

Evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties

30.08.2022

Part I – Access to justice and effective remedies

As an introductory consideration, ASGI would like to point out that there is a lack of precise information related to Part I of the Questionnaire at the national level .

The difficulty in providing input is mainly related to the decreased number of criminal proceedings for the crime of trafficking in persons (Article 601 of the Criminal Code) in Italy¹, to the emerging trends of the phenomenon - which is evolving with consequences also related to the cooperation of the victims with the Judicial Authorities - and to the gaps in the implementation of referral mechanisms in particular with the Law Enforcement and the Judiciary.

Right to information

Concerning the Italian legal framework, Article 90*bis* of the Criminal Procedure Code states that victims of crimes shall be provided with information in a language they understand on how to file a complaint and on their rights, including the right to have (free) legal assistance, the right to obtain compensation and other remedies. This information should be given as soon as they get in contact with the authority.

In the practice, victims of THB (presumed and identified) are informed of their rights mainly from qualified anti-trafficking organizations who carry out the programs for the assistance and protection of victims of trafficking foreseen by Article 18 par. 3*bis* of the Legislative Decree 286/98. These organizations often provide legal consultants and lawyers who assist victims in judicial and administrative proceedings.

At the institutional level, the new National Action Plan (2022-25)², approved on the 19th of October, provides some measures to guarantee the victims' information on their rights, through activities aimed at providing information to migrants and asylum seekers to the borders, in the reception centers, within the asylum procedure and the civil and criminal proceedings.

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According to a recent report of the Department of Public Security of the Ministry of Interior (March 2021), in 2020 about 80 people were arrested for the crime of trafficking and about 35 persons were identified as victims of trafficking within the criminal proceedings. Report available at: [https://www.interno.gov.it/sites/default/files/2021-04/focus_la_tratta_10mar2021_10.30.doc1 .pdf](https://www.interno.gov.it/sites/default/files/2021-04/focus_la_tratta_10mar2021_10.30.doc1.pdf).

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The recently approved National Action Plan has been published on the web site of the Department of Equal Opportunities and its is available at: <https://www.pariopportunita.gov.it/wp-content/uploads/2022/10/Piano-anti-tratta-2022-2025.pdf>.

Legal assistance and free legal aid

As mentioned, article 90*bis* of the Criminal Procedure Code provides the right of every victim of a crime to be informed also about the right to be provided with legal assistance and free legal aid.

In the practice, the anti-trafficking organizations usually provide legal assistance to persons who entered into the protection programs. They also provide legal information and counseling to all the presumed victims they met before (in the drop-in, counseling services, outreach activities etc), regardless of the immigration status.

With regard to the conditions for access to free legal aid, according to Decree 115/02, anyone with an income not exceeding a determined amount (about 11.700 euros in a year), is eligible for free legal aid in civil, administrative and criminal proceedings. However, according to article 76 par. 4*ter*, **persons who are victims** of certain crimes (sexual violence, domestic violence, FGM, slavery and **trafficking** of persons) **can access to free legal aid irrespective of the incomes.**

According to Article 76 par. 4*quater*, an unaccompanied minor involved in civil, administrative or criminal proceedings has the right to be informed of the opportunity to have a lawyer, including through the guardian, and to receive proper legal assistance.

Compensation from the perpetrators, State compensation, sanctions and measures

According to Article 74 of the Criminal Procedure Code, victims of THB can claim for compensation from the perpetrators within the criminal proceeding. There is not a fixed amount of compensation. In the practice the Criminal Court often establishes a provisional amount and then the victim applies to the Civil Court to obtain the total amount. This latter is determined on the basis of the damage suffered by victims and to the extent the victims themselves are in the condition to demonstrate it. The costs concerning the request of compensation are covered.

Several gaps emerge in the implementation of this provision. In particular, it is difficult to ensure that the perpetrators effectively pay the compensation due to a wide range of circumstances mainly related to the lack of assets, property or licit income in Italy. For the same reasons it is very difficult in practice to obtain measures such as confiscation or deprive perpetrators of the proceeds of criminal offenses or property.

With regard to victims of labor exploitation, the Italian Civil Law includes the possibility to bring claims for compensation and recovery of unpaid wages and social contributions. However, also in this field it is difficult for the victim both to prove the extent of the work done and to obtain the recognition of the responsibility of the real employers. Indeed, according to Article 29 of Legislative Decree n. 276/03 in case of supply chains there is a joint liability between contractors, but it is difficult to prove it.

As for the **State compensation**, Article 6 of the Legislative decree 24/14 states that victims of trafficking can access State compensation - provided by the State Fund for Victims of Trafficking - for a total amount **of 1500 euros**, that is clearly **too low**. The application for access to the State compensation must be submitted within 5 years from the sentence of the Court concerning the criminal proceeding. The victim must also provide evidence about the attempt to obtain compensation from the perpetrator.

At institutional level, the new National Action Plan (2022-25), provides some measures aimed at fostering training to all relevant professionals to enable victims of THB to obtain compensation.

Given the above, the main gaps in providing victims with compensation are the following:

- lack of practical measures to guarantee the victims with the possibility to be granted with compensation by perpetrators;
- insufficient amount of the State compensation and procedural difficulties in applying for this measure.

Non punishment-provision

Italy has not transposed Article 26 of the Convention yet. **Therefore there isn't a specific provision on the non-punishment of victims of THB.** There are some general provisions of the Criminal Code, in particular the one concerning the "state of necessity" (Article 54 of the Criminal Code) of victims in the execution of criminal acts which is applied in criminal proceedings.

A specific provision should be necessary also due to the fact that recently the number of victims (presumed or identified) of trafficking for criminal activities is increasing and there isn't enough awareness in the judiciary of the phenomenon.

Training and capacity building activities on these specific aspects should be promoted to sensitize Prosecutors and the Judiciary.

Protection of victims and witnesses

Legislative Decree 24/14 transposed Directive 2011/36/EU and introduced significant provisions concerning the protection of victims also within the criminal proceedings.

In particular according to the rephrased **Article 398 par. 5bis and 5ter** of the Criminal Procedure Code victims (with specific reference to minor) have **specific guarantees** in giving witness. The scope of this provision is limited to specific types of crimes, including trafficking (Article 600 of the Criminal Code) and gender related offenses (e.g. domestic violence and sexual abuses).

This provision is still not frequently implemented and the limitation of type of offenses entails gaps in the protection of victims. For example, despite the increasing involvement of potential victims in illicit activities, drugs related crimes are not included in the list.

Part II – Country-specific follow-up questions

12. Information on new developments in Italy since GRETA's second evaluation report.

Emerging trends on trafficking in human beings in Italy

In Italy the phenomenon significantly changed within the last few years: while in the period 2014-18 the majority (almost all) of the victims identified and assisted by anti-trafficking organizations were Nigerian women who reached Italy by the Central Mediterranean Route, nowadays a greater variety of nationalities and forms of exploitation has been detected. Also profiles of Nigerian women changed with an increasing overlapping of protection needs.

Nigerian women, single mother of minor children and secondary movements with Europe

According to data collected by the National Anti-trafficking Helpline (report covering the period Jan-Dec 2021), the majority of victims of trafficking assisted by the Italian anti-trafficking system are still Nigerian women potential victims of trafficking for the purpose of sexual exploitation.

In particular the 57% of the 2.294 persons who got in contact with the anti-trafficking staff and the 54% of the 695 persons who undertook a social protection pathway were Nigerian women. They mainly arrived in Italy in 2016/17, they applied for international protection in the country and, in many cases, spent a period in the Italian reception system for asylum seekers and refugees. Then they moved across other European countries, mainly Germany and France. Nigerian women came back to Italy after a few years and, despite declaring they applied for asylum also in those countries, their returns mainly took place informally and out of the mechanism foreseen by the Dublin III Regulation. They often return with minor children and they are in an extreme condition of vulnerability linked to their family situation and to the lack of accommodations and economical resources. Public social services and anti-trafficking organizations outlined a high risk of re-trafficking or of further processes of re-victimization in different forms of exploitation (including illicit activities). Their legal condition is heterogeneous (in many cases they lodge a subsequent asylum application) and their children often have autonomous protection needs (psychological or health-related vulnerabilities).

Women from Sub-saharan Africa and different forms of exploitation and of gender-based violence

A significant number of women potential victims of trafficking preliminary identified in Italy are from Ivory Coast and, in a lesser amount, from other Sub-saharan countries such as Senegal, Gambia, Cameroon, Ghana and Burkina Faso. They often reported gender-based violence occurred both in country of origin and in transit countries and indicators of different forms of exploitation (sexual, domestic slavery) are detected. A report on Ivorian women reaching Italy and at risk of trafficking has been published by IOM.

Trans persons from South America sexually exploited

In particular during (and due to) the pandemic emergency, an increasing number of trans persons originating from South America (Brazil, Colombia and Peru) approached the anti-trafficking services mainly seeking assistance for health-related issues. In some cases trafficking indicators and sexual exploitation emerged.

Labor exploitation and other forms of exploitation

The anti-trafficking system is also increasingly detecting cases of potential victims of trafficking for labor exploitation and for other purposes, such as begging or criminal activities. In particular, regarding presumed or identified victims of trafficking for labor exploitation, the organizations have been in contact with migrants and asylum seekers coming from Pakistan and Bangladesh who arrived in Italy through the Balkan Route. Some of them are minors and few of them entered into the social protection pathway.

In particular in 2021 the 24% of the total number of the victims who have been in contact with the Italian anti-trafficking network were victims of trafficking for labor exploitation, an increasing percentage compared with past years. This information should be read in conjunction with an increased attention on the phenomenon at the institutional level (e.g. the Italian Ministry of Labor adopted specific Guidelines for the early identification of victims of serious labor exploitation in the agriculture field, *see section below for further information*).

Indoor sexual exploitation

Compared to the previous period, a decrease in the number of potential victims sexually exploited outdoor has been registered during outreach activities carried out by the anti-trafficking organizations throughout Italy. Despite the lack of precise data on the phenomenon, an increasing of indoor (and online) sexual exploitation is presumed.

The legislation and regulations relevant to action against THB

During the period analyzed by this report there have been no significant changes made to legislation concerning the protection of victims and the persecution of crime. Gaps in their implementation are still reported.

Italy has a quite advanced system for the protection and assistance of victims of trafficking. As well known, article 18 of Legislative Decree n. 286/1998 provides that trafficked or exploited persons have the rights to have access to the specific measures of the “Social Protection” programme for the assistance and integration of victims of trafficking. The program includes social, health, psychological and legal assistance, safe accommodation and support in the social and labor inclusion pathway. According to article 18, victims can also be granted with a specific permit of stay also without their cooperation in a criminal proceeding.

According to the Italian Immigration Legislation, **a specific permit of stay can be released to victims of trafficking or of serious exploitation** (Article 18 of the Italian Immigration Act). The permit of stay is issued by the “Questore” (**Local Police Commissioner**) upon request or with the favorable opinion of the Public Prosecutor in the context of the **Judiciary pathway**: when victims want or are in the condition of reporting their cases and they are formally identified in the context of a criminal proceeding. The permit of stay is also issued by the “Questore” in the context of the **Social pathway**: also without cooperation in a criminal proceeding the request in this case is submitted by local social services or anti-trafficking organizations when the person enters the “Social Protection” programme.

The Italian Law also provides **a specific permit of stay** for victims of severe labor exploitation who cooperate in a criminal proceeding and submit a report against their employer (Article 22 para. 12quater of the Italian Immigration Act).

In addition, it is worth noticing that the Italian legal framework on trafficking has been updated to transpose the European Directives on the subject by Law N. 228/03 and Legislative Decree N. 24/2014.

In particular Legislative Decree 24/14 transposed Directive 2011/36/EU amending the criminal law provisions on slavery (art. 600 c.p.) and trafficking (art. 601 c.p.) and providing for some measures for the implementation of the protection of victims. Moreover, it introduced the legal ground for the adoption of a National Anti-trafficking Plan; the setting up of a State compensation fund for victims and measures concerning minor victims.

Specific provisions concerning the link among international protection and trafficking were also introduced, in particular related to the establishment of coordination mechanisms between the anti-trafficking and the asylum system creating mutual referral mechanisms and safeguard clauses for the respect of the non-refoulement principle.

Furthermore, Legislative Decree N. 18/2014, transposing Directive 2011/95/EU and Legislative Decree N. 142/2015, transposing Directive 2013/33/EU, explicitly includes victims of trafficking as vulnerable asylum seekers.

In the past years the nexus among trafficking and international protection and the recognition of victims as refugees were further understood and applied thanks to these

provision and to the implementation of the the SOPs for the identification of victims among asylum seekers (the SOPs are part of the Guidelines developed by UNHCR and the National Commission for the Right of Asylum republished in 2020). In 2016 the criminal provision concerning labor exploitation (Article 603bis of the Criminal Code) was amended to punish both the intermediary who recruits persons to be exploited and the employer.

Against this background, the Italian legislation shows some gaps both in terms of the lack of certain specific provisions foreseen at the European and International level and of implementation of existing provisions. In particular, the main gaps are related to:

- **lack of a provision on the recovery and reflection period:** Italy is not provided with a specific provision as per Article 13 of the Convention;
- **lack of a specific provision for the principle of non-punishment of trafficking victims:** although there are some general provisions of the Criminal Code concerning the “state of necessity” (Article 54 of the Criminal Code) of victims in the execution of criminal acts, an *ad hoc* provision is missing. This has an impact in the implementation of the principle itself.
- **difficulties in the issuance of the permit of stay for victims of trafficking:** on the one hand the change of the phenomenon makes the criteria for released of such permit not in line with the profiles and the needs of the potential victims (e.g. the condition of immediate and concrete dangerous of the victim is required, however Nigerian women returning from other EU countries are not anymore in a condition of exploitation, but at risk of further re-victimization); on the other hand in several cases the issuance of the permit of stay without cooperation in a criminal proceeding is not guarantee in the practice and the Immigration Office requires victims to report their perpetrators.

Institutional and policy framework and the national strategy for action against THB

The Department for Equal Opportunities (DEO) is the National Authority in charge of the coordination of national actions against THB.

National Rapporteur/Equivalent Mechanism, with full independence, as a key point for an effective monitoring of the implementation of the policies adopted by the National Authorities **hasn't been established yet**.

Every 12/18 months, the DEO launches a call for proposals to fund the programs for the protection and assistance to VoTs. Both local authorities and NGOs qualified on trafficking are eligible to apply for funding. Nowadays, 21 anti-trafficking projects, on a regional basis, are funded by the DEO. This mechanism of periodical funding rather than a stable line of budget on the topic represents a critical issue for the anti-trafficking organizations and for the long-term assistance of persons of concern.

Four years after the the First National Action Plan against Trafficking (2016-2018), a **second National Plan Against Trafficking (2022-2025) was adopted** by the Council of Ministers **on the 19th of October 2022**³. The Plan is structured according to the 4 key pillars of Prevention, Prosecution, Protection and Cooperation. In drafting the Plan the DEO also took into consideration inputs collected by the civil society, the Technical

Committee - created for providing suggestions on measures to be adopted in the protection of victims -, and Italian public bodies (Regions acting as leaders of anti-trafficking projects). The National Plan also includes the recommendations previously elaborated by GRETA.

Moreover, the Nation Plan includes different annexes and one of those is a document called **National Referral Mechanism (NRM)**. It is important to point out that despite also the previous National Plan (2016-2018) made reference to the NRM an effective NRM has not been implemented yet. To this purpose Standard Operating Procedures should be adopted for the establishment of effective procedures for the identification of potential victims and their referral to adequate services.

A central role in the Italian anti-trafficking system is played by the **National Anti-trafficking Helpline**, a free, anonymous and 24/7 service that has been set up by the DEO and currently run by the Veneto Region. The National Anti-trafficking Helpline gives information on the legal framework and on the services available to the potential victims through a qualified and multilingual staff. It can be contacted by potential victims directly or by whoever gets in contact with them, including private citizens. The service puts in communication the different anti-trafficking projects operating all over the country also with the aim of promptly transferring a person at risk from one territory to another.

Due to the emergency related to the Ukraine war, the DEO and the National Anti-trafficking Helpline created a specific project addressed to Ukrainian nationals victims or at risk of trafficking. So far no evidence of cases of trafficking involving Ukrainian citizens has been collected and the project is focusing on prevention.

In addition to the Plan adopted by the DEO, in Italy **several operational tools** have been developed to facilitate the protection and the identification of potential victims. These tools and their implementation complement the Italian Legal framework.

In particular, in 2020 UNHCR and the National Commission for the Right of Asylum updated and republished to Guidelines for the identification of victims of trafficking among asylum seekers⁴. These Guidelines are addressed to the staff of the Territorial Commissions for the Recognition of International Protection (the Italian Asylum Authority of first instance) and foresee Standard Operating Procedures for the referral of potential victims from the Territorial Commissions to the anti-trafficking organizations. Following their publication, they have been recognized as a best practice at the international level and are applied also in other parts of the procedure for the recognition of international protection such as throughout the judicial one.

The updated version of the NC-UNHCR Guidelines includes a set of trafficking indicators specific to the asylum context and specific sets for forms exploitation. With reference to this latter, a specific set of indicators related to labor exploitation has been developed.

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The Guidelines are available at: <https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali-identificazione-vittime-di-tratta.pdf>

In the specific context of labor exploitation, in 2021 the Italian Ministry of Labor and Social Policies published the “National Guidelines for the identification, protection and assistance of victims of labor exploitation in the agricultural sector”⁵. This tool aims at establishing a specific referral mechanism with a multi-agency approach.

Against this background, gaps in the institutional and policy framework and in the national strategy are the following remains and are mainly related to the following areas of intervention:

- insufficient and discontinuous attribution of resources to organizations which assist and protect trafficking victims;
- lack of an independent National Rapporteur and consequently lack of a monitoring and evaluation system;
- lack of effective and implemented National Referral Mechanisms (NRMs);
- limited knowledge and awareness of the Asylum Authorities of the trafficking indicators with regard to labor exploitation and other forms of trafficking.

13. Information on measures taken in Italy in respect of GRETA’s recommendations

For requests in par. 13 on measures taken in Italy, see the above information provided in par. 12: a statistical system on THB in Italy is still missing, as well as a provision on recovery and reflection period and a NRM, even for child victims.

Concerning the respect of the principle of non-refoulement, article 1 of Legislative Decree 24/14 explicitly refers to this provision but in practice there are still some gaps in the early identification of VoTs, with the consequences that in some cases migrants can be expelled from Italy before being identified. In particular effective screening and identification procedures at the borders are missing. Migrants without a permit of stay are exposed to exploitation and they face problems in access to dedicated services to their identification.

To date any new measure to discourage demand for the services of trafficked persons has been introduced.

Concerning measures that still need to be adopted, A.S.G.I. stresses on the importance of an advanced and comprehensive legal framework that could fit for the objectives of preventing and combating trafficking in human beings and of protecting its victims with a victim centered and gender-inclusive approach. The legal framework should also be adapted to current challenges emerging from new trends, to forms of exploitation different from sexual exploitation and to the overlapping of protection needs of potential victims.

In order to achieve the implementation of the Convention on Action against THB, ASGI advocates with the Italian authorities for the adoption the following measures:

- a) to review article 18 in order to clarify that the resident permit is issued also without the cooperation in a criminal proceeding and to update the criteria according to the emerging protection needs of victims;

5

The Guidelines of the Ministry of Labour are available at:
https://www.lavoro.gov.it/priorita/Documents/Linee-Guida%20vittime%20sfruttamento%20lavorativo_P_14_CU_Atto_Rep_n_146_7_ott_2021.pdf

- b) to introduce a specific provision for the recovery and reflection period as foreseen by article 13 of the Convention;
- c) to introduce a specific provision stating the non punibility of trafficking victims, as provided by article 26 of the Convention.
- d) to introduce a provision on national effective compensation funds for trafficking victims, taking into consideration the the ineffectiveness of the provision contained in article 6 of Legislative Decree 24/14;
- e) to effectively implement a National Referral Mechanism defining roles of all entities which may come into contact with victims of trafficking, so to develop a multi-agency involvement in victim identification;
- f) to establish an independent National Rapporteur on Trafficking also for monitoring and data collection purposes.

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