**Special Rapporteur on the trafficking in persons, especially women and children**

**Report of the Non-Punishment Principle**

**Submission of Ireland**

**February 2021**

The Criminal Law (Human Trafficking) (Amendment) Act 2013[[1]](#footnote-1) gave effect to [the EU Directive on preventing and combatting trafficking in human](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036) beings and protecting its victims[[2]](#footnote-2) in Ireland. This derives specifically from Article 8 Non prosecution or non-application of penalties to the victim of the EU Directive.

However, the statutory independence of the Director of Public Prosecutions and her office in Ireland (ODPP) constrains the scope for the introduction of legal provisions against prosecutions of categories of persons. The Prosecutorial Guidelines of the ODPP[[3]](#footnote-3) (4.7 and 4.8) explicitly cover the question of whether prosecutions should be considered in relation to crimes committed by a victim of human trafficking:

4.7 - In assessing whether the public interest lies in commencing or continuing with a prosecution, a prosecutor should exercise particular care where there is information to suggest that the suspect is a victim of crime. An example would be where it is suggested that the suspect is a victim of human trafficking. Such a person may be suspected of a range of offences from breaches of immigration law to offences related to prostitution. In a case in which there is credible information that a suspect is also a crime victim, the prosecutor should consider whether the public interest is served by a prosecution of the suspect.

4.8 - Factors which should be considered in assessing whether to commence or continue with such a prosecution include: (i) the nature of the offence allegedly committed by the suspect; (ii) whether there is any information that coercion or duress was exercised against the suspect in the context of the alleged offence; (iii) where there are allegations that the suspect was subjected to duress – whether it is alleged that this included violence or threats of violence or the use of force, deceit or fraud, or an abuse of authority or exploitation of a position of vulnerability; and (iv) whether the suspect has cooperated with the authorities in relation to any offences believed to have been committed against the suspect.

In practice, An Garda Síochána (the Irish police force) give effect to the non-punishment principle by considering potential victims of human trafficking as victims when this becomes apparent.  Generally, where potential victims of human trafficking claim that they are victims, they are entered into the National Referral Mechanism on the balance of probabilities that they are. This remains the case until a full investigation is completed.  This means these potential victims are protected within the Criminal Justice System while an investigation is undertaken.

Since the introduction of the Criminal Law (Sexual Offences) Act 2017[[4]](#footnote-4), which decriminalised the sale of sex, potential victims of human trafficking in these cases are more easily identified and non-punishment for these victims is enshrined in law.

The non-punishment protocol is vital for victims of human trafficking, but investigations are required to ensure that individuals claiming to be victims are such and are not merely seeking to avoid prosecution for criminal offences. These investigations can be challenging and complex as the person may have no identification, little English and be working in appalling conditions. Where An Garda Síochána suspect that a claim of human trafficking is a ruse, the person may be remanded in custody until the allegations are fully investigated.

While there is no gender element to the principle of non-punishment enshrined in legislation, in practice it is widely acknowledged that women are disproportionately affected by human trafficking.

In Ireland, there were forty-two victims of human trafficking identified by An Garda Síochána in 2019. Thirty-four of these were victims of sexual exploitation, three were victims of labour exploitation, two were victims of both sexual and labour exploitation and three were victims of forced criminality. As was the case in previous years, in 2019 the vast majority of incidents of human trafficking reported in Ireland related to sexual exploitation. Of the thirty-four victims of sexual exploitation, thirty-three were women.

Ireland’s Department of Justice has been engaging with NGOs regarding the provision of specialised accommodation for victims of trafficking, in particular for female victims of sexual exploitation. Agreement in principle has been reached with an NGO active in the housing sector to provide this accommodation.

A new National Referral Mechanism is currently under development, which will introduce multiple competent authorities leading to earlier, faster and a greater number of identification of victims.  Early identification of victims within the National Referral Mechanism will greatly assist the non-punishment principle.  Incorporating multiple competent authorities, working alongside trusted NGO partners, will protect victims across the board including in the immigration process, deportation and detention. This will also reduce the burden on An Garda Síochána as the sole competent authority and allow them to concentrate resources on the investigation into the alleged trafficking offences.

1. <http://www.irishstatutebook.ie/eli/2013/act/24/enacted/en/index.html> [↑](#footnote-ref-1)
2. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036> [↑](#footnote-ref-2)
3. <https://www.dppireland.ie/app/uploads/2019/03/Guidelines_for_Prosecutors_4th_Edition_-_October_2016.pdf> [↑](#footnote-ref-3)
4. <http://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/html> [↑](#footnote-ref-4)