

## **Breaches identified by ASGI**

### **A) Partial transposition of art. 2 of the Directive, with particular reference to the definition of the vulnerable position and the irrelevance of the victim consent with respect to the definition of the crime of trafficking**

Although article 2 of the Legislative Decree 24/14 has introduced substantial changes to articles 600 and 601 of the Criminal Code relating to crimes of reduction to slavery and human trafficking, article 2 has failed to enter into domestic law two major provisions contained in the European Directive: 1. the definition contained in par. 2(2) of the Directive, the "vulnerable position" (crucial concept in terms of the forms of coercion referred to in par. 1) and 2. the norm contained in par. 4 of the same rule, to which the consent of a victim of trafficking is irrelevant in presence of any of the means of coercion specified in par. 1.

Both aspects are of great importance when one considers the phenomenon of trafficking. For example, for the purpose of sexual exploitation victims are often constrained to the only possible alternative for their own survival or to protect their family members as a result of debt bondage. In fact, there are frequent situations where, at the time victims leave their country of origin or at the time the sexual services are requested, victims do not suffer physical violence or coercion in the strict sense. Similarly in the field of trafficking for exploitation at the workplace, situations characterized by the absence of an alternative are often seen, although most of the time there is no deprivation of liberty or any constraint in carrying out certain work performances.

### **B) Failure to adopt a rule providing for the non-punishment of the victims**

The Italian government has not introduced any rules with respect to article 8 of the European Directive providing for the exemption of prosecutions or sanctions for trafficking victims involved in criminal activities " they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2."

Yet it is known that people often forced to sexual performances, as a work or in other situations, are also constrained, against their will, to perform illegal acts because of their irregular status in the territory or because the exploitation is perpetrated in the context of criminal activities.

### **C) Failure to take the measures of assistance and support for victims of trafficking provided by art. 11 of the Directive**

The national legislature has totally failed to transpose into national law a provision of primary importance, namely article 11 of Directive 2011/36/EU which requires to the Member States to take the necessary measures to ensure that victims receive adequate assistance and support. Specifically the measures are the following : to ensure that the victim receives care and support "as soon as the competent authorities have a reasonable-grounds indication for believing" that the person is or has been a victim of trafficking; to ensure that assistance and support do not infringe "the victim's willingness to cooperate in criminal investigation, prosecution or trial"; to provide for appropriate mechanisms for early identification, assistance and support of victims "in cooperation with relevant support organizations". Even if one were to assume that it was the Italian Government's intention to introduce such measures in the near future, and in particular through a decree to be adopted by the National Plan of Action against Trafficking provided by in art. 9 of Legislative Decree no. 24/14, it appears that the government would fail anyway to implement the duties of the Directive because the rights have to be recognized by a primary source of law and no National Plan have been adopted so far despite the time schedule given to the legislatures.

Article 11 of the Directive also imposes, in par. 5 and 6, an informative burden to the Member States with respect to the rights that should be recognized to victims of trafficking, including the right to a "reflection and recovery period" established by the Directive 2004/81/EC but the latter was never introduced into domestic Italian laws.

#### **D) Failure to take measures to protect victims in criminal investigations and prosecutions**

The Legislative Decree has failed to transpose the measures provided by in art. 12 of Directive 2011/36/EU, with specific reference to the right of victims to access "without delay" to legal counseling and representation (par. 1) and the adoption of measures to prevent the so-called "secondary victimisation" (par. 4).

The Italian legislature only adopted, in art. 3 of Legislative Decree no. 24/14, a rule providing for special procedures for the completion of recording evidence in the case of adults (paragraph 398(5b) of the Criminal Procedure Code). Yet one could introduce additional rules to protect the security and the right of the defence of the victims and therefore have a more comprehensive transposition of the European Directive concerning the measures in art. 12.

In particular, it is possible to introduce a standard (similar to the cases of gender violence) providing for access to legal aid for the victims without showing absence of sufficient financial resources and in any case without the need for certification from the Consular Authority of the country of origin, often required but in most cases never released by the foreign authorities.

Moreover, the government could have introduced specific rules to prevent secondary victimisation specified by par.12(4) of the Directive. Such measures were partially adopted but their application relies upon the sensibility of each judge deciding on the matter.

#### **E) Substantial breach of article 17 of the Directive on compensation to victims**

The measure contained in art. 6 of Legislative Decree 24/14 establishes a right to compensation. The compensation is paid in a lump-sum of € 1,500.00/victim from the Fund for anti-trafficking measures and is extremely insignificant to the victim. The Fund was created to finance assistance programs and social integration made in favor of the victims of trafficking. The Italian decree does not incorporate the norms found in art. 17 of the European Directive, which requires Member States to allow victims the access to existing schemes of compensation to victims of violent unintentional crimes. Moreover, in this matter Italy (with the Legislative Decree no. 204/07) has partially transposed Directive 2004/80UE on compensating victims of crime, with the result that the current system is totally inadequate to ensure real and effective compensation for damages suffered by the people who have been victims of crimes of trafficking and/or slavery.

#### **F) Substantial violations of articles 19 and 20 of the Directive providing for the establishment of National Rapporteurs or equivalent mechanisms**

The national legislature has decided to invest the role of "national rapporteur or equivalent mechanism" in art. 19 of the Directive to the Department for Equal Opportunities within the Cabinet of the Ministers Council, assigning the tasks set by the European legislator in articles 19 and 20 (par. 7b) and c)) to the Department for Equal Opportunities, as well as maintaining the finality of the Department, and introducing tasks that historically belonged to the Commission for the support of victims of trafficking, violence and serious exploitation (par. 7a)).

The role of national rapporteur (or equivalent mechanism) should be assumed by an independent body, as it is the case in other EU countries. This is true because of the functions performed by such a person, especially when it comes to the first evaluation of the results from the national anti-trafficking data.

As of today, more than a year after the entry into force of the Legislative Decree 24/14, the Department of Equal Opportunities is an institution without financial resources and currently lacking a specific Minister by proxy. The Department is not exercising any of the powers granted by art. 7 of the Italian Decree. Therefore, it is clear that the Department will not be able to facilitate the tasks of the Anti-Trafficking Coordinator (ATC), as required by art. 20 of the European Directive.