

THE LEGAL DEFENCE OF VICTIMS OF TRAFFICKING LEGISLATIVE AND JURISDICTIONAL PROBLEMS AND GAPS

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ABSTRACT: *Although in the last 10 years in Italy there has been a greater sensitivity by the legislature to the trafficking, including in relation to international commitments such as the Palermo Protocol, there are still difficulties and deficiencies in affording effective jurisdictional protection for victims of this shameful social phenomenon.*

Italy has started to pay a sensitive normative attention to the defence of the victims of trafficking through the art. 18 of the DLvo 286/98I that stipulates the concession of a residence permit for social protection to the people that are subject to trafficking, as well as the possibility to be inserted in programs of assistance and social integration. The aforesaid norm has allowed starting an experience that doesn't have comparisons in Europe. There is rather a protection of individual rights, which is unconditional, at least in the first stage. This is the so called "Social path", which allows the trafficked person to seek help from an association, before and independently by a complaint.

The following Law 228/2003 was subsequently incorporated into a path already started four years earlier with the aforesaid Law of 1998 and it should have addressed the problems that had not been handled. The law protects victims of trafficking. In particular it envisaged the establishment of a special assistance program for victims of crimes under Articles 600 ("reduction or maintenance in slavery or servitude"), 601 ("Trafficking in persons") and 602 ("Purchase and sale slave") of the Italian Penal Code. Victims of exploitation are guaranteed assistance and hospitality.

Moreover, the law has radically changed the definition of slavery under Att. 600 Italian Criminal Code, indicating behaviour similar to it or reducing to servitude. It is a rule intended to have a particularly wide scope for punishing behaviour of exploitation in general or in particular the induction and exploitation of prostitution, work performance in conditions of complete subjugation and exploitation of employees against the employer.

The original concept of slavery has been extended to include the existence of a network and thus slavery is made not only through violence, threats and deception, but also abuse of authority or profiting from a situation of need, both in order to obtain sexual services, both for the use of a person for specific job performance, or for begging.

However there are still debates and open problems. It's important and necessary to incriminate and tougher penalties to be applied for the crime of trafficking in humans, which involves the violation of basic human rights. We must underline that the crime of slavery was only applied in few cases, especially when people had minor injuries. In most trials relating to such crimes the sentences included milder penalties.

Also, one should ensure that the criminal action does not result in an additional stress factor and victimization resulting from inadequate methods of conducting the procedure by those authorities - police and judicial - which should guarantee the rights of individuals harmed by the offence (known as secondary victimization).

Special investigation is required for activities on different levels of trafficking, such as trafficking of babies or children to be allocated to begging or forced labour, or domestic servitude.

But within a European approach to the problem, we cannot speak only of the gaps of national legislation. All must be framed in the broader dimension of cooperation. It's important the value of events such as the Protocol between Italy and Romania, signed in Bucharest on July 9 of 2008, which is the source of some transnational cooperation in the areas of intervention of the European Social Fund for the coordination of measures designed to promote the social inclusion of trafficked funded ESF, such as the strategic project "Integrating market labour trafficking victims. We need to promote a strengthening of international cooperation between higher institutions and civil society in the countries mostly involved in this terrible practice.

KEYWORDS: *human trafficking, victims, legal process, guaranteed assistance.*

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