

Comments to the NREM's Report for Italy

In the framework of Art. 20 of the

THB Directive 2011/36/EU

PREPARED BY

The Italian member organizations of the

EU CIVIL SOCIETY PLATFORM

AGAINST TRAFFICKING IN HUMAN BEINGS

- Comitato per la promozione e protezione dei diritti umani
- CISS - Cooperazione Internazionale Sud Sud
- Consorzio Sociale Agorà
- L.A.W. - Legal Aid Worldwide

26th February 2015

Comments to the review of the Italian criminal code and criminal procedure on the crime of "human trafficking" after the decree 24/2014

The Legislative Decree March 4th, 2014, n. 24 ("Preventing and combating trafficking in human beings and protecting victims") gives effect to Directive 2011/36 / EU on preventing and combating trafficking in human beings and protecting victims, replacing Decision framework 2002/629 / JH. This decree, as specified in the second paragraph of art. 1, does not affect the rights, obligations and responsibilities under the international law, including the international humanitarian law and the international human rights law and, in particular, where applicable, the Convention on the Status of Refugees, of which the Law July 24, 1954, n. 722, and the Protocol relating to the Status of Refugees of Law February 14, 1970, n. 95, relating to the status of refugees and the principle of non-refoulement.

On the other side, the Decree made changes to the Criminal Code and Criminal Procedure Code, by introducing the juridical concepts of: carrying out illegal activities, undergoing the removal of organs, and vulnerability, according to the provisions of Article 2, paragraph 3 of EU Directive 2011/36 /.

In particular, regarding Article 600 of the Penal Code, the term "*performance*" has been replaced with the more general term of the "*fulfilment of illegal activities*" by those who

are forced to follow a condition of continuous subjection. Also, a further specific activity over exploitation is specified, which is the submission "to the removal of organs." This inclusion is definitely due to the practice established over time that sees transnational organizations operating in the field of illicit trafficking in organs. Finally, considering the ways of "the reduction or maintenance in a state of subjection", it has been added to the case of a condition of "vulnerability", which refers to "physical or mental inferiority", in the light of the definition given by Article 2 par. 3 of EU Directive 2011/36 /.

According to the new reformulation of article 601 of the Criminal Code: "*Shall be punished with imprisonment from eight to twenty years everyone who recruits, introduces into the State, transfers also outside of it, transports, transfers authority over the person, hosts one or more persons who in the circumstances referred to in Article 600, or performs the same conduct to one or more persons, by means of deception, violence, threats, abuse of authority or exploitation of a situation of vulnerability, inferiority physical, psychological or need, or promises or giving of money or other benefits to the person who has authority over it, in order to induce them or force them to work performance, sexual or begging or otherwise to the fulfilment of illegal activities that involve the exploitation or undergo withdrawal organs. The same punishment shall be for everyone, even outside of the rules referred to in the first paragraph, who realizes the conduct therein provided in respect of the child or adolescent.*"

The over said Decree also changes Article 398 of the Criminal Procedure Code, by adding a new paragraph which provides that the court, on request, can extend also to adults who are in vulnerable circumstances, the precautions provided for the "*incidente probatorio*" (a special instrument to anticipate the taking of evidence before the trial) expected in the cases involving minors.

Critics and Observations

The measures taken with the Legislative Decree March 4, 2014, n. 24 cannot be said entirely satisfactory to the EU Directive provisions because partially distant from their "*ratio*".

Specifically, the new reformulation of Articles 600 and 601 of the Italian Criminal Code are not likely to respond to the evident objectives pursued by the European Directive which, in Article 4, refers to particularly **vulnerable people** in order to take heavier penalties when the victims can be traced to this area. Moreover Article 12, in accordance with Articles 4 and 11 of the EU Directive, in terms of the assistance of the victims, attributes relevance, as well as the subjective condition of the victims, including the way in which the crime was committed and, if there has been, the use of serious violence or has been caused a heavy injury.

Instead, the Italian legislator **has not provided any penalty increase** in Articles 600, 601 and 602 of the Criminal Code referred to that subjective condition.

Some important prediction provided by Art. 2 of the EU Directive are missing in our legislation, including the **definition of "vulnerable position"** as formulated in the

Directive and, the provision of Articles 2, paragraph 4, for which the consent of the victim is irrelevant in the presence of one of the means of coercion referred to paragraph 1 of Article 2. In this way, the content of the concept of vulnerability is left up to the judge with the possibility of different judgements and legal uncertainty. Article 1 of the Legislative Decree no. 24/2014 establishes that "*the implementation of the provisions (of the decree), is taken into account, based on an individual assessment of the victim, the specific situation of vulnerable people*", as provided below. But the formula about the position of vulnerability adopted by the legislator is "*fairly generic and poorly demanding in terms of definition in view of the meaning that the term used assumed already in common language.*"

As concerning the new Article 398 of the Italian Code of Criminal Procedure, the provision of procedures for specific performance of **recording evidence in the case of adults (incidente probatorio)** it is surely very good. But it would be more appropriate to provide such guarantees to all victims of crimes related to trafficking - those listed in paragraph 5a Article 398 – regardless to any evaluation at the discretion of the judge on the "*particular vulnerability*".

Also, it would be useful to introduce additional rules to protect the security and law defence of the victims and, therefore, more fully transpose the European Directive concerning the provisions of Article 12.

This includes the access to the **legal aid by the victims** without sufficient financial resources, without the need for a certification by the Consular Authority of the country of origin, often not released, but only with a self-certification by the victim. All of the victims are in fact people without any financial means and the lack of provisions that facilitate the legal aid procedure discourages the legal assistance itself.

Finally, an accurate consideration and care about the differences between prostitution as self-determination (not punished in Italy) and pimping are important: most of the time these differences are hardly perceptible because even if they are two different situations, juridically speaking, they are two different aspects of the same theme, human trafficking.

Comments on the flagging and monitoring system for the identification of the victims of trafficking

Understanding trafficking in human beings in Italy in its different regions, aspects and trends has become a Herculean task to many researchers and law enforcement agents. The capacity of movement of victims and offenders, as well as the lack of a unique shared monitoring system, that can flag potential human trafficking victims and identify presumed victims, as well as offenders, leads to an information gap and confusion. Moreover, the inserted information is often double counted and associations and other services cannot insert data. As presented in GRETA's report, Italy has at the moment three systems that monitor human trafficking victims' numbers.

The main system is the SIRIT Program that only counts the victims that enter into avenues foreseen by 18 Article and 13 Article and inserts information about the victim's sex, country of origin and form of exploitation. This significantly limits the real number

of victims, since it does not include in the database, potential victims identified by other services such as Street Units, NGOs, and sanitary systems. Furthermore, the statistics of this monitoring system are decreasing due to the funding reduction in the last years. In spite of that, the Italian authorities have indicated that this monitoring system will also include information regarding to actions and interventions not financed by the DEO.

The National Anti-mafia Directorate (DNA) has also a database software in which they include the number of annual open processes, number of suspects, number of victims and their countries of origin. Despite the fact that this is the only system that actually includes information about the offenders, it does not provide the trials outcomes, actual sentences and more information about the offenders such as connections with the local territory, coercion instruments and their roles. Besides this system, the Ministry of Interior has a database that contains data on police investigations and provides information on gender, age and nationality, but not on the type of exploitation and other characteristics.

At this point, the NGO would like to recommend the application of a unique monitoring system, as the one already implemented in Portugal and other European countries that cannot only collect information, but also lead to an effective action and prevention measures. Furthermore, this monitoring system, a shared database software, is accessed by first assistance services to the victims and NGOs and is provided by the Equal Opportunities Department. Furthermore, a unique monitoring system will help in understanding what are the regions/cities with the major number of potential and identified victims, leading to a better understanding of concentration areas and implementation of preventive measures.

The monitoring system will also help to understand human trafficking trends in Italy, dynamics and the phenomenon itself, including a better perception of other exploitation forms, human trafficking for sexual purposes. The system will avoid double counting, since it will crosscheck data on form of exploitation, gender, nationality, age, children and area, respecting their anonymity.

However, for the implementation of such a system, a training has to be given to all the first assistance services, law enforcement agents, authorities, labour inspectors, immigration services and civil society in the different Italian regions. This will not only identify the included stakeholders, besides the ones funded by the DEO, that will have access to the database, but also train these organizations in order to have a shared basis of indicators, as well as common guidelines on data collection. In order to enhance collaboration on the monitoring system, the stakeholders should be involved in other activities, in order to create local and regional networks. The monitoring system will not oblige information providers to provide information and denounce the victims. The given information will only be used for statistical and analytical purposes.

In this perspective, the comment reported by the NREM's Report for Italy, and specifically in Paragraph 3 on "*Gathering of statistics in close cooperation with relevant civil society organizations active in this field*" is positive since to improve the quality of the organizations seems to be a priority for the Department and also the level of integration of the statistical referral system once the national action plan will be in force.

Comments on the National Action Plan against Trafficking in Human Beings and Consultation Mechanisms

On the basis of Art. 9 of the Legislative Decree n. 24 of 4th March 2014, it was expected that within three months following the entering in force of the above-mentioned legislative provision, a National Action Plan Against Trafficking and Exploitation of Human Beings would have been adopted. So far, the plan it is not in place and public consultations with civil society organizations to elaborate or even present the draft of the plan seems not to have taken place.

It is expected that the Plan will be available as soon as it will be possible and that the civil society will be practically and positively involved at least in the implementation / periodical revision and monitoring of the Plan, including:

- The important contribution of all the associations/entities participating in the Programmes of Temporary Assurances and Long Term Assistance and Social Inclusion;
- The contribution of other civil society organizations or any other relevant stakeholder (also non formal groups) that are working in the field even if not directly participating in the Programmes funded by the Government.

Comments on Assessments on THB Trends - Multiple Forms of Exploitation

The NREM's Report provides a proper and detailed analysis of the recent trends as it concerns the nationalities of the victims, the forms of exploitation and the geographical areas of the country involved. However, to support this analysis, it is recommended to focus more attention on the particular vulnerable conditions of migrants (women, men, unaccompanied minors) in some areas of the countries (especially Southern Italy), where different economic, social and cultural aspects of the society contribute to serious forms of exploitation interconnected with the trafficking phenomenon.

In Sicily in the last years, the living conditions of migrants in Campobello di Mazara, a Ragusa, Vittoria, Marina di Acate, Scoglitti, Alcamo, Paternò, Scordia, Bronte and Cassibile, are alarming: from 15 thousand to 20 thousand working for 3 thousand agriculture companies. These migrants are victims of labour exploitation, with no living conditions of dignity.

In Ragusa, a multiple form of exploitation – labour and sexual exploitation – has clearly emerged risking to involve many of the about 5.000 women of Romanian nationality irregularly working in the agricultural sector in Ragusa and surrounding areas.

Besides the work in the fields that can reach up to 16 hours a day, seven days a week, for a payment of 20/25 Euros a day, working in high temperatures and with chemicals, the Romanian women, are also obligated to have sexual intercourse with their bosses.

An article¹ published by two researchers following a field assessment implemented in March 2014, identify the main characteristics of the issue.

The coercive instruments used to exploit these women are based in their isolation from the local population and their lack of access to basic services like shopping, school, hospital or basic needs; the threat of being fired; having no access to water; not taking their children to school, not having right to accommodation or to prevent violence against their daughters.

Due to the exploitation and the non use of contraception methods, these women get often pregnant and have to undergo an abortion. Unfortunately, as mentioned before, these women have not an easy access to the hospital, so they sometimes tend to do the abortion on their own, since also the doctors tend to refuse to do the abortions.

This is the reality of around 5000 Romanian women that live in the fields of Ragusa, suffering not only labour exploitation, but also sexual exploitation. Until now, three associations support these women: Proxima, FLAI/CGIL and Doctors without Borders, with a van that can go around these fields to support the women, especially at a health level and to take them in order to shop. Otherwise, migrants would have to appeal to the local bosses or other exploiters to go to the town for about 15 Euros. However, at the moment these associations are without funding to proceed with their work and activities of assistance.

Last year, in September 2014, after an Espresso's article² appeared on the matter, the authorities went to the fields to speak with the farmers. However, the intervention hasn't brought a change, since the farmers denied the multiple exploitation and the authorities seem not to have taken adequate measures to face the situation. The local mayor has met the researchers as well as the associations working with the victims, yet the mayor underlined the difficulties to intervene in the agricultural sector, the main source of income for Ragusa population. At this point, the local associations have no funding in providing services to these immigrants, and therefore, this situation continues and does not change. Furthermore, we want to underline also the danger represented by reducing fiscal and labour law controls in such an important economic area such as the one of the Ragusa Province, resulting in the violation of fundamental rights of many Romanian women and their children.

Comments on Assessment on THB Trends - Trafficking and Asylum Seekers

The NREM's Report highlights the growing attention on the relation existing between trafficking and asylum pathways, since many persons victims of trafficking in fact prefer to ask for asylum procedures instead of applying for the programs of assistance created to support trafficking victims.

¹ A. Sciarba, L. Palumbo "Le donne nelle Serre", pubblicato su www.meltingpot.org, 2014.

² A. Mangano, "Violentate nel Silenzio dei Campi a Ragusa.." L'Espresso, 15th September 2014

This trend needs to increase the capacities of both public and private stakeholders working in reception and assistance centres and services (CARA, CPSA, SPRAR, social services of local municipalities, etc.).

The staff or volunteers of these institutions and structures need to be trained on trafficking in human beings identification and especially to prevent that they end up to be exploited by well-structured or semi-structured organized groups - apart from the capacities of these migrants to achieve asylum recognition.

Particular attention needs the episodes of prostitution of women of Sub Saharan origin (especially Nigerian), providing sexual services inside or immediately outside CARA buildings.

At Mineo's CARA, some sources³ of information report a large practice of forced prostitution and exploitation affecting women hosted at the centres and practiced by semi-structured groups of migrants with the complicity and/or participation of Italian persons – even the staff of the centres.

Positive steps have been undertaken with the introduction of an expert to support the Territorial Commissions responsible for examining the applications for the recognition of refugee status. The activity of these experts in the different territorial commissions should be monitored with the support of civil society organizations having experience in the field. So far, the experience on the field seems to suggest that the expert is not able to recognize trafficking victims among asylum seekers while it is very important to identify them in this situation. This good practice needs to be further monitored and supported.

Comments on Assistance and Support Including Protection

Notwithstanding the important results reached thanks to the support of the Programmes of Long Term Assistance and Social Inclusion, we want to focus the attention on the limited duration of the assistance measures. If the limited duration of these Programmes should be related to the importance of stimulating victims to become self-independent following the rehabilitation period, it is true that most of the time the support is provided for a time that is not sufficient for the victims to overcome the difficulties and effectively socially be integrated into society.

The Long Term Assistance and Social Inclusion measures should be more flexible to respond to the individual needs of the victims trying to identify some measures more functional to allow the victims to undertake a new life free from any form of exploitation.

Furthermore, the Temporary Programme of Assistance (the so-called “Art. 13”) and the Long Term Assistance and Social Inclusion (“Art. 18”), as stated in the NREM's Report should be integrated into a single programme. In order to be more effective the financial

³ A. Ziniti, “La Vergogna al Cara di Mineo: Costrette a prostituirsi per 5 Euro”, 24th December 2013.

resources allocated to this programme should be organized in a 3-year programme instead of an annual programme of assistance.