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**PRINCIPLE OF NON-PUNISHMENT
OF VICTIMS OF HUMAN TRAFFICKING
– INTERNATIONAL LEGAL STANDARDS
AND THE SITUATION IN THE REPUBLIC OF SERBIA ****

ABSTRACT: In this paper, the authors analyze the principle of non-punishment of victims of human trafficking through the prism of international legal standards in this field and the situation in the Republic of Serbia. Following introductory remarks on the importance of this issue, the authors point to the international legal framework underpinning the mentioned principle, as well as to examples from comparative law and the case law of the European Court of Human Rights. Given that the application of this principle in practice implies the prior identification of victims of human trafficking, the paper analyzes this procedure in the Republic of Serbia.

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Particular attention is paid to the Center for the Protection of Victims of Human Trafficking, which is the only state body competent for the implementation of this procedure. The authors then consider this issue from the perspective of GRETA's third report and also address the current steps being taken by Serbia to fulfill its international obligations; accordingly, a summary analysis is provided of the provisions of the Draft Law on the Suppression and Prevention of Human Trafficking and the Protection of Victims in terms of the principle of non-punishment. The authors conclude that implementing the principle of non-punishment of victims of human trafficking into the current legal system of the Republic of Serbia, in line with international standards, should be accompanied by corresponding amendments to the Criminal Code, the Criminal Procedure Code, and the Law on Misdemeanors.

Keywords: human trafficking, victim, non-punishment of victims of human trafficking, criminal proceedings, misdemeanor proceedings

INTRODUCTION

The principle of non-punishment of victims of human trafficking is one of the most important aspects of the contemporary human-rights approach to combating human trafficking. This principle means that victims of human trafficking must not be subject to criminal, misdemeanor, or any other form of legal sanction for activities that are directly connected to their exploitation or the coercion under which they acted. In practice, this means that victims must not be punished, for example, for illegal border crossing, prostitution, use of false documents, or other unlawful activities that they committed as a direct consequence of trafficking.

This principle stems from the broader obligation of states to identify, protect, and assist victims of human trafficking, as well as to ensure the effective prosecution of traffickers. If victims are sanctioned, they risk being isolated from support systems, which would discourage them from cooperating with authorities and lead to traffickers avoiding liability. This principle is therefore crucial for the effective implementation of legal and institutional protection against human trafficking.

INTERNATIONAL LEGAL FRAMEWORK

The Palermo Protocol (2000)

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (hereinafter: the Protocol)¹ was adopted on November 15, 2000, in Palermo, within the framework of the United Nations Conference on Transnational Organized Crime. It supplements the United Nations Convention against Transnational Organized Crime, better known as the Palermo Convention². This protocol entered into force on December 25, 2003, after being ratified by 40 states. The adoption of the Protocol marked the first global and comprehensive attempt to respond systematically to the phenomenon of human trafficking, with a clear definition of that criminal offense, the obligation of states to criminalize it, and an obligation to provide victims with protection and support.

The purpose of this Protocol, defined in Article 2, is:

- To prevent and combat trafficking in persons;
- To protect and assist the victims of such trafficking, with full respect for their human rights; and
- To promote cooperation among States Parties in order to meet those objectives.

The Protocol is the first international instrument to provide a universally accepted definition of human trafficking, in Article 3(a). This definition includes three elements:

1. Action (for example, recruitment, transportation, harboring, or reception of persons);
2. Means (for example, threat, force, abduction, fraud, abuse of power or of a position of vulnerability);
3. Purpose (exploitation, which includes sexual exploitation, forced labor, slavery, etc.).

In the case of children (persons under 18 years of age), the use of “means” is not required for the act to be considered human trafficking. This comprehensive definition has enabled broad application and harmonisation of national legislation.

Although the Palermo Protocol does not contain an explicit provision on the non-punishment of victims of human trafficking, Article 6 is key to

¹ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

² UN General Assembly, *United Nations Convention against Transnational Organized Crime: A/RES/55/25*, 2001.

understanding the implicit obligation of states not to treat victims as perpetrators of criminal offenses:

“Each State Party shall consider implementing measures to provide assistance and support to victims of trafficking in persons, including appropriate housing, medical and psychological assistance, counseling, in particular as regards their legal rights...”

Although it does not mention victims’ criminal liability, the very emphasis on their protection, rehabilitation, and access to information, in the context of exploitation, leads to the conclusion that the victim must not be subjected to prosecution for the unlawful activities that they were compelled to commit. In line with this, the United Nations Office on Drugs and Crime (hereinafter: UNODC), in its *training manuals, model laws, and expert guidelines*,³ consistently advocates that States:

- Explicitly introduce the criminal-law principle of **non-punishment** into their legislation;
- Ensure that **victims are not punished for offenses that are a direct consequence of trafficking** (for example, prostitution, unlawful presence, possession of forged documents);
- Allow judicial authorities **discretionary powers to refrain from prosecution** when there are indicators of trafficking.

The 2020 *UNODC Issue Paper on The Non-Punishment Principle* states:

“Although the Protocol does not contain an explicit provision on non-punishment, its implementation requires treating the victim as a person in need of assistance, rather than as an offender. Therefore, the non-punishment principle is considered a logical consequence of Article 6 of the Protocol and the overall spirit of the Convention.”⁴

Although international instruments such as the Protocol do not impose a direct criminal-law norm, they create an obligation to harmonize domestic law with the instrument’s spirit. Therefore, States Parties to the Protocol, such as the Republic of Serbia (the Protocol was ratified in 2001), should ensure:

- A clear legal basis for applying the principle of non-punishment;
- Mechanisms for identifying victims before they are prosecuted;
- Training for police, prosecutors, and judges on applying this principle.

³ For example: UN Office on Drugs and Crime (UNODC), *Model Law against Trafficking in Persons*, 5 August 2009; UN Office on Drugs and Crime (UNODC), *Global Programme Against Trafficking in Human Beings, Toolkit to Combat Trafficking in Persons*, 2nd ed., October 2008.

⁴ The Inter-Agency Coordination Group against Trafficking in Persons (ICAT), *Non-Punishment of Victims of Trafficking*, Issue Brief, August 2020.

In practice, ignoring this obligation can lead to secondary victimization, reduced cooperation with investigative authorities, and undermining the effectiveness of efforts to combat human trafficking.

The Warsaw Convention (2005) – The Council of Europe Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter: the Warsaw Convention) was adopted on May 3, 2005, in Warsaw and entered into force on February 1, 2008.⁵ Unlike the Palermo Protocol, which is primarily of a security and criminal-law nature, the Warsaw Convention focuses on the human rights of victims and represents the first binding instrument at the European level to introduce a comprehensive mechanism for protection, prevention, and prosecution in the field of human trafficking. The Convention aims to ensure the protection of the rights and dignity of victims of human trafficking and to enhance cooperation between states in combating this phenomenon. Particular attention is paid to protecting victims from secondary victimization, which also includes the issue of their criminal liability for acts that are a direct consequence of their having been victims of trafficking.

One of the most important innovations of this Convention is the explicitly formulated Article 26, which provides:

“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

This is the first time that a binding international legal instrument refers to the non-punishment principle in a clear and direct manner. Its formulation, although advisory in tone (“provide for the possibility”), encourages states to integrate this principle into their substantive and procedural criminal law systems.

GRETA, the Council of Europe’s body responsible for monitoring the implementation of the Warsaw Convention, in its interpretations of Article 26 consistently emphasizes that states must develop effective victim-identification mechanisms because the principle of non-punishment loses its impact if the victim is not recognized as such at the outset of criminal proceedings.⁶

⁵ Council of Europe, *Convention on Action against Trafficking in Human Beings*, CETS No. 197, 16 May 2005.

⁶ Piotrowicz, R. (2020). Article 26: Non-punishment provision. In: *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings*.

According to GRETA reports, countries should ensure that prosecutors, police, and courts are trained on the importance of this principle in order to prevent secondary victimization. Practice in some countries, such as the United Kingdom and France, shows the adoption of specific guidelines for prosecutors that require them to verify victim status before deciding whether to initiate proceedings.

Application of Article 26 requires:

- Proactive identification of the victim before initiating criminal proceedings;
- Establishing a causal link between the act and the trafficking relationship;
- Flexibility in criminal proceedings, including the ability to suspend prosecution or refrain from filing an indictment;
- Inter-institutional cooperation, especially between law enforcement and public prosecutors, on the one hand, and victim support services on the other.

Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims

Here, it is necessary to refer to Article 8 (“Non-prosecution or non-application of penalties to the victim”) of 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,⁷ which was adopted six years after the Warsaw Convention. This article stipulated that

“Member States shall, in accordance with the basic principles of their legal systems, 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 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.”

The preamble to this Directive, in point 14, explains the scope and purpose of the non-punishment provision. It states that

Cheltenham, UK: Edward Elgar Publishing. Accessed on: June 26, 2025 from: <https://doi.org/10.4337/9781788111560.00038>.

⁷ European Union: Council of the European Union, *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*, OJ L 101/1–101/11, 15 April 2011 (2011/36/EU).

“Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimization, and to encourage them to act as witnesses in criminal proceedings against the perpetrators.”

Further clarification and expansion of the principle of non-punishment of victims of human trafficking was made in 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,⁸ which amends the aforementioned Directive 2011/36/EU and provides that this principle covers, in addition to criminal offences, “other unlawful activities.” In this way, the principle of non-punishment is extended to all punishable offenses, which is in line with the rationale of this principle and international standards.

The Istanbul Convention (2011) **– The Council of Europe convention on preventing and combating violence against women and domestic violence**

The Istanbul Convention, officially titled **the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence**,⁹ was adopted in Istanbul on May 11, 2011, and entered into force on August 1, 2014. It represents the first legally binding international instrument at the European level to establish a comprehensive normative framework for preventing gender-based violence, protecting victims, and prosecuting perpetrators, based on a human-rights approach and the principle of gender equality.

Although the Istanbul Convention does not regulate human trafficking as a separate criminal offense, nor does it replace the specialized international regime established by the Warsaw Convention, its relevance to this field is

⁸ European Union: Council of the European Union, *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*, OJ L, 24 June 2024 (2024/1712).

⁹ Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, ISBN 978-92-871-7990-6, November 2014.

indirect but normatively and conceptually significant. The Convention is based on the understanding that violence against women is a structural and gender-based phenomenon, and it recognizes that women and girls are at increased risk of various forms of exploitation, including sexual exploitation, forced labor, and other practices that often occur in the context of human trafficking.

The particular importance of the Istanbul Convention for victims of human trafficking lies in its view of the victim as a rights holder and in its emphasis on preventing secondary victimization. The Convention requires States Parties to ensure that the institutional response to violence does not lead to additional punishment, stigmatization, or marginalization of victims but is instead aimed at their protection, recovery, and empowerment. This approach is especially important in situations where victims of trafficking have been forced to participate in unlawful activities as a direct consequence of violence, coercion, or exploitation.

Although the Istanbul Convention does not contain an explicit provision on the principle of non-punishment of victims for criminal or other unlawful activities that they were compelled to commit, it indirectly contributes to affirming this principle through a number of its provisions. Above all, the Convention insists on an approach based on human rights, the obligation of states to act with due diligence, and the need to take into account the specific circumstances and vulnerability of victims of gender-based violence at all stages. In this regard, punishing victims for acts committed under coercion would be incompatible with the basic aims and spirit of the Convention.

The implementation of the Istanbul Convention is monitored by the Group of Experts on Action against Violence against Women and Domestic Violence (hereinafter: GREVIO), which, in its evaluation reports, pays particular attention to access to justice, the conduct of law-enforcement and judicial authorities toward victims, and the risks of secondary victimization in criminal and misdemeanor proceedings. Although GREVIO does not have a mandate to directly monitor the implementation of the principle of non-punishment in the context of human trafficking, its practice indicates the importance of developing national policies that prevent the criminalization of victims of gender-based violence, including victims of human trafficking.¹⁰

¹⁰ See: Turanjanin, V. (2024). Expanding the circle of positive obligations: Enabling victims of human trafficking to seek compensation in respect of lost earnings from their traffickers: *Krachunova v Bulgaria* (App. No. 18269/18). *European Human Rights Law Review*, (5), 448–453; Stoyanova, V. (2024). *Krachunova v. Bulgaria: New Positive Obligation under Article 4 ECHR to Compensate Victims of Human Trafficking for Pecuniary Damages*. Accessed on June 26, 2025 from <https://strasbourgobservers.com/2024/03/19/krachunova-v-bulgaria-new-positive-obligation-under-article-4-echr-to-compensate-victims-of-human-trafficking-for-pecuniary-damages/>

In practical terms, the standards of the Istanbul Convention require States to develop institutional and procedural mechanisms that enable the early identification of victims, adequate training of the police, prosecutors, and courts, as well as effective multisectoral cooperation with civil society organizations and victim support services. In this way, the Istanbul Convention complements the international and European legal framework for combating trafficking in human beings, contributing to strengthening the protection of victims and developing an approach that prevents their further victimization within the legal system.

UN documents and UNODC manuals

– Practical Interpretation of the Principle of Non-Punishment

In addition to the Palermo Protocol, which does not explicitly introduce the principle of non-punishment but implies it within the framework of Article 6, manuals, guidelines, and commentaries issued by United Nations bodies have a key role in its realization, primarily by the UNODC and the Office of the United Nations High Commissioner for Human Rights (hereinafter: OHCHR). One of the most important documents is *The Role of 'Non-Punishment' Provisions in Addressing Trafficking in Persons*.¹¹ This document is particularly important because it:

- Clearly defines what the principle of non-punishment refers to;
- Stresses the obligation of states to build mechanisms for identifying victims before initiating proceedings;
- Points to the need for liability to be legally eliminated, not merely mitigated.

“Non-punishment provisions must not only be viewed as discretionary mechanisms for sentencing mitigation, but as legal guarantees ensuring that victims are not held liable for unlawful activities they were compelled to commit as a direct consequence of their trafficking experience.”¹²

With a similar focus on the protection of victims, the OHCHR published the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1),¹³ which explicitly state that victims of trafficking should not be detained, prosecuted, or punished for illegal entry into

¹¹ UN Office on Drugs and Crime (UNODC), *The Role of 'Non-Punishment' Provisions in Addressing Trafficking in Persons*, 2020, 7.

¹² *Ibid.*, 7.

¹³ United Nations High Commissioner for Human Rights (UNHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, UN Office of the High Commissioner for Human Rights (OHCHR), 20 May 2002.

or residence in countries of transit and destination, or for their involvement in unlawful activities that are a direct consequence of their situation as victims of trafficking.¹⁴ Although this document is not legally binding, it is widely applied as a standard in the practice of international and domestic authorities, including national courts and human rights institutions.

Several key lessons follow from these sources. First, the principle of non-punishment is increasingly being treated not only as a protection policy but as a victim's right, grounded in their status as a person compelled to engage in unlawful activities. Second, states have a positive obligation to ensure that victims are not subjected to criminal or administrative proceedings, but are instead provided with legal and psychosocial assistance. Third, the role of prosecutors and judges is crucial – both in identifying victims and in assessing the causal link between trafficking and the offense committed. Finally, systemic cooperation with civil society and non-governmental organizations has proven to be a key element of the successful implementation of these standards, especially in countries in transition.

Examples of Good Practice in Applying the Principle of Non-Punishment

Over the past two decades, influenced by international standards and recommendations, various states have taken steps towards codifying, institutionalizing, and applying the principle of non-punishment of victims of human trafficking. Although these efforts are inconsistent, certain states provide examples of good practice that can serve as a model for other legal systems, including countries in transition such as Serbia.

The United Kingdom was one of the first countries to recognize the importance of the principle of non-punishment and to implement it systematically through case law and specific legal instruments. A key mechanism is Section 45 of the Modern Slavery Act 2015¹⁵, which provides victims of human trafficking with a statutory defense where their conduct was a result of exploitation. In practice, this provision is applied in criminal proceedings involving offenses such as theft, drug production, or illegal work, when there is evidence that the victims acted under coercion.¹⁶

¹⁴ United Nations High Commissioner for Human Rights (UNHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 3.

¹⁵ Parliament of the United Kingdom, *Modern Slavery Act 2015* (c. 30), London, 2015.

¹⁶ Connelly, L. J. (2016). *The Governance of Sex Trafficking: Politics, Policy and Practice in England and Wales*. (doctoral dissertation). Leeds: University of Leeds, 194.

According to analyses by Anti-Slavery International, such legal solutions contribute to fairer criminal proceedings and reduce secondary victimization.¹⁷ At the same time, challenges remain in the consistent application of the defense in case law and in ensuring adequate identification of victims in the early stages of proceedings.

In Canada, although there is no explicit defense based on non-punishment in the federal criminal statute, the practice of public prosecutors in certain provinces (for example, Ontario and British Columbia) shows consistent application of guidelines allowing for refraining from criminal prosecution in cases where a trafficking victim committed an offense as a direct consequence of exploitation.¹⁸ This approach is based on a public interest test and the concepts of proportionality and humane treatment of vulnerable groups.

In 2013, France adopted amendments to the Criminal Code that introduced the possibility of excluding criminal liability for victims of human trafficking who were compelled to commit criminal offenses (Art. L.221–6–2, *Code pénal*). French courts, with the support of specialized NGOs and lawyers, actively apply this institute, especially in cases involving the exploitation of children in begging and sexual exploitation. France also insists on including a psychological and social assessment when deciding whether prosecution should be pursued.¹⁹

Italy applies an innovative model that combines the criminal and migration dimensions of victim protection. According to Article 18 of the *Testo Unico sull'Immigrazione*, victims of human trafficking who cooperate with the authorities can obtain a special residence status and, at the same time, be exempted from criminal liability for activities directly caused by exploitation. Such practice, combined with a well-developed network of shelters and NGOs, allows for the systematic identification of victims and the consistent application of the principle of non-punishment.²⁰

¹⁷ Baldwin, S. B., Eisenman, D. P., Sayles, J. N., Ryan, G., Chuang, K. S. (2011). Identification of human trafficking victims in health care settings. *Health and Human Rights*, 13(1), 36–49.

¹⁸ Department of Justice Canada, *A Handbook for Criminal Justice Practitioners on Trafficking in Persons*, Working Group on Trafficking in Persons, 2024.

¹⁹ Council of Europe, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France*. Strasbourg, 2017.

²⁰ Palumbo, L. (2015). Protection of trafficked people in Italy: policies, limits and challenges. *Journal of Money Laundering Control*, 18(1), 52–65.

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE APPLICATION OF THE PRINCIPLE OF NON-PUNISHMENT OF VICTIMS OF HUMAN TRAFFICKING

Article 4 of the European Convention on Human Rights prohibits slavery and forced labor. In the case law of the European Court of Human Rights (hereinafter: ECtHR),²¹ this provision has evolved into a broader framework of protection against human trafficking, given that trafficking is regarded as a contemporary form of slavery. In *Rantsev v. Cyprus and Russia*²² and *S.M. v. Croatia*,²³ the ECtHR defined three groups of positive obligations of the state: 1) the obligation to put in place a legislative and administrative framework to prevent and punish human trafficking; 2) the obligation to protect victims of trafficking by providing measures of prevention, registration, and assistance to such persons; 3) the obligation to conduct an investigation and judicial proceedings when there is reasonable suspicion that the criminal offense of human trafficking has been committed. According to the ECtHR, the first two obligations are of a substantive nature, while the third covers the procedural aspect. *Krachunova v. Bulgaria*²⁴ represents a key judgment in terms of establishing an additional positive obligation – the victim’s right to compensation.²⁵

Although the Convention does not explicitly mention the principle of non-punishment, the Court has developed standards in the past decade requiring states to ensure that trafficking victims are not prosecuted for activities that are the direct consequence of their exploitation.

The case of *V.C.L. and A.N. v. the United Kingdom*²⁶ represents the first judgment in which the ECtHR expressly found a violation of Article 4 in the context of the non-punishment of victims of trafficking. The applicants were Vietnamese minors who had been illegally brought into the United Kingdom

²¹ Although Article 4 of the ECHR addresses slavery, servitude, and forced labor and does not expressly refer to trafficking in human beings, the ECtHR held in *Rantsev v. Cyprus and Russia* (App. no. 25965/04), 7 January 2010; *Chowdury and Others v. Greece* (App. no. 21884/2015), 30 March 2017; and *S. M. v. Croatia* (App. no. 60561/14), 25 June 2020, that trafficking in human beings falls within the scope of Article 4 of the ECHR.

²² *Rantsev v. Cyprus and Russia* (App. No. 25965/04), 7 January 2010, paras. 285–289.

²³ *S.M. v. Croatia* (App. No. 60561/14) 25 June 2020, paras. 304–306.

²⁴ *Krachunova v. Bulgaria* (App. No.18269/18) 28 November 2023.

²⁵ For more, see: Turanjanin, V. (2024). Expanding the circle of positive obligations: Enabling victims of human trafficking to seek compensation in respect of lost earnings from their traffickers: *Krachunova v Bulgaria* (App. No. 18269/18). *European Human Rights Law Review*, (5), 448–453.

²⁶ *V.C.L. and A.N. v. The United Kingdom* (Apps. No. 77587/12 and 74603/12), 16 February 2021.

and forced to work in illegal cannabis factories. Despite indications that they were victims of trafficking, the British authorities prosecuted and convicted them without an adequate assessment of their status as victims.

The Court found that the United Kingdom had breached its **positive obligation under Article 4 of the Convention** because it:

- Failed to carry out a timely and effective assessment of the applicants' status as potential victims of trafficking;
- Failed to suspend the criminal proceedings until the completion of the identification procedure;
- Failed to take exploitation into account as a material circumstance affecting criminal liability.

In this judgment, the ECtHR formulated several significant legal principles that shape the approach of states in similar situations:

1. **Positive obligations of the state:** Article 4 requires that states not only prevent and punish human trafficking, but also take active measures to identify and protect victims, including by suspending criminal prosecution.²⁷

2. **Principle of non-punishment:** Victims of trafficking must not be prosecuted for activities they were compelled to commit as a direct consequence of their exploitation. This principle, although not explicitly stated in the Convention, follows from its purpose and spirit.

3. *Due diligence of prosecutors and courts:* Before deciding to prosecute, the state must conduct a thorough assessment of whether the person is a potential trafficking victim. Otherwise, prosecution constitutes a violation of the right to protection from slavery.

This judgment sets a new standard in European human rights law. It strengthens the obligation of states to:

- Develop inter-institutional mechanisms for **early identification of victims**;
- Ensure that **prosecutors and courts apply the principles of proportionality and necessity** when deciding whether to initiate or continue criminal proceedings;
- Allow for **suspending proceedings or referral to alternative mechanisms** when there are grounds for treating the person as a victim.

In this context, the ECtHR provides strong support for a human rights-based approach and reminds states that the treatment of trafficking victims must be based on the recognition of their vulnerability and the exclusion of secondary victimization.

²⁷ Turanjanin, V., Stanisavljević, J. (2024). Human trafficking and forced prostitution under article 4 of the European convention on human rights. *German Law Journal*, 25(2), 284.

The judgment in *V.C.L. and A.N.* represents the culmination of a long process in which the ECtHR has developed the doctrine of positive obligations of states in combating human trafficking. Earlier cases did not always directly address the principle of non-punishment, but they laid the groundwork in terms of the duty to identify victims, provide protection, and prevent further abuse.

IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING

In order to apply the international standards set out above, it is necessary to identify victims of human trafficking. The doctrine points out that a large number of international instruments form the legal framework that prescribes the positive obligations of the state regarding the prohibition of human trafficking. These obligations manifest in two ways – in relation to perpetrators of the criminal offense of human trafficking and in relation to victims of human trafficking.²⁸ There is a well-founded understanding that the provisions of the Constitution²⁹ allow for the direct application of international law, i.e., allow competent state authorities to refer to the provisions of ratified international treaties and generally accepted rules of international law in their decisions or reasoning.³⁰ Although the concept of human trafficking is not defined in the Constitution, international sources of human rights are important for its definition.³¹

The obligations of States with regard to the identification of victims of human trafficking derive directly from the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings. The States Parties to this Convention (including Serbia, which ratified this Convention in

²⁸ Jeličić, M. (2025). Značaj nalaza i mišljenja Centra za zaštitu žrtava trgovine ljudima u krivičnom postupku. *Veštačenje u kaznenim postupcima*, (eds. Kolaković Bojović M., Stevanović I.) Palić: Institute of Criminological and Sociological Research, 142.

²⁹ Constitution of the Republic of Serbia, *Official Gazette of the RS*, No. 98/06 and 115/21. Article 16 of the Constitution stipulates that ratified international treaties are an integral part of the legal order of the Republic of Serbia and are directly applicable and that, under the hierarchy of legal acts, ratified international treaties rank below the Constitution and above laws (Article 194 of the Constitution), and that court decisions are based on the Constitution, law, ratified international treaties, and general acts adopted on the basis of law (Article 144).

³⁰ Dragičević-Dičić, R., Mirović, T., Žarković, M. (2016). *Pravni okvir i preporuke za primenu principa nekažnjavanja žrtava trgovine ljudima u Republici Srbiji*. Belgrade: OSCE Mission to Serbia, 12.

³¹ Simović, D., Orlović, S. (2023). *Komentar Ustava Republike Srbije*. Belgrade: Official Gazette, 177.

2009) have undertaken to ensure that each state shall provide its competent authorities with staff who are trained and qualified to prevent and combat human trafficking, to identify and provide assistance to victims, including children, and to ensure that the various authorities involved cooperate with each other, as well as with relevant support organisations, in order to identify victims in a procedure that takes into account the special situation of women and child victims and so that, where necessary, residence permits are issued under the conditions set out in Article 14 of the Convention (Art. 10, para. 1). With regard to the identification of victims, it should be noted that states are obligated to adopt legislative or other measures to ensure the appropriate identification of victims, in cooperation with other state parties and relevant support organizations (Art. 10, para. 2). It should be noted that Article 4(e) defines a “victim” as any natural person who is subject to trafficking in human beings as defined in this article.

There is a well-founded understanding that identifying victims of human trafficking is of great importance for criminal proceedings for two reasons. The first is that victims of human trafficking most often have the status of the passive subject in a criminal-law sense, i.e., the injured party in a criminal-procedure sense. The second aspect is important primarily for the prosecuting authority (the public prosecutor’s office), but also for the court, and relates to the principle of non-punishment of victims of human trafficking, pursuant to Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings.³²

In the Republic of Serbia, the Center for the Protection of Victims of Human Trafficking (hereinafter: the Center) is the authorized body for the formal identification of victims of human trafficking. It is an institution within the social welfare system, established by the Decision of the Government of the Republic of Serbia of April 13, 2012. The Center began operating on July 2, 2012. This was preceded by the adoption of the Regulation on the Network of Social Protection Institutions.³³ The Center is a key actor in the fight against human trafficking and cooperates with the Ministry of Internal Affairs and judicial authorities. The Center’s core tasks are related to the identification, referral, and protection of victims of human trafficking. Its Statute³⁴ and its Rulebook on Internal Organization and Systematization of Work Positions and

³² Jeličić, M. (2025). Značaj nalaza i mišljenja Centra za zaštitu žrtava trgovine ljudima u krivičnom postupku. *Veštačenje u kaznenim postupcima*, (eds. Kolaković Bojović M., Stevanović I.) Palić: Institute of Criminological and Sociological Research, 145, 146.

³³ Regulation on the Network of Social Protection Institutions, *Official Gazette of the RS*, No. 16/12.

³⁴ The Center’s Statute is available at: <https://centarzztlj.rs/wp-content/uploads/2020/07/Statut.pdf> (accessed on June 1, 2025).

Tasks³⁵ stipulate that the Center carries out its activities through two organizational units: the Service for the Coordination of the Protection of Victims of Human Trafficking, which has been operating since July 2012, and the Shelter for Victims of Human Trafficking, which began operating in February 2019. It should be noted that the employees of the Center are professionals in social welfare and related disciplines, who have the necessary knowledge and skills to work with victims of human trafficking. All professional staff at the Center hold licenses to perform core professional tasks in social welfare and have completed numerous additional trainings providing specific expertise. The Center employs social workers, psychologists, special educators, lawyers, and defectologists, who can recognize and understand the trauma experienced by victims from different perspectives and together provide the necessary support.

The Standard Operating Procedures for Handling Victims of Human Trafficking of December 12, 2018, is an important instrument for the procedure of identifying victims of human trafficking.³⁶ These procedures were drafted by the Office for the Coordination of Activities in Combating Human Trafficking within the Police Directorate of the Ministry of Internal Affairs of the Republic of Serbia, and were adopted by the conclusion of the Council for Combating Human Trafficking at its session held on January 25, 2019.

The Standard Operating Procedures provide an overview of activities related to the identification, referral, support, and protection of victims of human trafficking, including assistance and support to victims of human trafficking in criminal proceedings and in pursuing property claims, i.e., assistance in civil proceedings for damages, as well as the voluntary return of victims and the steps through which these activities are carried out. They are grouped into five procedures.

The first relates to preliminary identification and referral, which can be carried out by a large number of actors that may become aware of possible trafficking, while the second procedure concerns the formal identification of a victim of human trafficking. It is necessary to point out the difference between preliminary and formal identification of victims of human trafficking.

The circle of actors that can carry out preliminary identification of victims of human trafficking is much greater than in the case of formal identification. This includes members of the Ministry of Internal Affairs, employees in labor inspectorates and other public authorities, private individuals, employees of the judiciary, such as public prosecutors, judges of courts

³⁵ The referenced Rulebook is available at: <https://centarzztlj.rs/wp-content/uploads/2020/07/Pravilnik-o-organizacij-i-sistematizaciji.pdf> (accessed on June 1, 2025).

³⁶ Available at: <https://media.srbija.gov.rs/medsrp/dokumenti/01.SOP+final+250119.pdf> (accessed on June 1, 2025).

of general jurisdiction and misdemeanor courts, local teams for combating human trafficking, local security councils, etc. Participants in this procedure use indicators to recognize the risk of human trafficking and, in contact with a potential victim, assess whether they need assistance, refer them to the competent authority for the protection and support of victims of human trafficking, inform them of her rights and the duty to report the case to the competent authorities, so that anti-trafficking measures may be taken. Participants in preliminary identification must immediately notify the public prosecutor's office or the police upon learning of possible trafficking.

By contrast, the Center for the Protection of Victims of Human Trafficking initiates the formal identification procedure as the only competent authority in the Republic of Serbia. This is an urgent procedure that is initiated whenever information is obtained (through a report or otherwise) that a person is a victim of human trafficking. The procedure is initiated immediately or within 24 hours of the report at the latest.

The essential difference between preliminary and formal identification is that formal identification is based on the state's obligations arising from the Council of Europe Convention on Action against Trafficking in Human Beings, based on which a certain person is (or is not) granted the status of a trafficking victim, which entails numerous implications. Preliminary identification is a "prior step" in that process.

Therefore, within the Standard Operating Procedures, the second procedure concerns the formal identification of victims of human trafficking. It is carried out in three steps: an initial interview with the presumed victim conducted by a professional staff member of the Center; notification and cooperation among participants in identification, which includes notifying the Ministry of Internal Affairs, the competent public prosecutor's office, the Center for Social Work, etc.; and completion of the identification procedure, which results in a formal decision on whether or not the person presumed to be a victim of human trafficking is indeed a victim. The third procedure concerns victim support and protection. It is carried out in two steps – emergency support in response to the urgent needs of the presumed victim and continuous support. The fourth procedure is based on assistance and support to victims of human trafficking in criminal proceedings and in resolving property claims, or in civil proceedings for damages. The fifth procedure is the voluntary return of victims of human trafficking, and it concerns citizens of the Republic of Serbia and foreign nationals in cases of return to their country of origin.

A decision on the identification of a victim of human trafficking is made upon completion of the procedure and no later than three months, or in extremely complex cases, nine months from the date of the report/notification.

The formal act of identification is the Center’s expert report.³⁷ The Center always submits its expert report on the outcome of the identification procedure to the competent organizational unit of the Ministry of Internal Affairs, the competent public prosecutor’s office, the court, and the competent Center for Social Work, while it informs the other participant in the preliminary identification, who referred the victim to the Center, of the decision.

The expert report consists of several parts.³⁸

The first part sets out the reasons for preparing the expert report and provides basic information about the Center and its role. The second part concerns basic information about the person undergoing the identification procedure, i.e., the presumed victim, as well as their family. The third part addresses where and how the information on which the expert report is based was obtained, setting out the sources of information. Sometimes it explains where the interview with the presumed victim for identification purposes took place and what information was obtained through the interview. The following section, titled “Findings,” contains facts obtained in the identification procedure, which mainly relate to a longer period of time rather than only the period of the specific trafficking offense. Namely, the criminal offense of human trafficking often has its own “history,” which is reflected in the existence of preconditions for victim exploitation. In practice, this is often the case in situations of exploitation of minors by parents for the purpose of begging, where children become accustomed to begging as a routine part of daily life and lose the perception of the harmfulness of such behavior. The section titled “opinion of the presumed victim” sets out the trafficking victim’s view of the situation they are in. It contains observations by the Center’s expert on how the victim perceives their position and accepts the current situation, their plans for the future, and whether they are inclined to participate in criminal proceedings.

³⁷ It should be noted that the 2023 GRETA report paid particular attention to the analysis of the procedure for identifying victims of human trafficking in the Republic of Serbia, covering the evaluation period from 2017 to 2022. In the part of the report addressing these issues (paras. 206–217), several important facts were noted. GRETA indicated that, with the support of the OSCE, the Center for the Protection of Victims Human Trafficking developed indicators for the formal identification of child and adult victims of human trafficking, as well as indicators for the expert assessment of cases involving violence against adults and children, and risks for these two categories. It was observed that, although all actors, including NGOs and members of local anti-trafficking teams, can identify presumed victims of human trafficking, formal identification remains within the jurisdiction of the Center, and it does not depend on the outcome of a criminal investigation.

³⁸ As cited in: Jeličić, M. (2025). Značaj nalaza i mišljenja Centra za zaštitu žrtava trgovine ljudima u krivičnom postupku. *Veštačenje u kaznenim postupcima*, (eds. Kolaković Bojović M., Stevanović I.) Palić: Institute of Criminological and Sociological Research, 148, 149.

The key part of the expert report is the interpretation of the findings, where the expert team presents its view of the presumed victim's overall situation, explaining the reasons that led to a specific "opinion" as the concluding part. This section analyzes the causal relationships between the situation of the identified trafficking victim and clarifies certain aspects of their conduct. The opinion provides a conclusion on whether a person is identified as a trafficking victim and the form of exploitation, as well as the necessary steps to be taken for the victim's care and protection. This section also addresses cases of exploitation through the commission of criminal offenses, which is the basis for applying the principle of non-punishment of victims of human trafficking.

Therefore, the Center's expert report is the formal act by which a person is identified as a victim of human trafficking. Only after this act is adopted can the principle of non-punishment be applied in practice.

THE CURRENT SITUATION IN THE REPUBLIC OF SERBIA REGARDING THE PRINCIPLE OF NON-PUNISHMENT OF VICTIMS OF HUMAN TRAFFICKING AND GRETA'S THIRD REPORT

As already stated, this principle entails excluding criminal liability for unlawful activities committed as a result of human trafficking. This applies not only to criminal offenses but to misdemeanors as well. Regardless of the structure of the legal system, it is up to states to harmonize their legal systems with this international standard and provide a legislative framework for this type of protection of trafficking victims. It is worth noting that Article 27 of the Vienna Convention on the Law of Treaties provides that

“...a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

In the Republic of Serbia, there is no specific legislative framework governing the principle of non-punishment of victims of human trafficking. This observation is reiterated in GRETA's third report on the Republic of Serbia,³⁹ in paragraph 114, which notes that the absence of a specific provision on non-punishment of victims of human trafficking entails the risk of inconsistent treatment, depending on which prosecutor is assigned to the case.

³⁹ Council of Europe, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, Third evaluation round, 2023.*

In this report, in paragraph 115, GRETA made observations regarding the application of this principle in Serbia. It was stated that

“...the Serbian authorities rely on general provisions in the CC,⁴⁰ which establish the principle that there is no criminal offence without an unlawful act or culpability (Art. 14, para. 2), or which exclude culpability for acts of minor significance (Art. 18), as well as acts committed out of necessary defence (Art. 19) and extreme necessity (Art. 20). Further, Article 21 of the CC provides that an act committed under irresistible force would not be considered a criminal offence, while the commission of an offence under force which was not irresistible would trigger the application of mitigating circumstances leading to more lenient sanctions. Article 284 of the CPC stipulates that the prosecutor may, inter alia, reject the criminal report for criminal offences which are not prosecuted ex officio if he/she finds that prosecution would not be justified. The Law on Misdemeanours also stipulates (Article 15) that if a misdemeanour was committed under force or threat, it would not be considered as such. Further, the Law on Foreigners and the Instruction on its implementation contain provisions excluding or reducing the criminal or administrative responsibility of victims of trafficking who entered Serbia illegally or whose stay in Serbia is irregular.”

In paragraph 117, it is emphasized that GRETA

“...was informed that in some cases police officers, prosecutors and judges failed to take into account indicators that the accused may have been a victim of trafficking, especially in cases where possible THB was (re)qualified as a lesser offence (e.g. mediation in prostitution). One of the challenges mentioned to GRETA is the lack of communication between the relevant actors, leading to victims of trafficking being treated as injured parties in a criminal case for THB while they are simultaneously prosecuted for the act which they were forced to commit by the trafficker (often a misdemeanour) at another instance. In one such case, in which the victim was investigated for theft by a lower prosecutor’s office while he/she appeared as an injured party in the case against the trafficker, the NGO which was assisting the victim alerted the prosecutor to the parallel proceedings and the case against the victim was discontinued.”

In paragraphs 118 and 119 of the report, GRETA concludes that

“...the Serbian authorities should make further efforts in order to ensure that all of the authorities involved in the investigation and prosecution of potential cases of THB, including misdemeanour judges, receive the necessary training to ensure the consistent application of the non-punishment principle

⁴⁰ Criminal Code – CC, *Official Gazette of the RS*, Nos. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19, and 94/24.

to all victims of trafficking, and that the Serbian authorities should keep the implementation of the non-punishment principle under review so as to determine whether legislative amendments are not necessary to achieve its objectives, as set out by Article 26 of the Convention, and to guarantee consistency of practice in its implementation.”

CURRENT PROJECTS IN SERBIAN LEGISLATION – DRAFT LAW ON THE SUPPRESSION AND PREVENTION OF HUMAN TRAFFICKING AND THE PROTECTION OF VICTIMS

The Ministry of Internal Affairs of the Republic of Serbia has drafted a Law on the Suppression and Prevention of Human Trafficking and the Protection of Victims, on which a public hearing was held from May 22, 2025, to June 10, 2025. The explanatory memorandum on the reasons for adopting the law⁴¹ emphasized that the Draft Law transposes the provisions of Directive 2011/36 of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, as well as Directive (EU) 2024/1712 amending Directive 2011/36, except for the part relating to criminal offenses and sanctions, which is to be transposed when drafting amendments to the Criminal Procedure Code and the Criminal Code. It was pointed out that the starting point for drafting this law was a situation analysis, which showed that the problems identified in this area primarily concern the absence of a unified institutional and organizational framework, the lack of clearly defined coordination and cooperation among relevant actors, as well as the lack of a multidisciplinary approach to preventing and combating human trafficking. This affects the efficient provision of assistance, support, and protection to victims of human trafficking, detecting and proving the criminal offense, and the prosecution and adjudication of perpetrators of the criminal offense of human trafficking and related criminal offenses. It was also emphasized that there lacked a clear definition of the competences of key actors in preventing and combating human trafficking, namely the Council for Combating Human Trafficking, the National Coordinator for Combating Human Trafficking, and the National Rapporteur for Human Trafficking, as well as the Center for the Protection of Victims of Human Trafficking, and that the existing system also shows inconsistent conduct by relevant actors in the field of combating human trafficking, without unified statistical data

⁴¹ Accessed on June 26, 2025, from: <https://mup.gov.rs/wps/portal/sr/dokumenti/Regulativa/Nacrti+zakona>

and records on trafficking victims. The consequences of these problems are reflected in the insufficiently effective prevention and suppression of human trafficking, as well as a disproportionate gap between the number of formally identified trafficking victims and the number of injured parties in cases involving the criminal offense of human trafficking.

The Draft Law explicitly stipulates, in Article 37, the right to non-punishment of victims of human trafficking:

“A victim of human trafficking shall not be punished for committing an offense, to the extent to which they were compelled to do so, in accordance with ratified international treaties and national legislation.”

In this way, the aforementioned international standards are implemented into Serbian legislation by explicitly stipulating the principle of non-punishment of victims of human trafficking for criminal offenses, as a statutory principle. In addition, the Draft Law regulates the procedure for preliminary and formal identification of trafficking victims, with formal identification remaining within the jurisdiction of the Center for the Protection of Victims of Human Trafficking. Given that formal identification is the basis for applying the principle of non-punishment, it should be pointed out that the Draft Law stipulates that, after the formal identification procedure has been carried out, the Center shall make a decision on formal identification against which an objection is permitted. The Draft Law prescribes the establishment of a Commission that decides on objections against the formal identification decision, as an effective legal remedy, in order to prevent decisions to the detriment of trafficking victims, thereby ensuring a second-instance procedure. This is particularly important because a person who has committed an offense as a consequence of human trafficking has a legal interest in having their status as a victim established, which in turn enables the application of the principle of non-punishment.

CONCLUSION

The Republic of Serbia has not yet implemented the principle of non-punishment of victims of human trafficking into its legislative framework. The first steps in this direction were taken through drafting the Draft Law on the Suppression and Prevention of Human Trafficking and the Protection of Victims, which, at the time of writing, has not yet been adopted. However, even this Draft Law does not fully regulate all issues that may arise as contentious in practice. It merely prescribes the right of trafficking victims not to be punished for punishable offenses (criminal offenses and misdemeanors), without further elaborating on the procedural implications of this principle.

The substantive provisions of the Criminal Code that may be applied in these situations, as referred to in the GRETA report, remain outside the provisions of the Draft Law. The procedural aspects of this issue, i.e., defining at which stages of misdemeanor and criminal proceedings the principle of non-punishment may be applied, have not been clarified. It can be reasonably concluded that the international legal framework establishes that combating human trafficking is a project of global proportions and therefore warrants particular attention. For this reason, amendments to the Criminal Procedure Code⁴² and the Law on Misdemeanors⁴³ are necessary in order to implement the principle of non-punishment of victims of human trafficking. This must be done by precisely prescribing at which stages of these proceedings and in what manner the relevant procedural actors can apply the principle of non-punishment, relying on international standards as well as the Law on the Suppression and Prevention of Human Trafficking and the Protection of Victims, which is expected to become part of Serbia's positive law. In that sense, and following the example of France, amendments to the Criminal Code are also possible, with the aim of implementing a provision on the non-punishment of trafficking victims. In this way, amendments to these laws would comprehensively regulate the legal framework for implementing this principle, thereby facilitating the work of relevant actors responsible for applying this principle in practice.

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⁴² Criminal Procedure Code – CPC, *Official Gazette of the RS*, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, and 62/2021.

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