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Main instruments of judicial cooperation to cope with human trafficking: the experience of Italy through the analysis of relevant cases regarding women victims of sexual exploitation and begging.

1. Italy's context: some data²

¹ Differenza Donna (hereinafter DD) is a feminist organization of women based in Rome, Italy which since 1989 pursues the aim to fight, prevent and overcome all forms of violence against women. Since 2010 DD is part of WAVE-Women Against Violence Europe, the European network of NGO's aiming to combat Gender Based Violence and promote women's rights. DD is also part, since 2015, of the Platform for Cooperation on Undocumented Migrants (PICUM). DD was granted special consultative Status by ECOSOC in 2016 and is active on both a national and international level, running women's shelters and several help-desks which target survivors of all forms of GBV, including THB for sexual exploitation. Since 1992, when the first Italian central-south shelter for women victims of gender violence was established in Rome, the "Anti-violence shelter of Rome's Province," DD has received more than 30.000 women of which 50% migrants and asylum seekers and more than 1000 women survivors of human trafficking. Since 2013, through the activities carried out within the EU-funded project "GenderRIS: the gender dimension in anti-trafficking policies and prevention activities in Romania, Italy and Spain", DD cooperates with territorial commissions for international protection in order to strengthen the capacity of operators to detect indicators of trafficking and exploitation among asylum seekers.

² GRETA, 2019, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy SECOND EVALUATION ROUND

The last Greta report on Italy of 2019 stated that there is no data on the number of THB victims due to the absence of a uniform identification system.

However, the Department of Equal Opportunities (DEO) has processed the number of victims of THB who benefit annually from the assistance, protection and social integration programmes. According to these statistics, in 2019 there were:

- 1 172 assisted victims in 2016, the majority of them being female (954, or 81.4%);
- 206 male and 12 transgender victims.
- Adults constituted 90.5% of the assisted victims (1 061) and
- children 9.5% (111).

The main countries of origin of the assisted victims in 2019 were:

Nigeria (696 persons, or 59.4% of the total),

Romania (7%),

Morocco (5.3%)

Albania (3.6%)

As regards the forms of exploitation, the majority of the assisted victims were subjected to

sexual exploitation (674 persons, or 57.5%),

but there were also cases of **labour exploitation** (92),

forced criminality (37),

forced begging (15),

forced marriage (1)

as well as multiple exploitation (72).

The remainder of the cases are designated as “other”, which refers to persons **intended for exploitation** (220) or “**smuggling**” (61).

In addition to the persons assisted through projects funded by the DEO, a number of presumed victims of trafficking who seek asylum are accommodated in facilities run by the System for the protection of asylum seekers and refugees (SPRAR).

Due to its geographical situation, Italy has been at the forefront of the arrival of a massive number of asylum seekers and migrants.

Some 154 000 migrants and asylum seekers arrived in Italy by sea in 2015, via the so-called Central Mediterranean route, 181 463 in 2016, 119 369 in 2017, and 21 024 in the first nine months of 2018.

The refugee protection crisis creates new opportunities for traffickers and

exploiters.

The number of unaccompanied or separated children arriving in Italy (some 12 360 in 2015, 25 800 in 2016, 15 000 in 2017) and the shortage of places in reception and accommodation facilities for children create additional risks of trafficking and exploitation.

The number of women who apply for international protection and are either vulnerable to THB or already in the process of being trafficked has significantly increased.

IOM estimates that more than 80% of the **Nigerian women** and girls arriving in Italy are likely to be victims of trafficking for sexual exploitation in Italy or in other countries of the European Union (EU).

The UN Committee on the Elimination of Discrimination against Women (CEDAW) has expressed concern about **the prevalence of trafficking in women and girls in Italy and their subsequent forced prostitution, especially in the context of migration flows.**

Many African victims are young Nigerian women from Lagos and Benin City. They are exploited by Nigerian criminal groups able to control all the phases of the criminal process. The intercontinental movement of victims is carried out by land after long journeys across the desert.

Victims pass through Libya and arrive in Sicily, in Lampedusa helped by Lyberian criminal groups.

The recruitment of the victims is carried out using different strategies: violence, threats, deceit or, in case of Nigerian victims, establishing of a relationship between madams and victims based on a debt and voodoo rituals. In some cases women are aware of what they are going to do in Italy, namely that they will be involved in the prostitution market. However, they do not know the exploitation conditions under which they will be forced to work.

THB for labour exploitation is very difficult to be detected for some important reasons. The first one is that there is an overlapping between this crime and illegal immigration flows. Indeed, the condition of illegality lived by many migrants causes a vulnerability that facilitates their involvement in irregular jobs or in black labour market

According to the “Servizio di Analisi Criminale”, the number of underage children involved in begging in Italy has increased and their activity seems to be managed by criminal organizations. The existing literature

underlines that it is an “ethnic” kind of exploitation in which almost exclusively underage children from former Yugoslavia and Romania are involved. Recently, also North African children, mainly from Morocco, are forced to beg by some exploiters. The victims are often under 14 years old and have very low levels of education. Children with physical impairments are preferred since people are moved with pity and give them a hand-out.

2. Italian legislation

1) PROSECUTION

the Italian legislator considers THB as a unique process divisible in two phases (trafficking and exploitation), respectively disciplined in Articles 601 and 602, and in Article 600 of the Italian criminal code.

Art. 600 c.p. Reducing to and keeping in slavery or servitude

Whoever exercises, on another person, powers equivalent to property rights or who reduces to or keeps another person in a position of persistent subjugation, forcing him/her to work or furnish sexual services or to beg, or any type of activity that implies his/her exploitation, shall be punished with imprisonment for a period between eight and twenty years. Reduction to or maintenance in subjection occurs when the conduct is carried out with violence, threat, deceit, abuse of authority, or by profiting from a situation of physical or psychological inferiority or a situation of necessity, with the promise or payment of money or other advantages to whomever has power over the person.

Art. 601 c.p. trafficking in persons

Whoever traffics a person who is in the conditions envisaged by Article 600 or with the purpose of committing the offences outlined in the same article, induces by deceit or forces by means of violence, threats or abuse of authority or by taking advantage of a situation of psychological inferiority or a situation of necessity, or by promising money or other benefits to the person with power over the victim to enter, stay within, or exit from the national territory or to move within it, shall be punished with imprisonment for a period between eight and twenty years.

Article 602 slave trading crime

Whoever, apart from the cases indicated in the Article 601, acquires or sells a person who is in one of the situations envisaged by Article 600

shall be punished with imprisonment for a period between eight and twenty years.

Article 12 of the Legislative Decree 25 July 1998 no. 286 (the consolidated text on immigration)_ Smuggling

Any person who facilitates the illegal entry of others into the country against the dispositions of the Italian immigration law shall be punished with imprisonment for up to 3 years, and with a fine of up to 15,493.71 euros (30 million Lire) for each person illegally introduced into the country.

Law 75/1958, “Abolition of the prostitution regulation and fight against other people’s prostitution exploitation _ crimes connected to prostitution those who facilitate or induce someone into prostitution, who move a person to involve her/him into prostitution, and who recruit people to engage them in prostitution are punishable. The penalty fixed is from 2 to 6 years

2) PROTECTION

Article 18 of the Immigration Law

This article guarantees a temporary stay permit to the foreign victims. The aim is to help them escaping from the influence of the criminal organization and participating in assistance and integration programs The residence permit lasts six months and can be renewed for one year. It can be converted into a study or work permit if the official requirements are met.

In order to obtain the residence permit, **two alternatives exist**: the so-called social and legal binaries. The first one refers to the victim asking for help and protection to social services or to a NGO.

The second one refers to the declarations made by the victim to the law enforcement agencies or to legal authorities during a criminal proceeding in which emerges that he/she is in an exploitation condition.

The legal binary is activated by the public prosecutor who confirms the danger and the relevance of the declarations of the victim in the criminal proceeding.

Victims could potentially entry in the protection programs without necessarily denouncing their traffickers because the protection is considered a right independently from their judicial collaboration.

The victims included in the protection programs are accommodated in a temporary safe shelter where they can receive immediate adequate medical and psychological assistance. Then they are transferred into another long-term accommodation and they can have access to training

courses, labour market and other instruments to carry out a regular integration. This process is very tricky because the victim has to learn skills and relational models. The passage from illegal to legal working conditions and the responsibilities deriving from this are very delicate. Victims have to receive help and support throughout the change process. The social programs are an important tool to restore victims' strength and to get back their autonomy.

ART. 18 BIS Immigration Law: foreign victims of domestic violence

It provides that the foreign victim of domestic violence in Italy can request a special permit to stay under these conditions:

- 1) authorities have to know the existence of the situation of violence (such as family abuse and mistreatments, personal injury, kidnapping, sexual violence and stalking) or because a criminal proceeding has started or the situation of violence emerges during police operations;
- 2) the permit is granted by the immigration authorities, upon consent of the public prosecutor who is overseeing the individual woman's case.³

Statuses foreseen

Legislative Decree 251/2009 transposing the Directive 2002/83/CE recognized two forms of international protection: status of refugee and subsidiary protection.

The status of refugee is issued to persons fleeing from persecution on grounds of race, religion, nationality, social group or political beliefs. This permit lasts five years and it can then be either renewed or converted in a permit for work reasons. It grants a wide variety of rights, such as the right to being reunited with family members, the right to travel and to work, just like Italian citizens.

The subsidiary protection is granted to a citizen not belonging to the European Union, or stateless person that does not have the requirements to be recognized as a refugee, but with regard to which there are founded reasons to consider that if he or she returns to the Country of origin, or in the Country in which he or she habitually resided, would effectively risk serious injury, and cannot or does not want, due to this risk, to benefit from the protection of said country.

Legislative decree n. 113/2018 (decree "Salvini") abolished the "humanitarian" status of protection.

³ We have noticed that when women ask for the permit under art. 18 bis within the criminal procedure, then, it spreads the bias of the falsehood of the denounce considered it to be just an instrumental to obtain the permit.

Legislative Decree No. 18/2014 of 21 February 2014 transposed into national law Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

Further, Legislative Decree No. 142/2015 (in force since 30 September 2015) transposed Directive 2013/33/EU on minimum standards for the reception of asylum applicants and Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection. In addition, Presidential Decree No. 21/2015 on “Regulation on the procedures for the recognition and revocation of international protection” contains provisions aimed to clarify the different stages of the asylum procedure.

The procedure before the territorial commissions

Territorial Commissions for the Recognition of International Protection (CTRPI) and Sub-commissions are the authorities competent to examine the asylum application and to take first instance decisions.

Pursuant to Legislative Decree No. 142/2015, Territorial Commissions for the Recognition of International Protection have to interview the applicant within 30 days after receiving the application and decide in the three following working days.

Detained applicants who appeal against the rejection decision by the Territorial Commission remain in the administrative detention facility until the adoption of an order from the competent court suspending the expulsion order and as long as they are authorized to remain on the national territory as a consequence of the lodged appeal.

Procedure of appeal

The Procedure Decree provides for the possibility for the asylum seeker to appeal before the competent Civil Tribunal (a judicial body) against a decision issued by the Territorial Commissions rejecting the application, granting subsidiary protection instead of refugee status or requesting the issuance of a residence permit on humanitarian grounds instead of granting international protection.

The first appeal has automatic suspensive effect. The court must issue a non-appealable decision granting or refusing suspensive effect within 5 days.

The Tribunal can either reject the appeal or grant international protection

to the asylum seeker.

The Law 46/2017 (decreto Minniti) abolished the possibility to appeal the Civil Tribunal decisions on international protection before the Court of Appeal.

Furthermore, it excluded the personal comparison of asylum seekers before the civil Tribunals and abolished the second degree of appeal.

The act has sparked strong reactions from NGO and even from some magistrates since it drastically reduces the judicial protection of asylum seekers.

Identification and referral procedure

There is no procedure defined in law for the identification of vulnerable persons. However, the Ministry of Health published guidelines for assistance, rehabilitation and treatment of psychological disorders of beneficiaries of international protection victims of torture, rape or other serious forms of psychological, physical or sexual violence. The guidelines highlight the importance of multidisciplinary teams and synergies between local health services and all actors coming into contact with asylum seekers.

In 2017 UNHCR published detailed guidelines for the Local Commissions on the identification of victims of trafficking among applicants for international protection and the referral mechanism.

The Tribunal of Rome also has adopted a Protocol with representatives of NGO's stating specific guidelines to identify victims of trafficking.

Where during the examination procedure, well-founded reasons arise to believe the applicant has been a victim of trafficking, the Territorial Commissions may suspend the procedure and inform the Questura, the Prosecutor's office or NGOs providing assistance to victims of human trafficking thereof. LD 24/2014, adopted in March 2014 for the transposition of the Anti-Trafficking Directive, foresees that a referral mechanism should be put in place in order to coordinate the two protection mechanisms established for victims of trafficking.

The Reception Decree clarifies that trafficked asylum seekers shall be channeled into a special project of social assistance and integration.

3. Critical issues

The identification of THB victims is the main critical issue hampering the prosecution of crimes of trafficking because of many factors, such as:

- the lack of formal procedures at national level able to help front-line responders in identifying victims (the quality of this process changes from region to region because arrangements exist only at local level);
- the application of the anti-immigration security laws to the “illegal” migrants comport fines and their expulsion from Italy and it happens very often without an adequate check to identify trafficking victims among the illegal migrants

It is hard to convict traffickers by Italian THB regulations because of:

- the high costs of investigations;
- the long proceedings that require time and resources;
- the difficulties in collecting effective evidence able to ascertain the commission of crimes mentioned in Article 600 (Reducing to and keeping in slavery or servitude), Article 601 (Trafficking in persons) and Article 602 (Reducing into slavery) of the Italian Penal Code;

Many behaviors ascribable “reduction into slavery” are not prosecuted as such because the concession of limited freedom to the victims negates the application of the corresponding Article of the Penal Code (Article 600). Therefore, these behaviours are declassified into minor crimes with a reduced penalty. In order to provide an example, the legislation applied when cases of sex trafficking happen refers mainly to the Law 75/1958, “Abolition of the prostitution regulation and fight against other people’s prostitution exploitation”, that punishes sexual exploitation of people. This means that often only the final phase of the THB process, exploitation, is investigated and prosecuted.

- the lack of training of the police officers, especially of the custom police. Their role could be fundamental in recognizing particular THB indicators that can be important wake-up calls.

The existing judicial cases are mainly focused on sexual exploitation

being a more evident and morally condemned offence. Labour exploitation remains often a hidden phenomenon

5. Judicial Cooperation

Judicial cooperation is essential in order to contrast trafficking; an effective cooperation could help to improve some critical issues also at the nation level regarding the identification of victims, their protection and assistance and the prosecution of perpetrators.

THB is a transnational crime and its fight to be effective should be transnational as well, namely based on the cooperation among law enforcement agencies of different countries. Since the judicial cooperation is limited and, in many cases, problematic, the number of THB investigations is reduced.

Main point of judicial cooperation are:

- good legal framework's harmonization;
- exchange of information;
- common team for investigation;
- protection of victims.

Unfortunately judicial cooperation is not effective.

First of all, a common point of reference is missing: there is no European body in charge of collecting information, create a common database regarding victims and investigations

The cooperation between police forces and both national and international NGOs is not effective.

There is not a common platform regarding strategies of prevention measures, for example, in order to discourage the demand of prostitution through education and training at European level.

The role of Interpol or Eurojust should be implemented and NGO's and civil society organization working with the victims should be able to send direct requests to such European bodies for the protection of victims or for collecting relevant information useful for the asylum procedure.

Moreover, specific instruments to ensure an effective cooperation among countries where THB is a major issue should be envisaged. They could be bilateral agreements among origin and destination countries.

Cooperation among European NGOs should be promoted, by creating and

financing a European a permanent platform which could help in exchanging information or find shelter/accommodation to THB victims.

6. CASES

FIRST CASE

It deals with the story of a Nigerian woman, from Benin City, from edo ethnicity, Jehovah's Witness.

When she was 15 she moved to another city, Kano, because she has been sold by her father to a Muslim gay who became her husband.

Her husband tried to convert her to the Muslim religion by violence: he has raped her daily and segregated her at home.

She couldn't denounce the man because local law legitimated his behaviours since she was considered her husband's property.

She finally managed to escape and to reach Benin City where she met a woman who took her to Europe by paying 50.000 dollars.

She made a special oath as to be obliged to return all the money. She leaved from Senegal to Portugal and then to France and finally to Italy by train.

She has been obliged to work as prostitute in order to pay the 50.000 dollars.

She met a gay and went with him to Spain; then, her partner obliged her to work as prostitute in Italy again because of their severe economic problems. She became pregnant and was abandoned by her partner. From this moment she continued to work as a prostitute in Rome, Catania, Naples. She was afraid that social service could separate her from her daughter and decided to send her daughter to Nigeria with the help of a friend.

She then went first to Sweden to start a new life and asked for the refugee status which has been denied; then she went to France where she asked for the refugee status again which has been denied.

She went back to Sweden and she had been repatriated to Nigeria where she has been put in prison because, by leaving her husband, she was considered a criminal. In prison she has been tortured. She managed to escape thanks to an uncle and reached Libya. After one month of prison she managed to reach the Italian costs. In Italy she asked again for the refugee status claiming that in case of return to Nigeria, she would be arrested again because considered a criminal as she left her husband.

The refugee status has been denied from the territorial commission as they considered her statements too vague.

We submitted an appeal before the Italian tribunal to challenge the denial.

This case it is representative of the route through different European countries carried out by many THB victims, but there isn't any exchange of information between State's authorities, neither a common database which could check the different steps of the asylum seeker.

SECOND CASE

This case is related to a Romanian woman.

Despite this is not a third-country national victim's case, there are some interesting aspects regarding judicial cooperation.

This woman is of Roma ethnicity, she comes from a small village in Romania of a very traditional Roma people's community.

She has been sold by her father to her husband's family when she was 15. Since she moved to her husband's family, she became their property. She had just to do what they want.

She had two children and, when the last one was just two months, she has been obliged to go to Italy with her husband, her father in law and her husband's grandmother and forced to begging.

When she did not bring a big amount of money, she was beaten; she has been raped by her husband and she has been threatened with death every day.

She managed to escape thanks to the help of two women, two sandwich shop's owners, who could see the woman every day begging at the corner of their shop's street.

They helped her to contact the police station; she has been brought to another city in a shelter because her life was at risk. All the Roma community that was in Italy started to look for her.

After her denounce, the perpetrators (her husband and his relatives) went to prison and they have been persecuted with the accused of Reducing to and keeping in slavery – art. 600 of Italian criminal code - .

The victim has made a successful path to integration: she has started to learn to read and write (because she was an illiterate), and she has actively participated to all the projects suggested by our association in order to find a job. However, her priority was to bring his children to Italy with her.

The Italian Judicial Authority did not help us in doing this. They did not take any contact with the Romanian Authority in order to facilitate the reunification between mother and children.

The Romania embassy did not reply to our requests; they did not receive Italian citizens in their embassy. Just after two years, the Romania Embassy took the case; now the victim is in a shelter in Romania and we hope she could come back with their children in Italy as soon as possible.