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# Human trafficking, criminal classification and relationship with the judiciary in the global context

# Trata de personas, tipificación jurídico-penal y relación con el poder judicial en el contexto mundial

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## ABSTRACT

Human trafficking has been criminalized in almost every country since the Palermo Protocol, since the criminal response has grown faster than victim protection. The study therefore aimed to analyze the criminal classification of human trafficking and its relationship with the judiciary in the global context. A systematic literature review with a hermeneutic-analytical method was used, taking as corpus 20 sources (2000-2025) including doctrine and supranational and national case law. The results showed that the European Court, the Inter-American Court and the Supreme Court of the Philippines broadened protection, while legislations differ on consent and purposes. It was concluded that the non-punishment principle is where judicial practice most resists abandoning the punitive paradigm.

**Descriptors:** human trafficking; criminal law; courts; human rights. (Source: UNESCO Thesaurus).

## RESUMEN

La trata de personas se tipifica en casi todos los países desde el Protocolo de Palermo, por cuanto la respuesta penal ha crecido más rápido que la protección de las víctimas. Es así que el estudio se planteó como objetivo analizar la tipificación jurídico-penal de la trata de personas y su relación con el poder judicial en el contexto mundial. En este sentido se empleó una revisión sistemática de literatura con método hermenéutico-analítico, teniéndose como corpus 20 fuentes (2000-2025) que incluyen doctrina, jurisprudencia supranacional y nacional. Entre los resultados se obtuvo que el Tribunal Europeo de Derechos Humanos, la Corte Interamericana y la Corte Suprema de Filipinas ampliaron la protección, mientras las legislaciones difieren en consentimiento y finalidades. Entre las conclusiones se estableció que el principio de no punición es el punto donde la praxis judicial más resiste abandonar el paradigma punitivo.

**Descriptores:** tráfico humano; derecho penal; tribunal; derechos humanos. (Fuente: Tesauro UNESCO).

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**Research Articles Section**

## INTRODUCTION

When the United Nations General Assembly adopted, in November 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, known as the Palermo Protocol (United Nations [UN], 2000), the international community obtained for the first time a common definition of the crime, built on three elements: the act, the means and the purpose of exploitation. In line with this milestone, Moya-Guillem (2021) recalls that about 90% of the 179 countries examined by the United Nations Office on Drugs and Crime in 2018 already criminalized trafficking, so that the question was no longer whether States punish it but how they do so and what place the victim occupies in that response.

For their part, Cho, et al., (2014) built an index of compliance with anti-trafficking policies in three dimensions, prosecution, protection and prevention, for about 180 countries between 2000 and 2010, and found that States comply better with criminal prosecution than with victim protection, which was the weakest dimension throughout the period. This indicates that the phenomenon has a twofold register, since criminal treatment focuses on the trafficker and neglects the victimological dimension, while the judiciary is caught between the demand for punishment and the obligation to protect those who were exploited.

At the doctrinal level, the debate became explicit when Hathaway (2008) described the trafficking approach as a human rights quagmire, considering that it diverted attention from broader forms of slavery, and Gallagher (2009) replied that the Palermo framework had, on the contrary, provided firm ground for demanding concrete obligations from States. Later, Chuang (2014) described a process of expansion of the concept of exploitation that tends to conflate trafficking with all forced labor or with slavery.

But what happens when criminal classification reaches the courts, and to what extent have national and supranational judges managed to balance the punishment of the trafficker with the protection of the victim? Based on the above, the research aims to analyze the criminal classification of human trafficking and its relationship with the judiciary in the global context, in order to identify, through the comparative analysis of relevant decisions, the main challenges of that articulation.

## METHOD

The methodology used is qualitative, with a systematic literature review design and the hermeneutic-analytical method, which made it possible to scrutinize a delimited corpus of doctrinal, normative and case-law sources in order to interpret the relationship between the criminal classification of trafficking and the action of the courts. Accordingly, the phases of identification, screening, eligibility and inclusion were followed, and their criteria are summarized in Table 1, so that each selection decision was documented; documentary analysis was used as the technique and a recording matrix per source (author, year, type of document, court or country, finding and axis) as the instrument, and its data were subjected to content analysis by axis.

**Table 1.** *Systematic review protocol*.

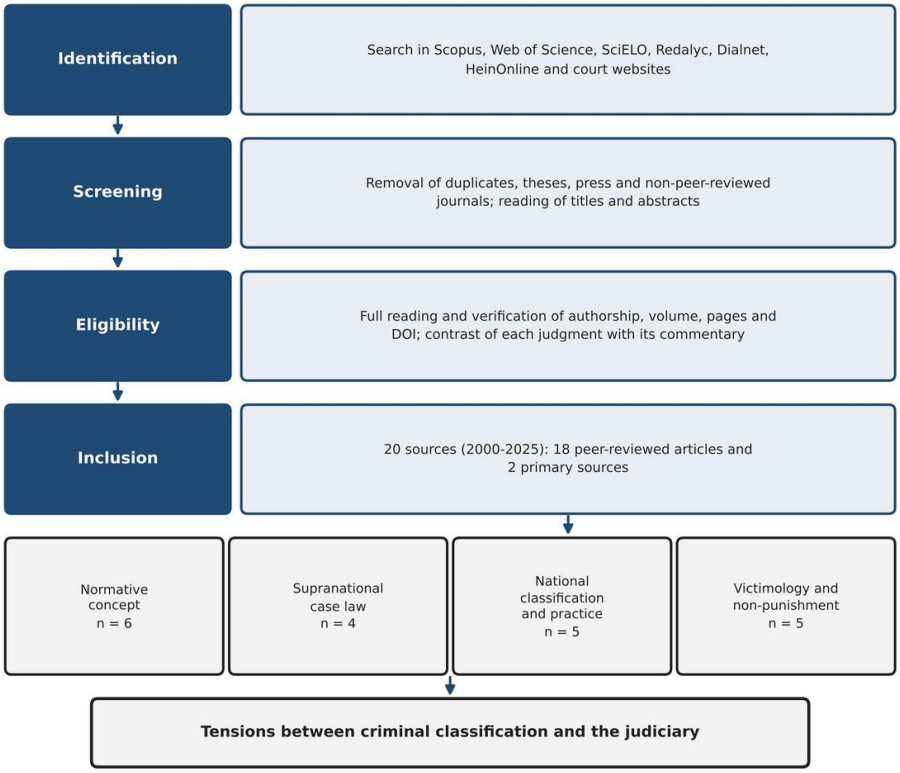
| Element | Description |
|---|---|
| Design | Systematic literature review with a hermeneutic-analytical method |
| Databases and repositories | Scopus, Web of Science, SciELO, Redalyc, Dialnet, HeinOnline and official court websites |
| Search terms | ("trata de personas" OR "human trafficking") AND ("tipificación" OR "criminalization" OR "no punición" OR "non-punishment") AND ("tribunal" OR "court" OR "jurisprudencia" OR "Palermo") |
| Period | 2000-2025 |
| Inclusion criteria | Peer-reviewed articles with a verifiable record; commentaries on supranational judgments; indispensable primary instruments and decisions |
| Exclusion criteria | Theses, press, legal blogs, non-peer-reviewed journals and duplicate records |
| Axes of analysis | Normative concept (n = 6); supranational case law (n = 4); national classification and practice (n = 5); victimological dimension and non-punishment (n = 5) |

**Note:** developed in-house.

As for its composition, the corpus comprised 20 sources, of which 18 are articles in peer-reviewed journals and two are primary sources, the Palermo Protocol and the judgment of the Supreme Court of the Philippines in *People of the Philippines v. Shirley A. Casio*, while the decisions of the

European Court of Human Rights and the Inter-American Court of Human Rights were examined through commentaries published in specialized journals. Subsequently, the sources were organized into four axes, namely the normative concept, supranational case law, national classification and practice, and the victimological dimension with the non-punishment principle, as represented in Figure 1.

**Figure 1.** *Phases of the systematic review and axes of analysis*.




**Note:** developed in-house.

Finally, since this is a documentary study, no work was carried out with people or personal data, and two safeguards were adopted, namely contrasting the reading of each judgment with at least one independent doctrinal commentary and distinguishing what the sources state from what is proposed as the authors' inference.

## RESULTS

The results of the research are described below, organized according to the four axes of the corpus:

### The normative concept and its gray areas

First, the Palermo definition combines the act of recruiting, transporting, transferring, harboring or receiving persons, the means of threat, force, deception or abuse of a position of vulnerability, and a purpose of exploitation, and adds that the victim's consent is irrelevant when any of these means has been used and that, in the case of persons under 18, trafficking exists even if they are not used (UN, 2000). However, Britos & Hernández (2017) warn that the Protocol does not define vulnerability, a term that is vague and ambiguous, and argue that it can only be properly interpreted from the standpoint of human rights ethics, while consent remains difficult to assess in judicial practice.

Similarly, Cortés-Toro (2007) documented in the Andean countries the persistent confusion among trafficking, migrant smuggling and the old notion of white slavery, and pointed out that the rule that considers any minor under 18 in a situation of exploitation to be a victim clashes with contexts where child labor is common and cultural notions of adulthood differ, while Venezuela and Ecuador then showed more incipient legislative development than Colombia and Peru.

### Supranational case law

Second, the European Court of Human Rights marked a turning point with *Rantsev v. Cyprus and Russia*, of January 2010, concerning a young Russian woman who died in Cyprus after arriving on an artiste visa, and Allain (2010) explains that the Court brought trafficking within Article 4 of the European Convention, which prohibits slavery, servitude and forced labor, and derived from it positive obligations of protection and investigation for both States. Nevertheless, Stoyanova (2012) questioned the fact that the Court adopted the concept of trafficking without a substantive analysis of its definition, thereby aligning itself with migration objectives, and proposed developing instead the notions of slavery and forced labor.

In the inter-American system, the Inter-American Court decided in October 2016 the case of *Hacienda Brasil Verde Workers v. Brazil*, and García (2018) highlights that it was the first contentious decision to apply Article 6 of the American Convention, that it held Brazil responsible for the situation of 85 workers rescued in 2000, that it characterized the prohibition of slavery as a norm of *ius cogens* and that it held that statutes of limitations on criminal proceedings are inadmissible for these crimes.

Regarding the prosecution of victims, the same European Court decided in February 2021 the case of *V.C.L. and A.N. v. the United Kingdom*, in which, according to Gregory (2021), it unanimously held that the State had violated Articles 4 and 6 of the Convention by prosecuting two Vietnamese adolescents who had been victims of trafficking and were found working in cannabis farms, whereby the non-punishment principle acquired for the first time an express anchor in European case law. Table 2 compares these decisions.

**Table 2.** *Relevant judicial decisions on human trafficking*.

| Case | Court and year | Facts | Contribution |
|---|---|---|---|
| Rantsev v. Cyprus and Russia | European Court of Human Rights, 2010 | Young Russian woman with an artiste visa who died in Cyprus | Trafficking falls within Article 4; positive obligations of protection and investigation |
| Hacienda Brasil Verde Workers v. Brazil | Inter-American Court of Human Rights, 2016 | 85 workers rescued in 2000 | Slavery as ius cogens; non-applicability of statutes of limitations; structural discrimination |
| People v. Casio | Supreme Court of the Philippines, 2014 | Minors offered for sexual exploitation | The minor's consent is irrelevant even with a history of prostitution |
| V.C.L. and A.N. v. the United Kingdom | European Court of Human Rights, 2021 | Vietnamese adolescents prosecuted for cannabis cultivation | Violation of Articles 4 and 6; anchoring of the non-punishment principle |

**Note:** developed in-house from Allain (2010), García (2018), Supreme Court of the Philippines (2014) and Gregory (2021).

### National classification and judicial practice

On the other hand, the reception of the offense in national legal systems is heterogeneous, and Moya-Guillem (2021) compared the legislation of Germany, Spain, France, Italy, the United Kingdom, Argentina, Chile, Colombia, Mexico and Uruguay and concluded that none fully reproduces the Palermo model, since some retain the validity of consent when there are no coercive means and limit the purposes to a closed list, others declare consent irrelevant and use open lists, and penalties range from less than a year or a fine in Germany and the United Kingdom to life imprisonment in the latter. Table 3 summarizes these models.

**Table 3.** *Models of criminalization of trafficking in comparative legislation*.

| Countries | Consent | Purposes | Observation |
|---|---|---|---|
| Germany, Spain, France, Italy and Chile | Valid if there are no coercive means | Closed list | Gaps, such as illegal adoption in Spain |
| United Kingdom, Colombia and Uruguay | Irrelevant | Open list | Dignity or moral integrity is protected |
| Argentina and Mexico | Irrelevant in all cases | Closed list | Mexico with an extensive list |
| Peru | Invalid if obtained through deception, coercion or abuse of vulnerability | According to the Criminal Code and Plenary Agreement 04-2023 | Dynamic vulnerability; reparation of the life project |

**Note:** developed in-house from Moya-Guillem (2021) and Cárdenas-Díaz (2025).

In Asia, the Supreme Court of the Philippines upheld the conviction in December 2014 in *People v. Casio* (Supreme Court of the Philippines, 2014), in which it specified the elements of the crime under the Philippine anti-trafficking law and held that the consent of a minor victim is irrelevant, even if she had previously engaged in prostitution, a criterion that places on the judge the burden of looking at the situation of vulnerability rather than at the victim's prior conduct. In Peru, Cárdenas-Díaz (2025) analyzed Cassation 1459-2019-Cusco and Plenary Agreement 04-2023/CIJ-112 and showed how case law distinguishes transport from the transfer of control over the victim, understands vulnerability as a dynamic condition and calls for comprehensive reparation that includes damage to the life project.

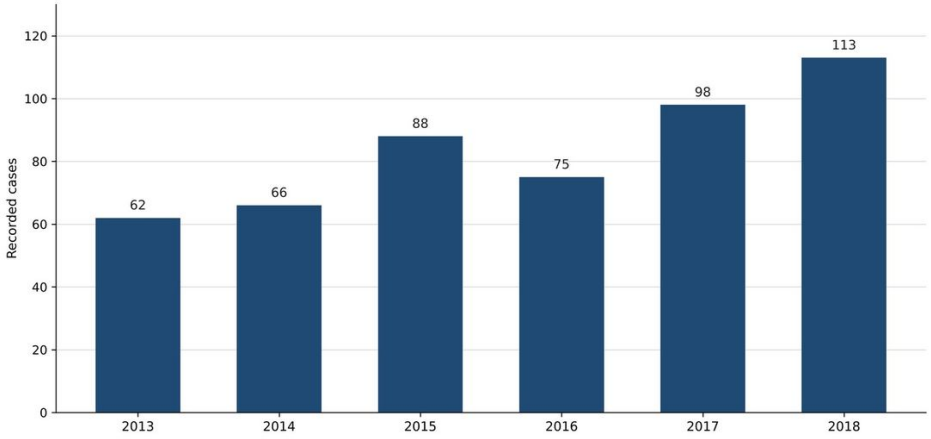
However, criminalization does not guarantee effective prosecution, and Farrell, et al., (2014) studied the investigation and prosecution of cases in U.S. counties to explain why, despite the new laws, proceedings remain scarce, among other reasons because of victims' reluctance, lack of police training and prosecutors' preference for crimes that are easier to prove.

### The victimological dimension and the non-punishment principle

As regards victims, Piotrowicz (2012) argues that international human rights law imposes on States positive obligations to identify, protect and assist trafficked persons, and Piotrowicz & Sorrentino (2016) showed how the non-punishment principle emerged from these obligations, according to which anyone who commits an offense as a consequence of having been trafficked should not be punished for it, a principle that is advancing in soft law and in the practice of some States, although its scope still raises difficult questions. Nevertheless, Villacampa & Torres (2017) documented in Spain that victims of trafficking for criminal exploitation are not identified as such, so that they end up prosecuted for the offenses they were forced to commit.

In Latin America, Venezuelan migration shows the cost of this lack of identification, and Coral-Díaz & Luna-de-Aliaga (2022) gathered data from Colombia's Ministry of the Interior recording between 62 and 113 cases of trafficking per year between 2013 and 2018, figures the authors consider affected by underreporting, while Fadi-Tomat & Pérez-Huérfano (2022) noted that in Aruba the victims identified by the government fell from 71 in 2017 to 2 in 2018 and to none in 2019, a decline they attributed to a reduced capacity for identification rather than to a decrease in the crime. Figure 2 represents the Colombian series.

**Figure 2.** *Human trafficking cases recorded by Colombia's Ministry of the Interior, 2013-2018*.




**Note:** developed in-house from Coral-Díaz & Luna-de-Aliaga (2022).

## DISCUSSION

The findings are discussed below and contrasted with what was set out in the introduction:

The results confirm the twofold register noted by Cho, et al., (2014), since criminal prosecution has become consolidated in national legal systems while victim protection depends, to a large extent, on the intervention of supranational courts. Accordingly, the European Court of Human Rights and the Inter-American Court agree in requiring States to exercise enhanced due diligence, although the Inter-American Court did so with greater emphasis on structural discrimination and impunity. This invites reflection on a paradox, since a broad definition of trafficking protects more

victims but makes it harder to prove the crime before a criminal court that demands strict legality, so that the debate between Hathaway (2008) and Gallagher (2009) on the scope of the Palermo framework moves from doctrine to the courtroom.

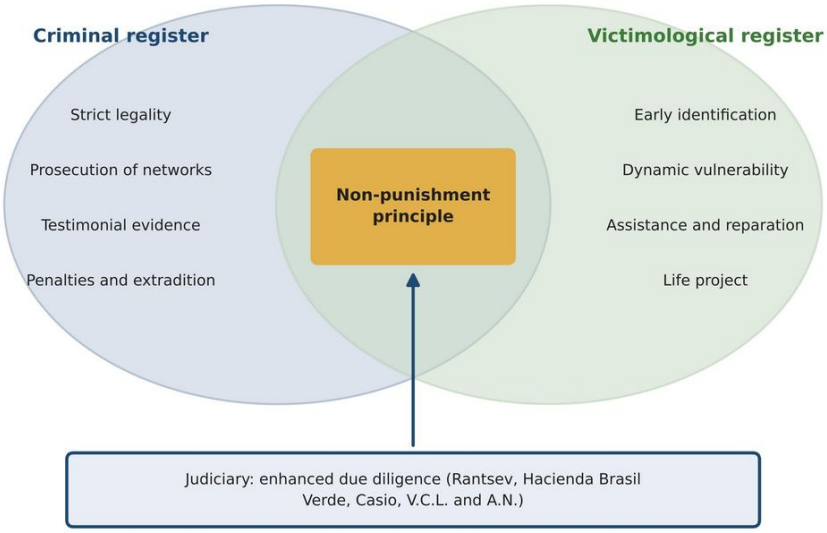
Thus, a joint reading of the four axes makes it possible to propose, as the authors' inference, that the relationship between criminal classification and the judiciary is organized around four tensions, between punishing and protecting, between strict legality and vulnerability as an open category, between criminal sovereignty and international cooperation, and between the victim as witness and the victim as a subject of rights, as presented in Table 4 and Figure 3.

**Table 4.** *Tensions between criminal classification and the judiciary*.

| Tension | Manifestation | Observed judicial response | Support |
|---|---|---|---|
| Punish or protect | Strong prosecution, weak protection | Few cases and unidentified victims | Cho, et al., (2014); Farrell, et al., (2014) |
| Strict legality or open vulnerability | Vulnerability undefined in Palermo | Dynamic vulnerability in Peru | Britos & Hernández (2017); Cárdenas-Díaz (2025) |
| Criminal sovereignty or cooperation | Different offenses that hinder extradition | Requirement of transnational due diligence | Moya-Guillem (2021); Allain (2010) |
| Victim as witness or subject of rights | Prosecution of victims forced to commit crimes | Non-punishment recognized in 2021 | Piotrowicz & Sorrentino (2016); Gregory (2021) |

**Note:** developed in-house from the corpus reviewed.

**Figure 3.** *Twofold register of human trafficking and the place of the non-punishment principle*.




**Note:** developed in-house from the corpus reviewed.

Another aspect that should be examined is the Venezuelan case, since the 2012 Organic Law against Organized Crime and Financing of Terrorism criminalizes human trafficking within the regime of organized crime, a placement that favors the prosecution of networks and that, in light of the above analysis, needs to be accompanied by judicial protocols for early identification and an express non-punishment clause for victims. Hence an intrinsic challenge for Venezuelan judges, which is to incorporate the standards of *Rantsev*, *Hacienda Brasil Verde* and *V.C.L. and A.N.* into a practice that still regards the victim, above all, as a source of evidence.

## CONCLUSIONS

The objective of analyzing the criminal classification of human trafficking and its relationship with the judiciary in the global context was achieved through the systematic review of 20 sources covering the Palermo Protocol, doctrine, the case law of the European Court of Human Rights, the

Inter-American Court and the Supreme Court of the Philippines, and studies on judicial practice in Europe, the United States and Latin America. In light of the above, criminalization has become universal, but its models differ in the value given to consent, in the list of purposes of exploitation and in the severity of penalties, while supranational courts have broadened protection by deriving positive obligations from the duty to prohibit slavery and by recognizing that statutes of limitations do not apply to these crimes, whereas national systems continue to prosecute few cases and fail to identify many victims, especially those who were forced to commit crimes. This indicates that the non-punishment principle is the area where judicial practice shows the greatest resistance to abandoning the punitive paradigm, so that, based on the data reviewed, the articulation between criminal classification and the judiciary is expected to depend on the early identification of victims, the training of judges and prosecutors in supranational standards and the express recognition of non-punishment in legislation and case law.

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## CONFLICT OF INTEREST

The authors declare that there is no conflict of interest with any individuals or institutions related to this research.

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## AUTHOR CONTRIBUTIONS

**Ramón Armando Mendoza-Villafranca:** conception of the study, design of the review protocol and writing of the introduction and of the supranational case-law axis.

**Noemí del Carmen Navarro-Villarroel:** search, screening and verification of sources, and writing of the national classification and victimological dimension axes.

**Carlos Manuel Carreño-Vélez:** comparative analysis, preparation of tables and figures, and writing of the final reflection and the conclusion. The three authors participated in the critical revision of the manuscript and approved the final version.

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