

# Assessment of the Principle of Non-Punishment: Collection of Case Law

*By the LSI working Group on  
non-punishment*

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## About this document

This paper assesses the practical application of the non-punishment principle based on analysis of a unique collection of 28 cases from 11 countries across Europe. The assessment includes positive and negative examples of the application of the principle, information on the impact on victims, and good and bad practices derived from the cases. This assessment is an addition to the Explanatory Brief and the Advocacy Document on Non-Punishment, earlier published by La Strada International. These two documents have been translated into Danish, French, German, Italian, Serbian and Spanish, and they are available on the LSI website<sup>1</sup>. Taken together, these documents offer a comprehensive overview of the non-punishment principle and its application in reality.

## Acknowledgements

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The content of this publication represents the views of the authors only and is La Strada International's sole responsibility.

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<sup>1</sup> [https://www.lastradainternational.org/focus-areas/#non\\_punishment](https://www.lastradainternational.org/focus-areas/#non_punishment)

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# Introduction

The non-punishment principle states that human trafficking victims should not be penalised for crimes they were forced to commit as a direct result of being trafficked. It recognises that victims are often compelled to break laws by their traffickers and therefore they should not be treated as criminals themselves. The principle aims to protect victims from further injustice and encourages them to engage with the authorities without fear of punitive consequences. At the European level there are three binding instruments that, in theory, secure the application of the principle:

- Article 26, Council of Europe Convention on Action against Trafficking in Human Beings<sup>2</sup>
- Article 8, EU Trafficking Directive 2011/36/EU and the amendment Directive (EU) 2024/1712<sup>3</sup>
- Article 4(2), ILO Protocol 29 to the Forced Labour Convention<sup>4</sup>

## Types of non-punishment

There are **three types** of non-punishment offences found in international and national provisions.

**Status offences** refer primarily to *immigration, administrative and civil offences*. Trafficking victims are often unknowingly made to commit status offences in the course, or as a direct consequence of, their trafficking situation. For example, a victim may carry a forged identity document provided by their trafficker. In many instances victims are not aware of this unlawful act and might be made to believe their documents are valid. Status offences are often instrumental for human trafficking to take place, or otherwise they directly facilitate the commission of the trafficking offence.

**Purpose offences (criminal exploitation)** occur when a victim is exploited for the purpose of *criminal exploitation*. The unlawful act which the victim commits is called a 'purpose offence', as the victim is exploited for the purpose of committing these offences for the trafficker's financial gain.

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<sup>2</sup> Council of Europe Treaty Series - No. 197 Council of Europe Convention on Action against Trafficking in Human Beings \* Warsaw, 16.V.2005 - <https://rm.coe.int/168008371d>

<sup>3</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA and Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

<sup>4</sup> P029 - Protocol of 1947 to the Forced Labour Convention, 1930

**Other offences** include all unlawful acts committed by trafficking victims which do not fall under the categories of status offences or purpose offences. This can also include the (sometimes grave) offences that victims commit to escape their trafficking situation.

## Why is this Case Collection important?

La Strada International (LSI) and its members actively push for legislative changes and improved guidance at the European level to promote stronger application of the non-punishment principle. LSI also works at a practical level to promote the principle's application through its own Working Group on Non-Punishment. LSI compiled this Case Collection to illustrate the application of the principle, or lack thereof, in practice. The collection assessment illustrates the consequences of the principle for human trafficking victims and how relevant national stakeholders could apply the principle to protect victims from further harm.

## What does the Case Collection consist of?

The collection of case law leveraged a template to support with understanding national practices around the application of the non-punishment principle for human trafficking victims. The template was then employed by the Working Group on Non-Punishment, which comprised specialised NGOs from eleven European countries<sup>5</sup>. Based on the information provided by these NGOs, as well as additional research, LSI compiled this current collection containing the following:

- An assessment of the findings
- Details about the victims
- A brief summary of the case law
- The unlawful act committed by the victim and the type of non-punishment offence
- Whether the principle of non-punishment was correctly applied or applied at all
- The impact of the application of this principle on the victim
- A brief analysis of the (in)application of the non-punishment principle
- National legal background of each country (provided in the Annex)

## Assessment findings

The non-punishment principle should have been applied in all cases collected and assessed for this report. However, despite the existence of European – and in some cases national – provisions on non-punishment, the principle was often not applied or only partly applied. There are several reasons for this, including lack of awareness, knowledge, or practical experience among relevant stakeholders. As this report shows, the non-application of the

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<sup>5</sup> The countries involved are Belgium, Denmark, Romania, Spain, United Kingdom, France, Switzerland, Serbia, Finland, Germany, and The Netherlands.

principle leads to grave breaches of the rights of the trafficked persons and has profound negative consequences on their lives. When the principle *is* applied, however, the victims benefit from improved legal protections and can even contribute to the prosecution of their trafficker.

## Information about the victims' profiles

In the case law collected for this report, most of the trafficked persons (23 out of 28) came from Europe and Africa (see Figure 1), while the remaining persons came from South America and Southeast Asia. An overview of the nationalities of the victims is provided in Figure 2<sup>6</sup>. Generally, nationalities differed, with a few exceptions: four were from Nigeria, two were from Morocco, two were from Vietnam, two were from Brazil, and more victims were from Romania<sup>7</sup>. In most cases (24 out of 28) the victim was an adult<sup>8</sup> (see Figure 3). Three cases involved minors<sup>9</sup>, and one case involved both adults and children. Moreover, there were slightly more women than men (in 14 out of 28 cases the trafficked persons were women). There was one case involving both men and women, and one [case involving a person that does not identify with either](#) (see Figure 4).

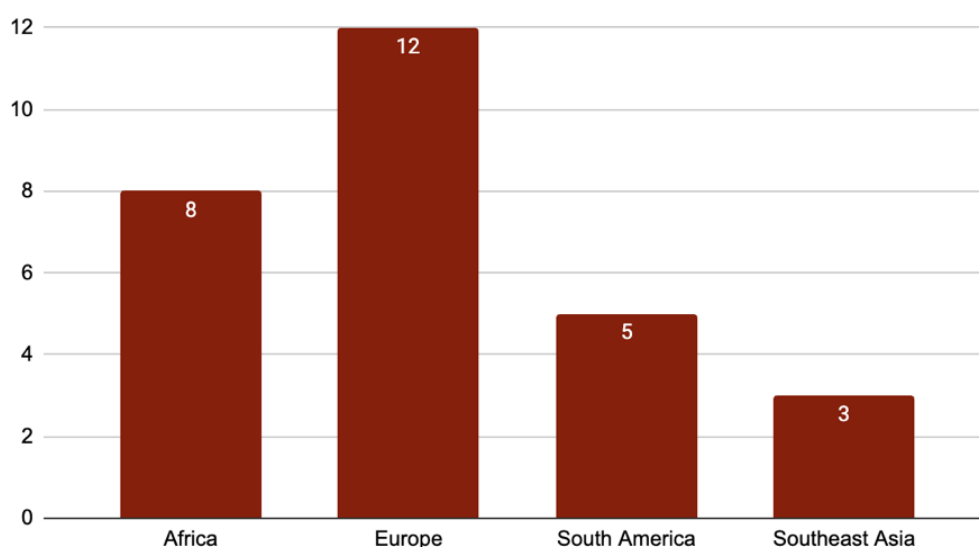


Figure 1: Origin of the victims

<sup>6</sup> For this analysis, real data about the origin of the victims was collected and used. However, in the summary of the cases, this information was either omitted or changed to ensure the anonymity of the victims. Other information about the transfer of victims to other countries was also changed for the same purpose.

<sup>7</sup> One of the cases from Romania, involved more victims and it was hard to determine how many victims there were in total.

<sup>8</sup> In some cases, the exploitation began when the trafficked persons were children but by the time the NGO was in contact with the persons, they had reached adulthood.

<sup>9</sup> A minor is defined as someone under the age of 18.

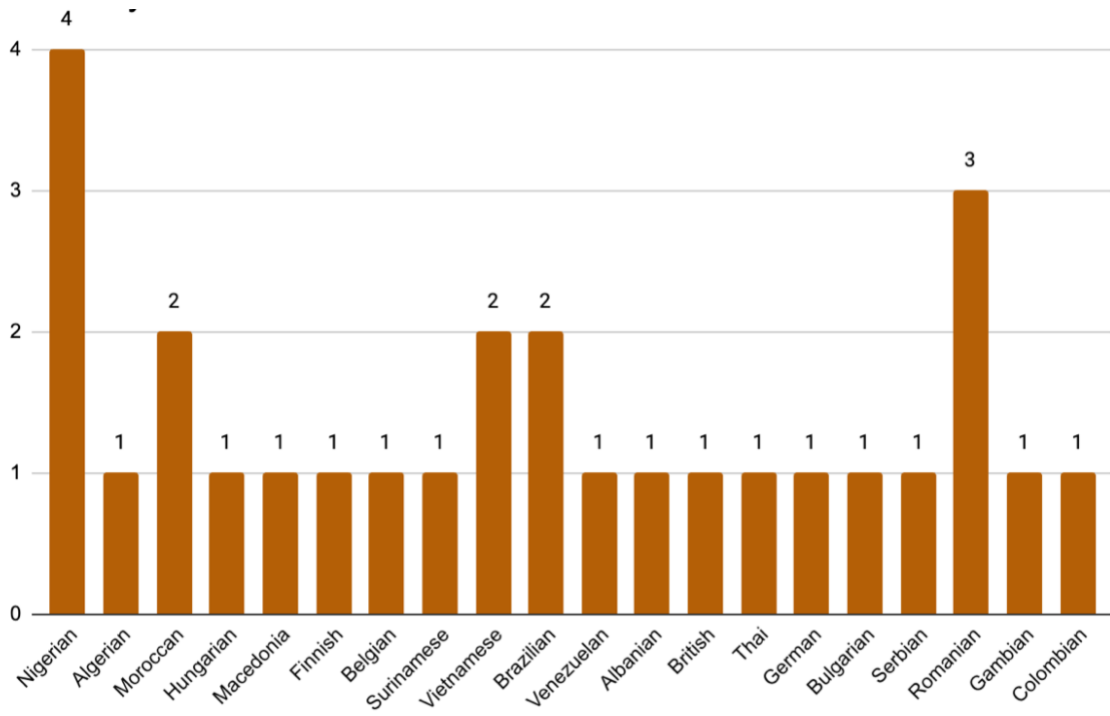


Figure 2: Nationality of the victims

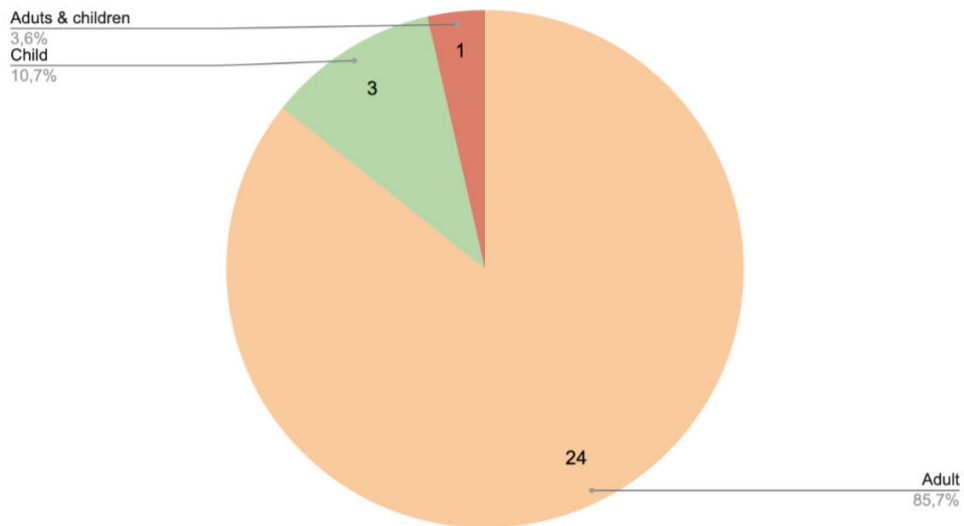


Figure 3: Percentage breakdown of cases by adults and children

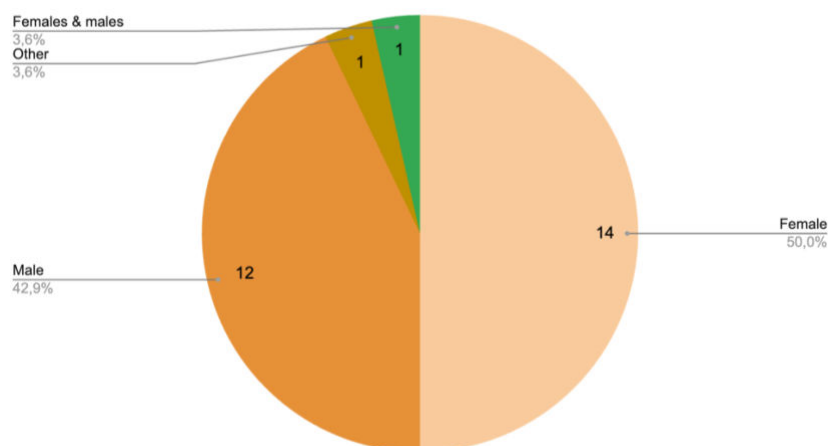


Figure 4: Percentage breakdown of cases by victim's gender

## Unlawful acts committed by the victim

The offences of which the victims were accused by the authorities are also diverse (see Figure 5). Drug-related offences and fraud are the most common type of offence (eight of 28 cases for each offence). The drug-related offences include drug trafficking, processing large quantities of cocaine, carrying a large quantity of drugs, illegal crop growing, and working at a cannabis plantation. Fraud entails possession of fake document (e.g. birth certificates or a healthcare card), having a false cohabitation agreement or a false marriage, and money laundering and tax evasion. There are also some cases (five of 28) involving more than one unlawful act.

## Types of exploitation

The types of exploitation also vary and some victims were forced into more than one type of exploitation (five of 28 cases). The most common types are criminal exploitation (12 of 28 cases) and sexual exploitation (seven of 28 cases), with labour exploitation being present in four of the 28 cases (see Figure 6).

## National legislation and Non-punishment Principle

The non-punishment principle is not always found within national law as a specific legal provision. As shown in Figure 7, from the countries we collected the cases, less than half has the principle in their national legislation. These countries are Romania, Belgium, Germany, United Kingdom and Spain. More information about this is provided in the [Annex](#).



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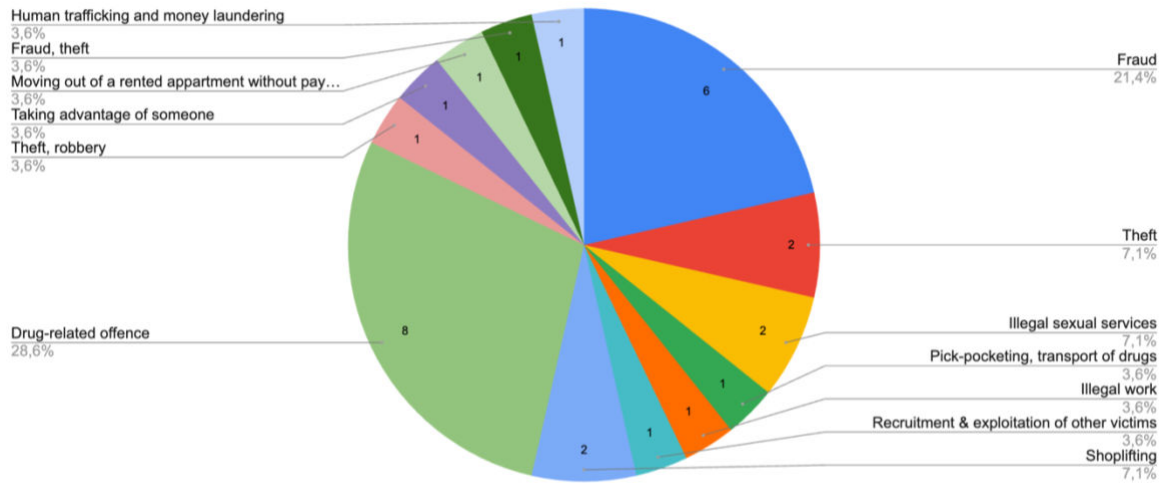


Figure 5: Unlawful acts committed by victims

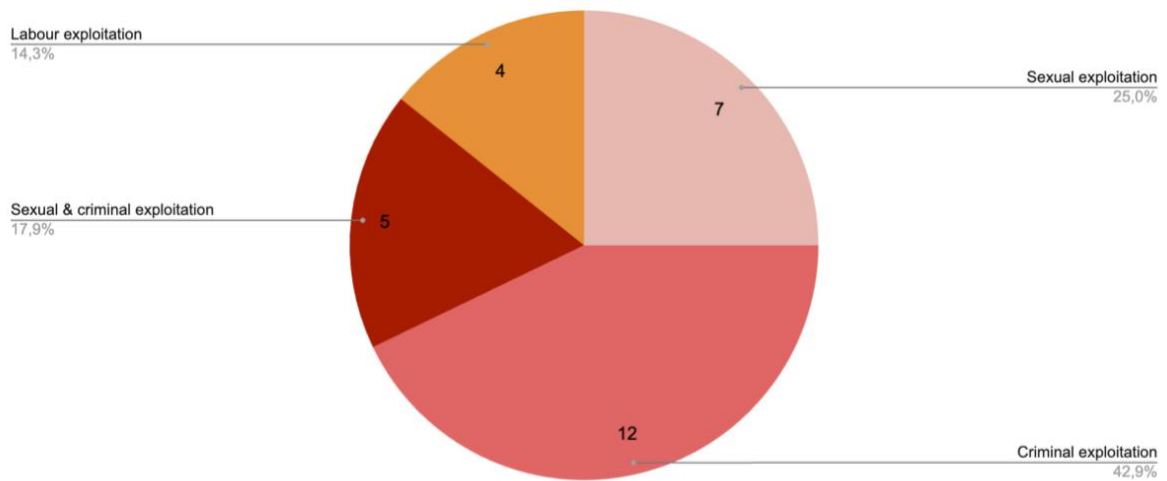


Figure 6: Percentage breakdown of cases by type of exploitation

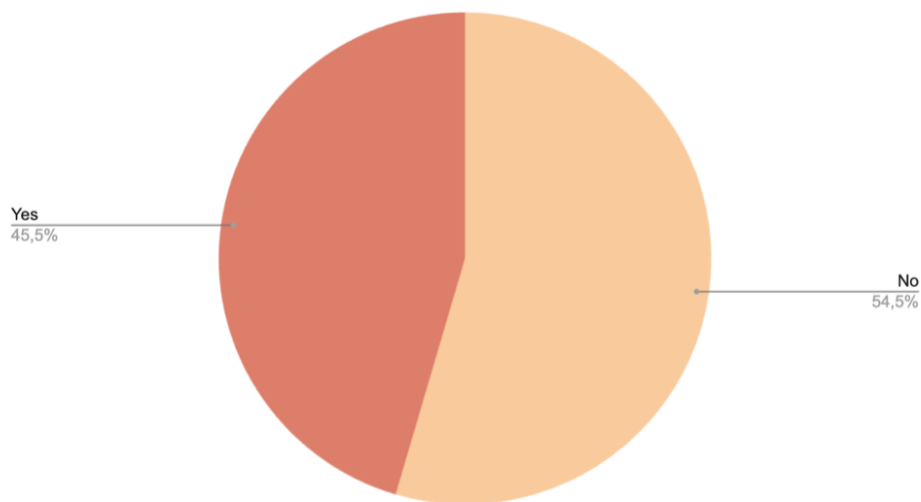


Figure 7: Percentage of countries with a separate legal provision on the non-punishment principle within national legislation (note this only relates to the 11 countries from which cases were collected and assessed, no overview is provided for all European countries)

In this report, the **correct application** of the principle refers to situations in which the victim was identified and not punished at all for the illegal acts that they committed due to their status as human trafficking victims.

A **partial application** involves cases in which:

- The victim was identified, yet the principle was not applied in the first instance but rather at a later stage in the proceedings; or
- The principle was applied on appeal; or
- The victim was not detained or deported, but was nevertheless punished through, for instance, fines which were not lifted.

A **non-application** involves situations in which:

- The person was identified as trafficking victim, but the principle was not applied;
- The victim was not identified as a trafficked person and could not benefit from protection.

16 out of 28 cases involved countries where the non-punishment principle is enshrined in national law. However, out of these, the only countries where the principle was correctly applied in all cases were Romania (three cases)<sup>10</sup> and Belgium (three cases). In Spain, the UK, and Germany, most cases witnessed only a partial application of the principle, while in some cases it was not applied at all. In Spain (four cases in total), two cases concerned a partial application, while in the other two cases the principle was not applied. In Germany (three

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<sup>10</sup> For Romania, the proceedings from one of the cases are still ongoing but it is likely that the outcome will be positive.

cases in total) only one case involved the correct application of the principle, one case involved its non-application, and one case involved a partial application. In the UK (three cases in total) two cases involved the non-application of the principle while the third involved its correct application. In sum, of the 16 cases from countries that have the non-punishment principle enshrined in national law, only eight correctly applied the principle, while three partially applied it and five did not apply it at all.<sup>11</sup> For a better representation of the data, see Table 1 below.

Country	Correct application	Partial application	Non-application
Belgium	3 cases	-	-
The UK	1 case	-	2 cases
Romania	3 cases	-	-
Spain	-	2 cases	2 cases
Germany	1 case	1 case	1 case
<b>Total: 16 cases</b>	<b>8 cases</b>	<b>3 cases</b>	<b>5 cases</b>

*Table 1: Overview of the application of non-punishment in countries that have non-punishment in national legislation*

When it comes to cases where countries do not have the principle enshrined in national law, the principle is (perhaps unsurprisingly) even less applied in practice. 12 cases<sup>12</sup> involve countries that do not have the principle enshrined in national law. In France (four cases in total) the principle was correctly applied only in one case, partially applied in another, and not applied in two. In Switzerland (three cases in total) the principle was partially applied in two cases and not applied in the third. In Finland (one case) the principle was partially applied, while in Denmark (two cases in total) it was not correctly applied in either case. Also, in The Netherlands (one case) the principle was not applied at all. Therefore, from the total of 12 cases, in only one of them was the principle correctly applied, in four it was partially applied, and in six it was not applied at all.<sup>13</sup> For a better representation of the data, see Table 2 below.

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<sup>11</sup> Disclaimer: we only collected a limited number of cases from each country and therefore it cannot be stated with certainty that the cases are representative of the national practice.

<sup>12</sup> The proceedings from the Serbian case are still ongoing and thus the outcome is not yet known.

<sup>13</sup> Disclaimer: we only collected a limited number of cases from each country and therefore it cannot be stated with certainty that the cases are representative of the national practice

Country	Correct application	Partial application	Non-application
France	1 case	1 case	2 cases
Denmark	-	-	2 cases
Finland	-	1 case	-
Serbia	-	-	-
Switzerland	-	2 cases	1 case
The Netherlands	-	-	1 case
<b>Total: 16 cases</b>	<b>1 case</b>	<b>4 cases</b>	<b>6 cases</b>

Table 2: Overview of the application of non-punishment in countries that have non-punishment in national legislation

Figure 8 shows an overview of all cases concerning the correct application, partial application, and non-application of the principle. In most cases (11 out of 28, the non-punishment principle was **not** applied, which had extremely negative consequences for the victims. The principle was correctly applied in eight cases and partially applied in seven; for two of the cases the proceedings are ongoing at time of writing.

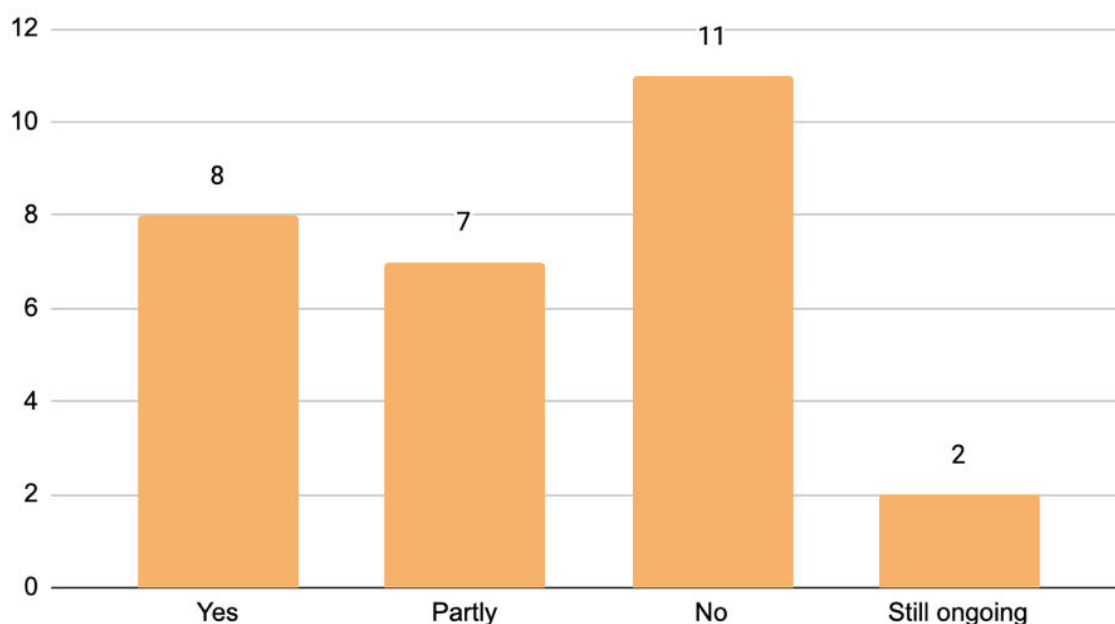


Figure 8: Correct application of non-punishment

In the cases in which the principle was applied, the most common field of application was criminal law (six out of 28 cases), followed by administrative law (two out of 28 cases) (see Figure 9).

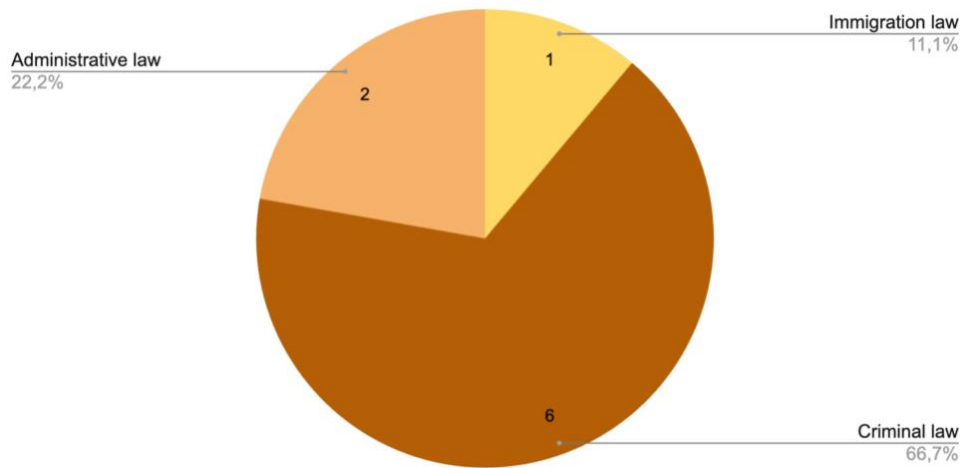


Figure 9: Field of law in which non-punishment was applied

In six out of nine cases involving a successful application, the principle was applied during the investigation/prosecution phase. Other stages of successful application were during court proceedings, at first contact with authorities, and after the judgement/conviction, with one case for each scenario (see Figure 10).

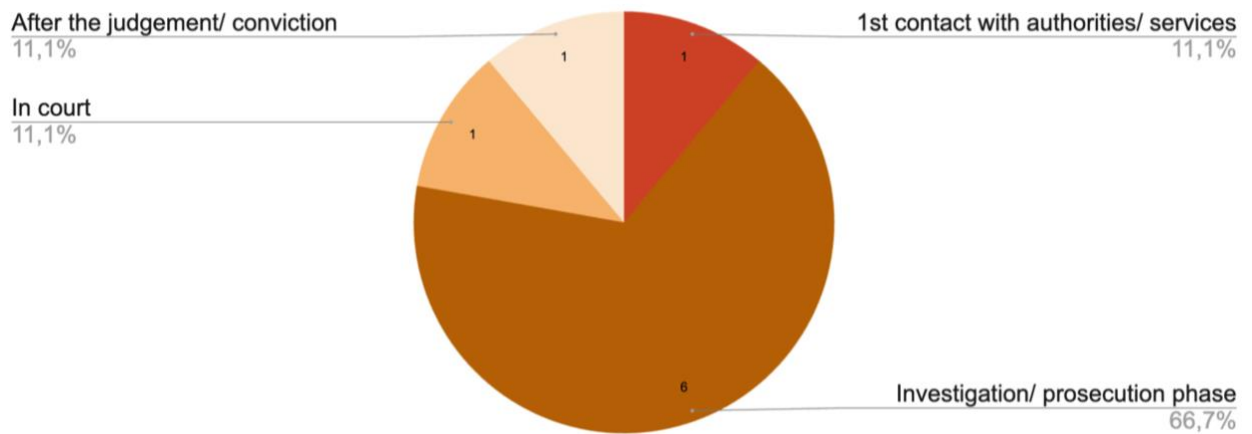


Figure 10: Stages in which non-punishment was considered but was not applied

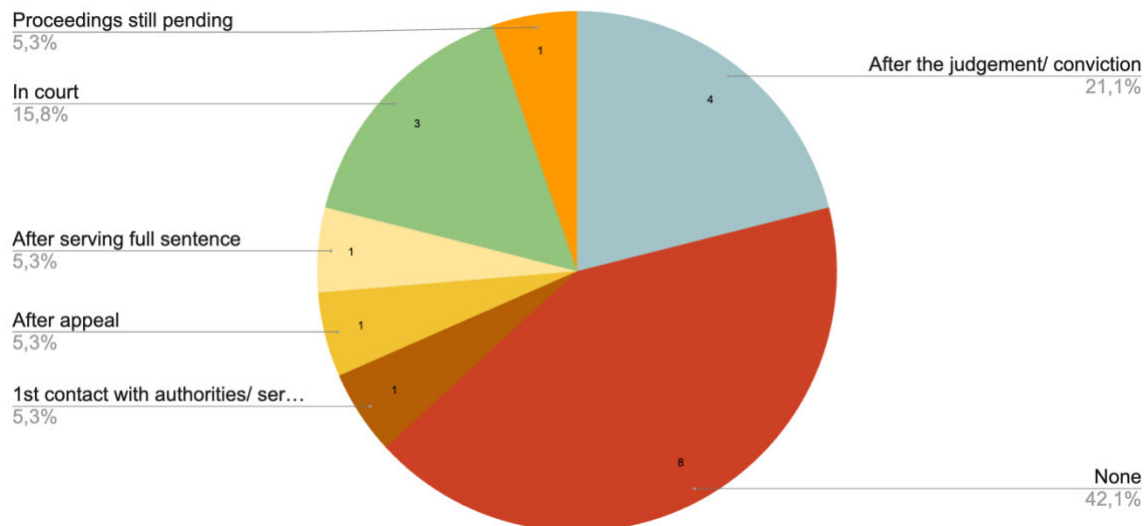


Figure 11: Stages in which non-punishment was considered but it was not applied in the end

From the cases in which the non-punishment principle was not applied, the principle was still considered in seven of the cases. However, in most cases (eight out of 19 cases involving partial or non-application of the principle) non-punishment was not considered at any of the stages (see Figure 11). In practice, the application of the principle depends on factors such as:

- Early identification of the victim status of the person concerned.
- Whether prosecutors, judges, and/or the victim’s lawyer have sufficient knowledge of the principle.
- Whether the victim can provide sufficient information about the trafficker.
- Whether an NGO is supporting the victim.
- Whether the non-punishment principle was enshrined in national law.<sup>14</sup>

## Good practices

Key good practices emerging from the cases reviewed include:

- NGOs are crucial in ensuring identification of the victim and the applicability of non-punishment principle.
- Flexibility of the legal proceedings allows for principle to be applied at later stages.

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<sup>14</sup> Recently, the EU Directive on Human Trafficking was amended and it now states that the non-punishment principle should, next to criminal activities, also apply to ‘other unlawful activities’, such as administrative or civil offences. This might influence the extent to which countries apply the non-punishment principle in the future, given that some cases in which it was not applied involved administrative offences. (See Directive (EU) 2024/1712)

- Specialised assessments help ensure early identification of the victim.
- When the principle is applied, re-traumatization of the victim can be prevented, and protection ensured.
- Successful identification and protection of the victim can facilitate their cooperation with the police regarding trafficking investigations.

## Bad Practices

Key bad practices emerging from the cases reviewed include:

- **Recognition and Initial Response Failures:** authorities often fail to recognise the accused person as a human trafficking victim, leading to inappropriate responses. These include overlooking clear indicators of trafficking, for example when explanations of a victim's situation were ignored, or where authorities were not convinced of a trafficking scenario and did not apply the non-punishment principle.
- **Legal and Judicial Shortcomings:** as explained by the cases below, courts often fail to apply the principle despite the presence of supporting evidence. This has often resulted in unfair legal actions against victims, such as prosecution, conviction, and sometimes deportation. Moreover, in some cases, legal practitioners appear to contribute to the non-application of principle.
- **Lack of support and Protection:** several cases showed a lack of compensation and support for the recognised victims. Misidentification or delayed identification has a significant negative impact on the victim's ability to receive timely and appropriate help.

## The impact on the victims

The application or non-application of the non-punishment principle is a key determinant in the nature of the victim's situation. The Positive Impacts below refer to cases where the principle was correctly applied, while the Negative Impacts refer to cases involving non-application and illustrate the detrimental impacts this had on the victims.

### Positive Impacts

- *Avoidance of prosecution:* the victims benefited from non-prosecution for crimes that were committed due to their trafficking situation, which fostered a greater trust in the legal system.
- *Access to support:* victims received significant support such as work permits, entry into rehabilitation programs (e.g., exit prostitution programs), and legal aid, which were crucial for their recovery and integration.
- *Protection of legal status and avoidance of re-traumatization:* victims were able to retain/obtain their victim status, avoiding wrongful conviction and further victimisation.

## Negative Impacts

- Denial of compensation and legal redress.
- Deprivation of liberty and the re-traumatization of the victim.
- Criminal record, risk of deportation, inability to apply for asylum due to non-recognition of the victim status.
- Inability to access the labour market due to criminal proceedings and the deterioration of their relationship with family.
- In some cases, the non-application led to extended jail time, further exploitation of the victims, and even suicide within police custody.

## Recommendations

After analysing all 28 cases, we conclude that the non-punishment principle is often not applied by judicial authorities and legal practitioners, leading to devastating outcomes for victims. This even happens in countries where the principle is enshrined in national legislation. In practice there is still a lot of room for improvement to ensure adequate application of the principle. These findings call for further action to:

- Highlight the implications for the victims of human trafficking.
- Raise awareness among practitioners about the situations in which the principle of non-punishment should be applied.
- Improve the support system for victims so they are identified in time and the principle is correctly applied from the beginning.
- Foster collaboration between parties (such as police, NGOs, judicial authorities, social services) to ensure a strong application of the principle.

A clear obligation on States to adopt specific penal provisions and prosecutorial guidelines can ensure a better application and interpretation of the principle. Competent authorities must have the obligation to apply the non-punishment provisions as early as possible and discontinue any proceedings and measures implying the restrictions of victims' rights (including but not limited to detention) as soon as relevant grounds have been found.

When the grounds for the application of the non-punishment principle have not been appropriately assessed by competent authorities and such grounds are subsequently found, any proceedings against the victim must be promptly terminated, and all their consequences cancelled, before and after an eventual conviction. This implies that criminal records must be cleared, and any other sanctions cancelled including fines or other administrative sanctions. If the authorities fail to do this and in turn collect fines paid by the victims, this also raises ethical questions related to the enrichment of the State through criminal offences, and the fact that victims are kept in vulnerable positions. The aim is to avoid a situation where victims, although exempted from criminal liability, are obliged to bear negative consequences – including but non-limited to debts and or expulsion or deportation orders – deriving from a failure of the authorities to comply with their due diligence obligations to ensure non-punishment.



It is further essential that the application of the non-punishment provision is **totally unconditional** and should **not** be in any way made dependent on the victim’s ability or will to cooperate with authorities in criminal investigation, prosecution and trial. In other words, it should not be used to obtain information in exchange of immunity.

It is of utmost importance that the principle applies to criminal, civil, administrative, and immigration offences. LSI has been actively advocating for the above recommendations to be included in the amendments for the EU Directive on human trafficking. Article 8 of the amended Directive now states that the principle is to be applied not only to criminal offences but also to other types of offences such as civil or administrative<sup>15</sup>. We support this amendment, as well as the recital reference calling for further awareness on the non-punishment principle embedded under article 18b.

However, LSI regrets that EU law makers have not been more committed to make further changes on this provision in line with our recommendations above. We had hoped for a stronger non-punishment provision in the Directive, which would instruct on the clearance of criminal records and sanctions of the victim. Therefore, much work still needs to be done and we call on all the relevant stakeholders to intensify their efforts to support victims of human trafficking by ensuring that all actors involved in combatting human trafficking know how to correctly apply the principle.

## Cases per country

### Belgium

All cases assessed for Belgium were provided by [Payoke](#). The non-punishment principle is enshrined in national legislation. For more information, see [Annex](#).

Case	1	2	3
Gender and age	Male (35)	Male (62)	Male (47)
Type of exploitation	Labour exploitation	Criminal exploitation	Criminal exploitation
Type non-punishment	Status offence	Purpose offence	Purpose offence

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<sup>15</sup> Now, Article 8 states: ‘Member States shall [...] take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal or other unlawful activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2’

Should the non-punishment principle have been applied?	Yes	Yes	Yes
Was the principle correctly applied?	Yes	Yes	Yes
Stage of application	In the investigation/prosecution phase	In the investigation/prosecution phase	In court
Field of law	Administrative law	Criminal law	Criminal law
Unlawful acts committed by the victim	Having a fake 'living together contract'	Shoplifting	Cutting hemp and taking care of the plants on cannabis plantation

*Table 3: Summary of cases in Belgium*

## Belgian Case (1): Correct application of the non-punishment principle to labour exploitation and smuggling victims

### Summary of the case

A criminal organisation took advantage of the vulnerable (economic) situation of Venezuelan victims. The criminal organisation with units in Venezuela, Netherlands and Belgium, offered travel and work packages for people to work abroad. Because of the stricter asylum legislation in the Netherlands, the organisation moved to Belgium. The organisation arranged fake (and real) work contracts, housing, helped people to apply for asylum, arranged fake relationships so people could receive a residence permit in Belgium. For this, they also worked together with a lawyer's office which also had to be paid by the victims. The case started because several official agencies noticed a big increase of people from Venezuela. After the investigations started, several victims made declarations against the criminal organisation, which is how several of these victims became known to Payoke.

### The non-punishment principle and the impact on the victim

From the beginning of the investigation, it was clear for the Belgium Prosecutor what the circumstances were, and the police services considered the people as victims of the situation rather than as 'criminals' who tried to obtain residence papers in Belgium. The police referred the victims to Payoke and did not prosecute the victims for the unlawful acts. Therefore, due to the correct application of the principle, the victims were not prosecuted for signing the fake living-together contract.

### Good practices

The Prosecutor could have chosen to prosecute all victims in this case due to fraud (of residence papers) and could have asked the Office of Migration to deport them. But the

Prosecutor didn't take this course of action, instead considering the circumstances and applying the non-punishment principle. The court also considered the arranging of a fake partner, the family reunion, housing, fake work contract explicitly as a part of the smuggling/exploitation. This act of looking at the circumstances is a good practice example in Belgium (as this is not often seen).

**Bad practices:**

None.

**Belgian Case (2): Principle correctly applied to stop the prosecution of an elderly victim of criminal exploitation.**

**Summary of the case**

A family, consisting of parents and their four children, took advantage of the vulnerable situation of a lonely elderly person who didn't have a social network. He lost contact with his family over the years and had few friends. The perpetrators groomed him – using the 'Loverboy technique' – into their family and isolated him even more. The children treated him as their grandfather, but also took advantage of him. The man lost his initial job because he stole money some money. After that, they always took his social benefit money. When he had a new job, they made sure they had his bankcard or when he asked his bankcard back, he had to withdraw money for them. They also went to do shopping with his bankcard. He also borrowed money for them and couldn't pay it back.

In the end he was totally dependent on the family. He also had to sublease his house (social housing) and give the rent to them. At that time, he had no other choice than to live with them. The family grew bigger: the children had kids of their own, and there was no place for the man anymore. He had to move from a room to the corridor and from there to the balcony. He also had to do household work on top of his own job. Because there was not a lot of money, they made him shoplift for them, as he wouldn't be suspected of shoplifting, because of his advanced In the end he escaped the situation as one of the neighbours saw him sleeping on the balcony and contacted the police. The police picked him up and brought him to the Payoke shelter.

**The non-punishment principle and the impact on the victim**

The application of the principle, lead to the prosecutor considering all the circumstances surrounding the man. Consequently, the prosecutor decided not to prosecute the man as it was obvious for him that the goods the victim stole were for the family and not for him and that he committed these offences as part of the exploitative situation. As the elderly man was not convicted, he felt that the justice system was on his side and that he could trust it.

**Good practices**

The Prosecutor considered the situation and the circumstances of the man. Strictly speaking the man could have been prosecuted, but this was not done, based on the circumstances the non-punishment principle was applied, which stopped the prosecution.

**Bad practices**

None

## **Belgian Case (3): Victim exploited for cannabis production found innocent in court due to the correct application of the principle**

### **Summary of the case**

The person was recruited in Germany as was advised to take another name. He was then offered a job in Belgium. He did not know what this job was. The person had to sleep at the same venue as where he had to work, which was a cannabis plantation. The housing was extremely precarious (e.g. no heating during winter). For food he was only provided with tomatoes and eggs. After working hours, he was locked inside the building. Two coworkers escaped but did not want him to come along with them. He had no connections and could not escape because he did not know where to go. He had to take care of the plants in the plantation and had to cut them when harvested. The police discovered the plantation and therefore the victim. They brought him to Payoke to help and accommodate him as a human trafficking victim.

### **The non-punishment principle and the impact on the victim**

The person was accidentally convicted as being part of the criminal organisation that harvested and sold cannabis. At a second stage of the procedure the same judge believed that this person was not guilty to the offences and followed the reasoning of the public prosecutor and the person's lawyer to not find him guilty. Therefore, the principle was not brought forward, yet the outcome of the case was the same, as the circumstances were considered.

As a result, the victim could keep his (temporary) status of victim of human trafficking and was not convicted for any suspected crimes committed during the time of his exploitation. However, the victim's case is still awaiting the final judgement so his status is still temporary.

### **Good practices**

In the second stage of the proceedings both the judge and the prosecutor recognised the circumstances (and followed the person's lawyer in this), and decided the person was not guilty for committing the offences because of the circumstances. Normally this should not have been applied if the public prosecutor in the first stage did not summon the person before the court for this case.

### **Bad practices**

As the person was prosecuted, and the circumstances were only recognised in the second stage, this left the victim vulnerable to revictimisation and traumatisation during the proceedings as he was initially prosecuted as part of the criminal organisation.

## Denmark

The cases were provided by [HopeNow](#). The non-punishment principle is not enshrined as a special provision for victims of trafficking in national legislation.

Case	1	2
Gender and age	Male (33-34)	Male (35)
Type of exploitation	Criminal exploitation	Labour exploitation
Type non-punishment	Purpose offence	Status offence
Should have non-punishment principle been applied?	Yes	Yes
Was the principle correctly applied? <sup>16</sup>	No	No
Stage of application	None	None
Field of law	None	None
Unlawful acts committed by the victim	Carrying a large quantity of drugs (marijuana)	Fraud (carrying false documents given by the trafficker)

*Table 4: Summary of cases in Denmark*

### Denmark (1): Non-application of the non-punishment principle led to the imprisonment and return of a West African victim

#### Summary of the case

The victim was trafficked by one of the largest cults regarded as a transnational crime network from his country of origin and was arrested during a raid in Christianshavn, in Copenhagen, Denmark. He was tried and convicted for being in possession of thirty marijuana joints. He received a deportation order and a six-year ban on entering Europe. Six

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<sup>16</sup> In Denmark, a delayed identification of the victim makes it almost impossible to appeal the decision of the court, which requires substantial evidence in favour of the victim and takes many months, time during which the victim remains in prison. However, not all victims can provide substantial evidence to support their case, so the court usually rules against them. Moreover, the victims expressed that they feel that the voluntary return is not a real choice, since the only other option he would have, would be to be deported with no assistance.

months after being imprisoned, HopeNow found him during their outreach work and he was eventually identified as a victim of trafficking. Despite this, the victim remained in prison and finally accepted a voluntary return to his country of origin rather than being deported. After returning to his home country HopeNow, together with his lawyer, attempted to appeal the court decision and ensure the man could be officially defined in court as a victim of human trafficking, rather than a criminal himself. After two years, the appeal was accepted by the court. However, the court requested his return to Denmark for the trial. HopeNow tried to get him a passport for him to return, but due to widespread corruption in his home country he was unable to obtain a passport and a visa. Because of this, the court refused to continue with the proceedings and the appeal fell through. HopeNow has since lost contact with the victim.

### **The non-punishment principle and the impact on the victim**

The principle was not applied even though the victim was officially recognised as a human trafficking victim. He was imprisoned, received an entry ban and a deportation order. As a result, the victim remained in prison for eight months and subsequently received a 'voluntary return'.

### **Good practices**

The appeal of the case was accepted but the court requested the victim to be present for the proceedings which was not possible, so the appeal fell through.

### **Bad practices**

The victim was not recognised in a timely fashion as a victim of trafficking, which prevented the application of the non-punishment principle. Because of this, the victim was received a prison sentence and received eventually a voluntary return. The victim remained at high risk from retaliations from the criminal organisation that initially trafficked him. After his return, the vehicle that was bought as part of the voluntary return funding was at one point confiscated by the criminal organisation. HopeNow contacted the NGO that was dealing with his case. Even when someone is identified as trafficked, there are very few lawyers who are equipped to handle similar cases and the time allocated for such a complicated procedure, legally, will result in any lawyer having to provide pro bono hours.

## **Denmark (2): West African victim of labour exploitation is still imprisoned despite being identified as a victim of trafficking**

### **Summary of the case**

The victim was initially trafficked into Italy where he worked in a restaurant and all the money earned by the victim went to his trafficker, who provided him with documents that were in the trafficker's name and with his bank account. The victim had been in one of the Italian refugee camps where he had contracted tuberculosis and became ill. Because of this, he was admitted to the hospital on several occasions but the trafficker did not provide enough money for consistent healthcare. The latter became worried he might be exposed because the hospital and the victim's employer were asking questions and had grown suspicious. The trafficker therefore decided to send him to Denmark. The victim was told that he would have access to medical care and later to work. However, on arrival in Denmark he was arrested for carrying false identity documents. Following his arrest, the victim was

tried and convicted for fraud, received a six-year ban to enter Europe and a deportation order.

HopeNow found the victim in the Ellebaek prison months later, during outreach work. In 2023 he was officially identified as victim of trafficking. While in prison, the authorities notified him that he would receive special assistance because of his vulnerable situation, however no measures were taken to do so. The victim's asylum application was denied and his lawyer appealed the decision. He was incarcerated in Ellebaek for over a year and eventually accepted a voluntary return to his home country. The victim had to leave Denmark in May 2024.

### **The non-punishment principle and the impact on the victim**

The victim was detained and tried before being identified as a victim of trafficking. He was eventually identified and his vulnerable status was acknowledged. Despite this, the principle was not applied and he remained imprisoned and his living conditions did not improve.<sup>17</sup>

### **Good practices**

None.

### **Bad practices**

The victim was put in solitary confinement due to tuberculosis, which further negatively impacted his psychological well-being. Moreover, after he was identified, no measures were taken to improve or redress his overall situation. The victim's asylum application was denied. This was appealed and the victim remained in prison, while the appeal is pending before the court. An appeal to bring up the non-punishment aspect of this case never occurred.

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## France

All cases were provided by the organisation [MIST](#). The non-punishment principle is not enshrined in national legislation. For more information, see [Annex](#).

Case	1	2	3	4
Gender and age	Female (32)	Female (27)	Male (16)	Male (16)
Type of exploitation	Sexual	Sexual	Criminal	Criminal
Type non-punishment	Status offence	Status offence	Purpose offence	Purpose offence
Should have non-punishment principle been applied?	Yes	Yes	Yes	Yes
Was the principle correctly applied?	Yes	No	Partly	No
Stage of application	1st contact with authorities or services	1st contact with authorities or services	After several convictions took place	None
Field of law	Immigration law	Immigration & administration law	Criminal law	None
Unlawful acts committed by the victims	She provided a fake birth certificate to the French administration	She provided a fake birth certificate	Stealing from tourists	Stealing

Table 5: Summary of cases in France



## French Case (1): Correct application of the principle to a West African victim of sexual exploitation

### Summary of the case

A West African female victim of trafficking encountered difficulties to access an 'exit prostitution program' because she entered in France with a biometric passport under a fake identity.<sup>18</sup>

### The non-punishment principle and the impact on the victim

The victim was identified by the NGO MIST and referred to another NGO dedicated to sex workers' assistance based in Paris, because she wanted to enter a program to exit prostitution called "Parcours de sortie de prostitution". At first the administration denied her the possibility to access the program, because she has a real biometric passport but explained that the name and date of birth were not the correct ones. The victim explained that her traffickers forced her to register herself under this fake identity at the Immigration office in her home country before her departure, where they registered her fingerprints through the process at the time. The Embassy of her home country in Paris explained to her that she can change it, but the cost of this administrative request would be 1800 euros. She explained to the French administration that she does not have this money, because she had no working permit, but that she was willing to recover her real name through the program dedicated to Exit prostitution.

The Paris administration refused her entrance claiming she has two different identity papers, which looked suspicious. The NGO MIST came therefore to support the case by highlighting that she was a victim of trafficking and has specific rights regarding this status, including the non-punishment principle. MIST wrote a letter to the administration to stress the non-punishment principle, as she was not to blame for the situation but the trafficker. The French administration eventually accepted her entrance into the program under her real name.

Due to the application of the principle, the victim has now a working permit and access to an integration program dedicated to 'exit prostitution'. But her right for assistance and integration was delayed, which has had negative consequences on her mental health.

### Good practices

When migrant victims of trafficking want to access to programs dedicated to sex workers' assistance to access to a working permit, the stakeholders should take into consideration that their rights as victim shouldn't be forgotten. In this case this worked out well, due to the support by the organisation MIST.

### Bad practices

None.

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<sup>18</sup> *Parcours de sortie de prostitution* is a 2-years integrations program under the law 425.1.4 of the French Foreigners' Code

## French Case (2): Incorrect application of the principle to a West African victim who was forced to provide a fake birth certificate.

### Summary of the case

A West African female victim of trafficking encountered difficulties to access an 'exit prostitution program' because she had a fake birth certificate.<sup>19</sup>

### The non-punishment principle and the impact on the victim

The victim was identified by the NGO MIST in Paris and referred to the National Network for the Assistance and Protection of Human Trafficking Victims (Ac.sé), coordinated by the organisation ALC. The victim was referred to a shelter located in Le-Puy-en-Velay, where the social workers applied for her resident permit through an entrance into a program to exit prostitution called 'Parcours de sortie de prostitution'. The woman gave her birth certificate and her passport to the administration, as they required these documents. Her passport was delivered by her home country's Embassy in Paris, but the birth certificate was a fake one that the victim was previously forced to use under exploitation.<sup>20</sup> The administration denied her the right to enter the 'Exit prostitution' program because of the fake birth certificate. The NGO MIST informed the shelter about the non-punishment principle, and they requested a lawyer who assisted the victim to appeal in the administrative court and she won.

Due to the application of the principle, the victim has now a working permit and access to an integration program dedicated to 'exit prostitution' but the victim's right for assistance and integration was delayed, which also had negative consequences on her mental health. Moreover, the shelter's social workers were discouraged from applying more such requests in their area due the difficulties encountered with the French administration.

### Good practices

Anti-trafficking NGOs can support victims and/or other NGOs and/or lawyers who assist them to recall the non-punishment principle. Lawyers must appeal against administration in such cases.

### Bad practices

The administration did not consider the non-punishment principle at first. Even though most of the beneficiaries of the 'Exit prostitution programs' are actually victims of trafficking, their specific rights of victims of trafficking might be forgotten, as they are considered 'people working in prostitution/sex workers willing to exit'. When migrant victims of trafficking want to access to programs dedicated to the sex workers assistance to access to a working permit, the stakeholders should take into consideration that their rights as victim should not be forgotten and that prostitution and human trafficking should not be conflated.

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<sup>19</sup> *Parcours de sortie de prostitution* is a 2-years integrations program under the law 425.1.4 of the French Foreigners' Code

<sup>20</sup> The traffickers forced her to use it to apply for asylum when she arrived in France.

## **French Case (3): North African minor who was forced to steal is eventually recognised and testifies in the case against his traffickers**

### **Summary of the case**

A North African boy (minor) was identified as a victim of trafficking in 2022 through a police investigation. His traffickers were sentenced by the Paris Court in January 2024 for trafficking of 12 children coerced by drug use to steal from the tourists nearby the Eiffel Tower. The NGO MIST was appointed as the legal guardian of the 12 children as they were unaccompanied children. After the arrest of his traffickers, the boy was brought abroad (another European country) by other traffickers and came back to Paris in September 2023. Then, for four months he asked the children welfare services in Paris for protection, through his lawyer, MIST as his legal guardian and the NGO who identified him at first in the street (NGO 'Hors la rue'). He was suffering from post-traumatic stress disorder (PTSD) and drug addictions as a result of exploitation and was recruited by other traffickers to steal in exchange of drugs access. Going in and out of jail for 4 months, he spent more than 2 months in detention in total during this period. One time, the Children's Court pronounced only Community work due to his victim status and he was able to go to a shelter. During his traffickers' trial in January 2024, he was a witness in the court case against his traffickers who were sentenced to four to six years' imprisonment.

### **The non-punishment principle and the impact on the victim**

In this case, the principle of non-punishment was not recognised from the beginning and, as a result, the victim was deprived of his liberty. This led to him developing PTSD and drug addictions due to the extended period of exploitation. His medical condition was not addressed in a proper way to ensure his protection. Eventually he was sent to a minors' shelter and could testify in court as a victim of trafficking.

### **Good practices**

The Children's Court considered (although only partly) the identification of children as victims of human trafficking by the prosecutor and the impact of trauma and drug addiction (as a result of trafficking) on the vulnerability to re-trafficking.

### **Bad practices**

The boy (a minor) spent more than two months in jail during a period of four months in which he was asking for protection from the children's welfare services in Paris. During the many criminal cases against the boy, he was often not recognised as a victim of trafficking, and when he was recognised, this was not fully considered to stop the prosecution.

## **French Case (4): Non-application of the principle to a child victim of criminal exploitation leads to suicide in prison**

### **Summary of the case**

A North African boy (minor) was identified as a potential victim of trafficking after being arrested for stealing. He was sent to the Children Court and was eventually sent to jail in

October 2023. His lawyer highlighted his vulnerable situation and suicidal plans. Despite this, the victim was sent to prison where he committed suicide.

**The non-punishment principle and the impact on the victim**

The principle was not applied in this case, despite the victim's lawyers highlighting his vulnerable situation and suicidal plan. As a result, the victim was imprisoned and committed suicide in jail.

**Good practices:**

None.

**Bad practices:**

The victim was not recognised, and the principle not applied. Consequently, the victim was jailed, where he then committed suicide.

## Romania

All cases provided by [ADPARE](#). The non-punishment principle is enshrined in national legislation. For more information, see [Annex](#).

Case	1	2	3
Gender and age	Females & males, both adults and children	Female (38)	Female (34)
Type of exploitation	Sexual, Criminal	Sexual	Sexual
Type non-punishment	Purpose offence	Other offences	Purpose offence
Should have non-punishment principle been applied?	Yes	Yes	Yes
Was the principle correctly applied?	Still ongoing	Yes	Yes
Stage of application	Investigation & prosecution phases	Investigation & prosecution phases	After the judgement/ conviction
Field of law	Criminal law	Administrative law	Criminal law
Unlawful acts committed by the victim	Car registration fraud (use of victim's identity); phone subscriptions (use of victims' identity); theft	Illegal sexual services	Human trafficking and money laundering in Scotland

Table 6: Summary of cases in Romania

### Romanian case (1): Correct Application of Non-Punishment principle for victims of criminal exploitation in Austria

#### Summary of the case

All victims had debts to a trafficking network that also deals with usury. Under threats to pay the debts, the victims were moved to Austria where they were housed in rented apartments with several people in one room. The victims (both male and female victims) were exploited via begging, theft and sexual exploitation. The traffickers also used the identities of the victims to illegally register cars and mobile phone subscriptions, the goal being to sell the phones without paying the subscriptions. Although six of the victims were in the custody of the Austrian police, because they were caught stealing, they were not

identified as victims of trafficking and so criminal cases were opened for theft. The situation reached the Romanian authorities that began investigations.

### **The non-punishment principle and the impact on the victim**

Non-application of the principle in Austria led to the victims receiving a criminal record. This could have impeded the victims' societal integration as well as create debts for goods that did not belong to them. Since six of the victims were identified as having a criminal record for theft and fraud in Austria, the Romanian prosecutor in charge of the case cooperated with the Austrian law enforcement to eliminate the criminal records and compensate the victims who had been punished. The Austrian police officers supported the steps taken by the prosecutor.

### **Good practices**

The involvement of the Romanian prosecutor and the defence of the victims' rights in the legal proceedings by the ADPARE victim coordinator.

### **Bad practices**

Lack of identification of victims in the country of destination and their treatment as criminals.

## **Romanian case (2): Correct Application of Non-Punishment in the Case of a Victim who was Sexually Exploited in The Netherlands**

### **Summary of the case:**

The victim was born and raised in Romania. At the age of 17, she met a boy and later married him. Their relationship resulted in a child. The woman was forced by her husband and a friend of his to offer sexual services, both on the street and at clients' homes. For several years the victim was exploited in Romania, and during 2016-2017 she was sexually exploited in The Netherlands. In Romania, the victim was fined almost daily, the total value of the fines being 526,744.00 lei (EUR 105,000).

The victim was found on the street in a full psychotic crisis. After the intervention of an emergency medical team, she was hospitalised in a psychiatric hospital in The Netherlands. The hospital staff referred her to an NGO, which contacted the victim's brother who was asked to take her home. She returned to Romania in August 2017 and was referred to the ADPARE counselling centre by her mother.

### **The non-punishment principle and the impact on the victim**

The victim's status was not recognised in The Netherlands and the fines she received accumulated, which also resulted in her having a negative financial record. This had a significant negative impact on her daily activities and future. The administrative bodies put pressure on her, all the time sending subpoenas and notices to bank institutions to seize her income and freeze her accounts. The impossibility of paying those unjustly applied fines resulted in huge debts over the years and a negative financial record, which caused her additional stress until the debts were erased.

However, in Romania, the judge applied the non-punishment principle after the prosecutor provided information, certifying that the victim violated the rules during the exploitation period and that she was under threats.

### **Good practices**

The financial debt was erased from the victim. Also, the involvement of the Romanian prosecutor and the defence of the victims' rights in the legal proceedings by the ADPARE victim coordinator, supported the case.

### **Bad practices**

The lack of identification of the victim in the country of destination.

## **Romanian case (3): Correct Application of Non-Punishment in the Case of a Victim Sexually Exploited in England**

### **Summary of the case:**

The victim was 22 when, after many failed attempts to find a job in Romania and to support her family financially, she decided to go to England following her friend's advice. Soon after she arrived, she met a Romanian man on social media and started to fall in love. He told her he loved her and that he wanted to start a family together. The Romanian man came to England under the pretext that they would start a family together, but after a week together he began to sexual exploit her, to assault her physically and verbally, and to force her to use drugs. She was controlled financially and communication with her family was restricted. All the money she received from forced sexual services was taken by the Romanian trafficker and used to buy drugs, gambling and send to his own family using her identity. She was forced to use drugs to get more clients and he used violence against her.

After two years, because she could no longer resist the trafficker's abuse, she locked herself in the apartment when he was away, and when he later came home and tried to enter the apartment, she threatened to call the police. After this incident, he fled to Romania. She also returned to Romania to see her parents, but after a short time she went back to England for another five months to practice prostitution on her own. After this five-month period, she decided to return to Romania and attempted to start a new life. But in 2021, when taking a driver's license exam, she was arrested and imprisoned for one month in Romania, then sent to England and imprisoned there for nine days. She was referred by the ex-officio lawyer to an anti-trafficking association, which in turn referred the case to ADPARE in January 2022.

### **The non-punishment principle and the impact on the victim**

The victim should have not been arrested and imprisoned, given that she was a victim of sexual exploitation. The authorities only applied the non-punishment principle following the steps taken by the ex officio lawyer in the UK who identified her as a victim of human trafficking. The British authorities were sued for wrongful imprisonment and compensation was requested for the moral damages suffered by the victim due to her imprisonment. The trial is ongoing.

For 11 months the victim was stuck in a country where she no longer wanted to stay and was unable to work and do other activities. All the experience she went through had a negative impact on her and her daily activities, she felt like she was being watched all the time. She lost her trust in people, in her family, in the authorities, and felt that everyone was accusing her. She worked hard to overcome the fear of authorities and of people, the fear of doing things alone, and the fear of having criminal record.

### **Good practices**

Ex officio lawyer identified her as a victim of trafficking while representing her in front of the judge.

### **Bad practices**

She was treated as a criminal and punished. The police put pressure on her to declare and consider herself guilty of human trafficking and money laundering. They recorded in the statements only what they wanted, and she had no translator.



## Spain

The non-punishment principle is enshrined in national legislation. For more information, see [Annex](#).

Case	1	2	3	4
Gender and age	Female (36)	Female (33)	Female (28)	Female (28)
Type of exploitation	Sexual, Criminal	Criminal	Criminal	Criminal
Type non-punishment	Purpose offence	Purpose offence	Purpose offence	Purpose offence
Should have non-punishment principle been applied?	Yes	Yes	Yes	Yes
Was the principle correctly applied?	Partly	No	No	Partly
Stage of application	After she was convicted (robbery) and served full sentence	None	None	After conviction
Field of law	Immigration law	Immigration & criminal law	Immigration & criminal law	Immigration & criminal law
Unlawful acts committed by the victim	Theft, robberies	Drug trafficking	Drug trafficking	shoplifting
NGO providing the case	SICAR cat21	SICAR cat	SICAR cat	Fundación de la Solidaridad Amaranta22

Table 7: Summary of cases in Spain

<sup>21</sup> Now Fundación de Solidaridad Amaranta

<sup>22</sup> Proyecto Esperanza and SICAR cat merged into Fundación de Solidaridad Amaranta while the Case Collection was being compiled

## **Spanish Case (1): Partial application of the non-punishment principle in the case of a West African victim of sexual and criminal exploitation identified and granted residence after conviction**

### **Summary of the case:**

The victim was a single woman with a two-year-old son and living with her grandmother. She had no family support and a precarious economic situation. She was recruited in her country of origin by an acquaintance who offered her a job in Spain. She travelled to Spain with her child. During the journey she became a victim of physical and sexual violence. Upon arrival in Spain, she was forced into prostitution to pay off a debt of 30,000 euros. She was also forced to steal from clients to get more money. On several occasions she was arrested for theft and robbery. Convicted of robbery with violence and intimidation, she was sent to prison. Due to her imprisonment, she lost guardianship of her child. After release from prison, she decided not to pay any more debts but continued to offer sexual services as a survival strategy, until she asked for help and was referred to a specialised agency.

### **The non-punishment principle and the impact on the victim**

The victim was informed of her rights to and options as a victim of trafficking only after she was referred to SICAR cat. She then went through the identification process and, according to Spanish immigration law, received a residence and a work permit. However, if it wasn't for SICAR cat, the principle of non-punishment would have likely not been applied given that the authorities did not address it previously.

The fact that she was not detected early led to a period of exploitation that negatively impacted her physical and mental health. Consequently, her recovery process was a long one. Moreover, her several arrests and convictions for crimes she was forced to commit gave her a criminal and police record that negatively impacted her social and labour integration in Spain. She was deprived of liberty for more than a year because of the conviction for robbery with intimidation. The withdrawal of guardianship of her child because of her imprisonment severely damaged her relationship with her daughter and had an impact on her mental health.

### **Good practices**

After receiving convictions and serving the sentence, she was identified as a victim of human trafficking and was able to access a residence permit. The exemption from administrative responsibility for non-compliance with the regulations on migration was applied.

### **Bad practices**

Despite the several arrests and contact with the authorities, no evidence of trafficking was detected, even when the woman explained her situation to professionals inside the prison. She was tried and convicted for several theft offences. Her arrests and convictions negatively impacted her social and labour life in Spain, as well as her relationship with her daughter. Because of her imprisonment, she lost the guardianship of her daughter which further damaged their relationship and negatively impacted her mental health. Moreover, she was deprived of her liberty for more than a year because of the conviction for robbery with intimidation.

## **Spanish case (2): Non-application of the non-punishment principle in the case of a South American victim of drug trafficking convicted, sentenced and deported despite NGO report on evident trafficking indicators**

### **Summary of the case**

The victim was a single mother with four children, unemployed, and her parents were hospitalised. She had nobody to look after her children and she had to pay the costs of her parents' medical care. She was in a situation of extreme financial vulnerability, having to sacrifice her own food to be able to provide for her children on some occasions. This situation was well known in her neighbourhood, and she was often offered small jobs such as taking care of elderly people or cleaning houses. While waiting at her usual bus stop to go home from the hospital after visiting her parents, a woman approached her and offered her a job cleaning her house. She accepted the offer, and the woman gave her phone number. When she called, she got an automated message saying that the number did not exist.

Two weeks later, at the same bus stop, a man approached her and indicated that he dropped a piece of paper. There was a written message addressed to her, telling her that they were aware of her precarious economic situation, that they knew her and her family, and that she should not explain to anyone that she had received the note. The following months she continued to receive notes in the same way and was approached by different people. Through the notes, she received instructions for a trip in exchange for 20,000 reais (about 3,748 euros). The notes also contained threats to her children, explaining that they would be beaten if she did not comply with the instructions or explained to someone that she was receiving these messages.

In one of the last notes, she was ordered to obtain a passport. After obtaining this documentation, she received a last note instructing her to go to a certain location with a suitcase packed. There she was forced to hide drugs between their clothes. Afterwards, she was forced to get a plane. On arrival in Spain, she was detained at the airport. She entered prison where a professional detected signs of trafficking and contacted SICAR cat to make an assessment of trafficking. Despite the assessment and report made by SICAR cat, the woman was not officially recognised as a victim of trafficking and has been convicted for the drug offences.

### **The non-punishment principle and the impact on the victim**

Once the victim was referred to SICAR cat, she was informed of her rights and options as a victim of trafficking. She agreed to start the formal identification process for which the specialised anti-trafficking units of the security forces in Spain are responsible. SICAR cat informed the police about the case and coordinated the formal identification interview. Unfortunately, she was not formally recognised as a victim of trafficking for the purpose of criminal exploitation. Despite this, SICAR cat wrote a report detecting signs of trafficking to request the application of the principle of non-punishment. The police did **not** identify her as a victim of trafficking because she had no information/details about the traffickers (names, phone numbers, etc). The lawyer did not provide SICAR cat's report nor requested the application of the principle of non-punishment.

As a result, the victim was deprived of her liberty and convicted for an offence against public health with a sentence of 5 years and deportation afterwards, with no option for asylum. She was given no option to apply for asylum or stay in Spain due to her vulnerable situation. Moreover, in case of her return to Spain, she will not be able to apply for asylum because she now has a criminal record in Spain.

### **Good practices**

She was detected by a professional from the prison and referred to an anti-trafficking NGO.

### **Bad practices**

She was not formally identified as victim of human trafficking because she was not able to provide evidence against her trafficker (which is contrary to international and European law stipulating that the identification must be made based on indicators). The public defender in the criminal proceedings did not cooperate with SICAR cat to provide a report on the assessment of indications of trafficking to the court. Consequently, the report was not provided to the court and the court was unable to assess this circumstance to apply the non-punishment principle. At no point in the criminal proceedings was there any mention of a possible trafficking situation. The woman was convicted, deprived of her liberty for five years, and deported. She now has a criminal record in Spain, and no option to ask for asylum.

## **Spanish Case (3): Non-application of the non-punishment principle in the case of a South American victim of criminal exploitation convicted and sentenced**

### **Summary of the case**

The victim lived with her daughter in Venezuela. The daughter was born when the victim was 17 years old and was, at the time, attending primary school. According to the woman, her situation in the country was good. In the summer of 2022, she was contacted by her younger brother with whom she had no relationship for years. He told her that he was involved in problems related to a criminal organisation engaged in drug trafficking. He said he had a debt with them and he wanted her to help him pay it off. Subsequently, she began to receive telephone threats from members of this criminal group, always using a private number. She received threats against her and her daughter. She felt manipulated and sold by her brother, finding herself in a situation of vulnerability and coercion through the use of psychological violence against her, and under the threats of the criminal group against the integrity of her daughter.

Due to the threats, she agreed to comply with their demands to pay off the debt contracted by her brother by smuggling drugs. Following instructions, she bought a plane ticket to Spain. Upon her arrival, the border police detained her at the airport. She entered prison where a professional detected signs of trafficking and contacted the NGO SICAR cat to make an assessment and confirm signs of being a victim of human trafficking. Despite the assessment and report made by SICAR cat, she was not officially recognised as a victim and was convicted for drug offences. This happened despite the victim's lawyer's request for the application of the non-punishment principle.

### **The non-punishment principle and the impact on the victim**

Once she was referred to SICAR cat, she was informed of her rights and options as a victim of human trafficking. She agreed to start the formal identification process and SICAR cat assisted her throughout. The police did not identify her as a victim of trafficking, based on the fact that the evidence provided against her traffickers was not enough. Despite this, SICAR cat wrote a report detecting signs of trafficking in human beings addressed to the Court to request the application of the principle of non-punishment. In court, the public defender in the criminal proceedings provided the SICAR cat report and requested the application of the principle of non-punishment. The Court, however, did not apply it.

As a result, the victim was deprived of her liberty and was convicted for an offence against public health with a sentence of 5 years, with a deportation order afterwards. She was not given the option to apply for asylum or stay in Spain despite her vulnerable situation in her country of origin. The victim will also not be able to apply for asylum if she returns to Spain since she now has a criminal record.

### **Good practices**

She was referred by a professional from the prison and referred to an anti-trafficking NGO. Moreover, the public defender in the criminal proceedings cooperated with SICAR cat to provide a report on the assessment of indications of trafficking and asked the court to apply the NP principle.

### **Bad practices**

She was not formally identified as a victim of trafficking, based on the facts the victim could not provide enough evidence against her traffickers, despite having given all the information available to her, telephone numbers, and being willing to denounce. Identification must be based on indicators and not on judicial evidence. The court did not apply the principle of non-punishment, despite the report and indicators provided by a specialised anti-trafficking NGO.

## **Spanish case (4): Partial application of the principle to a victim of criminal exploitation**

### **Summary of the case**

The victim lived with her mother, an older brother, and a younger sister, both of whom were minors at the time and were in a precarious economic situation. Through Facebook she met a man from Hungary living in Spain. They started a long-distance relationship that lasted months. During this time, he was especially attentive to her and her family. He was interested in her welfare and on several occasions sent her money to contribute to her family's support. Once the relationship of trust and the emotional bond was established, he suggested she move to Spain so they could live together. He even promised to marry her to regularise her administrative situation. The victim accepted and travelled following the man's instructions.

Shortly after her arrival, the victim understood that the man with whom she had fallen in love had only simulated their relationship to bring her to Spain under false pretences. She was forced by this man and two of his friends to commit thefts in clothing stores and

shopping malls. She was always accompanied and was forbidden to interact with anyone. She was often subjected to psychological and physical violence by the man. After six months, she was able to escape the situation by asking for help. She was then referred to and assisted by a specialised entity.

### **The non-punishment principle and the impact on the victim**

Proyecto Esperanza notified the national police of the case and coordinated the formal identification process. The victim was formally recognised as a victim of trafficking for the purpose of forced criminality. She was granted a reflection period. After some weeks, she decided to report the case to the police. She became a protected witness and received, according to Spanish immigration law, a residence and work permit due to her collaboration as a victim of trafficking.

However, the fact that she was not detected early led to a period of exploitation that had a very negative impact on her mental health. Consequently, her recovery process was a long one. Also, her arrest and several convictions resulted in a criminal record which negatively impacted her social and labour integration in Spain.

### **Good practices**

There was good collaboration between Proyecto Esperanza and the specialised unit of the national police, which facilitated the formal identification of the trafficking victim without subjecting her to secondary victimisation. The Spanish regulations were correctly applied, which insist that the formal identification of trafficking cases must be made based on indicators or reasonable grounds, without conditioning the formal identification on the victim's denunciation of the case. The victim made the decision to file a complaint when she had already been identified, at the time she considered it appropriate, after having received information and comprehensive support. Her complaint triggered a police investigation that led to the arrest of the traffickers and the identification of another victim that was from the same country of origin, recruited under the same conditions.

### **Bad practices**

During the time she was being exploited, she was neither detected nor identified by any of the actors involved each time she was arrested and tried for the theft offences she had been forced to commit. Though she was tried and convicted for several theft offences, so far only one pardon has been granted. A suspended sentence has been granted in three cases, while in one case the suspension is under appeal. The criminal proceedings against her traffickers are still ongoing and therefore it is uncertain whether the verdict will be an acquittal or a conviction – and, in the latter case, whether reparation measures will be taken, including the expungement of criminal records for offences committed in the framework of the trafficking process.

## Germany

Case 1 was provided by [Ban Ying](#) and the case 2 and 3 were provided by [KOBRA e.V. Koordinierungs- und Beratungsstelle gegen Menschenhandel](#). The non-punishment principle is enshrined in national legislation. For more information, see [Annex](#).

Case	1	2	3
Gender and age	Other (30)	Female (35)	Female (<21)
Type of exploitation	Sexual	Sexual	Criminal, sexual
Type non-punishment	Status offence	Purpose offence	Purpose offence
Should have the non-punishment principle been applied?	Yes	Yes	Yes
Was the principle correctly applied?	No	Partly	Yes
Stage of application	In court (1st instance)	In court (1st instance)	Investigation/prosecution phase
Field of law	Immigration law, criminal law	Criminal law	Criminal
Unlawful acts committed by the victim	False statement to obtain a residence permit	Took advantage of an older man	Money laundering, tax evasion

*Table 8: Summary of cases in Germany*

### German Case (1): Victim of sexual exploitation had to prove their innocence as the authorities did not believe their story

#### Summary of the case

The victim came to Berlin on a tourist visa, knowing that they were going to work as a sex worker. However, when they arrived in Berlin, the brothel owner told them that they had to get married to get a proper work permit, which would double their debt to the brothel owner. They agreed to marry a German man arranged by the brothel owner. They had to work both day and night and was not allowed to refuse customers under pressure from the brothel owner. All their earnings were deducted to pay their debts. The brothel owners beat them so badly that they finally escaped from the brothel. Later, they were undocumented and went to work in another brothel to earn money. Not long after that, they were discovered during a police check. The immigration authorities ordered them to leave Germany. They came to Ban Ying on the recommendation of their colleagues. Ban Ying helped them and took their case to court.

### **The non-punishment principle and the impact on the victim**

Ban Ying reported this case of human trafficking to the Berlin State Police of Criminal Investigation (LKA). Initially, in the indictment the crime of human trafficking was dropped; it was not classified as human trafficking but as smuggling. At the same time, they were charged with making false statements to obtain a residence permit. The lawyer submitted a complaint to the LKA for the reopening of the human trafficking case against their trafficker. Proceedings for obtaining a residence permit were dropped.

Thanks to the lawyer, the human trafficking case against the trafficker was reopened and proceedings were started against the owner of the brothel because of illegal residence and sexual exploitation. The trial took place in spring 2023. The brothel owner was sentenced because of arranging a fake marriage and providing work in the premises of the brothel and payment of at least 20% for accommodation and use of the room. The court argued that the 'forced' aspect of the situation, the organisation of the sex work, the demand of unpaid loan and the confiscation of the earnings, and the prohibition of contact with the outside world could not be established. The court also doubted their credibility. The defendant (brothel owner) appealed. The sentence was reduced due to their financial situation.

Therefore, given that the court found that this could not be proven, their right to §25 4a Residence Permit was also suspended. Fortunately, they learned German at Ban Ying's shelter, had their certificates recognised and got an apprenticeship and received a residence permit due to the apprenticeship.

### **Good practices**

None

### **Bad practices**

From the beginning, the police were not convinced that this was a human trafficking case and therefore did not apply the principle of non-punishment.

## **German case (2) – Partial application of the non-punishment principle in the case of a victim of sexual exploitation**

### **Summary of the case**

The victim was hired through a woman who worked for a pimp. He rented a flat in her name and she lived there with other women who were also exploited. The victim was dependent on her exploiter; she was under constant control surveillance and she was emotionally dependent on him. The victim was also subjected to physical and psychological violence. At some point, one of her clients filed a complaint against her, saying that she took advantage of him. During the police interrogation, the victim described her situation and admitted that she had stolen the money. Eventually, because the victim could not bear the abuse any longer, once there was an opportunity to run away and she took it.

### **The non-punishment principle and the impact on the victim**

The police did not assume that the case would be heard in court, as the lawyer emphasised human trafficking and her perspective as a victim. Fortunately, she was acquitted because



her lawyer recognised her exploitation. However, the judge and public prosecutor did not explicitly address non-punishment.

#### **Good practices**

The lawyer was knowledgeable about human rights and the applicable law given the circumstances of her being a victim.

#### **Bad practices**

The judge and the public prosecutor did not explicitly address the non-punishment principle.

### **German case (3): Successful application of the non-punishment principle in the case of a victim of sexual exploitation**

#### **Summary of the case**

The victim got to know her exploiter over the internet and fell in love with him. They came together by bus to Germany, where he sexually exploited her. He promised her that he would build a house together in Bulgaria and that part of the money would go to the children. She became dependent on him and under constant surveillance. The victim realised that her exploiter only cared about the money and decided to report him. Because he was mostly in a different country while she was in Germany, she was not that scared and went to the police. Also, at some point the bank discovered huge sums in the accounts that they could not explain, and so they called the authorities to investigate. This is how the victim came to be accused of money laundering and tax evasion.

#### **The non-punishment principle and the impact on the victim**

In the investigation or prosecution phase, the public prosecutor's office closed the case after §170 (2) StPO. Her lawyer wrote a statement on human trafficking in her case, the lawyer emphasised human trafficking and her perspective as a victim. As a result, the victim was not punished.

#### **Good practices**

The lawyer advocated for the application of the non-punishment principle, which was successful.

#### **Bad practices**

None.

## United Kingdom

All the cases were provided by [Anti-Slavery International](#). The non-punishment principle is enshrined in national legislation. For more information, see [Annex](#).

Case	1	2	3
Gender and age	Male (adult)	Male (27)	Male (33)
Type of exploitation	Criminal	Criminal	Criminal
Type non-punishment	Purpose offence	Purpose offence	Purpose offence
Should have the non-punishment principle been applied?	Yes	Yes	Yes
Was the principle correctly applied?	No	No	Yes
Stage of application	None	None	In court
Field of law	None	None	Criminal law
Unlawful acts committed by the victim	Cultivation and production of cannabis in a factory	Cultivation and production of cannabis	Supplying class b drugs

*Table 9: Summary of cases in the United Kingdom*

### UK Case (1): Non-application of the principle leads to conviction and imprisonment of victims of forced cannabis production

#### Summary of the case

Two men were trafficked to the UK for the purpose of criminal exploitation. The men were forced to cultivate and produce cannabis in a factory. The police discovered 1,489 plants weighing almost 234kg. The plants had an estimated street value of £2.2 million. One of the victims said that he came on “a lengthy and terrifying journey” while in debt bondage. It is clear these individuals were not at the top of this organisation and carried a substantial number of trafficking indicators.

In sentencing, the judge specifically referred the victims’ exploitation, stating “Each of you has been exploited by more criminally sophisticated people and each of you has been put to work against your will in a cannabis farm.” Nevertheless, they still received 13-month prison sentence, a conviction long enough for the men to be considered serious criminals and therefore liable to receive a Public Order Disqualification Decision under the Nationality and Borders Act 2022.

### **The non-punishment principle and the impact on the victim**

There was a failure in raising the non-punishment principle at all stages of the criminal justice process, despite the presence of clear and multiple indicators of trafficking. The Judge recognised that the men had been exploited by sophisticated people and they were made to work in the cannabis factory against their will.

The victims have been sentenced to 13 months imprisonment, which in virtue of the Nationality and Borders Act 2022 means they were subject to disqualification from the NRM support and consequently from going through the full identification process. This means that as potential victims they won't be entitled to the reflection and recovery period and if they are a Foreign national (such as in this case), they are liable to be removed from the UK. When a person is disqualified under public order grounds, the Competent Authorities no longer have a duty to reach a conclusive Ground decision.

### **Good practices**

None.

### **Bad practices**

The non-punishment principle was not applied. There was a failure to consider the indicators of trafficking and raise the defence, clearly present in both cases, such as trafficking to the UK and debt bondage. Vulnerability factors were also identified by the Judge, but nobody acted on them. There was a failure in raising the section 45 defence from the outset. Consequently, the two victims have been convicted to 13 months' imprisonment, are disqualified from NRM support, and can be deported after serving the sentence.

## **UK Case (2): Non-application of the principle leads to conviction, imprisonment and future deportation of a victim of criminal exploitation**

### **Summary of the case**

In February 2023, a young man smuggled into the UK via a small boat was convicted and sentenced to 13 months for cannabis cultivation. His prosecutor stated: "*Arrangements were made for him to travel to the UK to work in the construction industry. He arrived in an inflatable boat. His passport and identity documents were taken from him. He was initially taken to a London hotel. He was then collected by men who threatened him and his family. He was told he would have to do the work they gave him, or he would be killed. He was told £10,000 had been paid for his crossing to the UK. He was told he had to work to pay off the debt.*" He was moved to a different address from which he was not allowed to leave. The cannabis plants were already present.

### **The non-punishment principle and the impact on the victim**

In this case, there was a failure of the police and courts to understand, identify and act accordingly when presented with cases of forced criminality. The section 45 defence was not raised despite clear and multiple indicators of trafficking in the form of debt bondage and coercion by a promise of a job and threats to the victim's family. The prosecutor outlined quite clearly that the man was coerced into the prospect of a better life in the UK to work in construction, and once he arrived in the UK his documents were taken from him, putting him in a vulnerable position with limited escape routes. Furthermore, the prosecution

stated that the man's movements were directed by the exploiters, who threatened to harm his family, therefore putting him in a position where he was coerced to follow their orders.

### **Good practices**

None.

### **Bad practices**

The non-punishment principle was not applied. There was a failure to consider the indicators of trafficking for the purpose of raising the section 45 defence. Despite clear indicators of trafficking being outlined in the prosecutor's speech, these were disregarded and not recognised by the police, prosecution and the Judge as a form of modern slavery.

## **UK Case (3): 'County-lines' victim (criminal exploitation) recognised and provided with rehabilitation programme instead of jail**

### **Summary of the case**

The prosecutor said that the man was stopped while riding a scooter and during the search was found with around £300 of cannabis on him along with £240 in cash which he claimed was his benefits money. He also had scales and a mobile phone on him and when it was examined there were messages on there from people requesting amounts and other messages which made it clear he was dealing cannabis. The man stated that he was a user of drugs and that he had ADHD (attention deficit hyperactivity disorder). The defendant pleaded guilty to possession with intent to supply cannabis. The Judge's sentence was:

"It was your addiction to drugs which brought you into offending and the Crown themselves accept you were the victim of modern-day slavery, meaning there was a form of duress placed on you. In the circumstances, I am prepared to deal with this by way of a suspended sentence order."

The decision was a six-month jail sentence, suspended for six months, with 80 hours of unpaid work, a six-month drug rehabilitation programme and 20 rehabilitation sessions.

### **The non-punishment principle and the impact on the victim**

In this case, all parties recognised that the man acted under duress and was a victim of modern slavery. The non-punishment principle was raised at prosecution phase, and it was applied by the Judge to sentence the victim to a suspended sentence (meaning that he has a criminal record), 80 hours of unpaid work and a drug rehabilitation programme.

### **Good practices**

When the man was first brought into custody by police, he was interviewed in the presence of an appropriate adult. The man also had multiple vulnerabilities such as drug addiction and ADHD. All of these were taken into consideration when considering his case and it was recognised that people further up the chain had been pressuring him into supplying drugs, using his drug addiction to control him.

### **Bad practices**

None.

## Switzerland

All cases were provided by [FIZ Advocacy and Support for Migrant Women and Victims of Trafficking](#). The non-punishment principle is not enshrined in national legislation. For more information, see [Annex](#).

Case	1	2	3
Gender and age	Male (11 years old during first offence)	Female (adult)	Female (adult)
Type of exploitation	Sexual and criminal	Sexual	Labour
Type non-punishment	Purpose offence	Status offence	Status offence
Should have the non-punishment principle been applied?	Yes	Yes	Yes
Was the principle correctly applied?	No	Partly	Partly <sup>23</sup>
Stage of application	On appeal	After the judgement	None
Field of law	Immigration law	Immigration law	None
Unlawful acts committed by the victim	Pickpocketing and transportation of drugs	Offering sexual services on the street 1) in an area where this is not permitted and 2) during a time when during COVID-19-regulations it was forbidden to engage in sex work	Irregular work in Switzerland, because she is a non-EU citizen and formally not allowed to engage in work/lucrative activities in Switzerland

Table 10: Summary of cases in Switzerland

<sup>23</sup> She was not fined/penalised for working irregularly herself. However, because she worked irregularly, she was denied the compensation she was entitled to in the case against the trafficker

## **Swiss Case (1): Convicted victim of sexual and criminal exploitation saved from deportation through late application of the principle**

### **Summary of the case**

FIZ was informed by legal representation of the asylum application of a youth from North Africa aged 15. The representative knew that he had already been identified as a victim in Norway by the Norwegian government centre against Human Trafficking. Despite this, he was threatened with a Dublin deportation to the Netherlands. Before FIZ could meet him, he went missing. It was not until several months later that he resurfaced in a temporary detention centre for adults. It was here that FIZ was able to talk to him. At first, he was very suspicious. The FIZ counsellor discovered that it was easier for him to rap than to talk, and thus learned that he had also been forced into Switzerland by the criminal network that had exploited him since he was a child, in several European countries.

He lost his parents, thus making him and his younger sister orphans at a very young age. Living in the streets in his country of origin, he was recruited by a street gang. They forced him to beg and steal and soon brought him to Spain, from where he was further sent to different European cities for the same purpose. They used his little sister, whom he had left back home, as leverage and method of extortion. He could escape once before and asked for asylum in Norway, but from there was sent to the Netherlands under the Dublin regulation. When he asked for asylum in Switzerland, he was still under the influence of the traffickers, thus going missing after the first contact with FIZ. He said that he felt safe only in the prison, because in the asylum reception centres he would be found again. So, the only way he could really escape the trafficking situation was by being in prison.

### **The non-punishment principle and the impact on the victim**

He was in a detention centre for adults. He had been assigned a public defender, who rejected FIZ visits and requests for information on human trafficking in the criminal proceedings against him. The public defender refused to relinquish his mandate and give preference to a specialist lawyer that FIZ had hired, and the young man was convicted of various offences. Meanwhile, the network threatened to harm his underage sister back home if he made any statements. He then failed to provide concrete information on the exploitation network during his criminal proceedings in Switzerland, which had a negative impact on his conviction as he had to serve the full sentence in prison.

The lawyer hired by FIZ appealed the verdict to ensure that the human trafficking aspect was sufficiently considered. However, the next instance upheld the judgement concerning the offences, without considering the principle of non-punishment, but nonetheless proceeded to cancel his deportation. Hence, in the end the non-punishment principle was only applied in the immigration law rather than in both immigration and criminal law, since he was reluctant to give information about the perpetrators. The asylum application is currently being examined. Without the intervention of the specialised NGO, the victim would not have had the support he needed to reconsider his deportation.

### **Good practices**

Bringing in the specialized lawyer on human trafficking made it possible to appeal the verdict and he could explain in court why he was unable to give more information on his

exploitation. Nevertheless, he served several months of a prison sentence. His legal representative in the asylum system also was very relevant since she, the FIZ counsellor, as well as the specialised lawyer were all in regular contact with him. This led to a cancellation of the deportation order against him.

### **Bad practices**

The public defender who was assigned to his case was not aware or trained on human trafficking. Rather, he was personally convinced that his client should be duly punished for his unlawful acts.

## **Swiss Case (2): Eastern European victim 'violating' Covid-19 legislation due to the sexual services is fined and received a re-entry ban**

### **Summary of the case**

A victim, originally from Bulgaria, was exploited through prostitution. She was fined several times during the Covid-19 pandemic for illegal activity under the Covid law and breach of the obligation to register, among other things. The fines were systematically paid by her trafficker, with the money that the victim earned and for which she also worked. The woman was subsequently recognised and identified as a victim of trafficking. Although the police and prosecuting authorities also recognised her as a victim, they did not refrain from withdrawing or declaring null and void the fines issued during the exploitative situation. From this point of view, the canton (regional authorities) accepted funds derived from the crime of human trafficking for sexual exploitation. The collection of these fines paid by victims raises the ethical question of the enrichment of the State through a criminal offence.

At present, proceedings against the perpetrator are underway, but because of the denunciations and criminal orders, the victim fears that she will be banned from entering Switzerland in the future. She was brought to Switzerland by a criminal network and could not go back home during Covid. She was sexually exploited and had to give the money she earned to the trafficker. The specialised, non-repressive police became aware of her situation and made it possible for her to escape the situation. Once she was brought in contact with a specialised victim attorney, she could bring forward the fact that she had worked during Covid against her own will.

### **The non-punishment principle and the impact on the victim**

Although the police and prosecuting authorities later recognised her as a victim, they did not withdraw or declare null and void the fines issued during the exploitative situation. The non-punishment principle was only applied after the conviction of her perpetrator. Even though it was clear from the court case (in which she had acted as a witness) that she was a victim, nevertheless the fines and the entry-ban to Switzerland remained in her file. It is very difficult to erase this, once it is in the system, thus showing that the system in Switzerland is in practice not at all fit for the application of the non-punishment clause.

### **Good practices**

This case gave rise to a series of discussions between the victim attorney, FIZ and the cantonal police, as well as FEDPOL (national police). It is planned to elaborate a process

which prevents such complicated and unjust fining of victims and to make it easier to declare null and void their fines to prevent such unjust entry bans in the future. The cantonal police are trying to take an active role in establishing guidelines that can be applied in such cases.

### **Bad practices**

Even though it was known that she was a victim, it seems almost impossible to that the authorities would overlook the recurrent overstepping of the prohibition to offer sexual services during Covid, which then led to a ban to re-enter Switzerland.

## **Swiss Case (3): Labour exploitation victim denied compensation in the case against her trafficker**

### **Summary of the case**

An Albanian woman had to pay an expensive eye surgery for her child and was furthermore suffering from threats from her former husband who wanted custody for the child. She urgently needed money to pay for the surgery and for the lawyer in the matter of the custody of her child. She therefore put up an add offering her services as nanny and helping in households. She was then contacted by a Swiss family, offering her work as a nanny. She arrived and was exploited, abused, had no free time, no privacy, almost no pay. When she finally managed to escape and the case was brought to court, she was seen as a victim. However, in the verdict, she was denied compensation because “she was not allowed to work in Switzerland anyways”. In addition to the labour exploitation, she also experienced sexual harassment by the father of the family. Moreover, the couple promised her to pay her salary repeatedly without doing so. At one point she told the mother of the family that she had been sexually harassed by her husband, which led to the wife beating her. That was the moment she escaped and ran out of the house, rang at a neighbour’s doorbell who brought her to the police, who referred and transferred her to FIZ.

### **The non-punishment principle and the impact on the victim**

The principle was brought forward early on by the persecutor. The court then denied her access to legal compensation, even though she was recognised as a victim of trafficking. The perpetrator appealed, stating that she should not be recognised a victim of human trafficking at all. In 2023, following the appeal, the verdict of the court has been overruled by the cantonal court, denying her being a victim. As a result, the victim was denied access to compensation and legal redress.

### **Good practices**

In 2022, she was recognised as a victim by the court (this was later overturned, see below). It was the first condemnation for trafficking in labour exploitation as the persecutor is very specialised in the topic of human trafficking. However, the fact that she did not receive compensation because she was working illegally in Switzerland is very problematic.

### **Bad practices**

In 2023, following the appeal by the prosecutor, the verdict of the court has been overruled by the cantonal court, denying her being a victim. Thus, following the appeal, she is not even recognised as a victim anymore. The “punishment” in her case was that she did not receive any compensation or legal redress, even though it was known that she was a victim.



## Serbia, Finland and The Netherlands

The Serbian case was provided by [ASTRA](#); the Finnish case was provided by [Victim Support Finland \(RIKU\)](#); and the Dutch case was provided by [FairWork](#). Neither Serbia nor Finland has the non-punishment principle enshrined in their national legislation. The Netherlands has the non-punishment principle enshrined in national law but does not specifically refer to victims of human trafficking. For more information, see [Annex](#).

Case	Serbian case (1)	Finnish case (2)	Dutch case (3) <sup>24</sup>
Gender and age	Female (40)	Female (2 persons) <sup>25</sup>	Male (21-63)
Type of exploitation	Labour	Criminal and sexual	Criminal
Type non-punishment	Status offence	Purpose offence	Purpose offence
Should have the non-punishment principle been applied?	Yes	Yes	Yes
Was the principle correctly applied?	Uncertain (case still open)	Partly	No
Stage of application	Uncertain (case still open)	After the judgement in 1 <sup>st</sup> instance	None
Field of law	Civil law	Criminal law	Criminal law
Unlawful acts committed by the victim	Renting a flat on the victim's name using her identity card, and after 2 months they moved out without paying rent or bills	Accused of recruiting and exploiting other girls that came after them into the "cult". They were thus exploited and forced to traffic other victims (recruitment and exploitation).	Helping in processing large quantities of cocaine

Table 11: Summary of cases in Serbia, Finland and The Netherlands

<sup>24</sup> The judgement of the court can be found (in Dutch) here: <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Amsterdam/Nieuws/Paginas/Gevangenisstraffen-voor-produceren-cocaine-in-manege-Nijeveen.aspx>

<sup>25</sup> Currently 30-35 but were exploited since late teens

## **Serbian Case (1): Lack of communication between Basic Court and High Court in the case of a victim of Labour Exploitation**

### **Summary of the case**

Not long after divorcing her husband (with whom she has two children) the victim met a man through her social network and they begin a romantic relationship. On his suggestion they moved to another city because of more “job opportunities there”. At that point, he had already isolated her from her friends and family and had gained her complete trust. For about a month, the victim cleaned houses and offices, but the man took all the money, and he spent it mostly on himself, buying alcohol and cigarettes, while for her he bought just enough food to eat one meal a day. One night he decided that the money she earns is not enough, so starting the following day he would post ads and arrange for her to provide sexual services to clients.

When she refused to do it, he started physically abusing her. He constantly threatened to hurt her children, whom he knew about. After several months of torture, the victim escaped and went straight to the police. Several criminal proceedings have since been initiated, one before the High Court in which the victim appears as a victim of human trafficking and a witness in the proceedings, and another before the Basic Court in the same city, in which she is charged as a defendant for fraud against the landlord.

### **The non-punishment principle and the impact on the victim**

Even though proceedings began before the High Court in which she appears as a victim of human trafficking, there is another case pending before the Basic Court. In the latter case the victim is accused of not paying the landlord for the rent and the bills, as the apartment in which she was staying with her abuser was rented under her name. The Basic Court here overlooked her victim status.

The victim was a witness in the proceedings against the case of her abuser. However, the victim might still be convicted of fraud if the Basic Court does not apply the non-punishment principle after the appeal.

### **Good practices**

Proceedings began before the High Court in which the woman appears as a victim of human trafficking.

### **Bad practices**

The victim was charged for fraud against her landlord and proceedings are still ongoing. ASTRA is still waiting to see what is going to happen with the appeal, but in various cases in the past the same thing happened and sometimes courts ruled in favour of victims but sometimes not. It seems that there is a lack of communication between Basic and High Courts in Serbia and no standard approach in Court Practice, meaning it is for individuals involved in criminal proceedings to decide whether they will accept or deny appeal and respect or not the non-punishment principle.

## **Finnish case (2): Women acquitted for the (forced) recruitment and exploitation of other girls in a “cult”**

### **Summary of the case**

The case, which received a lot of attention in Finland, was related to a theatre director who was accused of recruiting girls in their teens who wanted to become actresses into a “cult setting” where they worked for free, and there were also accusations of sexual abuse. Two of the victims-plaintiffs in the case were older at the time the investigation started and had been in the accused cult for longer and reached a position where they were seen as less vulnerable and in more leading positions than the younger girls. Hence, they were investigated and later prosecuted for assisting the main perpetrator in the trafficking of the younger girls, while at the same time the main perpetrator was accused of trafficking them. In other words, in the criminal process they had a double role as accused and plaintiff.

At the end of the trial, the prosecutors in the case stated that they would not demand any punishment for these two women, as in their view it had been proved that they were in the position of trafficking victims when the accused assisting had occurred. Then, the district court freed the main perpetrator of all charges and hence, neither of the women were convicted for assisting. The prosecutors appealed the verdict to the court of appeals, but only for the main perpetrator, and decided to not continue prosecuting the two women for assisting him. The second instance trial has not yet taken place.

### **The non-punishment principle and the impact on the victim**

The non-punishment principle was not applied during the pre-trial investigation but by the prosecutors, partly at the end of the 1<sup>st</sup> instance trial. In principle, the court is not bound by the prosecutor’s demand or lack thereof, so there is a theoretical possibility that they could have still been convicted – although this was highly unlikely due to the prosecutors not demanding punishment. The application of the principle was final when the prosecutors decided not to appeal the court decision in the case of the women but only for the main perpetrator.

### **Good practices**

After the first instance trial, the prosecutor recognised the circumstances and demanded that the two victims should not be punished, and thereafter did not appeal the acquittal of the two victims.

### **Bad practices**

Accusing and prosecuting these two victims, and not immediately treating them as victims of trafficking led to stress, as well as possible re-traumatisation and revictimisation.

## **Dutch case (3): Non-application of non-punishment to unidentified victims of human trafficking, arrested for processing large quantities of drugs**

### **Summary of the case**

All 14 victims came to The Netherlands thinking that they would work in construction. However, they were brought to a horse-riding school in Nijeveen, a Dutch village, where they had to work in an illegal drug laboratory to process large quantities of cocaine. The police discovered the laboratory and arrested the workers and the owner. The court proceedings resulted in their imprisonment.

### **The non-punishment principle and the impact on the victim**

There was no indication in the judgement that attempts were made to identify the persons concerned as victims of human trafficking. The court considered the personal circumstances of the people and the working conditions, and also recognised the forced labour and the difficult labour conditions, as well as the health issues of the owner. Therefore, the sentence of the persons concerned was shorter than initially proposed by the public prosecutor. However, the Court did not address at all the principle of non-punishment in the judgement. As a result, the victims were sentenced to 30 months in prison.

### **Good practices**

The Court considered the circumstances of the men, more specifically the fact that they were subject to forced labour and poor working conditions. This led to a shorter prison sentence (30 months instead of 48 months).

### **Bad practices**

The victims were still prosecuted and had to serve a prison sentence.

# Annex A: Non-punishment in national legislation

## Belgium

In Belgium the non-punishment principle is laid down at national level in the Belgian Penal Code: [Art. 433 quinquies, §5 Penal Code](#): *The victim of human trafficking that is involved in crimes as a direct consequence of his exploitation cannot get a punishment for these crimes.* (translated)

## Finland

In Finland the non-punishment principle is not laid down at national level. For more information, see the following study made on the non-punishment principle in Finnish law: Hannonen, J., & Kainulainen, H. (2022) *The principle of impunity for victims of human trafficking*. <http://urn.fi/URN:ISBN:978-952-400-386-5> (Study in Finnish, abstract in English)

## France

In France the non-punishment principle is not laid down at national level.

## Germany

In Germany, the non-punishment principle is laid down at national level in the German Code of Criminal Procedure. According to this provision, the public prosecutor's office may refrain from prosecuting trafficked persons if they have committed a crime, such as theft, during their exploitation.

[§ 154c Abs. 2](#) German Code of Criminal Procedure (Non-prosecution of victim of coercion (Nötigung) or extortion)

(2) If the victim of coercion, extortion or of human trafficking (sections 240, 253 and 232 of the Criminal Code) reports such an offence (section 158) and if, as a result, a less serious criminal offence committed by the victim comes to light, the public prosecution office may dispense with prosecution of the less serious criminal offence, unless expiation is imperative owing to the severity of the offence. (translated)

In practice, the application of the principle varies widely because it is up to the prosecutors to apply it. For more information about the application of NP principle, we recommend checking out [this document](#).

## Spain

In Spain, the non-punishment principle is laid down at national level in the Spanish Penal Code and in the Spanish Immigration Law: The [Spanish Penal Code](#) expressly includes this principle in **Article 177.11 bis**, but only in the case of criminal offences.

"Without prejudice to the application of the general rules of this Code, the victim of trafficking in human beings shall be exempt from punishment for criminal offences committed in the situation of exploitation suffered, provided that their participation in them has been a direct consequence of the situation of violence, intimidation, deception or abuse to which they have been subjected and that there is adequate proportionality between that situation and the criminal act committed."

In practice, the application of this article proves very difficult.

[Article 59.2 bis of the "Spanish Immigration Law"](#) provides that foreign victims of trafficking who are in an irregular situation and are in the process of being identified as victims of trafficking by the competent authorities shall not be subject to the penalties provided for in this law.

"Both during the victim identification phase and during the recovery and reflection period, no penalty proceedings shall be initiated for infringement of Article 53(1)(a) and the administrative penalty proceedings initiated or, where appropriate, the enforcement of any expulsion or refoulement ordered shall be suspended".

## United Kingdom

In the United Kingdom, the non-punishment principle is laid down at national level in criminal law: [Section 45 of the Modern Slavery Act 2015](#) (Defence for slavery or trafficking victims who commit an offence)

- 1) A person is not guilty of an offence if—
  - (a) the person is aged 18 or over when the person does the act which constitutes the offence,
  - (b) the person does that act because the person is compelled to do it,
  - (c) the compulsion is attributable to slavery or to relevant exploitation, and
  - (d) a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act.
- (2) A person may be compelled to do something by another person or by the person's circumstances.
- (3) Compulsion is attributable to slavery or to relevant exploitation only if—
  - (a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or
  - (b) it is a direct consequence of a person being, or having been, a victim of slavery or a victim of relevant exploitation.
- (4) A person is not guilty of an offence if—

- (a) the person is under the age of 18 when the person does the act which constitutes the offence,
  - (b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
  - (c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.
- (...)

*(7) Subsections (1) and (4) do not apply to an offence listed in Schedule 4.*

Currently there is a research project on Section 45 of the Modern Slavery Act (2015). For more information, please visit [this website](#).

## Switzerland

The non-punishment principle is not laid down at national level. However, in communications with GRETA, the Swiss authorities always refer to Art. 17 of the [Criminal Code](#), 'Justifiable state of emergency':

"A person who commits an act punishable by law in order to save his own or another person's legal interests from an immediate danger that cannot be averted in any other way is acting lawfully if he is thereby safeguarding interests of a higher order."

However, there are no directives or special trainings to make sure that victims of human trafficking are seen under this law.

## Serbia

The Republic of Serbia does not have a unique legislation that specifically defines the principle of non-punishment for victims of human trafficking. However, there are certain international and national legal documents that can be applied in this case (i.e., [Council of Europe Convention on Combating Trafficking in Human Beings](#)).

The first basis for the application of the principle of non-punishment of victims is provided by the [Criminal Code](#), which in Article 388 defines the criminal offense of human trafficking, also foresees exploitation for the purpose of committing a criminal offense, and in that case the victim cannot be prosecuted for a criminal offense resulting from that status. The Criminal Code also offers the possibility to apply the non-punishment principle according to the provisions of **Articles 18-21**, which refer to acts of minor importance, self-defence, necessity, force and threat.

Another national document that may be of importance for the application of the non-punishment principle is the Instruction on the conditions for granting temporary residence to foreign nationals who are victims of human trafficking, which stipulates:

"If a victim of human trafficking has entered the country or resides in an illegal manner, the competent authority is obliged, before initiating procedure, to

determine the facts or circumstances that reduce the criminal or misdemeanour responsibility of the victim”.

Finally, the provision on postponement of criminal prosecution, **Article 283 of the [Criminal Procedure Code](#)** (CPC) where the principle of opportunity gives the possibility to the public prosecutor to dismiss the criminal complaint against the person who committed the criminal act that is causally related to the status of the victim by ordering that perform one or more obligations provided for in Article 283 of the CPC. Article 284 provides for the dismissal of a criminal report by the public prosecutor if the reported criminal offense is not an offense for which he is prosecuted ex officio.

## Denmark

Denmark does not have a specific provision on non-punishment in the article on human trafficking in the Criminal Code. National practice shows that when a person is interviewed by a social worker at an early stage in the proceedings, the non-punishment principle will nearly always be applied.<sup>26</sup> If a person is not regarded as potential victim of human trafficking by law enforcement when first arrested, they will automatically be imprisoned and criminalized by the Danish state, even for small offences. In cases where a person is not defined as trafficked *before* they are criminalized, they will remain with a conviction against them, despite being victims.<sup>27</sup>

HopeNow has identified numerous cases (based on work in prisons) in which people were found and (officially) identified as trafficked. However, if they have already been convicted for fraud, they are never released from prison but remain in prison until they are deported or agree to a so-called ‘voluntary return’. According to HopeNow, law enforcement has stated that there is a lack of resources to find and prosecute the traffickers. Cases that involve transnational criminal networks outside of Europe are particularly challenging to investigate. Therefore, the individual victims of human trafficking risk being criminalized by the state.

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<sup>26</sup> One example is the Operation Wasp Nest, carried out in 2015, when 35 victims of human trafficking were identified and benefited from protection. The case also concluded with 20 people being convicted for human trafficking.

Another example are female sex workers that are arrested. They are likely to be regarded by the police as having possible indicators for human trafficking. If the person is then interviewed by a social worker from Center Against Human Trafficking, even if she has no documents and/or has been accused of working here illegally, she will not be prosecuted because she was defined as trafficked.

<sup>27</sup> An appeal to reverse this can take months, meanwhile the person will have to stay in prison.



## Romania

The non-punishment principle is enshrined in the **Romanian Criminal Code**:

- [Article 25 C.](#): the deed provided by the criminal law committed because of a moral constraint, exercised by threatening a danger to the person of the perpetrator or another and which could not be removed in another way, is not punished.
- [Article 20](#): The person subject to human trafficking, who has committed, as a result of his exploitation, the crime of prostitution or begging, is not punished for this crime if, before the criminal prosecution for the crime of human trafficking has begun informs the competent authorities about this or if, after the criminal investigation has started or after the perpetrators have been discovered, it facilitates their arrest.

## Netherlands

The Netherlands does not yet have a specific provision on non-punishment in the article on human trafficking in the Criminal Code. The legislative proposal which is currently pending to amend the THB article in the Criminal Code, does not include a non-punishment provision, as the authorities believed it would not be required or necessary. Various stakeholders have criticized this. However, it has been agreed that more focus will be put on guidelines, awareness and training on the issue for relevant stakeholders.