

Human trafficking for criminal exploitation: Effects suffered by victims in their passage through the criminal justice system

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Abstract

The victim-centred approach to human trafficking emphasises the protection of victims and respect for their rights. For this protection to be effective, victims must be treated as such in their passage through the criminal justice system, which can be complex with forms of trafficking that are still relatively unknown, such as trafficking for criminal exploitation. Based on 37 in-depth interviews with Spanish practising criminal justice and victim assistance services professionals, this paper analyses the effects that the failure to identify these types of victims has on them as they make their way through the criminal justice system, paying particular attention to the degree to which the aforementioned professionals recognise the principle of non-punishment.

Keywords

Human trafficking, criminal exploitation, victims, effects in criminal proceedings, principle of non-punishment

Introduction

Human trafficking for criminal exploitation is one of the lesser-known types of this phenomenon. It refers to trafficking carried out for the purpose of forcing the victims to perform either activities that are considered unlawful or antisocial, such as begging or prostitution in places where it is illegal, or those that directly constitute crimes, such as growing or producing marijuana or hashish,

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acting as a drug mule, property-related street crime or credit card fraud. It includes the behaviours of recruiting, transporting, transferring, harbouring, receiving, exchanging or transferring control over a person by the characteristic means of coercive, fraudulent or abusive trafficking for the purpose of exploiting the victims by forcing them to engage in criminal activities (OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013).

The lack of interest in analysing this type of trafficking until recently can be explained by the fact that trafficking for the purpose of criminal exploitation was not specifically included in the definition of trafficking contained in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol) or Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention), which have been considered the most relevant treaties to determine the international concept of trafficking. It was not until the adoption of Directive 2011/36/EU, on preventing and combating trafficking in human beings and protecting its victims, that exploitation of criminal activities performed by the victim was specifically included as a possible form of exploitation (Article 2.3).

Despite the lack of special attention given to this form of trafficking to date, its presence in the technical reports issued on the matter has grown over time. It was not mentioned in the United Nations report on trafficking in persons until the 2014 edition, when it was included amongst the other forms of trafficking (UNODC, 2014). The same is true of the most recent Eurostat reports on the subject (Eurostat-European Commission, 2013; 2015), where it generally accounts for a share of no more than 17% of all identified victims. Other studies specifically designed to analyse trafficking for criminal exploitation in Europe have shown how women imprisoned in the United Kingdom or Spain for crimes such as illegal entry into the country or for acting as drug mules had not been identified as trafficking victims (Hales and Gelsthorpe, 2012; Villacampa and Torres, 2014). In 2014, the report for the European RACE project, coordinated by Anti-Slavery International, offered proof of the existence of this type of trafficking in Great Britain, Ireland, the Czech Republic and Holland (RACE, 2014) for the purpose of forcing the victims to commit crimes related to illegal cannabis cultivation or property-related street crime.

Previous studies conducted with professionals had not focused on analysing their awareness of the existence of this type of trafficking either. Knowledge of trafficking in general or specifically of some of the better-known forms of this phenomenon has been analysed in research carried out in the USA (Farrell, 2014; Farrell et al., 2014; 2015; Farrell and Pfeffer, 2014) and Canada (Kaye et al., 2014) on criminal justice system professionals, in studies conducted with police officers (Renzetti et al., 2015) and in those focused on child trafficking (Warria et al., 2015). None have focused on the view such professionals have of trafficking for criminal exploitation or, specifically, on determining the adverse effects that the failure to identify victims of this type of trafficking as such has on them as they make their way through the criminal justice system.

A common feature of the aforementioned analyses carried out with victims is that all of them show how the victims of this form of trafficking are doubly victimised: first, by the process leading to their enslavement itself and, second, by the system's failure to identify them as victims. They are usually considered offenders and held legally and criminally liable for acts committed in the exploitation stage of the trafficking process. Because of this failure to identify them as such, the victims of this type of trafficking do not benefit from the victim-centred or holistic approach to trafficking advocated in particular by the Warsaw Convention and Directive 2011/36/EU and are thus heavily victimised from an institutional point of view. Since the essence of this approach consists precisely in placing victims' rights at the centre of the system, reinforcing victims'

protection and the prevention of victimisation, one of the basic elements to achieving real victim protection is to successfully identify them as such.

One aspect of the victim-centred approach to human trafficking adopted in international regulations that should especially apply in cases of trafficking for criminal exploitation is precisely the recognition of the principle of non-punishment of victims for crimes committed during the trafficking process (Cherneva, 2011; OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013; Piotrowicz, 2014). It is understood that punishing victims for crimes committed during the trafficking process would pose a serious threat to the trafficking victims' dignity and would as well entail a fundamental violation of the victims' human rights by the state that failed to apply it (OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013).

Whilst the principle of non-punishment of victims for crimes committed during the trafficking process itself was not specifically recognised in the Palermo Protocol it was explicitly recognised in the Warsaw Convention and Directive 2011/36/EU. Despite the lack of reference to this principle in the Palermo Protocol, some have argued that the instrument does indirectly recognise it (Piotrowicz, 2014). As for the Warsaw Convention, Art. 26 provides that each Party shall provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities they have been compelled to commit. Article 8 of Directive 2011/36/EU takes a broader approach to this principle, not only prohibiting punishing victims, but also providing for the non-prosecution of them (OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013; Villacampa, 2011).

The exact legal expression of the principle of non-punishment varies from state to state, mainly depending on the state's regard for the victims' human rights (OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013). Those states that most respect them implement measures not only to exempt trafficking victims of criminal liability, but also not to prosecute them for these offences at all. In Spain, the Criminal Code only contains a specific clause of non-punishment of victims, the legal nature of which has been disputed. The Spanish Public Prosecutor's Office sustains restrictive criteria for the applicability of this clause based on respect for the proportionality required in it between the offence committed and the pressure experienced by victims (Fiscalía General del Estado, 2011). In addition, non-punishment is generally proposed only in cases in which the victims have committed minor property crimes, cannabis production or retail drug dealing (Fiscalía General del Estado, 2011). It is harder to find examples of the application of this principle to victims involved in more serious crimes. Although its applicability to victims who are forced to traffic with other people in order to secure their own freedom is accepted, its application in cases such as those of mules carrying large quantities of drugs has hardly been considered (Fiscalía General del Estado, 2011; OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013; RACE, 2014).

In light of the proven existence of unidentified victims of trafficking for criminal exploitation in various European countries (Hales and Gelsthorpe, 2012; RACE, 2014), Spain amongst them (Villacampa and Torres, 2014), and the lack of research carried out on professionals specifically focused on trafficking for criminal exploitation, the first objective of this research with professionals was to determine what effects the lack of identification of these victims as such might have on the treatment they receive as they make their way through the criminal justice system. Furthermore, given that the principle of non-punishment is a manifestation of the victim-centred approach primarily applicable in cases of trafficking for criminal exploitation, the second objective of this research was to determine the degree to which the principle is recognised and applied by practising criminal justice professionals.

Method

This research used a qualitative methodology, as it was deemed better suited to the research objectives, allowing researchers to better position themselves within the field of study (Denzin and Lincoln, 2002; Lincoln, 2002) and enabling a more in-depth exploration of the reality (Corbin and Strauss, 2008; Marshall and Rossman, 2006; May, 2005). A purposive sampling system was used based on the assumption that various types of criminal justice and victim assistance services professionals could potentially come into contact with victims of trafficking for criminal exploitation.

Individuals representing both professional groups were selected taking into account the likelihood they had to run into victims of such a type of trafficking and were then directly contacted by the researchers. The sample of criminal justice professionals consisted of members of the different groups involved in the criminal justice process, from the arrest of the victim/offender (police officers), to the criminal proceedings (judges, prosecutors, lawyers), to the execution of the sentence (prison officials). For this group of professionals, in those cases in which units or teams specialised in human trafficking and/or migratory issues existed, both specialised professionals and their non-specialist counterparts were selected for the interviews. The sample of victim service providers included staff from the victim assistance offices, which are responsible for providing assistance to all crime victims under Spanish law, as well as staff from organisations mainly dedicated to assisting human trafficking victims.

The final sample consisted of 37 professionals, of whom 28 worked exclusively or preferably in the criminal justice system and 9 in the field of victim assistance services. Their specific characteristics are shown in Table 1.

The data collection methodology consisted of the performance of face-to-face, in-depth, semi-structured interviews with a duration of between 30 and 90 minutes. Two interview models were prepared, addressing different aspects depending on whether the interviewee was a criminal justice or victim assistance professional. The two interview models shared a common section, designed to determine the degree of knowledge of the trafficking phenomenon and the applicable regulations, as well as to gather information on training, coordination and the victim welfare system, the results of which are not discussed here. In contrast, in the main section, which sought to determine how the professionals had acted in cases involving victims of trafficking for criminal exploitation, the results of which are the focus of this paper, different questions were asked depending on whether the interviewee was a practising criminal justice or victim assistance professional. In both cases, the interview models were used as a guide, without dictating the dynamic of the conversation with the interviewee.

Participation in the research was voluntary for the interviewed professionals. The interviews were conducted in Spain (Madrid, Barcelona, Tarragona and Lleida) between February and June 2014; they were recorded and subsequently transcribed in full.

The data were analysed using the thematic analysis methodology (Guest et al., 2012), in accordance with its component steps: familiarisation with the data, generation of initial codes, search and review of themes, definition, and naming of themes (Braun and Clarke, 2006).

Results: Treatment of the victims in their passage through the criminal justice system

A common feature of the treatment received by all trafficking victims once they entered the criminal justice system was that they were often treated more as a source of evidence than as

Table 1. Interviews conducted.

	Gender	Length of service	City	CJS VA	Specialist
4 officers: National Police	Man	17 years	Barcelona	CJS	Yes
	Man	25 years	Barcelona	CJS	Yes
	Man	33 years	Barcelona	CJS	No
	Man	37 years	Catalonia Barcelona	CJS	No
5 officers: Catalan Regional Police	Man	20 years	Catalonia Barcelona	CJS	Yes
	Man	14 years	Barcelona	CJS	Yes
	Man	N/A	Catalonia Lleida	CJS	No
	Man	N/A	Lleida	CJS	No
6 public prosecutors	Man	15 years	Barcelona	CJS	No
	Man	6 years	Barcelona	CJS	Yes
	Man	30 years	Lleida	CJS	Yes
	Man	N/A	Lleida	CJS	No
	Man	35 years	Madrid	CJS	Yes
	Woman	27 years	Madrid	CJS	Yes
2 judges	Man	17 years	Madrid	CJS	Yes
	Woman	15 years	Lleida	CJS	No
4 NGO lawyers	Man	17 years	Lleida	CJS	No
	Woman	18 years	Lleida	CJS-VA	No
	Woman	15 years	Madrid	CJS-VA	Yes
	Woman	7 years	Barcelona	CJS-VA	Yes
7 prison officials	Woman	5 years	Barcelona	CJS-VA	Yes
	Woman	25 years	Barcelona	CJS	No
	Woman	N/A	Barcelona	CJS	No
	Man	29 years	Barcelona	CJS	No
	Woman	13 years	Lleida	CJS	No
	Man	27 years	Lleida	CJS	No
	Woman	15 years	Tarragona	CJS	No
5 NGO staff	Woman	26 years	Tarragona	CJS	No
	Woman	18 years	Barcelona	VA	Yes
	Woman	N/A	Madrid	VA	Yes
	Woman	11 years	Madrid	VA	Yes
	Woman	N/A	Madrid	VA	Yes
4 Office of Crime Victim Services staff	Man	N/A	Barcelona	VA	No
	Man	12 years	Barcelona	VA	No
	Man	30 years	Barcelona	VA	No
	Woman	25 years	Tarragona	VA	No
	Woman	N/A	Lleida	VA	No

CJS: criminal justice system; N/A: not applicable; NGO: non-governmental organisation; VA: victim assistance.

subjects of rights. This could hinder the victim's very identification as such, although its effects were clearest during the victim's participation in the subsequent judicial proceedings usually undertaken against the traffickers. As this is true of trafficking victims in general, this paper sought to address exclusively those issues affecting victims of the type of trafficking specifically

examined in this research (i.e. trafficking for criminal exploitation), as these victims make their way through the criminal justice system.

Specifically, in the case of this type of victim, the interviews revealed, first, that they were usually treated by legal professionals as offenders. Whilst this institutional effect of inculcating the victim occurs with victims of any form of trafficking (Atak and Simeon, 2014; Decker, 2015), due to the fact that they are often not legal residents and may have marginal lifestyles, leading the system to label them as offenders, the effect was more pronounced in cases of trafficking for criminal exploitation, in which the victims had committed a crime. Second, one particular aspect of this treatment of the victims as offenders that fundamentally affects victims of trafficking for criminal exploitation had to do with the degree of knowledge that the professionals involved had of the principle of non-punishment of victims and how they conceived of the applicability of the non-punishment clause contained in the Spanish Criminal Code. Both issues will be addressed in the presentation of the results.

Treatment of victims as offenders

By the police. Victims of human trafficking who had committed crimes were essentially treated as offenders from the moment they were detected and throughout their journey through the criminal justice system. Unlike the reaction generated in professionals by the detection of a person who conforms, in this context, to what might be considered the cliché or stereotype of the ‘ideal’ victim – a sexually exploited foreign woman – widely recognised as a victim of a situation of exploitation, whether or not she is ultimately identified as a victim of trafficking or merely a victim of a crime against sexual freedom, in cases in which the person is determined to have committed a crime, reservations emerged in relation to considering him or her a victim of a situation of exploitation. The commission of a crime gives the person the status of offender, which conflicts with his or her identification as a victim. Consequently, these victims ended up being treated as offenders from the time of their arrest and throughout their entire journey through the criminal justice system.

I 14: ‘They are pure victims (*in reference to victims of trafficking for sexual or labour exploitation*). A separate issue is when the victim is a relative victim. They are still a victim, but at the same time, they have committed a crime, which evens the scale, and if the crime is really, really serious, then the scale goes like this, and then, either the trafficking is obvious and the scale is rebalanced or it becomes a matter of examining things case by case.’

In the context of police work, the intervention with the victim was too focused on getting the victim to collaborate with the police investigation. Indeed, some of the interviews seemed to suggest a very close link between recognition of the status of victim and the victim’s willingness to collaborate in the police investigation for the purpose of dismantling the criminal organisation.

I 6: ‘In some cases, we have managed to stop the criminal proceedings opened against them for theft, because the girl offered to collaborate on the dismantling of the ring. Then, the prosecutor seeks to correct that, even via the national police, if they have initiated deportation proceedings against them, by stopping or cancelling them.’

Findings from this study support the view that the interest taken in these people, at least in the early stages of their passage through the criminal justice system, was primarily related to their role

as offenders and, sometimes, even as members of a criminal organisation. However, this situation was roundly criticised by certain non-governmental organisation (NGO) workers, as well as by officers at victim service offices, who claimed that recognition as victims, with the benefits and rights that it entails, was wrongly being used as an incentive.

I 29: 'What we cannot do is say "If you give me information, I will view you as a victim; if you do not, I will view you as an offender". The concept of victim has to be objective; it cannot be subjective, because otherwise it opens the doors to a certain arbitrariness that is very dangerous.'

I 34: 'I have encountered cases of women who were tricked or women whom they blackmailed, telling them, "If you testify, we will get your residency papers; if you don't, we won't".'

A paradigmatic case was that of drug mules, usually arrested at the airport itself, when it was discovered that they were carrying drugs. In these cases, the arrested individuals went through the entire criminal justice system, including prison, without anyone considering and investigating their possible status as victims of a trafficking offence. In each stage of this journey, the professionals found reasons to maintain the label applied to them at the time of their arrest. This situation can clearly be seen in the statements of some of the interviewed police officers, who rejected the idea that drug mules should be granted victim status on the grounds that they were not forced to act because they either did it for money ($n = 2$) or to pay back outstanding debts ($n = 1$), that they were aware of what they are doing ($n = 1$), or that they failed to report the crime upon arriving in the country, but rather tried to make it out of the airport without saying anything ($n = 1$).

I 4: 'Let's see, drug mules, yeah, sure, but, I don't know, they almost always volunteer to do it. They took it and they need it . . . Most of them are from South American countries, and they need the money and, I don't know, they give them 6,000 Euros (. . .) They make two or three trips and that's it, I think, voluntarily.'

Even the starkest cases, such as that of a woman who carried the drugs in her own body, in the form of breast implants that were detected upon her arrival in Spain, both because of how the surgery had been performed and due to the poor condition she was in, did not seem to change some of the officers' perspectives.

I 4: 'In that case, it was my colleagues who, upon doing the X-ray, saw that she still had stitches below her breast, because the surgery must have been performed two or three days earlier. She had stitches, and a little piece of bag was poking out, which is where she was carrying the drugs. They brought her directly to the hospital, because they had to operate. Imagine what would have happened if something had broken and stayed inside her. And she was just a 20-year-old girl, right? I felt terrible for her. I mean, I would even have preferred it if she had turned to prostitution before risking that kind of danger. I don't know what happened after that. I know that she went to the hospital and they removed it from her there, they would let her heal and then bring her before a judge, of course. She would be arrested and then taken to court. I think it was voluntary, too.'

During the criminal proceedings. Once the case leaves the police environment without having been detected as a case of trafficking for criminal exploitation, the other legal professionals understood that it had been judicialised and should follow the standard criminal procedure. At the prosecution level, for example, the interviewed prosecutors expressed their reluctance to

consider drug mules as victims, alluding to both the seriousness of the offence ($n = 1$) and the fact that the journey itself entails a spatial and temporal separation from any exploitation suffered ($n = 1$). In one interview, the prosecutor did not immediately rule out the possibility that such individuals could be considered victims, but acknowledged that the difficulty of proving the circumstances of exploitation under which they had made the journey carrying drugs would make it harder to prevent their prosecution.

I 14: 'The problem is proof, of course. That is what we are seeing in the hearings. It is a very common argument used by people caught coming with drugs. Not always, but 90% of the time, they tell a story, that their family is poor, but the thing is, then they have to prove it. Of course, you have to assess each crime. It's not the same thing if they force you to go out and try to steal a phone or ride the underground and steal a few Euros as it is to come with a suitcase packed with five kilos of cocaine. That's different (. . .) If they have said it, then in the pre-trial stage for the drug trafficking, inquiries are made. That's the way it has always been. But nothing ever comes of it. Because a lot of times what they tell you is not true; other times, you can't prove it. If they wait until the actual trial to say it, then the obvious question is: hey, why didn't you tell me before? (. . .) If it happens in the trial, it's really complicated. If the court finds the statement credible, which would also be surprising, then that has to be taken into account. Let's suppose the court does believe it. Then two things can be done: first, the sentence can be reduced; and second, the person can be acquitted, because we determine it was state of necessity. If any of that happened, it would be the first time I saw it'

The lawyers interviewed took a critical view of the criminal action and held that the criminal justice system's interest in drug mules was limited solely to obtaining the information needed to break up the drug trafficking ring. Consequently, the police and judicial investigation did not focus on determining the circumstances of victimisation, but rather primarily on obtaining as much information as possible from the person apprehended with drugs. One of the interviewed lawyers decried that drug mules are not treated as victims, but rather as mere witnesses, as repositories of valuable information that police and prosecutors seek to access. However, if the information the mule has is found to be incomplete or insufficient for the purposes of proceeding to arrest the ringleaders or if he or she is not willing to cooperate with the authorities – even if out of fear of reprisals – then any chance of accessing the benefits available to trafficking victims becomes more remote. In this regard, the lawyers expressed both the desirability of allowing attorneys to speak with the accused before they make their statements – so that the situation can be properly considered from the start – and the need to present the victims' statements to the judge very clearly, in order to show that their actions were the product of the fear and threats to which they were subjected.

In prison. Prison officials receive the drug mules once they have been remanded in custody or convicted in the criminal proceedings. The existence of a conviction seems sufficiently conclusive for these professionals not to question the status of the person entering prison and for them to accept that he or she committed the crime and is not the victim of another offence.

I 25: 'For us, once they have been convicted, we take it for granted they were the perpetrator, that they are not victims.'

I 28: 'We operate on the premise that we have the aggressors of the victims, so we don't wonder whether we have victims too. We don't look at it from that perspective. We take it for granted that they are criminals.'

Nevertheless, these professionals were receptive to the possibility that it is precisely during confinement in prison that victims might amass the necessary confidence to reveal the truth of their experience, once free of the pressures exerted on them during their passage through the law enforcement and court systems.

I 23: 'Obviously, at first, we don't identify them as victims. We identify them as perpetrators of a crime. But when they start to tell you what it was like, you see that there's something there . . . that they were abused, that they were extorted in some way.'

I 24: 'We are working with people who have committed crimes, but who might also be victims. This can give rise to contradictions, but it's also possible for both conditions to be met by a single person (. . .) When you start to inquire, especially if they are linked to any sort of ring, little by little, a profile starts to emerge, the role they played in the organisation, whether they had decision-making powers, whether it really was a decision of their own or one they were forced to make by acquaintances, friends, emotional dependence, or whether they were forced through violence, coercion or threats to their families.'

Far from prompting these officials to independently suggest that the sentences be reviewed, this information was entered into prisoners' criminal records for classification purposes or to weigh their participation in treatment programmes aimed at helping them to become stronger emotionally and empowering them.

Those remanded in custody may find themselves in a different situation. With regard to these individuals, some prison officials ($n = 3$) noted the possibility of reporting any new information about the circumstances of their criminal activity that might come to light in this stage to the judge – basically by advising the prisoners to contact their lawyers to have them request the preparation of a report or advising them to denounce their situation themselves.

I 23: 'If we detect it when they are in preventive custody, we can help, if we can contact this organisation that helps out during the trial (. . .) that comes from time to time to conduct interviews and works with tools specifically designed to detect who is and isn't a victim.'

Treatment given and identification as victims. It should be underscored that the treatment received by victims who have committed crimes is, in any case, the result of ignorance of this type of human trafficking and the lack of specific criteria for identifying victims of it. This can clearly be seen in the words of one police officer, who stated that, if the person were a victim, he would treat him or her just the same as any other trafficking victim. That is, should the person be identified as a victim, he would have no trouble understanding that the trafficker might have exploited the victim's vulnerability to force him or her to commit the crimes for the trafficker's benefit. However, for that to happen, specialised officers must be aware of this type of trafficking and be able to identify the victims thereof.

The information provided thus far with regard to drug mules, as a paradigmatic example of victims of trafficking for criminal exploitation, must be qualified in the case of victims of sexual exploitation who commit offences, with regard to whom the relevant professionals do seem to have developed various legal mechanisms aimed at preventing their criminalisation. This might include, for instance, victims of trafficking for sexual exploitation who steal from their customers or offer them drugs, and could thus be charged with theft or drug dealing, or victims who become the

controllers of other victims (so-called *mamis*). According to the interviewed professionals, when the person's dual status – as a victim of sexual exploitation and the perpetrator of one of the aforementioned offences – was discovered in a single action, (e.g. in a police raid), standard practice was not to charge that person with the committed offence or, alternatively, to close the proceedings directly, due to the minor nature of the offence.

The situation becomes more complex when a person's dual status, as a victim and offender, is not detected simultaneously, but rather he or she is charged with the offence prior to being detected and recognised as a victim. Some professionals explained that, often, it is precisely when steps are taken to regularise the situation of a person identified as a victim of trafficking for sexual exploitation that the existence of a police or court record for previously committed crimes is discovered, thereby hindering or blocking the regularisation. One worker at a victim welfare organisation noted that such cases are conducted entirely in parallel, with the statuses of offender and victim following different legal courses. Moreover, as one of the interviewed prosecutors stated, once the offender has been tried and convicted and the sentence has been executed, many difficulties arise. In this regard, the NGO members explained that in such cases it is crucial to secure the prosecutor's cooperation in order to determine whether the victim has or has not been charged with anything and to be able to proceed, where applicable, to 'wiping' their criminal or police records clean.

In short, roughly speaking, there are two types of situations. In cases involving multiple forms of exploitation, especially when one of these forms is sexual exploitation and it is determined that it was in that context that the victim committed one or more offences, the victim status is built around this situation of sexual exploitation, and that circumstance covers the victim's status as the perpetrator of the offences. In other words, the legal professionals did not make the case for victim status based on the coercion to which the individual was subjected to commit crimes, but rather on the sexual exploitation he or she suffered. In contrast, in cases in which the individual had been exploited solely for the commission of crimes, according to the legal professionals' own statements, it was more complicated for them to make the case for victim status, although it was impossible to know how that translated into practice, as none of the police officers specialised in the identification of victims reported ever having detected one. They were not pure victims and, consequently, their identification and treatment as victims was more complex.

Recognition and application of the non-punishment principle by professionals

The second objective of this research was to determine the degree of awareness that professionals likely to come into contact with victims of trafficking for criminal exploitation had of the existence of the non-punishment principle itself and the scope of its application, as it is a factor that enables assessment of the effects that passage through the criminal justice system has on victims of trafficking for criminal exploitation. A low level of respect for and application of the aforementioned principle could serve to reinforce the conclusions that these victims are treated as offenders, as their institutional inculcation can be considered inversely proportional to the degree of knowledge and application of this principle. In this regard, it has already been noted that the countries that observe it most are the most respectful of victims' human rights (OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013).

Knowledge of the exemption from criminal liability clause. In this research, it was not initially planned to ask the interviewees about the non-punishment clause directly. However, it was planned to ask them specifically about the effects that, in their view, the identification of a victim of human

trafficking for criminal exploitation should have on the actions taken, a question that would be posed as a hypothetical situation for those interviewees who claimed never to have identified any such victims to date. The possible effects that such identification might have listed on the template the interviewers used included informing victims of their rights, treating them with respect, taking protective measures, acquittal, or reduction or review of the sentence, amongst others.

In other words, it was initially considered that any reference to the clause on non-punishment of victims of this type of trafficking should be allowed to arise spontaneously in the interviews, when the interviewees were asked about the effects on the identification of victims. However, due to the lack of spontaneous reference to the matter by the interviewees, the topic arose almost exclusively when, in relation to questions about the effects, the interviewer referred to this issue explicitly. As a result, the issue was alluded to in 64% of the interviews conducted ($n = 24$). However, the non-punishment principle was only addressed in some detail in 13% of the interviews, that is, in five interviews, four with criminal justice professionals (one police officer, two prosecutors and one lawyer) and one with an NGO staff member responsible for welfare. In 35% of the cases ($n = 13$) this issue did not even come up in the interview, although the interviewee was specifically asked about the effects that the status of victim should have on the actions taken.

What is most revealing about the lack of awareness of the existence of this clause amongst professionals who should know it is that 7 of the 13 interviews in which the issue was not addressed were with criminal justice professionals. That professionals whose area of expertise focuses on providing assistance to victims might not be aware of or have considered the applicability of a ground for exemption from criminal liability is not worrisome, since their role, should they work with these types of victims, is limited to ensuring their social and psychological well-being. Thus, for example, it is understandable that none of the four interviewees who worked in victim service offices referred to the existence of this clause or to the principle of non-punishment itself, or that only two of the five NGO workers interviewed did. However, it can be considered indicative of the same lack of awareness of the need to exempt trafficking victims of criminal liability for crimes they have been forced to commit that 7 of the 13 interviews in which the issue was not even addressed were with criminal justice professionals. This group included three police officers, two prosecutors and two judges, who are precisely the parties that should refrain from bringing charges or acquit or reduce the liability of victims forced to commit crimes. It can thus be deduced from this study that at least one sector of the professionals responsible precisely for effectively recognising the non-punishment principle seemed to be unaware of its existence.

The lack of interest of a key sector of criminal justice professionals in effectively applying this principle is clearly illustrated in the case explained by one of the interviewees. In it, a prison chaplain in southern Spain discovered that one of the inmates in custody for allegedly committing a drug trafficking offence had been forced to commit it by traffickers. He turned to the NGO where the person who explained the story worked and to a pro bono lawyer, who contacted the prosecutor handling the case in order to apprise him of the situation. The prosecutor's reaction, in light of the stage of the proceedings and the fact that the victim had already spent months in preventive custody, was not to withdraw the charges or request an acquittal, but rather to seek that the sentence be reduced to coincide with the time the victim had already spent deprived of freedom.

Nature of the exemption from criminal liability clause. With regard to the 24 interviews in which the non-punishment of victims clause was analysed, the issues addressed primarily had to do with the nature of the clause and the limits of its applicability. Concerning the first of these issues, whilst the Spanish Criminal Code provides for the principle of non-punishment as it is reflected in the

Warsaw Convention, that is, as a ground for acquittal that operates following the victim's prosecution, 10 of the interviewees considered that the status of trafficking victim should be used to prevent the prosecution itself. In some cases, the interviewees spoke of their experience, indicating that when a trafficking victim who has been forced to commit a crime by the traffickers is identified, especially in the case of sexually exploited women forced to commit crimes by their pimps, the decision is directly made not to charge the victim, even when some interviewees indicated that in such cases the women are not remanded in custody. In other cases, rather than referring to past experience, the professionals who addressed the issue referred to the desirability that such questions be aired as soon as possible in the abstract:

I 10: 'It is going to be hard precisely because of that, because probably, for better or worse, it is going to be applied in the pre-trial investigation. Because what nobody is willing to do is to bring it up in the trial itself. Obviously, that would involve putting someone in the dock, which is the last thing they need. So that's usually dealt with in the pre-trial stage.'

I 19: 'If I have learned anything over the years, it is that you have to do everything from the start. If you leave it all for later, you make things harder for yourself. From the start, from the minute they are taken into custody, from the time of the first appearance in court to determine whether or not they should be remanded in custody, at that initial moment in which the victim's statement is taken, it has to be made very clear that he or she is a victim; that he or she cannot be charged with the commission of a crime.'

In other words, aside from the problems that the applicability of this defence might pose, especially in cases in which the status of trafficking victim emerges only after the person has been found convicted of the crime in question and usually in a diverse criminal prosecution, the professionals who addressed the issue at any length alluded to the need for the principle of non-punishment to operate as a means of avoiding the prosecution of the victim itself.

With regard to the nature of the non-punishment clause of the Spanish Criminal Code, those who referred to this issue, primarily members of the Public Prosecutor's Office, and most likely due to the influence of the vagueness of Public Prosecutor's Office (FGE) Circular 5/2011 in this regard, expressed uncertainty as to the exact nature of the defence.

I 10: 'The legal approach is complicated. First, because I am not entirely sure what Article 177 bis.11 Spanish Criminal Code is. I don't know if it is a provision for special immunity from prosecution or a ground for exclusion from criminal liability, or if it has to do with the unenforceability of the conduct. I don't know if it affects culpability or unlawfulness. It probably lies somewhere in between unlawfulness and culpability, even though they call it a provision for special immunity from prosecution.'

I 13: 'It is a reasonably imposed rule of international law that is very hard to fit into the framework we work with. It does not require a different conduct, nor is it a state of necessity, nor is it a provision for special immunity from prosecution, nor . . . we don't know what it is. We have no idea. It's a rule that's there and what we do want is for it to be recorded in the judgement.'

The lack of possible gradation of this clause, unlike what is indicated with regard to defences such as a state of necessity or overwhelming fear, was another aspect to emerge in the interviews. Perhaps because of this lack of possible gradation, because of the clause's seemingly intrinsic all-or-nothing nature, one interviewee, a lawyer by profession, stated that when the sole defendant is the victim of the crime itself, it is difficult to obtain exemption from criminal liability due to

possible trafficking, such that she tried instead to reduce the sentence, citing extenuating circumstances.

Scope of the exemption from criminal liability clause. The second issue discussed in the interviews in which the victims' exemption from criminal liability was addressed was the limits of the application of this defence. On this point, clear differences were observed between victim assistance and criminal justice professionals. The victim assistance professionals widely held that the exemption from criminal liability should apply regardless of the seriousness of the offence committed if it can be shown that the victim was forced to commit it. This was the view advocated by two of the NGO staff members who explicitly referred to the issue, as well as two of the lawyers who worked at NGOs devoted to victim assistance. Even some of the interviewed prison officials were similarly permissive, insofar as they did not restrict the applicability of the defence, although, as noted, they were well aware that, because they worked with people who had already been convicted, they themselves could do little in this regard. In contrast, the criminal justice professionals were, by and large, less generous with regard to the defence's applicability, repeatedly referring to the idea of proportionality, that is, to the need to balance the seriousness of the offence committed with the dimensions of the pressure experienced by the victim to commit it. Specifically, six of the criminal justice professionals in whose interviews the issue was addressed cited the idea of proportionality to justify a restrictive application, both of this defence and of any other generic defence for victims of trafficking for criminal exploitation.

The hegemonic view of trafficking as that carried out for the purposes of sexual exploitation poses no conceptual problems with regard to the application of the defence in cases in which the sexually exploited women are, at the same time, criminally exploited by their pimps, to the extent that some criminal justice professionals only considered the possibility of this situation in relation to the applicability of this defence. Whilst no one disputed that the sale of small quantities of drugs by prostitutes can fall within the scope of the defence, the exemption from criminal liability was generally considered not to apply to the smuggling of larger amounts of drugs as a mule.

I 14: 'If they seized a kilo and a half of cocaine, then, girl, you can't tell me that it was just to offer to customers (...). One of the things about Article 177 bis.11 Spanish Criminal Code is that it requires proportionality between the offence you are committing and the reasons you are committing it, based on that exploitation. So, some things are more credible than others, but that falls within the rules of the law. Some things are more believable, others less so. I mean, if I have five bags of cocaine with me when I'm standing out there dressed like a prostitute, and I say that my bosses told me I have to offer them to customers, that's pretty credible. But if I have a duffel bag with a kilo of cocaine in it, well...'

Despite the strict view that most criminal justice professionals seemed to take of the applicability of the defence provided for in the Spanish Criminal Code, a minority did accept the possibility of exempting victims of sexual exploitation who, in turn, exploited others in order to secure their own freedom from criminal liability. On that basis, citing a sort of *argumentum a fortiori* – if it is possible to exonerate someone of a human trafficking offence, then it should be even more possible to do so with regard to a drug trafficking offence – some accepted the exemption from criminal liability of drug mules carrying significant quantities of drugs. However, only three of the interviewees expressed this more permissive position.

Discussion and conclusion

The victim-centred approach to human trafficking emphasises protection of the victims and respect for their rights. To make this protection effective, the victims must be treated as such as they make their way through the criminal justice system, which can be difficult with lesser-known forms of trafficking, such as trafficking for criminal exploitation. The foregoing pages have analysed the effects that this lack of identification of the victims has on them during their passage through the criminal justice system based on 37 in-depth interviews with criminal justice and victim assistance professionals.

In the Spanish system, identification of trafficking victims falls solely to the police. Consequently, once an individual leaves the police setting without having been identified as a victim – which happens more frequently when people do not collaborate – the other professionals understand that the case is going to court and that it should follow the standard procedure. In the case examined here, given the special nature of this type of trafficking, this involves treating the victim as a genuine offender, although some of the professionals involved after the conviction did believe there is a need to be able to respond in some way to a hypothetical subsequent identification of a victim. The reinforced institutional inculcation of these types of victims was the main effect of the failure to identify them as such. The primacy of the identification of victims of trafficking for sexual exploitation becomes apparent when the effects suffered by the victims as they make their way through the criminal justice system are addressed. For instance, in cases in which victims are exploited in multiple ways, when sexually exploited women are forced to commit crimes, the case for victim status is built on the sexual exploitation – rather than the criminal exploitation – suffered. As a result, when the criminal exploitation is the only form of exploitation suffered, it is much harder, if not impossible, for criminal justice professionals to build a case for victim status. With this type of trafficking, in which the victim has also committed an offence, there tends to be a dichotomous treatment of the subject, who is either identified as an ‘ideal’ or ‘pure’ victim – one who has been sexually exploited – or is treated as an offender.

One indication of the ignorance regarding the favourable effects that victim status should have for these individuals, even when they had solely been exploited for the forced commission of crimes, was the lack of knowledge by some criminal justice professionals of the internationally recognised non-punishment principle itself and its implementation in domestic law, despite the fact that it was precisely these people who should call for its application. In addition, amongst those who were aware of the aforementioned principle’s existence, the interpretation of Spanish positive law led them both to have doubts regarding the nature of the exemption from criminal liability clause provided for under Spanish law and to maintain that it applies almost exclusively to minor drug dealing offences that sexually exploited women might commit. Both the widespread unawareness of the principle’s validity and the scant acceptance of its applicability confirm that victims of trafficking for criminal exploitation are essentially treated as offenders as they make their way through the criminal justice system, as they are unlikely to be exempted of criminal liability for the crimes they have been forced to commit.

The results of this qualitative research on the treatment of victims of trafficking for criminal exploitation lead us to propose the need to expand both the information and training offered on the subject, especially to criminal justice professionals who might find themselves in a position to identify and deal with victims of this form of trafficking. Criminal justice professionals must be trained to understand that trafficking is a complex phenomenon that includes also processes of exploitation of victims forced to engage in criminal activities.

The efforts undertaken to train professionals in this kind of trafficking should help to overcome certain biases towards it, thereby mitigating the effects that passage through the criminal justice system has on these victims. Especially with regard to victims of trafficking for criminal exploitation, with a view to minimising the damage caused by their police-procedural journey, legal professionals should be made aware of the meaning and content of the non-punishment principle, whose application is not limited to a given category of crime or to victims of a given type of trafficking. Additionally, at the regulatory level, consideration should be given to the inclusion in Spanish domestic law of a clause that would lead directly to the lack of prosecution of such victims, whilst at the same time encouraging a less restrictive interpretation of the idea of proportionality in the application of the defence already provided for in the Spanish Criminal Code than that currently advocated by some criminal justice professionals.

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References

- Atak I and Simeon JC (2014) Human trafficking: Mapping the legal boundaries of international refugee law and criminal justice. *Journal of International Criminal Justice* 12: 1019–1038.
- Braun V and Clarke V (2006) Using thematic analysis in psychology. *Qualitative Research in Psychology* 3(2): 77–101.
- Cherneva I (2011) Human trafficking for begging. *Buffalo Human Rights Law Review* 17: 25–73.
- Corbin J and Strauss A (2008) *Basics of Qualitative Research*. Los Angeles, London, New Delhi, Singapore: Sage Publications.
- Decker SH (2015) Introduction. Human trafficking: Contexts and connections to conventional crime. *Journal of Crime and Justice* 38(3): 291–295.
- Denzin NK and Lincoln YS (2002) Introduction: The Discipline and Practice of Qualitative Research. In: Denzin NK and Lincoln YS (eds) *The Sage Handbook of Qualitative Research*. Thousand Oaks, London, New Delhi: Sage Publications, pp. 1–41.
- Eurostat-European Commission (2013) *Trafficking in Human Beings*. Report available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_human_beings_-_dghome-eurostat_en_1.pdf (accessed 20 March 2017).
- Eurostat-European Commission (2015) *Trafficking in Human Beings*. Report available at https://ec.europa.eu/anti-trafficking/publications/trafficking-human-beings-eurostat-2015-edition_en (accessed 22 March 2017).
- Farrell A (2014) Environmental and institutional influences on police agency responses to human trafficking. *Police Quarterly* 17(1): 3–29.
- Farrell A, Owens C and McDevitt J (2014) New laws but few cases: Understanding the challenges to the investigation and prosecution of human trafficking cases. *Crime, Law and Social Change* 61: 139–168.
- Farrell A and Pfeffer R (2014) Policing human trafficking: Cultural blinders and organizational barriers. *The Annals of the American Academy of Political and Social Science* 653: 46–64.
- Farrell A, Pfeffer R and Bright K (2015) Police perceptions of human trafficking. *Journal of Crime and Justice* 38(3): 315–333.
- Fiscalía General del Estado (2011) Circular 5/2011 sobre criterios para la unidad de actuación especializada del Ministerio Fiscal en materia de extranjería e inmigración. Report available at <https://www.fiscal.es/> (accessed 20 March 2017).

- Guest G, MacQueen KM and Namey EE (2012) *Applied Thematic Analysis*. Los Angeles, London, New Delhi, Singapore, Washington DC: Sage Publications.
- Hales L and Gelsthorpe L (2012) *The Criminalisation of Migrant Women*. Cambridge: Institute of Criminology, University of Cambridge.
- Kaye J, Winterdyk J and Quarterman L (2014) Beyond criminal justice: A case study of responding to human trafficking in Canada. *Canadian Journal of Criminology and Criminal Justice* 56(1): 23–48.
- Lincoln YS (2002) Institutional review boards and methodological conservatism. The Challenge to and from Phenomenological Paradigms. In Denzin NK and Lincoln YS (eds) *The Sage Handbook of Qualitative Research*, Thousand Oaks, London, New Delhi, Singapore: Sage Publications, pp. 165–181.
- Marshall C and Rossman GB (2006) *Designing Qualitative Research*. Thousand Oaks, London, New Delhi, Singapore: Sage Publications.
- May KA (2005) Conocimiento abstracto: un caso a favor de la magia en el método. In Morse JM (ed) *Asuntos críticos en los métodos de investigación cualitativa*. Alicante: Publicaciones Universidad de Alicante.
- OSCE-Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013) Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking. Report available at <http://www.osce.org/secretariat/101002?download=true> (accessed 23 March 2017).
- Piotrowicz R (2014) The non-punishment principle in international law. Available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/SeminarsConf/Presentations_workshop/Presestation_RWP.asp (accessed 20 March 2017).
- RACE (2014) *Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples*. Report available at http://www.antislavery.org/wp-content/uploads/2017/01/trafficking_for_forced_criminal_activities_and_begging_in_europe.pdf (accessed 23 March 2017).
- Renzetti CM, Bush A, Castellanos M and Hunt G (2015) Does training make a difference? An evaluation of a specialized human trafficking training module for law enforcement officers. *Journal of Crime and Justice* 38(5): 334–350.
- UNODC (2014) *Global Report on Trafficking in Persons*. Report available at <https://www.unodc.org/unodc/en/human-trafficking/publications.html#Reports> (accessed 20 March 2017).
- Villacampa C (2011) El delito de trata de seres humanos. Una incriminación dictada desde el Derecho Internacional. Cizur Menor: Aranzadi-Thomson Reuters.
- Villacampa C and Torres N (2014) Trafficked women in prison: The problem of double victimisation. *European Journal on Criminal Policy and Research* 21(1): 99–115.
- Warria A, Nel H and Triegaardt J (2015) Challenges in identification of child victims of transnational trafficking. *Practice: Social Work in Action* 27(5): 1–19.