

TRAFFICKING IN PERSONS: VICTIM ASSISTANCE AND PROTECTION IN ITALIAN CRIMINAL PROCEEDINGS

It is widely recognized that the main purpose of the criminal justice system does not lie exclusively in punishing offenders, but above all and primarily, in respecting and restoring the human rights, dignity and needs of victims of crime. ¹

Bearing in mind that criminal procedural law and human rights protection are closely interdependent and reinforce each other, ² when responding to trafficking in persons within the criminal justice system, it is crucial to have the best interests of the trafficked victims ³ at the forefront of all efforts to prevent and combat trafficking.

A victim-centred criminal justice approach to trafficking is most effective in terms of achieving a successful prosecution of the traffickers and supporting the human rights of the trafficked victims. Indeed, without access to protection and concrete assistance provisions, trafficked victims may not develop sufficient trust to cooperate with law enforcement personnel in their investigations activities and to effectively participate in the criminal justice process. Additionally, since without evidence and testimony from trafficked victims it is often difficult to prosecute the traffickers with full effect, ensuring the right to be heard and to participate in criminal proceedings (as a victim and/or a witness) is crucial for both reducing victim's vulnerability and effectively prosecuting traffickers.

Rights, support and protection of trafficked persons. The overall legal framework.

At the international level, the rights of the victims of trafficking in criminal proceedings are defined in the 2000 UN Convention on Transnational Organized Crime ⁴ supplemented by the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Those recognized rights are additional and correlative to those affirmed in the non-binding General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. ⁵

At the European level, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings takes a "human rights-based approach" to the issue, explicitly highlighting the importance of protecting the rights of the victims while designing a comprehensive framework for their protection and assistance as victims and witnesses. Accordingly, the Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, which has replaced the Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings, ⁶ prioritizes the protection of victims over the punishing perspective, explicitly supporting the adoption of an "integrated, holistic and human rights approach to the fight against trafficking in human beings." ⁷ With particular regard to the rights of victims and witnesses in criminal proceedings, those provisions need to be combined with the more recent minimum standards on the rights, support and protection of victims of crime in general, as set out in the Directive 2012/29/EU.

This comprehensive approach shows a new widespread awareness of the needs of victims of crime. More specifically, it takes in due consideration the complexity of victimization in the phenomenon of trafficking.

Italian legislation and the actual legal framework. Major challenges and persistent issues.

In this scenario, Italian substantive/procedural model appears extremely progressive and innovative with respect to both assistance and protection of victims.

In accordance with Article 600 of the Italian penal code - recently rewritten in order to reflect the wide definition of human trafficking provided by both the UN Trafficking Protocol and the European Directive

2011/36/EU - the Italian substantive criminal law provisions defines the victim of human trafficking as a person reduced or maintained in a state of continued subjection, forced into labour, sexual services, begging or exploitation of criminal activities. Nevertheless, it has to be noted that despite the comprehensive legal framework on trafficking in human beings, the Italian anti-trafficking efforts and policies focus on the sexual exploitation of women with minor attention paid to the growing trend of trafficking for labour exploitation.

Assistance provisions. Temporary residence and long-term assistance programme

Of great importance is Article 18 of the Legislative Decree n. 286/1998 (Italian Immigration Act) which provides victims of severe exploitation with a six-month temporary residence permit for humanitarian reasons. More specifically, the temporary permit applies to foreigners in situations of abuse or severe exploitation where their safety is seen to be endangered as a result of trying to escape from the situation or as a consequence of pursuing criminal action against the traffickers.

According to the Italian law, registered NGOs, associations and law enforcement authorities are in charge of identifying victims of trafficking. However, considering that a correct identification of victims is a prerequisite toward safeguarding their rights, it is crucial to harmonize the existing local guidelines by homogeneously defining a formal identification procedure. Additionally, in order to effectively address victims' needs, it is truly important to build institutional capacities as well as provide social workers and relevant law enforcement officials – especially from Identification and Expulsion Centres (CIEs) – with adequate training on trafficking in persons. 9

In order to obtain the above-mentioned residence permit, victims identified are required to participate in a programme for assistance and social reintegration managed and financed by the Italian Department for Equal Opportunities. The social integration projects within this programme (including accommodation, educational activities, health-care services, language courses, training) are conducted by registered civil society organizations (CSOs) which are selected through the governmental calls process.

Art. 18 envisages two alternative channels for obtaining a temporary permit: a judicial procedure (“judicial path”) activated by a public prosecutor which entails cooperation with competent authorities in criminal investigations and a risk assessment of victims' vulnerabilities made by local authorities, accredited CSOs or NGOs (“social path”).

Although the temporary permit does not depend on victims' capacity or willingness to collaborate with law enforcement authorities, it was reported that projects under art. 18 help increase victims' cooperation during investigations. Indeed, social assistance projects and long-term residence permits contribute to build trust in law enforcement and local authorities, and strongly encourage judicial cooperation. 10

This approach prioritizes victims' rights per se over the interests of prosecutors. However, it was observed that more restrictive immigration policies as well as the recent introduction of the Security Package (Law n. 94/2009) – which define and punish the crime of illegal entry and stay in the State's territory – have forced several victims to choose between remaining exploited or facing the prospect of being criminalized, put in detention or deported.

In-court protection. Victims support and rights in Italian criminal proceedings

Bearing in mind that trafficked victims often face a secondary victimization during investigations and criminal trials, a comprehensive rights-based approach is required to effectively address their needs as victims and witnesses.

In order to prevent secondary victimization or trauma during the criminal proceedings, Italian criminal procedure system envisages the institution of a special evidence pre-trial hearing 11 (the so called *incidente probatorio*): 12 a closed hearing can be requested during the pre-trial investigation (whether by the victim or the prosecutor) which follows the same rules of the trial phase. This closed hearing is generally used in cases where evidence may be compromised as well as in cases where witnesses may be convinced not to testify, or

if there is a risk of them leaving the country before the trial starts.

In trafficking cases, this pre-trial hearing can be requested without producing causes of non-adjudgment or non-renewability as a standard practice aimed at reducing the secondary victimization as well as preventing the risk of a time-lag between the application of assistance programmes and the trial.

Conclusions

Although the Italian legal framework on trafficking represents a very comprehensive and progressive model, many institutional inadequacies still persist. The late adoption of a National Plan Against Trafficking 14 (2016-2018) aimed at providing clear national identification guidelines, administrative tools and protocols as well as the inadequate implementation of Directive 2011/36/EU represents a persistent concern in correctly addressing the trafficking issue following an approach based on the principles of human rights protection and victims of crime support.

Footnotes

1. Jeannette Kloetzer, Deputy Head of the OSCE Centre in Astana, Two-day OSCE-organized training seminar for judges on good legislative and judicial practices to combat trafficking in human-beings, 29 November 2011. See <http://www.osce.org/astana/85448>.
2. Kristina Touzenis, *Trafficking in Human Beings. Human rights and transnational criminal law, developments in law and practices*, UNESCO, 2010, p. 59.
3. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omission that are in violation of criminal laws operative within Members States, including those laws proscribing criminal abuse of power". Item A.6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations A/RES/40/34, 29 November 1985. See, inter alia, M. C. Bassiouni, *Declaration of basic principles for victims and abuse of power, in The protection of collective victims*, Paris, 1988.
4. UN General Assembly, *UN Convention on Transnational Organized Crime* - <https://www.unodc.org/>
5. UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34, 29 November 1985. <http://www.un.org/>
6. § 12 of the preamble to Directive 2011/36/EU.
7. *Ibid*, 7.
8. The residence permits is renewable for one year and can be converted into study or work permits if the official requirements occur.
9. Letizia Palumbo, *Protection of trafficked people in Italy: policies, limits and challenges*, *Journal of Money Laundering Control*, Vol. 18, 1, 2015, p. 56.
10. Joy Ezeilo, *Report of the Special Rapporteur on trafficking in persons especially women and children. Mission to Italy*, United Nations Human Rights Council, 2014, p. 16.
11. Art. 392, Italian Code of Criminal Procedure.
12. Art. 392, Italian Code of Criminal Procedure.
13. See Art. 392, 1-bis Italian Code of Criminal Procedure, amended by Law 172/2012.
14. *Primo Piano nazionale d'azione contro la tratta e il grave sfruttamento degli esseri umani (covering the period 2016-2018)*, adopted on 26 February 2016. <http://www.pariopportunita.gov.it/index.php/>

The author

Alessia Lo Conte holds a MA in Law, with honors, from the University of Salerno with a Master thesis focusing on Victims Rights within the Italian Judicial System. She served as an honorary fellow at the Department of Legal Studies of the University of Salerno, and since 2015 she works for UNICRI.