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The Non-Punishment Principle in the Council of the Baltic Sea States Region

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Doctoral researcher Jani Hannonen was invited to speak at a human trafficking forum in Stockholm to present his research on the non-punishment principle to human trafficking specialists. According to the non-punishment principle, victims of human trafficking should not be punished for offences they have been compelled to commit. The forum was jointly organised by the Council of the Baltic Sea States and Europol.

Council of the Baltic Sea States and Anti-Trafficking Efforts

The Council of the Baltic Sea States (CBSS) is an intergovernmental organisation for regional cooperation consisting of ten member states (Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland and Sweden) and the European Union (EU). Russia is no longer a member state, as it was suspended in 2022 due to its invasion of Ukraine and subsequently withdrew from the organisation.

A safe and secure region is one of the priorities of the CBSS. Anti-trafficking has been identified as a focus area, with the Anti-Trafficking Task Force responsible for coordinating anti-trafficking efforts within the CBSS. Human trafficking is a crime that encompasses a wide range of exploitative practices, usually for financial gain.

The CBSS and Europol organised the European Forum against Trafficking in Human Beings – Countering Organised Crime and Protecting Victims (THBxOC 2025) in Stockholm, Sweden, on 3–4 December 2025. The Forum brought together approximately 250 participants from all CBSS member states and 25 other European countries. The participants were mainly law enforcement authorities, but also representatives from ministries, labour inspectorates, tax authorities, and international and regional organisations.

I was invited to present my research on the non-punishment principle of victims of human trafficking. The one-hour seminar breakout session, titled “The non-punishment principle in human trafficking cases: Practice and limitations”, was held on the second day and attended by approximately 40 participants. The non-punishment principle was a topical issue at the Forum, frequently referred to in panel discussions, and many panellists identified exploitation for criminal activities as a rising trend in trafficking.

The Non-Punishment Principle

According to the non-punishment principle, victims of human trafficking should not be punished for offences they have been compelled to commit. The non-punishment principle is the abstract idea behind the concrete non-punishment provisions and other relevant legal sources. The European non-punishment provisions are stated in the Council of Europe Trafficking Convention (Article 26) and the EU Anti-Trafficking Directive (Article 8).

The concept of compulsion is the most crucial element of the non-punishment principle. Compulsion should be understood broadly as psychological control that is characteristic of human trafficking. The Council of Europe Explanatory Report to the Trafficking

Convention provides clear interpretative guidance. According to the Explanatory Report (para. 273), compulsion should be understood as consisting of the means element of human trafficking and the psychological influence exerted to commit the offence. Therefore, compulsion may be based on the abuse of a position of vulnerability, and this entire situation of exploitation should be given legal significance when deciding the criminal liability of the compelled victim.

The non-punishment principle is mainly a question of national criminal law. However, ignoring the non-punishment principle may amount to a human rights violation, given the duty to protect trafficking victims derived from Article 4 of the European Convention on Human Rights, as established in the European Court of Human Rights case *V.C.L. and A.N. v. United Kingdom* (16 February 2021).

Implementation of the European Non-Punishment Provisions in the CBSS Member States

The CBSS member states have implemented the non-punishment provisions in different ways. The national implementation approach sets out the criteria for applying the non-punishment principle within the national justice system.

All member states of the CBSS are state parties to the Council of Europe and have ratified the Trafficking Convention. Most CBSS member states, with the exception of Norway and Iceland, are also members of the EU and are required to comply with the EU Anti-Trafficking Directive.

The majority of CBSS member states rely on existing criminal law defences or procedural law provisions concerning the waiving of measures (Sweden, Norway, Denmark, Iceland, Finland, Estonia and Poland). Sweden, Denmark and Norway have complemented this approach with human trafficking-sensitive guidelines issued to prosecutors.

Three CBSS member states have specific non-punishment or non-prosecution provisions for victims of human trafficking. Germany has a non-prosecution provision for victims of trafficking, extortion, and blackmail; Latvia has a human trafficking-specific non-prosecution provision in procedural legislation and a non-punishment provision in the Criminal Code; and Lithuania has opted to regulate non-punishment in the human trafficking provision.

The information is based on the countries' replies to the Trafficking Convention monitoring body, GRETA (Group of Experts on Action against Trafficking in Human Beings), and on Silvia Rodriguez-Lopez's recent peer-reviewed comparative article in the *New Journal of European Criminal Law*.

Does It Really Matter if the Person Is a Trafficking Victim or Not?

The national legislation of most CBSS member states does not require that the compelled individuals be victims of human trafficking. Therefore, it might be possible to apply the idea of non-punishment to all vulnerable individuals who are compelled to commit offences. For example, a person might be compelled to commit benefit fraud in the context of domestic violence, which is not very different from a situation of human trafficking. Even systems that have specific non-punishment provisions for trafficking victims could adopt this approach by applying general provisions concerning the waiving of measures.

I believe that it is more important to emphasise the actual compulsion, such as the abuse of the person's position of vulnerability to commit offences, rather than focusing on the definition of human trafficking as a predicate offence. The non-punishment principle does not require a trafficking conviction, and credible evidence of compulsion should be sufficient for non-punishment.

The Investigation Guideline

The pre-trial investigation authority plays a crucial role in applying the non-punishment principle. Recognising compulsion is the most important step, followed by investigating the alleged compulsion and gathering evidence. Early recognition of exploitation is vital because it might be too late to gather evidence in later phases of the criminal procedure, and the non-punishment claim is not necessarily credible without evidence to support it.

The following indicators may raise suspicion that a person who is initially encountered as a suspect in a crime was compelled to commit the offence:

- Criminal profit is wholly or mostly transferred to someone else, or there is no benefit for the person committing the offence.
- The level of independence in the commission of the crime is low (for example, only performing assisting tasks).

- The person's explanation seems memorised, or it seems that they have been told what to say.
- The person or a witness mentions the compulsion.
- There is evidence of vulnerability (young age, poor living conditions, dependency on the possible exploiter, etc.).
- A vulnerable person is repeatedly caught committing similar offences in different regions (the person seems to "pop up" in different places without proper means of transport or a proper explanation).
- The stolen goods do not seem to be for the person's own needs (for example, a young person steals products that older adults typically wear or use, such as watches or tools).
- There are signs of external guidance (messages, someone transports the person, etc.).

The prospective victim should be referred to assistance services regardless of whether the non-punishment principle is eventually applied or not. Providing support to the vulnerable person in cooperation with an NGO might even encourage them to share information about the exploitation during the pre-trial investigation.

National non-prosecution or non-punishment provisions should be applied as early as possible if the investigation reveals that the person was likely compelled to commit the offence. However, early non-prosecution is not always possible, for example, if the offence is severe or the evidence is unclear. The non-punishment principle is dynamic, and it may be either non-prosecution or non-punishment at the trial phase, depending on the case. Cooperation with the prosecutor and the possible victim's legal representative is important to ensure a smooth transition from the pre-trial investigation to the trial phase.

Starting a human trafficking investigation is vital to stop the problem at its roots and to prevent the traffickers from exploiting others in criminal activities. The criminal policy implications of the non-punishment principle call for directing the limited criminal justice resources to prosecute the traffickers, not their victims. The idea is that the trafficker is the actual offender, and the victim is merely a replaceable tool in the commission of the crime.

Depending on the national legal system, it might even be possible to indict the trafficker for the crime the compelled person committed (indirect offending).

The Non-Punishment Principle Is Not Rocket Science

The non-punishment principle is about regular legal discretion that criminal law practitioners already engage with daily. The essence of the non-punishment principle is to interpret national legislation with the aim of avoiding the punishment of victims of human trafficking.

The non-punishment principle advocates a holistic approach that treats the compelled victim fairly within the legal system. National guidelines and cooperation between authorities are essential to ensure fair treatment at every level of the process.

About the Author



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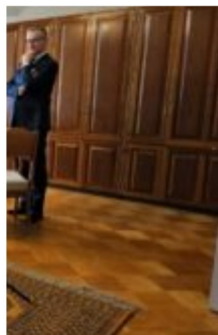
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