

Warner ten Kate

*National Coordinating Public Prosecutor for Trafficking of Human Beings and People Smuggling
& Flexible Liaison Magistrate People Smuggling*

4 December 2017

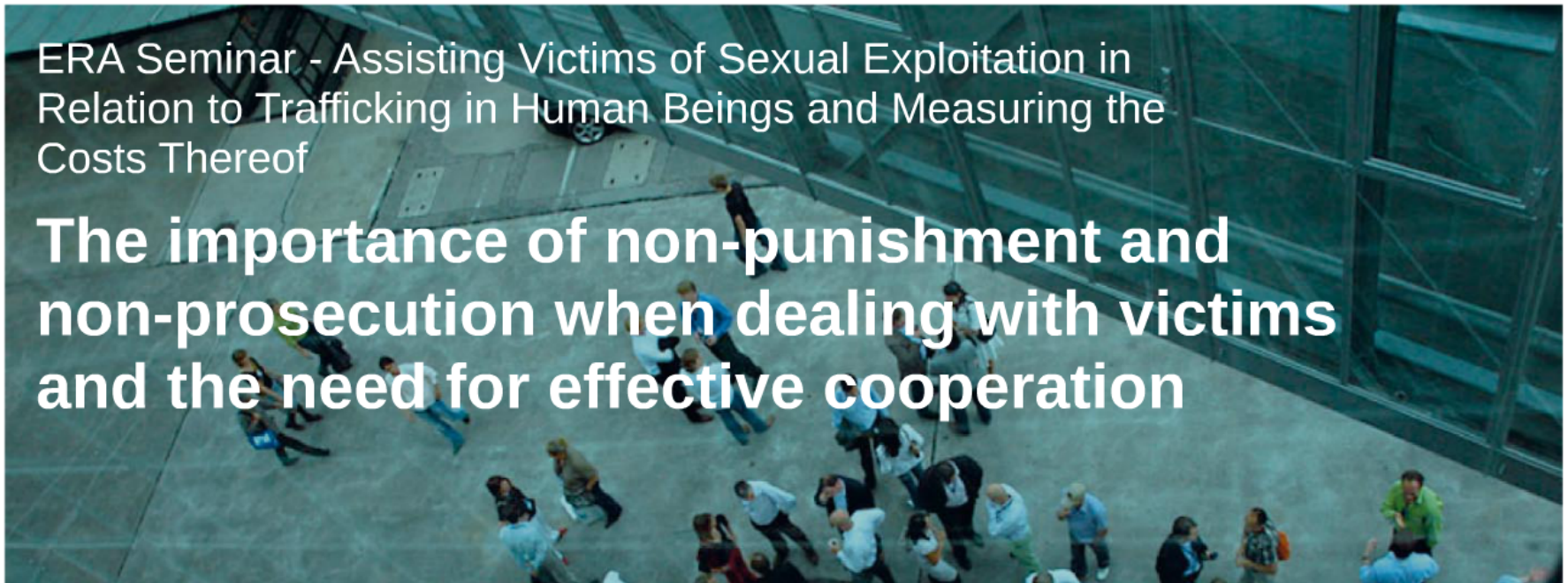
National Office of the Public Prosecution Service



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ERA Seminar - Assisting Victims of Sexual Exploitation in
Relation to Trafficking in Human Beings and Measuring the
Costs Thereof

**The importance of non-punishment and
non-prosecution when dealing with victims
and the need for effective cooperation**



Subjects

- **Cooperation between authorities to identify victims of THB**
- **Non-punishment**
- **Costs of victims' assistance**



Cooperation between authorities to identify victims of THB

Authorities play an important role in identifying victims of THB. When they pass signals of THB on to a judge or Public Prosecutor, they have a role in filling in the principles of ***non-prosecution and non-punishment!***

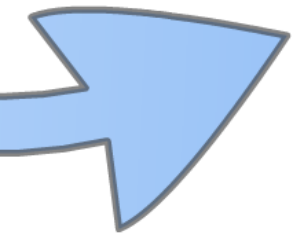
For example: Medical experts can play this role! In the 10th Report of the (Dutch) National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children is concluded that **50% of all medical experts have had a victim of THB as client.**

Non-prosecution/ non-punishment

Starting point is **prosecution**. In cases where it is evident that the victims were forced to commit criminal offenses the options are, for instance, deciding **not to prosecute** or requesting the court to convict without imposition of any punishment.

The decision not to punish the perpetrator (a victim of human trafficking him- or herself) can be made in case of self defense/ excess/psychological force majeure.

Although the formal requirements of an offense are met and a justification or exculpation ground in the strict sense is lacking, is the occurred such an edge case that prosecution or punishment would be disproportionately.





Non-punishment principle

Content of this rule:

- An international principle
- Protection of victims of exploitation
- If the person on the basis of a national act or on the basis of international provisions can be appointed as a victim, the victim can refer to the non-punishment principle.
- The offenses must be sufficiently directly related to the exploitation

Non-punishment principle

Rationale:

- Avoid further victimization: risk of being deported, detained or prosecuted
- Detection of the original offense
- To protect the human rights of victims

Legal basis

The first legal basis of the non-punishment provision:

- **Convention of Warsaw (Council of Europe Convention on Action against Trafficking in Human Beings), art. 26**

*“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”.*

In 2011, the provision is further expanded. Also, the possibility of non-prosecution is specifically mentioned by this directive:

- **Directive 2011/36/EU, art. 8**

*“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.”*

- **Protocol of 2014 to the Forced Labour Convention, 1930, art. 4 sub 2**

Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

Protection of victims (Rantsev case)

The protection of victims is an essential element in combating trafficking in human beings. The ECHR emphasizes the importance of a victim-centered approach in the “Rantsev” case:

- States must adopt an effective policy against combating trafficking
- Preventive measures
- Protection and assistance of victims



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Non-punishment (and non-prosecution) in the Netherlands

From 1 May 2014, a specific Directive for the decision not to punish a person who is a victim of trafficking in human beings comes into force.

The decision not to punish a victim, based on this Directive, can be made in case of:

- 06: In case of self defense/excess/psychological force majeure
- 42: Although the formal requirements of an offense are met and a justification or exculpation ground in the strict sense is lacking, is the occurred such an edge case that prosecution would be disproportionately.

Other options:

Art. 9a Dutch Criminal Code (CC): the opportunity for the judge to convict a person without punishment.

Judge can consider it as a circumstance beyond one's control (no convict or punishment)

Judge can reduce the sentence

Examples non-punishment in other States:

Argentina Law, 26.364, Prevention and Criminalization of Trafficking in Persons and Assistance to Victims of Trafficking of 2008, Article 5

"Victims of trafficking in persons are not punishable for the commission of any crime that is the direct result of having been trafficked."

United States, Victims of Trafficking and Violence Protection Act of 2000, Sect. 112

"Penalties for the crime of unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labour do "not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, [...] if that conduct is caused by, or incident to, that trafficking."

Philippines, Anti-Trafficking in Persons Act (RA No. 9208) of 2003, Sect. 17

"Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking [...] or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant."



From non-punishment to non-prosecution

Non-prosecution - legal basis

- **UN Resolution A/RES/55/67**

13 - "Also invites Governments to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being **prosecuted** for their illegal entry or residence, taking into account that they are victims of exploitation";

- **Directive 2011/36/EU**

This EU-directive elaborates on the Convention of Warsaw by introducing non-prosecution.

*Art. 8 - **Non-prosecution** or non-application of penalties to the victim "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 Netherlands: The principle of opportunity, art. 167 section 2 Dutch CC**

The right of the Public Prosecutor to **prosecute** or to drop a case.

- **The Netherlands: Directive on trafficking in human beings (2013A012)**

Starting point is **prosecution**. In cases where it is evident that the victims were forced to commit criminal offenses the options are, for instance, deciding **not to prosecute** or conviction without imposition of punishment.

Obstacles

- **A new strategy for perpetrators:**
perpetrators use minors, because minors can not be penalized.
- **Non-prosecution in other nations:**
Some nations don't have the legal possibility to apply the non-prosecution provision, because the Public Prosecutor must prosecute a suspect of trafficking in human beings, also when he is a victim of trafficking in human beings.

Effective cooperation between authorities in assisting and protecting victims

- Legal basis
- First contact
- Special victim protection
- Victim support services
- Costs of victims' assistance

Legal Basis

Directive 2012/29/EU

- Some important changes:
 - Referral of victims to victim support services.
 - Family members have access to victim support services.
 - Victims may receive translation, free of charge, on request.
 - Victims have a right to receive information from the first contact with a competent authority.
 - Victims have a right to receive certain information about the criminal proceedings, for example when the decision is made not to proceed or end an investigation.

The Netherlands: Directive on trafficking in human beings (2013A012)

- Important topics:
 - The Public Prosecutor has to inform victims of all important decisions made in the criminal proceedings.
 - Right of victims to have a solicitor and/or interpreter.
 - Right of victims to examine the content of procedural documents and to receive information about the progress of the case.
 - Support of the Prosecutors Office in receiving tangible and intangible compensation.
 - Right to speak or give a written statement at the trial.
 - Information about the (conditional) release of the suspect/convict.

First contact

The Netherlands: Directive on trafficking in human beings (2013A012)

- Informative talk ('intake') between victim and investigative authorities.
 - Victims receive information about criminal procedures and the investigative authorities receive information about the what/how/when/why etc.
 - Victims are informed about victim support services.
 - A transcript is made of this conversation. This transcript is however, in most cases, not part of the procedural documents.

Competent authorities can start an investigation without a decision of the victim whether to proceed.

The 'intake' can result in an official report of the crime.

- The Netherlands: Directive on auditive and audiovisual registration of interrogations comes into force.
- Competent authorities can start an investigation without a decision of the victim whether to proceed.

Special victim protection

Foreigners:

- **The Netherlands: Directive on trafficking in human beings (2013A012)**
 - This directive contains special protection for victims who do not have the Dutch nationality.
 - B8/3 procedure

Children (<18):

- **UN Convention on the Rights of the Child, art. 3.1:** "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration foreigners."
- 13 Oceans:
 - Victim support services, such as BNRM, CoMensha, the Ministry of Justice and Security, RvdK, LdH and Defence for Children worked close together with police and the Public Prosecutor throughout the proceedings.



Ministerie van Sociale Zaken en
Werkgelegenheid

Some authorities involved in the fight against THB



Ministerie van Veiligheid en Justitie

Gemeente ?



Ministerie van Buitenlandse Zaken



Koninklijke Marechaussee



comensha
mensenhandel in beeld



Ministerie van Volksgezondheid,
Welzijn en Sport

Some examples:
CoMensha
Fairwork
Police
ISZW
NIBUD
Fier



Immigratie- en Naturalisatiedienst
Ministerie van Veiligheid en Justitie



Ministerie van Binnenlandse Zaken en
Koninkrijksrelaties



Costs of victims' assistance

Use of psychiatric services

The objectives of this study were: (1) to quantify the use of secondary mental health services by survivors of human trafficking; (2) to estimate the cost of survivors' use of secondary mental health services provided by the UK National Health Service (NHS); and (3) to identify factors that predict higher costs of mental health service provision.

- **Two factors identified as significant predictors of mental health service cost:**
 - Diagnosis of psychotic disorder
 - Documented history of pre-trafficking violence

Total costs per patient

Variable	N	Mean (s.d.) ^a	Median	Min	Max
Number of days over which contacts took place	119	1490 (757)	1727	1	2325
Total cost per person (£)	119	27,293 (80,985)	3,366	59	633,970
Total cost per person per day (£)	119	57 (147)	3	0	725

Univariate associations with total cost per patient			
Variable	N	Mean cost (£)	P-value
Type of exploitation			
Sexual	58	21,324	0.435
Other ^a	61	32,970	
Gender			
Male	28	49,899	0.091
Female	91	20,338	
Disorder			
Psychotic disorders ^b	20	98,452	0.000
Other/psychological distress ^c	99	12,918	
Age when admitted (split at median)			
≤ 22	60	32,058	0.012
> 22	59	22,447	
Violence pre-trafficking			
Yes	57	41,840	0.090
No	62	13,920	
Violence post-trafficking			
Yes	69	23,060	0.505
No	50	33,135	

^a Financial, labour, domestic and unknown exploitation
^b Bipolar and schizophrenia and other non-affective psychoses
^c Childhood emotional, depression, emotionally unstable PD, enduring personality change following catastrophic experience, mixed conduct disorder, OCD, PTSD, severe stress and adjustment, substance misuse, unspecified mental retardation, unspecified disorder of psychological development, psychological distress, and not assessed

Source:

Cary, M., Oram, S., Howard, L. M., Trevillion, K., & Byford, S. (2016). Human trafficking and severe mental illness: an economic analysis of survivors' use of psychiatric services. *BMC health services research*, 16(1), 284.

Conclusion:

- Trafficked patients' use of mental health services is highly variable, but patients with psychotic disorders and with experiences of pre-trafficking violence are likely to require more intensive support.
- The mean cost per patient per day is approximately 57 pounds

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Human tra
survivors'
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Conclusion:

- Trafficked patients' use of mental health services is highly variable, but patients with psychotic disorders and with experiences of pre-trafficking violence are likely to require more intensive support.
- The mean cost per patient per day is approximately 57 pounds

Costs of victims' assistance



Lifetime Cost of Care for Victims of Minor and Youth Sex Trafficking

High-Risk Sex Trafficking Community Segments*	Estimated Victims	NPV of Cost of Care Required as Consequence of HT (Victims)	Estimated Lifetime Cost
Child abuse/neglect	72,018	\$83,125	\$6,036,358,005
At-risk youth being served by DFPs	6,024	\$83,125	\$500,742,076
Homeless	351	\$83,125	\$29,126,190
Total			\$6,566,226,271

* The research team acknowledges the limitations of this narrow definition of human trafficking. Future benchmarks will incorporate additional segments such as adult sex trafficking, other economic sectors, etc.

Annual Value of Labor Exploited from Trafficking Victims

High Risk Labor Trafficking Segments*	Estimated Victim	Estimated Annual Value Wages Lost
Signar bus/workers	36,970	\$94,214,966
Cleaning services	84,100	\$714,349,393
Construction	35,488	\$90,406,591
Kitchen workers in restaurants	60,825	\$155,426,806
Landscaping and grounds keeping workers	17,024	\$43,450,207
Total		\$599,127,942

* The research team acknowledges the limitations of this narrow definition of human trafficking. Future benchmarks will incorporate additional segments such as adult sex trafficking, other economic sectors, etc.

Source:
 Busch-Armendariz, N., Nale, N. L., Kammer-Kerwick, M., Kellison, J. B., Torres, M. I., Cook-Heffron, L., & Nehme, J. (2016). Human trafficking by the numbers: The initial benchmark of prevalence and economic impact for Texas. Institute on Domestic Violence and Sexual Assault (IDVSA), The University of Texas at Austin.

APPROXIMATELY

79,000

MINORS AND YOUTH
ARE VICTIMS OF
SEX TRAFFICKING

IN TEXAS ★ ★

APPROXIMATELY

234,000

WORKERS ARE
VICTIMS OF
LABOR TRAFFICKING

THERE ARE CURRENTLY AN ESTIMATED

313,000

VICTIMS OF
HUMAN TRAFFICKING
IN TEXAS ★ ★ ★ ★ ★

TRAFFICKERS
EXPLOIT
APPROXIMATELY

\$600 MILLION

FROM VICTIMS OF LABOR TRAFFICKING

★ ★ ★ ★ ★ IN TEXAS

MINOR AND YOUTH
SEX TRAFFICKING COSTS
THE STATE OF
TEXAS

APPROXIMATELY

**\$6.6
BILLION**

Lifetime Cost of Care for Victims of Minor and Youth Sex Trafficking

High-Risk Sex Trafficking Community Segments*	Estimated Victims	NPV of Cost of Care Required as Consequence of HT (Lifetime)	Estimated Lifetime Cost
Child abuse/maltreatment	72,618	\$83,125	\$6,036,358,905
At-risk youth being served by DFPS	6,024	\$83,125	\$500,743,976
Homeless	354	\$83,125	\$29,426,190
Total			\$6,566,529,071

* The research team acknowledges the limitations of this narrow definition of human trafficking. Phase 2 benchmarks will incorporate additional segments such as adult sex trafficking, other economic sectors, etc.

Annual Value of Labor Exploited from Trafficking Victims

<u>High-Risk Labor Trafficking Segments*</u>	<u>Estimated Victims</u>	<u>Estimated Annual Value Wages Lost</u>
Migrant farmworkers	36,970	\$94,314,906
Cleaning services	84,100	\$214,549,192
Construction	35,438	\$90,406,591
Kitchen workers in restaurants	60,925	\$155,426,986
Landscaping and grounds keeping workers	17,024	\$43,430,267
Total		\$598,127,942

* The research team acknowledges the limitations of this narrow definition of human trafficking. Phase 2 benchmarks will incorporate additional segments such as adult sex trafficking, other economic sectors, etc.

The logo for 'fier!' is a blue circle containing the word 'fier!' in white lowercase letters with an exclamation point. The 'i' has a dot above it, and the 'e' has a dot to its right.

fier!

Costs of victims' assistance

Fier Friesland

Estimates the cost of victims' assistance at:

- 260 euro (24 hours support and treatment)
 - Around 100.000 euro every year
- Specialized treatment (for example with a mental disorder), is 10.000-15.000 euro more expensive.



Question and answer?