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Revictimization of Human Trafficking Victims: The Absence of Effective Remedy in the Implementation of Italian Anti-Trafficking Legislation

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Alla mia famiglia e a Davide

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Abstract

Human trafficking remains a pressing human rights concern, particularly when victims face revictimization due to a flawed implementation of existing norms. This thesis examines the effectiveness of Italian anti-trafficking legislation, highlighting the absence of effective remedy for trafficking victims. After briefly discussing the present legislative framework, the dissertation identifies three critical aspects: the lengthy duration of trials and its implications on prosecutorial discretion; the challenges encountered during the *incidente probatorio* procedure; and the lack of the non-punishable clause in the Italian legal system. Each of these aspects is analyzed in relation its corresponding human rights implications, supported by case studies. By combining GRETA's and ASGI's considerations, European human rights jurisprudence, and the expertise of field experts, the research identifies systemic failures that contribute to re-victimization, in the form of secondary victimization, state complicity to trafficking, and barriers to access justice. The study concludes with the consideration that Italy should ensure a comprehensive protection for trafficking victims, by either concretely implementing existing legislation or undertaking legal reforms, in compliance with a human rights and victim-centered approach. This is pivotal given the inherent condition of vulnerability of THB victims, and the recognition that the lack of effective remedy not only violates international legal standards, but also renders jurisdictional laws illusory and merely symbolic.



Introduction

Human trafficking is a complex and pervasive global crime which manifests in various forms, including, *inter alia*, sexual exploitation, forced labor, forced criminality, domestic servitude, and organ trafficking. The United Nations defines trafficking in persons under the Palermo Protocol annexed to the United Nations Convention against Transnational Organized Crime, emphasizing the need to protect victims, prosecute offenders, and eradicate the phenomenon. Despite significant international legal frameworks aimed at combating human trafficking, the crime persists due to factors such as poverty, political instability, corruption, and demand for cheap labor and commercial sexual services. Victims often come from marginalized backgrounds and are subjected to psychological and physical abuse by their traffickers, making their recovery and access to justice particularly difficult. Additionally, traffickers exploit legal loopholes and jurisdictional complexities to evade prosecution, further exacerbating the issue.

The international community has sought to implement measures to combat human trafficking effectively: starting from international legal standards, the majority of states and regional systems have adopted norms to contrast the phenomenon. However, challenges remain in their enforcement, risking to hamper victims' accessibility to remedies. Addressing human trafficking requires a multi-faceted and multi-level governance approach that aims at obtaining applicable legal frameworks. Only through sustained, concrete and coordinated efforts can the cycle of exploitation be disrupted, ensuring that victims receive the justice and protection they rightfully deserve.

The present thesis employs a comprehensive methodology that integrates both qualitative and quantitative approaches. Specifically, a combination of data analysis, examination of reports, conventions, and legislation, as well as interviews with field experts, has been utilized to ensure a thorough investigation.

The first chapter involves an examination of the existing legal framework at the Italian level, assessing the extent to which the country has transposed international legal instruments into its national legislation. In particular, we are referring to the UN Palermo Protocol, the 2005 Council of Europe Warsaw Convention and the 2011 and 2024 EU Anti-Trafficking Directives. The research also delved into the most relevant laws Italy introduced to fulfill its commitment to fight human trafficking, such as Law No.228/2003, Article 18 of the legislative decree 286/1998 and the Anti-Trafficking National Plan 2022-2025. Moreover, throughout the dissertation several articles of the Italian Penal Code and the Code of Criminal Procedure are examined in support of the arguments presented. The findings indicate that Italy has established a well-structured anti-trafficking legislative framework. In the same chapter, a section on the right to effective remedy has been included, as it is the focus of the research.

The subsequent step involved a detailed analysis of the 2024 Group of Experts on Action against Trafficking in Human Beings (GRETA) report. GRETA, composed of 15 experts, is responsible for monitoring member states' compliance with the Council of Europe Convention on Action against Trafficking in Human Beings (commonly referred to as the Warsaw Convention). The report identifies several gaps in the implementation of anti-trafficking legislation in Italy. Three key issues have been selected for further analysis due to their significance and potential human rights implications: the excessive duration of judicial proceedings in Italy (and how this impacts the discretionary power of the public prosecutor); the use of *incidente probatorio*; and the lack of a non-punishable clause in the Italian Penal Code.

Chapter 2 addresses the significant delays in proceedings, which are a primary issue involving the whole penal system in Italy, but it is especially problematic when it comes to human trafficking as will be explained. To cope with this situation, the Legislator has implemented several reforms regarding the power of public prosecutors and time limits

when conducting investigations. The operational mechanisms of prosecutorial discretion and recent changes have been analyzed in order to understand how public prosecutors prioritize certain cases over others, and how delays affect victims. The third GRETA evaluation report, along with the Association for Juridical Studies on Immigration (ASGI) evaluation report on the implementation of the Warsaw Convention, have been utilized to highlight major human rights implications concerning compensation, state complicity in human trafficking and the use of plea bargaining and fast-track trials.

Chapter 3 deals with the procedure of *incidente probatorio*, for which a similar methodology has been deployed. GRETA highlights the importance of utilizing this tool to avoid secondary victimization and to preserve the integrity of evidence obtained from the victim's testimony. This section examines the evolution of its application within the Italian legal system and its potential downsides, to later discuss how its implementation remains limited to cases handled by prosecutors specialized in human trafficking and the connected human rights implications.

Chapter 4 delves into the matter of non-punishability of victims. The chapter starts with a discussion about forced criminal activities with the support of data provided by the Numero Verde Anti-Tratta. The third GRETA evaluation report underscores Italy's failure to introduce an *ad hoc* clause according to Article 26 of the Warsaw Convention, which establishes the principle of non-punishment for victims of trafficking compelled to commit unlawful acts. Insights from the 2022 ASGI roundtable conference have been particularly instrumental in elucidating the legal implications of this omission. Experts at the conference discussed the potential consequences of this legislative gap and the adaptive measures adopted by Italian judges, who may invoke, *inter alia*, Article 54 of the Penal Code (*stato di necessità*) to address this issue. Here, unwillingness to testify and re-trafficking have emerged as two major concerns.

Each chapter includes a section that examines the human rights implications relevant to the topic at hand, and emphasizes the necessity of a victim-centered approach in all sectors combating THB. In fact, this thesis critically evaluates the judiciary and legal frameworks, particularly their operational practices, to highlight how they can significantly impact both direct victims—by influencing their access to compensation, justice, and protection from

secondary victimization for instance—and potential future victims, as ineffective case management may enable traffickers to continue their activities.

The whole research has involved a field expert, Dr. Giuseppina Di Bari, a socio-legal operator of the Anti-Trafficking Project Navigare in the Veneto region. Dr. Di Bari provided the documentation of the two case studies described in the thesis: they served as empirical examples to support the broader considerations identified in the stakeholder reports used as a starting point for the research. Her contributions facilitated access to additional interviews with another relevant expert, lawyer Orietta Baldovin, who is also the defense lawyer of the victim of the second case study. Furthermore, doctor Dario Fava, operator at Numero Verde Antitratta, and Gianfranco Della Valle, head of the Numero Verde Antitratta, have been essential to access the latest data available and key observations from their experience at the helpline. Data were useful to identify trends and patterns in trafficking cases in order to gain a realistic understanding of the current state of human trafficking within the Italian context, especially concerning forced criminality, which is an under-researched branch of THB. This methodological approach was adopted based on the premise that the direct and practical experience of professionals actively engaged in the field would offer valuable insights and significantly enhance the relevance of the analysis. Interviews have been conducted providing each participant with the informed consent form of the University of Padua.

In summary, this thesis employed a multi-faceted methodological approach to conduct a comprehensive analysis of Italy's response to human trafficking, with particular emphasis on the challenges identified by key stakeholders. Eventually, the study aims at demonstrating the existence of a persisting gap between legal provisions and their practical implementation, with a specific focus on the (in)capacity of the Italian penal system to deliver effective remedies.

1.1 Italian legislation to combat human trafficking

At both the international level and European Union levels, different legislative frameworks regulate human trafficking and Italy has significantly improved its legal framework throughout the years, introducing new laws to align with EU and international legal standards. The following section will summarize the most relevant legislation.

1.1.1 Transposed international legal instruments

Italy signed the United Nations (UN) Palermo Protocol, annexed to Convention against Transnational Organized Crime, in 2000 and ratified it through law n.146 of 2006.¹ The protocol defines human trafficking in a comprehensive manner in Article 3 as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services,

¹Italy. Parliament. (2006) Law no. 146 of 16 March 2006: Ratification and implementation of the United Nations Convention and Protocols against Transnational Organized Crime. Official Gazette of the Italian Republic, 11 April. Available at: [gazzettaufficiale](#)

slavery or practices similar to slavery, servitude or the removal of organs”.²

Two relevant instruments are the residence program for social protection motives and the national anti-trafficking legislation. Both operate under the Italian Department of Equal Opportunities (Dipartimento per le Pari Opportunità (DPO)), which allocates funding through an annual public call, known as "*Avviso*", for local authorities and Non-Governmental Organizations (NGOs).³ The first was instituted under article 18 of legislative decree 286/1998 and became operative in 2000. It allows victims to receive a temporary stay permit and take part in integration and assistance programs in order to escape the condition of exploitation. According to the law, there are two possible paths for victims: the social and the legal. In the first one, victims can ask for help from social services and NGOs; in the second case, the residence permit is granted after the victim reports their trafficker to the legal authorities and their situation of danger is confirmed. The innovative aspect consists in the introduction of the social path as it ensures that protection is an unconditional right granted to victims, rather than being contingent on their cooperation with the law enforcement. The protocol envisions that victims go through an interview where they are informed of the protection program. Afterwards, they are accompanied to a shelter to be later transferred to a long-term accommodation. The program foresees the provision of training courses and other instruments to allow them to integrate in society as well as the labour market.⁴

On the other hand, the national anti-trafficking legislation was enacted in 2003 with the approval of Law No. 228/2003 (called "Measures Against Trafficking in Human Beings"). A key aspect of this legislation was the establishment of a special assistance program for victims under Article 13, which builds upon the residence program for social protection motives introduced by the 1998 Immigration Law. In this case victims receive immediate assistance in terms of accommodation and healthcare for three months (and then for another three months if renewed). Law No.228/2003 also revised Article 600

²General Assembly resolution 55/25 (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. [online] OHCHR. Available at: [Palermo Protocol](#).

³Caneppele, S. and Mancuso, M. (2012). Are Protection Policies for Human Trafficking Victims Effective? An Analysis of the Italian Case. *European Journal on Criminal Policy and Research*, 19(3), pp.259–273. doi:<https://doi.org/10.1007/s10610-012-9188-9>

⁴ibidem

(which regulates the “reduction to or maintenance in slavery or servitude”)⁵, Article 601 (on human trafficking)⁶ and 602 (on “purchase and sale of slaves”)⁷ in order to adapt it to the evolving nature of the phenomenon of human trafficking and increase Italy’s abilities in fighting it.

In the present dissertation the following documents will be especially relevant. The European Union Directive of 2011, which has been transposed into the Italian legal system through Legislative Decree No. 24 in 2014. The country has time until 2026 to transpose the amended 2024 Directive, which is more comprehensive and updated than the previous directive following the transformation of Trafficking in Human Beings (THB). For instance, it extends the definition to the exploitation of surrogacy, forced marriage and illegal adoption.⁸ Moreover, Italy has transposed the 2005 Warsaw Convention of the Council of Europe in 2010 with law No. 108, and the “Victim Directive” 2012/29/EU with Legislative Decree No. 212 of 2015.⁹

1.1.2 Anti-Trafficking Plan (*Piano anti-tratta*)

The Anti-Trafficking Plan is structured around the four Ps: prevention, by reducing demand for trafficking; prosecution, by dismantling traffickers’ business models online and offline; protection, by supporting and empowering victims—particularly women, minors, and vulnerable groups; and partnership, by fostering international cooperation. This approach integrates gender-sensitive and human rights-based principles, aligning with national policies on gender equality and child protection. Furthermore, it emphasizes multi-level and multi-agency governance, engaging local authorities, the private sector, and civil society in a coordinated response to trafficking.¹⁰

A key component is the anti-trafficking Toll-Free Number (*Numero Verde*), which

⁵Italy. Parliament. (1930) Law no. 1398 of 26 October 1930: Provisions on Criminal Procedure. Official Gazette of the Italian Republic, 26 October. Available at: [gazzettaufficiale](#)

⁶ibidem

⁷Brocardi.it (n.d.) Article 602 - Criminal Code. Available at: [codicepenale](#)

⁸European Union. (2024) Directive (EU) 2024/1712 of the European Parliament and of the Council of 16 October 2024 on the protection of whistleblowers. Official Journal of the European Union. Available at: [eurlex](#)

⁹Italy. Department for Equal Opportunities. (2022) National Anti-Trafficking Action Plan 2022-2025. Available at: [gazzettaufficiale](#)

¹⁰ibidem

serves as a nationwide reference point for the regional projects combating human trafficking across Italy. This service is responsible for receiving calls, assessing and filtering requests, redirecting cases to relevant regional projects, coordinating victim assistance across networks, and monitoring case detection at the national level. Connected to this last point, the Toll-Free Number adopts the Computerized System for the Management of the Identification and Reception of Trafficked Persons (SIRIT) to collect data. Moreover, in collaboration with the DPO, since 2016 the Organization for Security and Co-operation in Europe (OSCE) organizes live simulations to train human trafficking experts around the world. The last one took place in 2024 at Carabinieri's Centre of Excellence for Stability Police Units (CoESPU) in Vicenza and focused on labour exploitation, a type of THB that has been growing in the last few years.

1.1.3 National Referral Mechanism

Attached to the anti-trafficking plan we find the National Referral Mechanism (NRM).¹¹ The NRM establishes standardized procedures for identifying and assisting victims across various forms of exploitation prevalent in Italy, including sexual exploitation, severe labor exploitation, forced begging, forced criminality, and forced marriage.

The mechanism incorporates two key sets of guidelines. The first, the Guidelines for Territorial Commissions and Sections (2021), focuses on identifying trafficking victims among international protection applicants and outlining referral procedures. The second, the Guidelines for the Identification, Protection, and Assistance of Victims of Labor Exploitation in Agriculture (2021), defines minimum standards and public governance measures for victim support in the agricultural sector.

The first set of guidelines, originally introduced in 2016 and revised in 2020, emerged from the Coordination Mechanisms for Victims of Trafficking project, a collaboration between the National Commission for the Right to Asylum and the United Nations High Commissioner for Refugees (UNHCR). These guidelines provide Standard Operating Procedures (SOPs) to improve coordination between trafficking prevention, victim assistance and international protection, ensuring that trafficking victims' rights remain independent

¹¹European Commission. (2023) Italy: National Referral Mechanism 2023.

of asylum decisions. Additionally, they suggest institutional collaboration with Anti-Mafia District Directorates.

The second set of guidelines, issued by the Ministry of Labour and Social Policies in February 2020 and officially approved in October 2021, emerged from the Three-Year Plan to Combat Labor Exploitation and Unlawful Recruitment in Agriculture 2020-2022. These guidelines provide a comprehensive policy framework to standardize the identification, protection and assistance of victims in the agricultural sector.¹² Such mechanisms aim at strengthening Italy's approach to human trafficking, ensuring a coordinated response across institutions and enhancing victim protection measures.

1.2 The right to Effective Remedy

Remedies consist in correcting an injustice, as far as possible, and are essential for victims of trafficking in light of their status as victims of crime and the severe human rights violations they have suffered. This right comprises two components: procedural and substantive. Procedurally, remedies refer to the mechanisms through which credible claims of human rights violations are examined and adjudicated, whether by courts, administrative agencies, or other competent authorities. Substantively, remedies pertain to the results of such proceedings, specifically the relief granted to the claimant.¹³

Whilst access to remedies is often framed in terms of compensation, remedies can also be interpreted as reparations, which indicate a wider range of measures such as restitution, rehabilitation, satisfaction and guarantees of non-repetition, which will be discussed below. For the purposes of the present thesis, also the role of the State will be analyzed in providing effective remedies.

1.2.1 The role of the State

Currently, ninety percent of countries criminalize human trafficking with ad hoc domestic laws. However, data show that it is complex for victims to access effective remedies, which

¹²European Commission. (2023) Italy: National Referral Mechanism 2023

¹³ICAT (Inter-Agency Coordination Group against Trafficking in Persons). (2016) Providing effective remedies for victims of trafficking in persons. Vienna: United Nations Office on Drugs and Crime (UNODC). Available at: [ICAT](#)

indicates a concerning gap between the existence of laws and their effective implementation.

States have a duty to provide remedies to trafficking victims when their actions directly result in human rights violations. This may occur if the State was actively involved or complicit in the trafficking process, or if it directly violated a right protected under international law (for instance in case of arbitrary detention of a trafficked person). Even when the State is not directly implicated in trafficking or responsible for a specific violation, it is obliged to investigate and prosecute trafficking cases and to protect victims. Consequently, a State may be still required to provide remedies if it fails to take reasonable measures to prevent trafficking and safeguard potential or actual victims, in accordance with the due diligence standard.¹⁴

Under international legal standards relevant for the country of Italy, trafficked persons may seek recourse if the State fails to fulfill its treaty obligations to prevent trafficking or protect their rights. They may file complaints to UN Treaty Bodies, the constitutional complaints mechanisms of the International Labour Organization (ILO), or judicial bodies such as the European Court of Human Rights (ECtHR). The International Covenant on Civil and Political Rights (ICCPR) explicitly mandates that States “ensure that any person whose rights or freedoms as recognized herein are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”.¹⁵ When a trafficking victim suffers a violation of a right protected under a human rights treaty that also guarantees the right to a remedy, the State’s failure to provide an effective domestic remedy constitutes a further breach of that treaty.

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has the task to evaluate parties’ implementation of the Warsaw Convention, which contains a section dedicated to remedies. As a member of the Convention, Italy is subject to monitoring by the Group of Experts, which drafts periodic reports. The last one was published in 2024 and tackled victims’ access to justice and effective remedies.

¹⁴ICAT (Inter-Agency Coordination Group against Trafficking in Persons). (2016) Providing effective remedies for victims of trafficking in persons. Vienna: United Nations Office on Drugs and Crime (UNODC). Available at: [ICAT](#)

¹⁵United Nations Office of the High Commissioner for Human Rights (OHCHR). (1966) International Covenant on Civil and Political Rights (ICCPR). Available at: [ICCPR](#)

1.2.2 Types of Remedies

Restitution

Restitution is a broad concept that consists in restoring the victim to the conditions they were living in before the violation of their rights, i.e. before the occurrence of the exploitation. This may concretize in payments for property damage, health-related expenses, both medical and psychological, but also the restitution of unpaid wages.¹⁶ The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) provides another nuance of the notion, claiming restitution may also mean returning the person to their physical situation before trafficking, for which the agency highlights, firstly, the complexity to achieve that result in the first place; secondly, the risks of re-trafficking or other human rights violations.¹⁷

Compensation

Compensation refers to financial remuneration provided to trafficked individuals in order to address the harm they suffered due to trafficking. The Palermo Protocol and the United Nations Convention against Transnational Organized Crime (UNTOC) require States to provide compensation. In particular, Article 6 paragraph 6 of the latter mandates States to "establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention".¹⁸ This is further reinforced by the related Legislative Guide, which outlines that States must offer one or more of the following options to meet their obligations: provisions allowing victims to pursue civil damages through statutory or common law torts; provisions permitting criminal courts to award damages or impose compensation or restitution orders against offenders; and provisions establishing dedicated funds or schemes enabling victims to claim compensation from the

¹⁶Human Trafficking Legal Center. (n.d.) Restitution awards obtained during criminal cases. Available at: [Restitution](#)

¹⁷ICAT (Inter-Agency Coordination Group against Trafficking in Persons). (2016) Providing effective remedies for victims of trafficking in persons. Vienna: United Nations Office on Drugs and Crime (UNODC). Available at: [ICAT](#)

¹⁸United Nations Office on Drugs and Crime (UNODC), 2004. United Nations Convention against Transnational Organized Crime and the Protocols Thereto.

State for the injuries or damages suffered due to the criminal offense.¹⁹

Both the UNTOC and the Warsaw Convention require States to create mechanisms for the seizure and confiscation of traffickers' assets, which may be used to compensate victims. However, neither instrument mandates the specific allocation of these assets. Article 15(4) of the Warsaw Convention addresses scenarios where compensation cannot be sourced from the perpetrators by obligating States to adopt necessary legislative measures to ensure victim compensation.²⁰ Soft law recommendations further advocate for the use of confiscated proceeds to benefit victims, specifically encouraging States to establish compensation funds financed by such proceeds. Although the Trafficking in Persons Protocol does not define the specific damages to be covered, compensation generally encompasses both material and non-material damages. The United Nations Office on Drugs and Crime (UNODC) Model Law on Trafficking outlines that compensation should address medical treatment, temporary accommodation, childcare, lost income and wages, as well as non-material damages, such as moral, physical, or psychological harm, emotional distress, pain and suffering, and any other costs directly incurred by the victim as a result of trafficking.

Relevant in this sense is the ECtHR's opinion in relation to the *Krachunova vs Bulgaria* case of 2023. According to the court, States must provide victims with compensation for any damage that is economically assessable, proportionally to the violation and the circumstances of each case. The complexity of quantifying the damage cannot be invoked as a *ratio* for the negation of the access to compensation. Moreover, such payment concerns several aspects: the loss of profits, the loss of the potential profit, the lack of profit (since in many cases victims owe everything they earn to their trafficker) and unpaid wages, in line with national law.²¹ The court reasoned about whether Article 4 of the European Convention on Human Rights (ECHR) produces positive obligations for states to guarantee compensation. Given that THB represents a threat to the dignity

¹⁹ICAT (Inter-Agency Coordination Group against Trafficking in Persons). (2016) Providing effective remedies for victims of trafficking in persons. Vienna: United Nations Office on Drugs and Crime (UNODC). Available at: [ICAT](#)

²⁰Council of Europe, 2005. Convention on Action against Trafficking in Human Beings. [online] Available at: [Warsaw Convention](#)

²¹Mancini, L., 2025. L'obbligo positivo di risarcire le vittime delle schiavitù moderne: la compensation secondo la Corte Europea dei Diritti dell'Uomo. [online] Available at: [Compensation](#)

and fundamental liberties of victims, States should fulfil their obligations under Article 4 taking into account both the Palermo Protocol and the Warsaw Convention. The court has recently introduced a different perspective when it comes to THB trials, with a greater focus on victims' protection rather than on the efficiency of investigations and sentences, and such an approach also concerns compensation.²² The court further considered that compensation serves as a vital tool in mitigating the risk of re-trafficking by providing survivors with the financial resources necessary to rebuild their lives. Hence, the judges concluded that it forms part of the positive obligations ex article 4 of the ECHR and highlighted the importance for victims to gain from their traffickers' profits in order to debunk the myth that human trafficking is a low risk crime that brings high earnings.²³ Indeed, traffickers' profits have reached 150M dollars in the last few years. Andrea Salvoni, Vice-Special Representative and OSCE Coordinator for Combating Human Trafficking, declared that if THB were an economy, it would be the 55th biggest economy of the world.²⁴

Rehabilitation and Recovery

Rehabilitation and recovery generally encompass medical and psychological care, as well as the provision of legal and social services such as shelter, counseling, healthcare, and language support. The granting of these services is independent of the victim's cooperation with law enforcement authorities. There is broad consensus advocating for the provision of a non-conditional reflection period, during which trafficking victims can receive essential services to support their physical, psychological, and social recovery.²⁵ In Italy the special permit released according to Article 18 of the 1998 Immigration Law to a person who is identified as a victim of trafficking fulfills this right, as it grants a reflection period.²⁶

²²See supra note 21

²³ibidem

²⁴Salvoni, A. (2023). Video evento 30 novembre 2023 "Tratta di esseri umani e sfruttamento." [video] Available at: [conferenza](#)

²⁵ICAT (Inter-Agency Coordination Group against Trafficking in Persons). (2016) Providing effective remedies for victims of trafficking in persons. Vienna: United Nations Office on Drugs and Crime (UNODC). Available at: [ICAT](#)

²⁶Brocardi.it (n.d.) Article 18 - Consolidated Act on Immigration. Available at: [Article 18](#)

Satisfaction

This entails recognizing the violation of the victim's rights and implementing actions to prevent further violations. Measures to provide satisfaction to trafficked victims may include verifying the facts, publicly disclosing the truth (where such disclosure does not cause additional harm), issuing an official declaration or judicial decision that restores the victim's dignity, reputation and rights, offering public apologies, and applying judicial and administrative sanctions against those responsible for the violations.

Guarantees of non-repetition

Lastly, these measures may overlap with actions aimed at securing satisfaction for victims. Such guarantees require effective investigation, prosecution, and sanctioning of traffickers, as well as implementing all necessary measures to prevent re-trafficking. This entails ensuring safe return, providing temporary or permanent residence status if it is applicable, and offering integration support. Other ways to ensure guarantees of non-repetition are strengthening the legal response to trafficking and addressing the root causes, such as poverty, gender inequality, and discrimination.²⁷

The present thesis will tackle specifically compensation, satisfaction and guarantees of non-repetition, exploring both the causes and the consequences surrounding victims' complex access to these remedies.

²⁷ICAT (Inter-Agency Coordination Group against Trafficking in Persons). (2016) Providing effective remedies for victims of trafficking in persons. Vienna: United Nations Office on Drugs and Crime (UNODC). Available at: [ICAT](#)

Prosecutorial Discretion and The Issue of Protracted Judicial Proceedings

2.1 The Length of Judicial Proceedings and the Figure of the Public Prosecutor

2.1.1 The Doctrine of Mandatory Prosecution

The Italian model of the public prosecutor is grounded in the principle of mandatory prosecution of Article 112 of the Italian Constitution, according to which the public prosecutor is a judicial officer that must initiate criminal proceedings whenever they become aware of an offense subject to prosecution.¹ According to the Constitutional Court this principle represents "a point of convergence of a set of fundamental principles of the constitutional system. The principle of legality [...] requires procedural legality for its implementation; and this [...] can only be safeguarded through the mandatory nature of criminal prosecution".² Such model envisions a public prosecutor who operates independently from political influence whilst remaining under constant judicial oversight, both in the exercise of prosecutorial functions and in instances of inaction. Furthermore, it grants the public prosecutor the authority to oversee police investigations and the role of an impartial party within the judicial process.

¹Questione Giustizia (n.d.) For a culture of prosecutorial discretion. Available at: [discrezionalità](#)

²Tarli Barbieri, G. (2021) Rule of law and the prosecutorial function in Italy: A European unicum? *Questione Giustizia*, 2-2021. Available at: [questionegiustizia](#)

Public prosecutors have three types of discretionality: functional (*fisiologica*), which refers to the natural discretion inherent in the prosecutor's role, where decisions are based on legal obligations, existing facts, and the need to prioritize cases. It ensures flexibility within the legal framework, allowing the prosecutor to determine the course of action based on the situation at hand. The organizational (*organizzativa*) discretionality involves the prosecutor's ability to manage and allocate resources within their office. Under this kind of discretionality fall decisions related to workload distribution and prioritizing cases to ensure an efficient judicial process. The investigative (*investigativa*) refers to the timing, scope, and resources of investigations, the methods adopted in requests submitted to the judge, the adequacy of the investigations. This part also includes the potential seizure of evidence and use of wiretapping. In this case the discretionary power of the prosecutor – shared with the police – is higher compared to the previous two.³

The doctrine of mandatory prosecution aims at implementing two principles: the equality of all citizens before the law and the independence of the public prosecutor from the executive power. The *ratio* of the first principle is that if prosecution were not mandatory, some people would be more subject to the law than others. Instead, anyone who violates the law must face the legal consequences of having breached it.⁴ The opposite is enshrined in the principle of prosecutorial discretion adopted by the UK and the US, for example. There, *inter alia*, public prosecutors have the discretionary power to file criminal charges or not.⁵ The implications of the nature of this second model are not within the scope of the present dissertation, as the focus is on the Italian penal system. Nevertheless, Chapter 4 will readdress this difference in relation to the non-punishable clause.

Secondly, the principle of mandatory prosecution prevents any intervention coming from the Government. The Parliament is involved insofar as it sets what is considered legal and what is not. However, it is the expression of the popular will, while the Government is formed out of the majority of the Parliament, which is why the interference of the executive would be dangerous.⁶

³Questione Giustizia (n.d.) For a culture of prosecutorial discretion. Available at: [discrezionalità](#)

⁴Giustizia Insieme (n.d.) Who decides which investigations should be carried out and which should not? The Public Prosecutors. Available at: [pubblicoministero](#)

⁵Green, B.A. (2019) Prosecutorial Discretion: The Difficulty and Necessity of Public Inquiry. Available at: [prosecutorial discretion](#)

⁶Giustizia Insieme (n.d.) Who decides which investigations should be carried out and which should not?

More specifically for what concerns the relationship between the Legislature and the public prosecutor, the Italian system attributes – as in most European countries – to the political authorities responsible for justice powers of direction, control and supervision of the components of the public prosecutor’s office. Although the public prosecutor is independent and acts in the public interest of the collectivity applying the law, interferences of varying nature and intensity by the political sphere have been attested, from explicit pressure to more subtle attempts at influence, such as career advancement incentives. Another example is the attempt to direct prosecutorial action in specific cases, undermining the principles of transparent, accountable, and justifiable prosecutorial discretion. An inherent tension rises between two competing needs. On the one hand, the necessity to align prosecutorial actions with broader criminal policy objectives through democratic oversight; and, on the other hand, the prerogative to safeguard prosecutorial independence. While the former ensures that public prosecution contributes effectively to policy implementation, the latter demands that prosecutorial decisions are exercised with impartiality, consistency, and integrity. Excessive political influence risks compromising prosecutorial autonomy, potentially leading to biased interference that undermines the principle of equality before the law and the fair administration of justice.⁷

2.1.2 Effects of the Bonafede and Cartabia Reforms

Italy is known for the excessive length of its proceedings to the point of having received many critiques by international courts, such as the ECtHR: the institution has identified more than 1200 violations of the right to a fair trial enshrined in Article 6 of the ECHR since its establishment in 1959.⁸ Also GRETA has urged Italy to solve this issue, as the duration of proceedings is usually between three and ten years, with the investigation phase being excessively long. In the 1990s, the Public Prosecutor’s Office of Turin underscored the necessity of establishing priority criteria to alleviate the burden on the justice system and reduce the duration of proceedings. This was the first attempt when it came to the use of priority criteria and, in the case of Turin, precedence was given to crimes where

The Public Prosecutors. Available at: [pubblicoministero](#)

⁷ibidem

⁸Giustizia Insieme (n.d.) Il pubblico ministero come ridisegnato dalla riforma Cartabia. Available at: [riformacartabia](#)

the defendant was under custody measures, followed by the gravity of the crime. The latter point was evaluated according to some parameters, i.e. personality of the defendant, the damage faced by the victims, repetition of the crime, pecuniary and non-pecuniary damage. This model influenced other public prosecutor's offices around Italy, which started to adopt their own guidelines and criteria, with the gravity of the crime being the prevalent on average. Initially, these criteria were criticized for their lack of objectivity, primarily due to the absence of a unique regulatory framework set by the Legislator. As a matter of fact, the presence of different action plans started to undermine the principle of equality and there were different approaches to the criteria even within the same offices.⁹

Initially, circulars of the public prosecutor regulated the matter; over time, the Italian Parliament began to address the issue. The two most relevant legislative interventions are the Bonafede reform of 2020 and the so-called Cartabia reform of 2022 (Legislative Decree 150/2022). The former delegated the task of developing the priority criteria to the Public Prosecutor's Office, a decision that was criticized for excluding the Parliament from the process and for granting the Public Prosecutor a political role.¹⁰ The only novelty introduced by this reform is the obligation for offices to include priority criteria in their organizational projects. The Lattanzi Commission tried to improve the reform establishing that the Parliament should define a general framework of criteria, after which the Public Prosecutor's Office is tasked with formulating specific, context-dependent priorities, thereby ensuring the practical implementation of Parliament's decisions. With the final version of the Cartabia Reform the establishment of criteria by the Parliament is assigned to the formal, binding and stable instrument of law, with the unexplicit approval of the High Council of the Judiciary.¹¹ As such, the law imposes a mandatory framework that is applicable to all relevant stakeholders. Despite being seen as a significant intervention, the reform only addresses the bare minimum required to establish such criteria, leaving many unresolved issues. The lack of clarity on whether the law should be periodic and the

⁹Virga, V. (2024) 'Obbligatorietà flessibile e criteri di priorità', *Pluralismi giuridici. Prospettive antiche e attuali*, Università di Palermo, 19 June.

¹⁰Orlacchio, F.A. (n.d.) *Lo stato dell'arte sui criteri di priorità nell'azione penale: evoluzione storica e prospettive future*. Giustizia Insieme. Available at: [criteripriorità](#)

¹¹Virga, V. (2024) 'Obbligatorietà flessibile e criteri di priorità', *Pluralismi giuridici. Prospettive antiche e attuali*, Università di Palermo, 19 June.

vague reference to general criteria raises concerns about the discretion left to prosecutors.¹²

To improve the reform, the Parliament drafted legislative decree 933, which is still under scrutiny of the Senate. According to experts of the field, the proposal lacks clarity, particularly in defining the relationship between the general criteria set by the legislature and the more specific ones outlined by prosecutors' organizational plans. This vagueness could lead to inconsistent application and excessive discretion by prosecutors, especially when it comes to defining concepts such as severity of the facts or actual harmfulness of the crime. There are also concerns about the references made in the bill to criminal reality and protection needs of the population: it might politicize the process, as prosecutors are not democratically accountable and should not base priorities on public opinion or political considerations. On the other hand, it has been demonstrated that politics exercise an influence over tribunals. In fact, at the moment theft and cases falling under the *Codice Rosso*, such as femicides, create more public alarm than other crimes, which leads courts to prioritize these cases. According to Di Bari, the hypersensitivity to certain crimes could be beneficial if applied to THB cases.¹³ Another concerning passage is the criteria of the suspect's failure to participate in restorative justice programs during the preliminary investigations, as it would undermine the presumption of innocence of the defendant.¹⁴ Lastly, the initiative fails to adequately align with existing laws, such as Article 132-bis of the Code of Criminal Procedure (CPP), which prioritize certain crimes in case scheduling, creating potential practical difficulties in ensuring consistency across judicial offices.¹⁵

Despite its flaws, the reform does not infringe the principle of mandatory prosecution of Article 112. At the same time, prioritizing some crimes over others runs the risk to decriminalize offenses corresponding to non-priority cases, sending an unequivocal signal to criminal organizations.¹⁶ This is reinforced by the most important issue cited at the beginning of this chapter, which then has consequences on how public prosecutors exercise

¹²Orlacchio, F.A. (n.d.) Lo stato dell'arte sui criteri di priorità nell'azione penale: evoluzione storica e prospettive future. Giustizia Insieme. Available at: [criteripriorità](#)

¹³G. Di Bari and O. Baldovin, personal communication, 19th May 2025

¹⁴Virga, V. (2024) 'Obbligatorietà flessibile e criteri di priorità', *Pluralismi giuridici. Prospettive antiche e attuali*, Università di Palermo, 19 June.

¹⁵Orlacchio, F.A. (n.d.) Lo stato dell'arte sui criteri di priorità nell'azione penale: evoluzione storica e prospettive future. Giustizia Insieme. Available at: [criteripriorità](#)

¹⁶Virga, V. (2024) 'Obbligatorietà flessibile e criteri di priorità', *Pluralismi giuridici. Prospettive antiche e attuali*, Università di Palermo, 19 June.

their discretionary power, i.e. the excessive duration of proceedings. The causes are varied, but some find that a huge role is played by the chronic lack of human and technological resources. Then, this generates an exaggerated workload for tribunals and leaves some cases unaddressed for many years. For instance, no exam for judicial clerks has been conducted for twenty years, producing a void in the administrative organic of the judiciary. Lawyer Baldovin underlines that human trafficking and femicides, to make an example, have the same priority for public prosecutors: they are equally severe crimes. However, judges often do not understand THB cases in their complexity until they face victims' sorrow, after which they start to actually get involved. This, united with the fact that they require a lot of resources which tribunals do not have, creates a hard pathway for these cases to be processed by the penal system.¹⁷ The Cartabia reform has tried to intervene introducing strict limits for public prosecutors to conduct investigations: according to Article 415-bis, paragraph 5 ter of the CPP they have six months to end investigations. After this period, the defendant or the victim can ask the judge to solicit the public prosecutor to take a decision on the prosecution (*assumere le determinazioni sull'azione penale*) and the interested parties must be notified of the decisions taken by the public prosecutor. Lawyer Baldovin affirmed that this has happened only once so far because the penal system lacks resources.¹⁸ The collateral effect is that some crimes cannot be prosecuted and not in a timely manner. *De facto*, this amounts to an inevitable reduction of the principle of mandatory prosecution, as public prosecutors will discretionarily decide to exercise criminal action only for those cases they can work on and that judges can receive.¹⁹

Minister of Justice Nordio has recently proposed to revise the principle of mandatory prosecution by dividing the career of the public prosecutor from the rest of the judicial system. His proposal would abolish the principle enshrined in Article 112, which would pose both the principle of equality before the law and the independence of the public prosecutor from the executive under serious risk. In fact, separating the public prosecutor from the judge would increase the chance of interference by external organs because the

¹⁷O. Baldovin, personal communication, 19th May 2025

¹⁸ibidem

¹⁹De Robbio, C. (n.d.) Chi sceglie quali indagini devono fare (e quali non fare) i pubblici ministeri? Giustizia Insieme. Available at: [pubblicoministero](#)

public prosecutor would not be protected by the statute that guarantees the independence of the judiciary anymore.²⁰

As a result, a comprehensive reform of the judicial system is essential in the long-term. From a short-term perspective, the adoption of priority criteria and time limits to conduct investigations seem necessary given the current state of the judiciary in Italy. Therefore, a wise application of these laws, in accordance with the modalities established by the Cartabia reform, is crucial to avoid undermining fundamental constitutional principles. Nonetheless, it is also important to recognize that this structural flaw could have adverse effects on victims of THB, particularly if their cases are not listed in the priorities of public prosecutors and courts. The immediate consequence would be delays in the judicial process and the subsequent human rights violations, which will be explored below.

2.2 Case Study

The first case study serves as a valuable example for both this section and the discussion on the *incidente probatorio* (in Chapter Three). To ensure confidentiality, all names mentioned in this case study are pseudonyms.

2.2.1 History of the victim

The case is about the experiences of a Nigerian girl, referred to as Rose, who endured a complex childhood and tragic history of trafficking. Born in Nigeria, Rose lost her mother at a young age and was subsequently raised by her grandmother, as her father refused to assume responsibility for her care. Following her grandmother's death, Rose found herself without a stable home. She temporarily resided with a woman who subjected her to mistreatment, forcing her to work in a market. Seeking to escape this abusive environment, she attempted to return to her father, who once again rejected her, leaving her with no choice but to seek shelter in abandoned houses. It was during this period that she experienced her first sexual violence, which resulted in pregnancy. She gave birth in 2016 while staying at a friend's house, but the circumstances forced her to leave soon after.

²⁰See supra note 20

At this point, Rose met a woman, Daisy, who expressed sympathy for her situation and welcomed her into her home. Daisy was in a relationship with Rose's father at the time. One day, another woman, referred to as Violet, visited Daisy's house and presented a job opportunity in a hair salon in Italy, proposing that both Daisy and Rose travel there. Daisy, initially skeptical, questioned Violet about the details of the journey to Italy and was reassured when Violet told them they would travel by plane. Trusting this information, Rose left her child in the care of the friend who had welcomed her when she was pregnant, and the two embarked on their journey. They traveled with the assistance of Violet's brother, alongside other young women. However, after providing them with a contact number for emergencies, Violet's brother did not accompany them further. Daisy attempted to reach him when it became evident that they were not flying as promised, but he never answered her calls.²¹

2.2.2 The Journey

The journey took them through Niger and across the desert, an experience that Rose later described as terrible. She saw individuals left to die due to exhaustion, as well as men demanding money in exchange for safe passage and subjecting women to sexual violence. Rose herself was again a victim of sexual assault during the journey. They remained in Libya for three days before being placed on a rubber boat for Italy. Their vessel was eventually rescued by the Aquarius humanitarian ship, which brought them to Valencia, Spain. A few days later, Violet arrived in Spain and provided instructions on how the women could leave the shelter they had been placed in and travel to Verona, Italy. While Violet took a flight, the others traveled by car.²²

2.2.3 Exploitation

Once in Verona, Daisy inquired about the promised job, only to be informed by Violet that the work consisted of prostitution. According to the madame, this was the only means with which they could repay the debt of 20,000 euros incurred for their journey. Despite Daisy's explicit refusal to accept these conditions, both she and Rose were forced into sex

²¹Di Bari, G. (2020) Letter to the Public Prosecutor at the Tribunal of Venice, Dr. Lucia D'Alessandro [Unpublished letter]

²²ibidem

work under Violet's control. At first, Rose did not join the others for a few days because she had a bellyache. Violet suspected that the young woman was pregnant, so she gave her a Nigerian pill to induce an abortion. After ascertaining that she was not expecting a baby with a pregnancy test, she brought her to the street in Legnago. Any failure to earn a sufficient amount of money resulted in physical violence perpetrated by Violet. Daisy ultimately managed to escape with the help of Project Navigare, the initiative supporting victims of trafficking in the Veneto region. Rose, however, remained under Violet's control for a longer period, suffering further abuse. Violet, suspecting that Rose knew Daisy's whereabouts, subjected her to severe beatings. Meanwhile, the young woman met the operators of the project as well and she told them that she did not want to work there anymore. One night, she waited for another girl she worked with to find a client and talked to the operators, who gave her a series of numbers to call, including the Numero Verde, which she called to ask for help. Violet probably understood that she had made contact with someone, because she beat her till the last day. When Rose called the Numero Verde from the bathroom, she had to talk with a very low voice since someone was behind the door, knocking and screaming. Violet obliged her to take a medicine to sleep and in fact she woke up the following afternoon being extremely dazed. Anyway, she managed to go to the bathroom again and to escape the building through a window. Once she was out, she called the operators of the project, who contacted the police immediately. On July 19, 2018, Rose was placed under the protection of Project Navigare and on the 20th September 2018 the young woman registered a complaint against Violet at the Questura of Verona with the help of a cultural mediator.²³

2.2.4 Current situation

Dr. Di Bari²⁴ reported that the trial did not start until November 2024. In the meantime, Violet obtained the Italian citizenship while still exploiting other victims, as no precautionary measure was imposed by the judge. This is in part due to the fact that the case is dealt by the Direzione Distrettuale Antimafia (which will be explained better in the following Chapter) rather than the ordinary tribunals, and generally they do not notify the case to

²³Rose (2018) Report of complaint to the Verona Police Headquarters, [Unpublished legal document], Verona, 20 September

²⁴G. Di Bari, personal communication, 18 January 2025.

the accused in order to avoid the obligation to reveal the complainant's name. Lawyer Baldovin stated that in these cases the plausible perpetrator is kept under surveillance by the authorities, though.²⁵ Under the suggestion of the Navigare operators, Rose constituted herself as a civil party, acquiring the right to know the evolution of the trial and ask for compensation. The following hearing has been postponed to June 2025, which means that Violet is now investigated but she has no order issued by the judge to prevent her from continuing her illicit activities.

2.3 Human Rights Implications: Applying GRETA's Considerations

The aforementioned case is one of the many that remain unaddressed due to the issues analyzed above. Specifically, Rose had to wait five years before seeing the beginning of the trial.²⁶ When cases remain in a situation of *impasse*, victims risk to face detrimental consequences under different aspects: access to compensation, reduction of the sentence for the trafficker, further exploitation, possible re-trafficking. According to GRETA, Italian authorities should investigate human trafficking offences quickly and ensure a reasonable length of the trial, in line with the case-law of the ECtHR. As the Group of Experts affirmed in the last monitoring report, the Warsaw Convention adopts a human rights based approach, whereby all victims possess the right to access justice and effective remedies, with particular attention to women and children. If States fail to take steps to prevent THB, protect victims and investigate cases efficiently, they have the positive obligation to facilitate effective access to remedies.²⁷ Recalling Chapter 2, the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons outline the right to an effective remedy as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

²⁵O. Baldovin, personal communication, 19th May 2025

²⁶G. Di Bari, personal communication, 18 January 2025.

²⁷GRETA (2024) Access to justice and effective remedies for victims of trafficking in human beings: Evaluation Report Italy, [online] Strasbourg: Council of Europe. Available at: [GRETA](#)

2.3.1 Access to Compensation

Compensation orders from convicted offenders

Courts have the power to order convicted offenders to pay compensation to their victims. In Italy it is the victim (or their representative) that must actively pursue compensation. Victims may join the criminal proceedings as a civil party, which means that they bring their civil action as part of the criminal proceedings (*costituzione di parte civile*): at the end of the criminal proceedings, the criminal court will assess the injury and award damages, or just declare there is a right to damages and refer the parties to the civil courts in order to determine the amount owed by the trafficker. Article 74 of the Code of Criminal Procedure stipulates that, during criminal proceedings, a civil action for damages may be initiated by anyone who has suffered harm as a result of the offense, or by their heirs, in accordance with Article 185 of the Penal Code. This action can be brought against the defendant and any individual liable under civil law.²⁸ Lawyer Baldovin affirmed in our interview that often compensation is set by judges but lacks the executive implementation because convictions for trafficking foresee important sums of money; however, traffickers hardly work in some cases. She recalled a case in which the judge imposed a sum of 30 thousand euros and 50 thousand euros to two madams, who did not possess assets of that value.²⁹

State-funded compensation

In Italy Legislative Decree No. 24 of 4 March 2014 introduced several provisions whose aim is to make the national action against trafficking in human beings more complete and effective. One of the main innovations was the establishment of an amount of 1,500 euros for each victim under the Annual Fund against Trafficking. The fund is financed by the profits of confiscated goods after a judgment of conviction. This is a key provision as in the Italian criminal system there is no general procedure to compensate the victims of violent fraudulent crimes for their damages. The compensation is also due in the cases

²⁸European Commission (n.d.) Claiming damages from the offender: Italy, [online] Available at: [EuropeanCommission](#)

²⁹O. Baldovin, personal communication, 19th May 2025

when the perpetrators of crimes are unknown.³⁰

The law also regulates access to the fund. The application for compensation must be submitted to the Presidency of the Council of Ministers within one year from the final ruling of the conviction, or (if the author of the crime is unknown) from the filing of the archiving.³¹ It also identifies as a condition preventing the right to compensation the fact that the victim applying for compensation is under investigation or convicted by final judgement for one of the serious offences referred to in Article 407(2)(a)³² of the Code of Criminal Procedure (mafia-related crimes, terrorism-related offenses, particularly serious crimes like homicide, aggravated robbery, kidnapping for ransom), corruption and high-level financial crimes. This is particularly relevant as a non-punishable clause is not present in the Italian legal system.

In 2016 the Legislator instituted with law n.122 a fund for victims of mafia-related crimes and crimes that involve extortion demands, usury, and intentional violence. Accordingly, access to the fund is recognized also to victims of a crime committed with violence against the person and crimes under article 603 bis of the Penal Code (labour exploitation). However, access to such fund is just theoretical because it has been demonstrated that victims obtain compensation only in rare occasions, also in cases where perpetrators have been convicted.³³ Di Bari claimed that so far nobody has had access to the fund, at least when it comes to the Veneto region,³⁴ and that criteria to access the 1,500 euros fund are too strict.³⁵

An important obstacle for victims in accessing compensation more generally is the lack of adequate legal support, which should be granted not only during the trial, but also in the phase of requesting compensation. Moreover, some victims renounce to ask for compensation for many reasons. Even when they are properly supported, they may simply

³⁰Council of Europe (2019) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, [online] Available at: [CouncilofEurope](#)

³¹European Commission. (2023) Italy: National Referral Mechanism 2023.

³²Brocardi (n.d.) Article 407 of the Italian Code of Criminal Procedure, [online] Available at: [CPP](#)

³³Mancini, L. (n.d.) L'obbligo positivo di risarcire le vittime delle schiavitù moderne: la compensation secondo la Corte europea dei diritti dell'uomo, [online] Sistema Penale. Available at: [Mancini](#)

³⁴G. Di Bari, personal communication, 12 February 2025

³⁵G. Di Bari, personal communication, 19th May 2025

not want to fight to obtain compensation and are fine just with obtaining a conviction.³⁶ Thus, mechanisms that are outside the scope of the trial should be foreseen by States in order to provide economic protection, taking into account the psychological vulnerability that affects victims also during this phase.³⁷

Civil Claims by victims

The victim may also file a claim for damages before the ordinary civil courts. In practice, a trafficked person will generally be able to pursue civil claims only if he or she can secure legal representation. In Italy, victims of THB are granted free legal aid according to different legislative acts: article 18 of the Legislative Decree No. 286/1998; Presidential Decree No. 115/2002, which allows victims to access legal representation notwithstanding their income if they are "particularly vulnerable persons"³⁸; as well as the already mentioned Legislative Decree No. 24/2014 and Law No. 228/2003, which guarantee access to legal assistance, shelter and psychological support. Traffickers typically leave their victims financially impoverished, so it is particularly crucial for States to provide free legal aid to victims in civil proceedings. Even if trafficked persons have secured legal representation, their representatives may not consider pursuing civil action because of the expense and effort involved. Lawyer Baldovin confirmed this: "it takes between 500 and 1000 euros just to start a civil proceeding to seek compensation, while if victims constitute themselves as a civil party to the criminal trial, it takes only 27 euros".³⁹

According to Article 316 of the CPP, the public prosecutor or the victim acting as a civil party may request the court for the seizure of the assets of the perpetrator, even during the preliminary investigation.⁴⁰ According to GRETA, Italy should identify traffickers' assets to ensure compensation for victims and make sure victims obtain compensation within a reasonable time. This would ensure not only victims' right to compensation, but also the right to non-repetition, as the money obtained from compensation can allow victims to build a new life far from the exploitative condition of trafficking they had been

³⁶G. Di Bari, personal communication, 19th May 2025

³⁷Mancini, L. (n.d.) L'obbligo positivo di risarcire le vittime delle schiavitù moderne: la compensation secondo la Corte europea dei diritti dell'uomo, [online] Sistema Penale. Available at: [Mancini](#)

³⁸Italy. (2002) Decreto del Presidente della Repubblica 30 maggio 2002, n. 115. Testo unico in materia di spese di giustizia. [online] Available at: [decreto](#)

³⁹O. Baldovin, personal communication, 19th May 2025

⁴⁰Italy. (n.d.) Codice di procedura penale, Articolo 316. [online] Available at: [CPP](#)

in before. The seizure of assets is a fundamental component of states' obligations to deprive traffickers of both the means and profits derived from their criminal activities, thereby preventing them from continuing their exploitation. However, GRETA found that, normally, this measure is not applied in THB cases, allowing traffickers to hide or dispose of their assets.⁴¹ Also Dr. Giuseppina di Bari confirmed that it is an unusual practice: "it is more likely to take place in case of trafficking for labour exploitation, but it is still rare".⁴²

Even in cases where compensation is granted, until the traffickers are found guilty, victims cannot obtain it because civil proceedings are suspended until the end of the criminal trial. Meanwhile, victims may lack financial means and may have to go through re-victimization or re-trafficking. In this case, Rose could benefit from the support of the Navigare project, but not all victims have the same story.

2.3.2 State Complicity in Trafficking

In the case at hand, Rose was contacted again by one of her former colleagues after she escaped. Luckily, she was (and still is) followed carefully by anti-trafficking operators, who instructed her not to provide any personal information to people she did not know or to the girls she used to work with, because the Navigare personnel assumed the call had been mandated by Violet in an attempt to drag her back to her condition of trafficking. A five-year period provided the madame with copious opportunity to coerce Rose back into trafficking, given Rose's stratified condition of vulnerability. In general, the issue of re-trafficking is very common for victims of trafficking. As will be better described in Chapter 4, the term "re-trafficking" is typically applied to cases where victims return to their country of origin and are subsequently re-trafficked. However, the phenomenon of re-trafficking in destination countries remains an underexplored area of research.⁴³ In this case Italy could have handed over a victim to the traffickers and, paradoxically, become their accomplice.

Dr. Di Bari explained that social programmes generally have a duration of six months

⁴¹GRETA (2024) Access to justice and effective remedies for victims of trafficking in human beings: Evaluation Report Italy, [online] Strasbourg: Council of Europe. Available at: [GRETA](#)

⁴²G. Di Bari, personal communication, 12 February 2025

⁴³Kokunre, A. (2020) Re-trafficking of women repatriated to Nigeria. [online] Sciabaca Oruka - ASGI. Available at: [asgi](#)

with an additional year. In many cases proceedings do not go in parallel and, according to the guidelines of the DPO, the Italian anti-trafficking projects are not obliged to extend their support to victims. In Veneto Progetto Navigare has decided to assist victims until first instance sentences (*sentenze di primo grado*), but not all projects may have the same chance to do so, with the risk that the victims are left alone or with public defenders even though the trial has not come to an end yet.⁴⁴ It is precisely in this post-violence period that victims are the most vulnerable to the chance of retaliation, i.e. that the trafficker commits the same crime again. To face this risk, judges can adopt preventive measures such as restrictive orders or detention orders. The law prescribes that the police surveil the perpetrator to inform the judge in case of violation of a restrictive order, which allows the judge to replace the restrictive with a detention order.⁴⁵ Even in cases where judges do not adopt preventive measures in order to preserve the victim and avoid the obligation to notify the perpetrator that they are being investigated, traffickers are controlled by authorities.⁴⁶ According to Legislative Decree 159/2011 (Anti-Mafia Code), traffickers can be subjected to special surveillance and restriction of movement if they are considered particularly dangerous and even if they have not been condemned yet.⁴⁷ For gender-based violence Italy has promulgated in 2023 the so-called *Legge Roccella*, which introduced the concept of dynamic vigilance: the Prefect can impose different controls over the defendant and the victim. Although this law does not apply to human trafficking, the same principle could be extended to include the phenomenon.⁴⁸ Restrictive orders for investigated perpetrators are foreseen by Article 282-ter of the CPP, which prevents the defendant from going to the places the victim frequents and it obliges the perpetrator to keep a certain distance.⁴⁹

However, if the case is not brought before the judge for a long time, such preventive measures cannot be adopted. Lawyer Baldovin emphasized that the victim's account could justify issuing an arrest warrant, but the longer the judges delay hearing the testimony, the

⁴⁴G. Di Bari, personal communication, 12 February 2025

⁴⁵Filice, F. (n.d.) La protezione delle vittime e delle persone vulnerabili nel sistema legale italiano. [online] [Questione Giustizia](#). Available at: [questioneigiustizia](#)

⁴⁶O. Baldovin, personal communication, 19th May 2025

⁴⁷Gazzetta Ufficiale, (2011). Decreto Legislativo 6 settembre 2011, n. 159 – Codice delle leggi antimafia e delle misure di prevenzione. [online] Available at: [gazzettaufficiale](#)

⁴⁸ibidem

⁴⁹Brocardi.it, (n.d.). Art. 282-ter codice di procedura penale - Divieto di avvicinamento ai luoghi frequentati dalla persona offesa. [online] Available at: [CPP](#)

less imminent the danger the warrant is meant to prevent becomes. The risk is that the judge for the preliminary investigations may refuse to issue the arrest warrant.⁵⁰ Pemberton and Mulder⁵¹ would define this as an omission bias, in the sense that, conventionally, lack of action by institutions is not considered as able to produce negative effects on the victims. The truth is that not only do they suffer the consequences of society's silence vis-à-vis their victimization, but the lack of intervention also exposes them to an increased risk of re-victimization.

Nonetheless, the trafficker can continue recruiting new victims easily. This is exemplified by the case of Violet, who persisted in her criminal activities even after Rose and Daisy managed to escape. Violet was even able to obtain the Italian citizenship before the trial commenced, effectively integrating into the legal framework as if she were an ordinary migrant seeking lawful employment, despite her involvement in trafficking.

This case (and countless others) underscores systemic deficiencies in the judicial system, which ultimately failed to protect an unknown number of victims, going against the guarantees of non-repetition described in Chapter 2.

2.3.3 Plea Bargaining

Although cases of THB are not statute barred, excessive delays may drive legal representatives to advise the use of plea bargaining (*patteggiamento*) or a fast-track trial (*giudizio abbreviato*), both of which present notable advantages and disadvantages for the parties involved.

“Victims have many needs. They need chances to speak their feelings. They need to receive restitution. They need to experience justice: victims need some kind of moral statement of their blamelessness, of who is at fault, that this thing should not have happened to them. They need answers to the questions that plague them. They need a restoration of power because the offender has taken power away from them”⁵²

⁵⁰O. Baldovin, personal communication, 19th May 2025

⁵¹Pemberton, A. and Mulder, E. (2023) 'Bringing injustice back in: Secondary victimization as epistemic injustice', *Criminology and Criminal Justice*, 23(4), pp. 583–600

⁵²Monash University, Faculty of Law, 'Bargaining with Justice: Victims, Plea Bargaining and the Victims Charter Act 2006 (Vic)' (2012) *Monash University Law Review*

Plea bargaining (regulated by Article 444 of the CPP) is an agreement between the defendant and the public prosecutor to set a prison sentence not higher than five years during the preliminary hearing, allowing to avoid the actual trial. This tool is permitted in cases of THB unless organised crime or criminal associations are involved and is available for sentences of up to seven and a half years in prison.⁵³ Article 444 (1-bis) excludes the use of plea bargaining for some crimes like the recruitment of minors for prostitution (under Article 600-bis of the Penal Code), but there is no reference to Article 601 on THB.⁵⁴

In this sense, GRETA laments the lack of a database containing data about investigations and sentences given to perpetrators.⁵⁵ The Chamber of Deputies carried out a study in 2015 on a sample of sentences regarding Article 600, 601 and 602 of the Penal Code. As can be seen in Figure 2.1, almost 59 percent of all sentences have resulted in a conviction for the perpetrator or plea bargaining. This percentage does not contain updated data, given the lack of persistent collection of statistics about the topic, and it does not differentiate between ordinary convictions and plea bargainings.⁵⁶

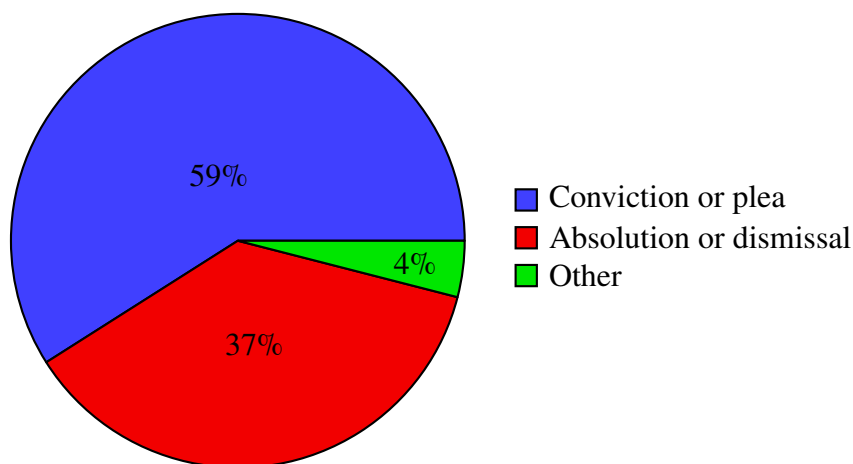


Figure 2.1: Results of sentences related to THB. Source: Chamber of Deputies

On the one hand, plea bargaining offers some potential benefits, not only for perpetra-

⁵³Vitiello, M., 'Bargained-for-Justice: Lessons from the Italians?' (2017) 48 *University of the Pacific Law Review* 247

⁵⁴Italy, Codice di Procedura Penale, art. 444, available at: [CPP](#)

⁵⁵U.S. Embassy and Consulates in Italy (2022) Rapporto 2022 sulla tratta di esseri umani. Available at: [USembassy](#)

⁵⁶Camera dei deputati (n.d.) La tratta di esseri umani: statistiche

tors, but also for victims, as they are prevented from having to provide evidence, which may lead to secondary victimization; meanwhile, they obtain a guaranteed conviction of their trafficker. Moreover, the perpetrator gets a lower sentence, whereas courts reduce the duration and expenses of the trial.⁵⁷ This last point makes the use of plea bargaining particularly appealing in Italy, since the country is known for its excessively long proceedings (as discussed previously in the chapter).

On the other hand, *patteggiamento* is, *de facto*, a compromise out of which everyone is “both a winner and a loser”.⁵⁸ In the US it may even consist in a redefinition of the occurred facts to be presented to the judge, in order to justify the reduced sentence. This practice is known as fact-bargaining. In Italy, plea bargaining complies with the general principle of compulsory prosecution and prohibits the renegotiation of the charge or the reconstruction of facts.⁵⁹ When the parties agree on a sentence, the judge must still review the facts to ensure that the bargain and the facts coincide, which means analyzing mitigating and aggravating circumstances. The judge also determines whether charges can be dropped against the defendant.⁶⁰ Despite on paper Italy seems to have a strong legislative framework to check on this practice, the use of plea bargaining raises some concerns. Firstly, victims’ participation changes significantly during this type of trial. According to the 2012/29/EU Directive, participation is a macro right of victims, which requires immediate application, and it is framed as the “right to be heard”.⁶¹ The Italian CPP presents a fragmented scheme, which enables the recognition of rights in instances of normative silence. This means that, unless there is an explicit prohibition, participation of the victim is foreseen; in other words, they possess the right to be heard as envisioned by the EU Directive. In the case of *patteggiamento* there is no explicit prohibition of participation for the victim for instance. At the same time, there is no obligation to inform the victim about when the hearing to decide the plea bargaining will take place.

⁵⁷Monash University, Faculty of Law, ‘Bargaining with Justice: Victims, Plea Bargaining and the Victims Charter Act 2006 (Vic)’ (2012) Monash University Law Review

⁵⁸*ibidem*

⁵⁹Orlandi, R. (2019) ‘The Italian Path to Reform: Italy’s Adversarial Model of Criminal Procedure’, *The Italian Law Journal*, 5(2), pp. 565-579. Available at: [reform](#)

⁶⁰Vitiello, M., ‘Bargained-for-Justice: Lessons from the Italians?’ (2017) 48 *University of the Pacific Law Review* 247

⁶¹Belluta, H. (2012) ‘Per piccoli passi: la vittima di reato cerca spazio nel procedimento penale’, *Diritto Penale Contemporaneo*. Available at: [dirittopenale](#)

The justification for an act that may seem to contradict the right of information of the victim is the fact that during *patteggiamento* the victim is allowed to participate, but is not involved, as it concerns the prosecutor and the defendant. Hence, professor Hervé Belluta⁶² wonders if the victim can actually give a contribution during this alternative form of trial and believes it is very unlikely victims would be in favour of such a practice, if they were asked. Furthermore, the sentences obtained through this instrument may not reflect the factual culpability of the defendant, with victims feeling “sold out” and perceiving justice has not been achieved.⁶³ Then, the testimony of the victim risks to be of secondary importance *vis-à-vis* the final sentence, as the judge cannot modify the agreement reached between the public prosecutor and the defendant. The victim could try to persuade the prosecuting authority through their testimony, influencing the withdrawal of the negotiated settlement or of a declaration of non-punishability (according to Article 129 of the CPP), but only if they constitute themselves as a civil party before the judge accepts the request of *patteggiamento*. Beyond this, any argument advanced during the hearing is unlikely to exercise significant influence.⁶⁴

Furthermore, victims are obliged to go to civil courts to ask for compensation because they cannot constitute themselves as a civil party of *patteggiamento*. This represents a huge cost for victims, as explained above, because lawyers demand between 500 and 1000 euros just to start the civil trial, while in the case of *costituzione di parte civile* during the criminal trial the cost is of 27 euros.⁶⁵ It would be more appropriate to include the possibility to receive compensation even in cases of plea bargaining without having to open another civil trial.

2.3.4 Fast-track Trial

Alongside plea bargaining, fast-track trial (*giudizio abbreviato*) is adopted. In this alternative form of trial, the trafficker avoids the trial and is judged (generally) according to the evidence collected during the pre-trial phase. On the one hand, the trafficker (or the

⁶²See supra note 61

⁶³Vitiello, M., 'Bargained-for-Justice: Lessons from the Italians?' (2017) 48 University of the Pacific Law Review 247

⁶⁴Silvia Paoletti (2018) 'La tutela della vittima del reato: dalla legislazione europea all'ordinamento interno', PhD thesis, Università degli Studi di Urbino Carlo Bo. Available at: [PhD](#)

⁶⁵O. Baldovin, personal communication, 19th May 2025

victim) cannot present new evidence; on the other hand, in case of conviction the sentence is reduced by one third compared to the normal trial.⁶⁶ It is relevant to specify that this is the simple version of the fast-track trial, while the conditional type accepts the collection of additional evidence to that presented by the public prosecutor.⁶⁷

Giudizio abbreviato is regulated by Article 438 of the CPP, whose subsection 5 has been amended by the Cartabia Reform: “the judge must adopt the (conditional) fast-track trial if the requested evidentiary integration is necessary for the decision, and the expedited trial still achieves procedural efficiency in relation to the foreseeable duration of the trial proceedings”.⁶⁸ In order to determine whether the adoption of the fast-track trial is an efficient choice, the second part of this subsection envisages that the judge compares the conditional fast-track trial to an ordinary proceeding, rather than to a *giudizio abbreviato semplice* (simple fast-track), as, instead, the article used to prescribe before the reform. Given that the duration of an ordinary trial is inherently longer than that of a simplified fast-track process, it is reasonable to assume that the conditional fast-track trial would offer greater efficiency; hence this modification is aimed at incentivizing the use of this procedural tool. Another important modification introduced by the reform concerns subsection 2-bis of Article 442 of the CPP: “When neither the defendant nor their lawyer has appealed the conviction, the imposed sentence is further reduced by one-sixth by the enforcement judge”.⁶⁹ This means that in case of conviction not only is the sentence reduced by one-third, but also by an additional one-sixth.

Clearly, the objective of these two modifications is to reduce the burden on the judicial offices and the length of proceedings. While this reasoning works from the perspective of the judicial system, for the victim it may not be the best option: the defendant may be incentivized to adopt fast-track strategically to obtain a reduced sentence, producing the same feeling of injustice in victims as the *patteggiamento* produces.

For what concerns the right to be heard, in this case the participation of the victim depends on which of the two types of *giudizio abbreviato* are chosen. In fact, in the simple

⁶⁶GRETA (2024) Access to justice and effective remedies for victims of trafficking in human beings: Evaluation Report Italy, [online] Strasbourg: Council of Europe. Available at: [GRETA](#)

⁶⁷DirittoConsenso.it. (2023) Il giudizio abbreviato secondo la riforma Cartabia. Available at: [Cartabia](#)

⁶⁸Brocardi.it. (n.d.) Codice di procedura penale: Libro sesto, Titolo I, Art. 438. Available at: [brocardi](#)

⁶⁹Brocardi.it. (n.d.) Codice di procedura penale: Libro sesto, Titolo I, Art. 442. Available at: [brocardi](#)

version, the victim does not play any active role since the judge will decide on the evidence collected up to that point. It could be beneficial for an extremely vulnerable victim, for whom the exposure to a trial would put them under a high risk of secondary victimization. However, victims would not have the chance to provide any further evidence. Instead, the position of the victim changes in the conditional fast-track trial, since the public prosecutor may ask the victim to testify to collect more evidence.⁷⁰

Compensation works slightly differently from *patteggiamento*. Victims constituting themselves as a civil party are not automatically excluded from the trial and may accept or reject the fast-track trial. If the victim approves it, they can advance a request for compensation during the criminal trial. Otherwise, they are excluded from the criminal trial and have to refer to civil courts for compensation. In case of rejection by the victim, the fast-track trial will take place anyway, but the victim can appeal the final decision, contrary to what happens for *patteggiamento*.⁷¹

It is evident that these two legal mechanisms risk undermining victims' right to participation, they result in reduced sentences for perpetrators compared to those imposed in a standard trial, and specifically *patteggiamento* makes access to compensation more complex. On the one hand, studies show that some victims may experience ethical indignation if the perpetrator is granted better or more expensive rehabilitation than they receive. They often adopt a critical stance towards the offender's rehabilitation as a benefit to the offender which, in turn, relatively worsens the outcome for the victim. In fact, some victims may perceive legal punishment as a formal identification of the defendant as the perpetrator, while publicly they are acknowledged as the individual harmed by the criminal act. At the same time, this does not imply that victims believe perpetrators should be punished more severely in order for justice to be served. Victims do not just prioritize punishing the perpetrator; rather, they also place significant value on other factors, such as financial compensation, information regarding the perpetrator's intentions, an acknowledgment of guilt, and, in some cases, a request for forgiveness from the trafficker.⁷² Dr. Giuseppina

⁷⁰Silvia Paoletti (2018) 'La tutela della vittima del reato: dalla legislazione europea all'ordinamento interno', PhD thesis, Università degli Studi di Urbino Carlo Bo. Available at: [PhD](#)

⁷¹Fontana, M. (n.d.) Rito abbreviato. Available at: [rito](#)

⁷²Orth, U. (2002) 'Secondary victimization of crime victims by criminal proceedings', *Social Justice Research*, 15(4), pp. 313-340. DOI: 10.1023/A:1021210323461

Di Bari stressed this point perfectly while describing the importance of *costituirsi parte civile*: "I always try to explain to victims the importance of becoming civil parties to the case. And when they understand that this tool allows them to exercise a right, they generally accept. At first, Rose did not understand its importance; sometimes not even judges do. But notwithstanding the final result of the trial, I saw many victims relieved when they were told they had the chance to know how the trial would end. Even more than obtaining compensation. It is a tool that allows victims to become citizens that exercise their rights".⁷³ During the interview Dr. Di Bari also remembered the case of labour exploitation of Grafica Veneta against eight workers from Pakistan⁷⁴ that Project Navigare followed in 2021: "At the end of the trial, where they had been civil parties, they instituted a fund because they said they wanted to help those who cannot be as lucky as they had been".⁷⁵ Lawyer Baldovin also agrees on this point and believes that neither of the alternative forms of trial undermine victims' access to justice. In fact, according to her experience, victims already expect not to receive money and for them justice equals making the trafficker pay, helping others thanks to their collaboration with the law enforcement, knowing that their perpetrators are not going to harm them anymore. The expectancy of compensation is more common among men exploited for labour, while it is less common for women trafficked in sexual exploitation.⁷⁶

However, it remains crucial to emphasize the importance of a commensurate punishment to the crime committed as a part of obtaining justice, especially if we consider that at the global level the trials against perpetrators per year are 10,000, which means one trial every 2800 victims, compared to 19,000 of some years ago. Convictions are less than a fifth of this number.⁷⁷

To conclude on this chapter, it can be affirmed that Italy is well aware of the issues related to the length of proceedings and has tried to improve the situation by modifying the role of public prosecutors and introducing reforms to the penal code throughout the

⁷³G. Di Bari, personal communication, 12 February 2025

⁷⁴For further details, see Il Fatto Quotidiano, 'Grafica Veneta, verbali dei lavoratori pakistani: "Picchiati, ci hanno legato mani e piedi e presi a calci. Minacciate anche le nostre famiglie"', available at: [fattoquotidiano](#)

⁷⁵G. Di Bari, personal communication, 12 February 2025

⁷⁶G. Di Bari and O. Baldovin, personal communication, 19th May 2025

⁷⁷Salvoni, A. (2023). Video evento 30 novembre 2023 "Tratta di esseri umani e sfruttamento." [video] Available at: [conferenza](#)

years. Nevertheless, there is still a margin of improvement because such modifications seem to be still far from fully complying with the human-rights based and victim-centred approach advocated by GRETA and international legal standards. To be precise, this chapter has confirmed that the state risks not fulfilling its obligations in providing effective remedies if cases are not addressed promptly.

3.1 Use of *Incidente Probatorio*

3.1.1 Functioning of the *Incidente Probatorio* in the Italian Penal System

The analysis of the evolution of this procedural instrument is particularly significant, as it illustrates the progressive development of jurisprudence towards enhanced victim protection. The *incidente probatorio* (pre-trial hearing) was initially introduced in 1988 with article 392 of the CPP; however, its original framing had a strictly evidence-oriented approach:¹

During the preliminary investigations, the public prosecutor and the person under investigation may request the judge to proceed with an incidente probatorio in the following cases:

- a. The collection of testimony from a person when there are well-founded reasons to believe that they will be unable to testify during the trial due to illness or another serious impediment.*
- b. The collection of testimony when, based on concrete and specific elements, there are well-founded reasons to believe that the person is at risk of violence, threats, or offers or promises of money or other benefits intended to prevent them from testifying or to induce*

¹Italy. (n.d.). Codice di procedura penale. [online] Gazzetta Ufficiale. Available at: [CPP](#)

them to give false testimony.

c. The examination of the person under investigation regarding facts concerning the responsibility of others.

d. The examination of the individuals referred to in article 210 (and the examination of justice collaborators).

e. A confrontation between individuals who have provided contradictory statements either in another incidente probatorio or to the public prosecutor, when one of the circumstances outlined in letters (a) and (b) applies.

f. An expert evaluation or judicial experiment if the evidence concerns a person, object, or location whose condition is subject to unavoidable changes.

g. An identification procedure when particular urgency does not allow the act to be postponed until the trial.

It was only later that paragraph 1-bis was introduced:²

In proceedings for the offenses referred to in articles 572, 600, 600-bis, 600-ter, and 600-quater of the Penal Code, including those related to pornographic material as per article 600-quater-1, as well as articles 600-quinquies, 601, 602, 609-bis, 609-quater, 609-quinquies, 609-octies, 609-undecies, and 612-bis, the public prosecutor—also upon request of the injured party—or the person under investigation may request that an incidente probatorio be conducted for the collection of testimony from a minor or from the injured adult party, even outside the circumstances provided for in paragraph 1.

This paragraph adds a victim-oriented approach that is necessary when it comes to victims of human trafficking and it was added with Law No. 172 of 2021 to implement the so-called Lanzarote Convention, which is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.³ This modification allowed the extension of this measure to an exhaustive list of crimes including mistreatment, domestic abuse, rape, sexual violence but also hate crimes (such as hate speech), and to adults besides minors.⁴

²Italy. (n.d.). Codice di procedura penale. [online] Gazzetta Ufficiale. Available at: [CPP](#)

³Council of Europe. (n.d.). The Lanzarote Convention: Protecting children against sexual exploitation and sexual abuse. [online] Available at: [Lanzarote](#)

⁴Filice, F. (2024). La protezione delle vittime e delle persone vulnerabili nel sistema legale italiano/The protection of victims and vulnerable persons in the Italian criminal system. [online] [Questione Giustizia](#).

Under this regime the testimony is collected in an intimate, protected environment with the specific objective to prevent any interaction between the victim and their trafficker. During an ordinary trial, protected modalities are applied only when the victim has to testify, whereas during the *incidente probatorio* they operate also during an identification procedure, a judicial inspection and an expert assessment.⁵ More specifically, a psychological expert is put at disposal of the victim to assist them during the acquisition of the evidence. In case of minors, family members are allowed to be present. Furthermore, the judge may adopt a one-way mirror with an intercom to prevent the victim from having contact with the perpetrator. The whole testimony is collected in audio-visual form. The result is a private hearing where victims provide their testimony in absence of the defendant (who may be present in another room) and are questioned only by the judge for the preliminary investigations. As a matter of fact, the procedure forbids the defense lawyer to cross-examine the victim to avoid any intimidation. Sometimes, especially for trials that concern domestic abuses and gender-based violence, there is the risk that the prosecutor or the defense lawyer adopt aggressive questioning techniques to frighten the victim or investigate elements that might portray the victim in a compromising manner. In the case of sexual abuses this may entail questions about other sexual relations outside the relationship between the victim and their abuser, for instance.⁶ Dr. Di Bari reported that in THB cases it is not rare to find defense lawyers who accuse victims to have reported their perpetrator only to obtain the residence permit, sometimes even in cases where the victim has already obtained the refugee status by the Territorial Commission.⁷ It is already in this phase that the judge can adopt preventive measures and as mentioned in the previous chapter, the protective measures that derive from Legge Roccella may be applied to THB cases especially if they involve violence and sexual exploitation.

A major issue used to be that victims eligible for the *incidente probatorio* were not covered by the protections provided under article 190-bis of the Penal Code. This arti-

Available at: [vulnerability](#)

⁵Grieco, S. (2024). “Declinazioni speciali” del contraddittorio a protezione del dichiarante vulnerabile. Le misure di compensazione ai rischi di unfair trial, anche alla luce della nuova disciplina delle videoregistrazioni post Riforma Cartabia. [online] *Questione Giustizia*. Available at: [Grieco](#)

⁶Filice, F. (2024). La protezione delle vittime e delle persone vulnerabili nel sistema legale italiano/The protection of victims and vulnerable persons in the Italian criminal system. [online] *Questione Giustizia*. Available at: [vulnerability](#)

⁷G. Di Bari, personal communication, 12 February 2025

cle stipulates that individuals who have already testified during an *incidente probatorio* cannot be called to testify again during the trial. However, this protection was limited exclusively to minors under the age of 16. Consequently, this created a discrepancy within the legal framework between article 190-bis and the aforementioned article 392, leading to a plausible failure in protecting victims.⁸ In 2015 through legislative decree 212 (that transposed the 2012/29/EU Directive), this possibility was extended also to adult victims of human trafficking.⁹ This decree was significant because it also further expanded the application of the *incidente probatorio*. Previously, this procedural mechanism was primarily envisaged for victims of particularly violent and traumatic crimes, as outlined in articles 351 1-ter and 392 1-bis of the CPP, who were recognized as having presumed vulnerability (*vulnerabilità presunta*) given the gravity of the crimes involved. In other words, the crimes under those articles are so violent, that the condition of vulnerability is automatically recognized by law. The decree, instead, emphasized the cruciality of prioritizing the individual, by introducing the concept of atypical vulnerability (*vulnerabilità atipica*): according to this concept, the type and severity of the crime under investigation are irrelevant if victims present an evident state of vulnerability.¹⁰ Lastly, under article 392 1-bis CPP the *incidente probatorio* can be utilized also in cases outside those acts that cannot be postponed. This version is known as *incidente probatorio liberalizzato* and it aims at incentivizing its use.¹¹

3.1.2 Defendant's Rights: The Risk of Unfair Trial

When using a tool like *incidente probatorio*, a complex balance is required between protecting the victim and safeguarding the defendant's rights, both of which are constitutionally significant. The Italian Supreme Court clarified that the new framework established by Legislative Decree 212/2015 does not disrupt the core principles of the criminal justice system, nor it undermines the fairness of the trial for the accused, in reshaping the victim's

⁸Recchione, S. (2011). La testimonianza 'debole' della vittima nel processo penale. [online] CanestriniLex. Available at: [canestrinilex](#)

⁹Brocardi.it. (n.d.). Art. 190-bis - Modalità di assunzione della testimonianza della persona offesa. [online] Available at: [CPP](#)

¹⁰Salvis Juribus. (2021). La tutela della vittima del reato e l'audizione della persona offesa vulnerabile in sede di *incidente probatorio*. [online] Available at: [salvisjuribus](#)

¹¹Dimuzio, G. (2015). Testimonianza della vittima vulnerabile. [online] Giurisprudenza Penale. Available at: [testimonianza](#)

role. With a significant increase in cases where incidental questioning is used, we assist in a process of documenting the testimony, where witness statements are recorded or written and then used in the main trial without re-interrogation by the judge.

Video recordings are used to facilitate the testimony but some point out that video testimony cannot replicate the nuances of direct cross-examination and this shift necessarily affects the principle of orality and immediacy. The reduced cross-examination typical of protected hearings, mediated by the judge for preliminary investigations and/or a psychologist, limits the defense's ability to interact directly with witnesses, thus impairing a critical defense tool. The EU Victims' Directive stresses that victim protection should not compromise the defendant's rights, and that national courts should judge whether balance has been adopted on a case-to-case basis. In this sense, the ECtHR has established that using testimony from individuals who have not been cross-examined by the defense violates article 6 of the ECHR if it is the sole or decisive evidence against the accused: in fact, defendants have the right to examine the accusations that are brought against them. However, since 2011, if adequate balancing is assessed by courts, the use of such testimony does not automatically violate the ECHR. Safeguards such as detailed reasoning about the reliability of the testimony, video recordings, corroborative evidence, or indirect questioning by the defense (for example, written on a paper) can mitigate this risk. In Italy, provisions for vulnerable individuals under article 90-quater of the CPP seem to align with ECHR standards, offering protections for the defendant like having access to police video recordings and ensuring the defense can ask clarifying questions through intermediaries. Judges must take into account that they are vis-à-vis a vulnerable testimony, for which a cautious evaluation is required, such as in recognizing vague answers and the possible consequences of suggestive questioning on the validity of the testimony.¹² The role of judges is crucial in finding such equilibrium: they have to make sure victims expose clearly their testimony, to then share with the defense lawyers the information collected in the first part of the interview so that the lawyers can suggest more questions. In this respect, the judge must evaluate which questions are appropriate for the

¹²Grieco, S. (2024). "Declinazioni speciali" del contraddittorio a protezione del dichiarante vulnerabile. Le misure di compensazione ai rischi di unfair trial, anche alla luce della nuova disciplina delle videoregistrazioni post Riforma Cartabia. [online] *Questione Giustizia*. Available at: [Grieco](#)

case to avoid re-victimizing the victim.¹³ By this token, *incidente probatorio*'s functioning reflects the perfect balance between ensuring the credibility of vulnerable witnesses and the protection of the defendant's rights.¹⁴

3.1.3 Cartabia Reform

Video recording is preferred over written transcripts as it allows the judge, responsible for determining the defendant's guilt, to experience the full evidentiary process, including verbal and non-verbal elements. It seeks to capture the inherent orality of evidence, typical of cross-examination. Under the Cartabia reform, the use of video recordings has been extended to all witnesses, both in trials and during an *incidente probatorio*, based on article 401, paragraph 5 of the CPP. Specifically, video recording addresses the aforementioned concerns regarding the principles of immediacy and orality, especially as evidence is usually assessed by a different judge than the one who collected it. This led to the inclusion of audio recording in the general documentation.

This is the only modification related to *incidente probatorio* introduced by the reform, since its main focus is to speed up criminal trials, as outlined in the Piano Nazionale di Ripresa e Resilienza (PNRR), and the preference for video recordings reflects this goal of reducing delays and inefficiencies. This change is aimed more at avoiding the need for trial renewal in case the judge changes, rather than ensuring reliable documentation that preserves evidence over time. Nevertheless, the reform has been able to systematize the balance of the rights of vulnerable individuals against those of the defendant. For vulnerable parties, further protections have been put in place. If legal requirements are not followed during preliminary investigations, the collected evidence becomes inadmissible, as stipulated by article 373 subsection 2-quater of the CPP. Moreover, any statement made by vulnerable individuals must be fully recorded to ensure accuracy and prevent manipulation. In the absence of recording tools or technical personnel or in case of emergency the process can proceed without a recording. The only exception applies to

¹³Questione Giustizia, 2025. La protezione delle vittime e delle persone vulnerabili nel sistema legale italiano. Questione Giustizia. Available at: [questionegiustizia](#)

¹⁴Grieco, S. (2024). "Declinazioni speciali" del contraddittorio a protezione del dichiarante vulnerabile. Le misure di compensazione ai rischi di unfair trial, anche alla luce della nuova disciplina delle videoregistrazioni post Riforma Cartabia. [online] Questione Giustizia. Available at: [Grieco](#)

an interview with a person in vinculis, i.d. in prison, whereby the recording requirement does not apply.¹⁵

3.1.4 Appeal of Rejected *incidente probatorio*

In Italy, no appeal is permitted when the judge for the preliminary investigations declines the request of using the *incidente probatorio*, as such decision falls within the scope of their discretionary powers. There is the chance of appeal to the Court of Cassation, but only in cases where the act is considered *abnorme* (i.e. abnormal or grossly irregular). In the 2005 case *Sottani vs Italy*, the European Court of Human Rights expressed concerns regarding the mediating role of the public prosecutor in requesting the *incidente probatorio* from the judge, even though the last decision is taken by the judge. The court held that utilizing this tool may be essential to guarantee the efficacy of *costituirsi parte civile* (being a civil party to the trial) for the victim. This case raised pertinent questions about the possibility of permitting victims to make direct requests for it, thus initiating a broader debate on the mediating role of public prosecutors in the phase of preliminary investigations. The court, in fact, suggested this role may infringe article 6 of the ECHR (i.e. the right to a fair trial) and that direct access not only to *incidente probatorio*, but also to other rights during this preliminary phase, should be granted to victims, which would amplify their position in trials.¹⁶

Typically, refusals to admit the *incidente probatorio* are based on considerations related to the timeliness of the trial proceedings. However, the relevance of the evidence and the potentially detrimental consequences victims may live during an ordinary hearing should be given greater weight than the scheduling of the trial. Moreover, according to lawyer Baldovin, this explanation does not correspond to reality as *incidente probatorio* does not prolong the duration of trials, rather the contrary: "it takes four hours, so an afternoon, where all parties are present, instead of having to hear the victim one day, the defendant another day and so on. Also, in case the victim escapes, judges can still proceed with

¹⁵Grieco, S. (2024). "Declinazioni speciali" del contraddittorio a protezione del dichiarante vulnerabile. Le misure di compensazione ai rischi di unfair trial, anche alla luce della nuova disciplina delle videoregistrazioni post Riforma Cartabia. [online] *Questione Giustizia*. Available at: [Grieco](#)

¹⁶Recchione, S. (2011). La testimonianza 'debole' della vittima nel processo penale. [online] *CanestriniLex*. Available at: [canestrinilex](#)

the trial because the testimony is valid."¹⁷ Instead, in an ordinary hearing there is the rule that if a victim gives their testimony and they escape, their declarations can be used during the trial only if it was not reasonably foreseeable that they would be absent and all proper summons efforts are made. In cases of trafficking, it is not so absurd for victims to escape or simply not show up during trials, which would annul the testimony.¹⁸ It may be beneficial to introduce provisions for an appeal in exceptional circumstances, particularly when the vulnerability of the victim necessitates the acceptance of the *incidente probatorio* request to ensure proper legal protection and the fair administration of justice.

The Plenary Session of the Court of Cassation has recently intervened, expressing their opinion on the two orientations that have emerged among experts regarding the matter. According to the professionals that adhere to the first orientation, the judge's most pressing concern is the balance of the need, on the one hand, to protect the victim and, on the other, the procedural guarantees of the defendant's right to defense. In this regard, the decision not to allow an appeal against the rejection of a request falls within the legislature's discretion and does not create any risk of conflict with international legal sources. Rendering pre-trial evidence gathering procedures mandatory could lead to a disproportionate outcome, especially in cases where the testimony is deemed irrelevant or unnecessary (for example, when sufficient evidence has already been obtained from other sources or when the victim's condition, due to the criminal act or other reasons, renders immediate testimony during the investigative phase inadvisable). Furthermore, they recall article 398, paragraph 1, which outlines three possible judicial decisions (acceptance, inadmissibility, or rejection): this suggests that the law excludes the mandatory acceptance of a procedure requested by the parties involved. Such interpretative stance has led to rulings that exclude vulnerability even in seemingly unreasonable cases. For instance, in cases of sexual violence perpetrated by a relative when the victim was still a minor, vulnerability has been dismissed (and thus the use of *incidente probatorio*) on the grounds that the individual has become an adult in the meantime, is part of a well-structured family, and because the nature of the abuse—limited to inappropriate touching in the presence of third parties—was considered insufficient to justify the presence of vulnerability.¹⁹

¹⁷O. Baldovin, personal communication, 19th May 2025

¹⁸ibidem

¹⁹De Vita, R. and Guerrisi, V. (2024) 'Testimonianza della vittima di violenza e incidente probatorio: i

The second orientation sustains, instead, that states' obligation to protect victims from secondary victimization creates a mandatory acceptance of the use of pre-trial hearing to safeguard the physical and psychological integrity of the vulnerable person. Rejection is allowed only in cases where the request is ill founded, and preventing secondary victimization must prevail over the principle whereby evidence is collected during the trial. According to the experts, whenever an *incidente probatorio* is rejected without a proper motivation, it is an act that goes beyond the discretionary power conferred to the judge.

The constitutional court stands for the second orientation, providing different reasons to support this stance. Firstly, legislative decree 212, which introduced the concept of atypical vulnerability, shows the intent to create a more effective system to support victims involving them in uncovering and verifying criminal conduct. Furthermore, the provision presents a dual rationale: protecting victims' integrity and preserving the authenticity of evidence. This measure is, certainly, an exception to the fundamental principle of immediacy of evidence, but it is based on a presumption of urgency given the nature of the crimes and the condition of vulnerability of the witnesses. For the way it is conceived, the Plenary Session claims it ensures full protection of the right to a defense and a fair trial in compliance with both the Italian Constitution and international legal standards.²⁰

3.1.5 Issues with the Current Use of *incidente probatorio*

There are some issues related to the current use of *incidente probatorio*. Firstly, the guarantee that the testimony of the vulnerable victim will not be collected again in a future trial operates only *pro futuro*, but does not have a retroactive effect. This means that potentially the judicial police and the public prosecutor may set up preventive investigative hearings, de facto risking to re-victimize the victim.

Secondly, article 190-bis foresees that judges may reconsider the admissibility of the evidence made in safe contexts in the following cases: in presence of new facts or circumstances different from those previously stated, or in situations where a new evaluation is

limiti processuali alla vittimizzazione secondaria', De VITA Law, 10 August. Available at: [De Vita](#)

²⁰De Vita, R. and Guerrisi, V. (2024) 'Testimonianza della vittima di violenza e incidente probatorio: i limiti processuali alla vittimizzazione secondaria', De VITA Law, 10 August. Available at: [De Vita](#)

necessary due to specific needs. These conditions are broad and offer limited assurance that the victim's testimony will not be repeated during the trial.

Moreover, since judges are not obliged to accept a request for an *incidente probatorio*, their discretionary power in determining the victim's vulnerability raises concerns. This is due to the absence of criteria to identify the factors of vulnerability necessary to justify the use of this procedural tool. International legislation has left a wide margin of appreciation to states to determine national procedures, but Italy has adopted neither a judicial process to verify vulnerability nor a specialized personnel that is competent with such evaluation. It seems plausible that these figures would be the public prosecutor or the judge, in conjunction with the personnel that enters in contact with the victim. However, Italian law does not specify it.²¹ In this sense, the Plenary Session statement at the end of a trial on the matter is extremely relevant. In fact, the court affirmed that a ruling in which the judge rejects a request for an *incidente probatorio* concerning the testimony of a victim of one of the offenses listed in article 392, paragraph 1-bis, is considered *abnorme* (irregular), and therefore subject to appeal before the Court of Cassation, if the decision is based on the victim's alleged lack of vulnerability and the deferrable nature of the evidence. These conditions are, in fact, presumed by law.

Lastly, the failure or incorrect application of protective measures by professionals is not accompanied by any explicit sanction.

3.2 Case Study

Lawyers or NGOs representing victims of THB usually have to ask the responsible prosecutors to adopt the *incidente probatorio*, and the chance to testify in an intimate, secure space outside the court is not frequently implemented. Testimonies confirmed that, unless specialized prosecutors are involved, *incidente probatorio* is not used.²² This brings up the issue of training for the professionals working with victims, ranging from judges to lawyers. Over time, the judiciary is acquiring more knowledge of the phenomenon, but

²¹Grieco, S. (2024). "Declinazioni speciali" del contraddittorio a protezione del dichiarante vulnerabile. Le misure di compensazione ai rischi di unfair trial, anche alla luce della nuova disciplina delle videoregistrazioni post Riforma Cartabia. [online] *Questione Giustizia*. Available at: [Grieco](#)

²²GRETA (2024) Access to justice and effective remedies for victims of trafficking in human beings: Evaluation Report Italy, [online] Strasbourg: Council of Europe. Available at: [GRETA](#)

more specialized training could be useful, especially for the ordinary tribunals.

In the case at hand, the judge did not use the pre-trial hearing and proceeded directly with the ordinary trial, despite many requests from the Navigare Project operators. Dr. Di Bari wondered whether the NGOs should do more to convince the judges to approve its use: "however, it is absurd that we have to insist so much in the first place".²³ Unfortunately, the reasons that led this judge to adopt the ordinary trial without an *incidente probatorio* are unknown. It is indeed strange because this case was dealt by the Direzione Distrettuale Antimafia (DDA), where it is more likely to find specialized judges. In Italy, in fact, the Legislator decided that for crimes falling under certain articles, including those of trafficking and related articles (600, 601 and 602), the Office of the Prosecutor (*Procura della Repubblica*) in the capital of the district under the jurisdiction of the Court of Appeal in which the competent judge has jurisdiction has the task to carry out the preliminary investigations. The DDA is the special office that takes care of those investigations and is present at every Prosecutor of the Republic's office. Judicial officers are chosen directly from the Chief Prosecutor, and the Direzione nazionale antimafia e antiterrorismo (DNA) coordinates all DDA present on the territory.²⁴ Ordinary Tribunals can deal with cases of THB in specialized sections that protect *fasce deboli* (vulnerable people). However, finding personnel that have received proper training for THB cases is less likely than in DDA, where they are used to dealing with big mafia and organized crime cases.²⁵

Dr. Di Bari also stressed the fact that for labour (but also sexual) exploitation judges are more inclined to approve the *incidente probatorio*, as they are easier to prove than trafficking (even though both can be a manifestation of trafficking). Human trafficking is more complex because it can be a supranational phenomenon in certain cases, connected to international criminal networks, and funds and resources are not many. Moreover, Di Bari underlined how even in cases where the *incidente probatorio* is adopted, victims are not necessarily protected as they should: "for a case we were in the Assize Court in Verona, so in presence of both Court of Assize judges (*giudici togati*) and lay judges (*giudici non togati*). I was shocked when I saw a high school class come in. I asked the professor why

²³G. Di Bari, personal communication, 12 February 2025

²⁴Edizioni Simone (2017) 'Direzione distrettuale e nazionale antimafia e antiterrorismo', La Legge per Tutti. Available at: [DNA](#)

²⁵G. Di Bari, personal communication, 12 February 2025

they were there and who authorized them. She answered that she and her students were excited to hear the *incidente probatorio* of a THB victim and that the judge had authorized them.”²⁶ She tried to reason with the judge, who did not see any problem in their presence though. Di Bari talked to the class explaining to them that it would be a very delicate moment for people who had suffered a lot. She asked them if they really wanted to be there (also because they were fifteen or sixteen) and kindly told them to leave the room if they understood the importance of privacy for that occasion. “Eventually, only the professor - who was very angry by then - and five students stayed in the court”.²⁷

During our interview, Di Bari also remembered a case in which a Romanian girl, victim of trafficking for sexual exploitation, had to wait 8 years before her case was addressed, and only then the judge approved the use of *incidente probatorio* even though many years had passed from the occurrence of facts. Di Bari explained that the judge went personally to the girl to apologize on behalf of the institution for having to go through her experience again after 8 years, and for not having dealt with her case for such a long time.²⁸ She also admitted that it is not easy to catch the proper time to conduct an *incidente probatorio*: “if it takes place too soon, you risk a boomerang effect because victims need time to process what they have gone through, perhaps even to accept they are victims. If it takes place too late, there is the risk of re-victimization.”²⁹

3.3 Human Rights Implications: Applying GRETA’s Considerations

Two major human rights implications that derive from the incorrect use of pre-trial hearing, or its non-utilization, are secondary victimization and the impacts on the validity of the testimony. This section will analyze thoroughly both to highlight the pressing need to adopt this procedural instrument.

²⁶G. Di Bari, personal communication, 12 February 2025

²⁷ibidem

²⁸G. Di Bari, personal communication, 18 January 2025

²⁹G. Di Bari, personal communication, 19th May 2025

3.3.1 Secondary Victimization

Secondary victimization can take place especially if the *incidente probatorio* is not adopted, but also if the judge decides to use it after many years from the occurrence of the events. The term refers to the chance that the victims relive the feelings of anxiety, fear and pain experienced throughout the exploitation during the trial.³⁰ According to the EU Directive 2011/36 victims have already suffered abuse and degrading treatment, which is why they should be protected from further trauma.³¹ A delicate equilibrium must be found since victims have the right to participate in the trial of those accused of violating their rights, but at the same time to take part in a trial that is conducted in a manner that, as far as possible, minimizes the risk of secondary victimization. As previously mentioned, the fairness of the trial is owed to the accused as well.

Secondary victimization can take many forms. Examples can be invasive and skeptical questioning from law enforcement in the form of victim blaming, which can lead the victim to feel disbelieved. This can exacerbate their trauma and complicate their emotional response to the legal process. Similarly, the courtroom environment and the legal proceedings themselves can be intimidating, particularly during cross-examination. Multiple interviews may be necessary to establish trust between law enforcement and traumatized victims: in fact, as will be discussed later, victims are often reluctant to tell the complete story immediately. However, such interviews can sometimes re-traumatize the victim instead of fostering cooperation with the investigation.³² As already mentioned, victims might face aggressive questioning by defense attorneys, further increasing their distress and distrust in the institutions.³³ A concrete example of this will be analyzed later in the chapter. *Incidente probatorio* can be extremely essential for this type of crime because it minimizes unnecessary repetition of interviews throughout the investigation, prosecution,

³⁰Faillaci, G. (2023) 'La «vittimizzazione secondaria» e gli strumenti processuali a tutela dei soggetti vulnerabili', Njus. Available at: [victimization](#)

³¹European Union (2011) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Official Journal of the European Union, L101, pp. 1–11. Available at: [EU law](#)

³²Ward, T. and Fouladvand, S. (2018) 'Human trafficking, victims' rights and fair trials', The Journal of Criminal Law, 82(2), pp. 138-155. ISSN 0022-0183. Available at: [THB](#)

³³Okonagata, G. (2023) 'Beyond the crime: Understanding secondary victimization and its impact on victims', Medium. Available at: [Okonagata](#)

and trial stages.³⁴ Furthermore, some cases may attract significant media attention, for which victims may be subjected to public scrutiny and sensationalized reporting. Such exposure can lead to additional emotional distress and vulnerability. In addition to these challenges, victims may also experience social stigmatization. The judgment, isolation, or blame they face from their community or peers can intensify feelings of shame and guilt, creating an even greater emotional burden, and making it hard for them to acknowledge their status of victimhood. Prolonged legal proceedings can further amplify these stresses, as victims must wait for resolution and closure.³⁵

Evidently, the potential harmful consequences of secondary victimization for victims are several. Victims who experience it often feel isolated and unsupported. The lack of empathy and understanding from those involved in the legal process, including authorities, can foster feelings of betrayal and distrust. The impact on mental health is another significant consequence of secondary victimization: victims may experience heightened anxiety, depression, and post-traumatic stress disorder, making it more difficult for them to cope with the aftermath of the crime. Nevertheless, this may not be true for all victims as will be shown below. Indeed, distrusting the justice system may make them reluctant to report crimes in the future, as they fear experiencing additional harm or judgment during the legal process. This contributes to the underreporting of incidents and sends the incorrect and dangerous message to traffickers that they can keep their power over victims. Also victims that have already started proceedings with the law enforcement may decide to withdraw fearing further mistreatment or a lack of belief in their account. Consequently, victims may decide not to seek help in the first place, which has long-term issues: without validation and support, the healing process can be delayed, if not prevented even, making it more difficult for victims to move forward with their lives. Finally, social stigmatization may lead victims to internalize guilt, which in turn creates an additional barrier to seeking support from friends and family, further hindering their recovery. The cumulative impact of secondary victimization can disrupt a victim's ability to develop healthy coping mechanisms, making it more difficult for them to manage the trauma and

³⁴Ward, T. and Fouladvand, S. (2018) 'Human trafficking, victims' rights and fair trials', *The Journal of Criminal Law*, 82(2), pp. 138-155. ISSN 0022-0183. Available at: [THB](#)

³⁵Okonagata, G. (2023) 'Beyond the crime: Understanding secondary victimization and its impact on victims', Medium. Available at: [Okonagata](#)

stress they continue to experience.³⁶

From a human rights perspective, criminal trials for THB should not be viewed merely as mechanisms for crime control, but rather as an opportunity for the state to fulfill its duty towards those whose human rights have been violated. This duty involves proving the guilt of the accused through a fair trial in which the victim is given a genuine opportunity to participate. At the same time, some point to the fact that, to ensure fairness, the defendant must also have the chance to present evidence of substantial probative value and raise questions that could create reasonable doubt, even if such evidence or questions are distressing to the alleged victim. However, the right of victims to protection from secondary victimization can justify limitations on the defendant's right to confrontation, provided that there are adequate counterbalancing safeguards to ensure a fair trial.³⁷ And as already sustained by eminent authorities in the legal field (such as the Italian Court of Cassation) the *incidente probatorio* fulfils this balancing need.

A German study tried to assess whether criminal proceedings could negatively influence psychological variables such as self-esteem, faith in the future, trust in the legal system and faith in a just world. The results showed that psychological stress and punishment severity did not qualify as statistically significant in the regression analysis, while trust in the legal system and faith in a just world were statistically significant and negatively affected by criminal proceedings, besides being more strongly affected than self-esteem and faith in the future. Some victims participating in the research commented that the criminal proceedings had been worse than what they had suffered during the exploitation, whilst a limited number of victims perceived them to be helpful. This study shows that, although some psychological aspects are not affected by criminal proceedings, there are other negative psychological dynamics involved.³⁸

A concrete example of secondary victimization is J.L. vs Italy case of 2021, where the European Court of Human Rights has found a violation of article 8 of the ECHR for

³⁶Okonagata, G. (2023) 'Beyond the crime: Understanding secondary victimization and its impact on victims', Medium. Available at: [Okonagata](#)

³⁷Ward, T. and Fouladvand, S. (2018) 'Human trafficking, victims' rights and fair trials', *The Journal of Criminal Law*, 82(2), pp. 138-155. ISSN 0022-0183. Available at: [THB](#)

³⁸Orth, U. (2002) 'Secondary victimization of crime victims by criminal proceedings', *Social Justice Research*, 15(4), pp. 399-415

the language and arguments used, in the face of a positive obligation of States to protect the person from forms of secondary victimization. The sentence focuses on highlighting completely unjustified references to aspects of the applicant's personal life contained in the decision of the Florence Court of Appeal, because they are not relevant to the examination of the credibility of the witness and to ascertaining any consent to sexual acts object of the original accusation. In fact, the young woman accused six young men of having obliged her to have sexual intercourse in Florence. She had been to the hospital, which confirmed the violence, and she went to the anti-violence centre Artemisia to get psychological support. However, the young men were acquitted on the grounds that the young woman was a fragile female with a creative personality, bisexual and who was used to having occasional sex even when she was not convinced. Moreover, the judges of the Court of Appeal stated that everyone had drunk that night and that testimonies saw the young woman behaving in a sensual way, wearing red underwear. Testimonies affirmed she looked drunk when she went out with the group of young men but this was not taken into account by the court. The ECtHR found a violation of article 8 of the Convention considering the arguments about the bisexuality of the young woman, her underwear, her sexual life before the events and the assumption she had a weird relationship to sex inappropriate and regrettable.³⁹ This case could open a discussion on the gender stereotypes present in courts, but this aspect goes beyond the scope of the present thesis. Rather, its relevance consists in showing one of the possible ways in which secondary victimization could manifest in court, especially when sexual exploitation is involved.

Scholars have identified the definition of secondary victimization as a subject of critique. In fact, the 2012 Victim Directive of the EU mentions secondary victimization 17 times without providing a definition, while the Council of Europe provides an unsatisfactory one: "Secondary victimization means the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim".⁴⁰ However, this definition is both ambiguous and difficult to reconcile with the Council

³⁹Bouchard, M. (2021) 'La vittimizzazione secondaria all'esame della Corte europea dei diritti dell'uomo: come le parole dei giudici possono arrecare una seconda offesa alla vittima: il caso J.L. c. Italia 27 maggio 2021', *Diritto Penale e Uomo*. Available at: [ECtHR](#)

⁴⁰Pemberton, A. (2023) 'Bringing injustice back in: Secondary victimization as epistemic injustice', *Criminology and Criminal Justice*, 1–20. doi: 10.1177/17488958231181345

of Europe's broader definition of victimization, which states that a "victim is a natural person who has suffered harm, including physical or mental injury, emotional suffering, or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state".⁴¹ The primary issue is that the experiences typically classified as secondary victimization do not arise from a breach of the criminal law itself. Rather, they emerge from the way criminal law is applied and administered within member states.

There are several critical flaws in the current conceptualization of secondary victimization then. First, the term is applied inconsistently and has become a catch-all category for any negative experience that victims endure after the initial victimization. This lack of conceptual precision blurs important distinctions between different forms of harm. Second, secondary victimization is often framed as an extension or exacerbation of the trauma caused by the primary victimization. Such framing neglects the negative treatment that victims experience from institutional actors, reducing it to an amplification of the original harm. Third, the emphasis on negative emotional outcomes may have unintended anti-emancipatory consequences. Initially, concerns about secondary victimization were used to justify improving victims' procedural rights and their ability to participate in legal processes; now, the fear of exposing victims to further emotional harm may be used to limit their involvement.⁴² Such concerns are reasonable, but since not all victims have the same experiences, participation and protection from secondary victimization should be carefully balanced. Another flaw lies in the neglect of institutional inaction. The current definition focuses on actions taken by criminal justice and law enforcement agencies while overlooking the harm caused by inaction or neglect. For example, inadequate resource allocation or restrictive procedural practices (such as opting for plea bargaining, analyzed in chapter 2, or the decision not to use an *incidente probatorio*) may prevent victims from participating meaningfully in the legal process. This oversight reflects an omission bias, where harms resulting from inaction are not recognized as secondary victimization. Finally, the prevailing definition assumes that secondary victimization is contingent on the victim's conscious awareness of the harm caused by institutional responses. This perspective disregards subtler forms of harm, such as the reinforcement of stereotypes or

⁴¹ See supra note 40

⁴² *ibidem*

the implicit ways in which social institutions shape victims' experiences. For instance, the case of the Italian young woman described above exemplifies this.

A more robust understanding of secondary victimization can be developed by applying the concept of epistemic injustice, which refers to the harm inflicted on individuals in their capacity as knowers. This form of injustice manifests in two primary ways. The first is testimonial injustice, which occurs when a victim's credibility is undermined due to unwarranted prejudice. It may involve discounting the victim's account, questioning their testimony, or failing to validate their experiences. In response, victims may engage in testimonial smothering, where they withhold or minimize their testimony to avoid misrepresentation or dismissal. The second is hermeneutical injustice, which involves unfairness in the collective resources available for interpreting and understanding experiences. Victims often struggle to articulate and share their experiences, particularly when societal frameworks do not accommodate their perspectives. This difficulty is exacerbated by the lack of audiences willing to engage with and validate their interpretations. By integrating epistemic injustice into the conceptual framework of secondary victimization, the phenomenon can be more accurately defined, emphasizing that the injustice of secondary victimization is qualitatively distinct from that of primary victimization. While primary victimization is defined by a breach of criminal law, secondary victimization stems from the way legal systems operate and the epistemic harms they inflict on victims.⁴³

3.3.2 Validity of the Vulnerable Testimony

Validity of the testimony may be hampered if the *incidente probatorio* is adopted after many years from the occurrence of the events. As a matter of fact, judges often tend to regard such testimonies as less credible due to the passage of time.⁴⁴ In the context of THB trials, this concern is further complicated by the fact that the testimony typically relies on the victim's memory, which may deteriorate or become less accurate over time. This could be the underlying reason why the judge decided not to adopt it in our case study. Victims may be confused regarding the chain of events or their stories may be inconsistent.

⁴³Pemberton, A. (2023) 'Bringing injustice back in: Secondary victimization as epistemic injustice', *Criminology and Criminal Justice*, 1–20. doi: 10.1177/17488958231181345

⁴⁴Recchione, S. (n.d.) 'La testimonianza "debole" della vittima nel processo penale', *CanestriniLex*. Available at: [canestrinilex](https://www.canestrinilex.it/)

Hence, while generally the consistency of a witness' testimony is an essential element for courts to assess its credibility, in trafficking cases judges cannot rely on this factor, and this poses the victim in an uncomfortable situation.⁴⁵ Lawyer Baldovin explained that it is hard to make them remember details they have removed, either due to the passage of time or as a traumatic response to what they lived. According to her, judicial skepticism toward such testimonies is understandable, given the severity of trafficking convictions and the corresponding need for precise and unequivocal evidence of exploitation.⁴⁶ "There are cases where the victim's testimony is less important, such as when more victims report the same traffickers. When there is concurrence of declarations, the public prosecutor may ask to initiate the trial immediately without an *incidente probatorio* if by 90 days there is proof of the crime. The defendant lawyer has then other 15 days to build the defense" but it rarely happens.⁴⁷ This would make relying on evidence other than the testimony, such as undercover operations, a better option to secure convictions. However, it is very complex to do such operations, which renders victims' testimonies pivotal.⁴⁸

As already aforementioned, balancing the protection of the defendant's rights and the protection of the victim-witness of the crime is central to human trafficking cases. The method of direct confrontation with the accused, which is central to the accusatory process, is not always adequate to ensure reliable testimony, as the presence of the accused may place the victim in a position of psychological subjugation (if not intimidation), thus interfering with their testimony. Secondary victimization may cause significant harm to the formation of reliable testimony. It must be considered that the trauma resulting from the inadequacy of the mechanisms protecting the testifying victim significantly hinders not only the formation of evidence and potential convictions but also the very possibility of prosecuting many invisible crimes, whose exposure depends solely on the willingness of the victims to report. This creates serious consequences for the effectiveness of the criminal justice system, as it results in the failure to pursue specific criminal acts. Furthermore, when the victim's decision to withdraw from the legal process occurs in cases of organized crime,

⁴⁵Ward, Tony and Fouladvand, Shahrzad (2018) Human Trafficking, Victims' Rights and Fair Trials. The Journal of Criminal Law, 82 (2). pp. 138-155. ISSN 0022-0183

⁴⁶O. Baldovin, personal communication, 19th May 2025

⁴⁷ibidem

⁴⁸Ward, Tony and Fouladvand, Shahrzad (2018) Human Trafficking, Victims' Rights and Fair Trials. The Journal of Criminal Law, 82 (2). pp. 138-155. ISSN 0022-0183

the criminal system in which the unreported crime is embedded becomes strengthened. The victim's decision to refrain from pursuing the case provides significant evidence to the criminal organization of the strength of the intimidation employed by the criminal group.

The accusatory statements made by traumatized victims are often not immediately complete. They typically emerge after a lengthy process in which the victim both re-elaborates the trauma, and starts trusting the authorities they engage with. Their statements are generally made without awareness of the procedural consequences they may have. Consequently, they often appear fragmented, symbolic, or even untruthful due to fear, shame, intimidation, or suggestion.⁴⁹ The storytelling of victims in criminal proceedings can often be inconsistent, which severely undermines the credibility of their testimony. When a victim provides contradictory statements (saying one thing initially, then changing their story, adding or omitting details, and later offering a different version entirely), it creates significant distrust on the institutional side. This erratic storytelling can lead to the perception that the victim is lying, causing the judge and others involved in the trial to question the credibility of the entire narrative. Such inconsistencies complicate the understanding of the crime itself and its impact on the victim. Lawyer Carla Quinto reports that when it comes to victims' declarations, there is still a high suspicion from judges, who refer to anti-trafficking organizations to legitimize their words.⁵⁰ Some professionals noted that a victim's status may sometimes be better inferred from their non-verbal gestures rather than from the words they say. Behaviors like nervousness, avoiding eye contact, staring off into the distance, sweating, scratching (especially for victims who have suffered violence) or appearing evasive during an interview can be strong indicators of the trauma the victim has experienced. For these reasons, in the case of a pre-trial examination, it is crucial to document the non-verbal communication data from vulnerable victims through video recording, in accordance with the obligation of audiovisual or audio documentation. The proper recording of initial statements is deemed by the judiciary to be indispensable in order to prevent potential contamination and interference, which, if not immediately addressed, may introduce an irreparable flaw in the formation of critical evidence for the

⁴⁹Recchione, S. (n.d.) 'La testimonianza "debole" della vittima nel processo penale', CanestriniLex. Available at: [canestrinilex](https://www.canestrinilex.it/)

⁵⁰Quinto, C. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

final decision. Fear was also highlighted by many professionals as a common trait among victims, particularly in cases of trafficking. This emotion is often seen as a key sign that can help identify victims who may otherwise be overlooked.⁵¹ Victims' testimonies thus depend on the trust they develop in judges, as they go through a journey that is both legal and psychological. Special measures are pivotal because the risk that the defendant and their lawyers instrumentalize the vulnerability of the victims is higher than one may think, especially when it comes to women and minors.⁵²

To sum up, the promptness of the trial, alongside the timely collection of an *incidente probatorio*, serve both to safeguard the rights and well-being of victims and to secure reliable evidence for prosecuting traffickers. In fact, human actions and behaviors are, by their nature, unpredictable, contingent, and theoretically irreproducible. This characteristic becomes even more pronounced when the factor of vulnerability is introduced, as it inherently influences both victims' behavior and the recollection of the trauma they experienced. It is precisely this notion of irreproducibility that justifies a mitigation, if not a complete exception, of the adversarial principle in the evidence-gathering process. Since the protection of the witness's psychological and physical well-being is directly linked to the reliability of their testimony, the use of mechanisms that limit cross-examination as provided by domestic legislation, finds its legitimacy not only in European legal frameworks but also in the broader international commitment to safeguarding the rights of THB victims. At the same time, the dual-track procedural approach must be applied with caution, ensuring the right to participation for victims, as well as adequate measures to mitigate any potential impact on the defendant's right to a defense.⁵³ And *incidente probatorio* has proven to be such a tool. As Dr. Di Bari stated in our interview: "once the evidence is crystallized, people are set free".⁵⁴ Otherwise, the state risks not fulfilling its duty to provide guarantees of non-repetition and satisfaction.

⁵¹Villacampa, C. and Torres, N., 2017. Human trafficking for criminal exploitation: The failure to identify victims. Springer Science+Business Media Dordrecht. Available at: [identification](#)

⁵²Grieco, S. (2024). "Declinazioni speciali" del contraddittorio a protezione del dichiarante vulnerabile. Le misure di compensazione ai rischi di unfair trial, anche alla luce della nuova disciplina delle videoregistrazioni post Riforma Cartabia. [online] *Questione Giustizia*. Available at: [Grieco](#)

⁵³ibidem

⁵⁴G. Di Bari, personal communication, 12 February 2025

4.1 Forced Criminality

4.1.1 Human Trafficking for Forced Criminality

Human trafficking is not only about sexual or labour exploitation. Victims (both minors and adults) may be recruited for forced criminality, i.e. activities such as drug smuggling, theft, pickpocketing, selling counterfeit products, and fostering illegal immigration. Thanks to technology, criminal networks have become more sophisticated and now exploit people for mass scale financial frauds. Such phenomenon comprehends cybercrime, financial fraud, extortion, money laundering and corruption. The main places where they occur are casinos, hotels, businesses, and victims are either the offenders or complicit in such crimes.¹ This is a type of trafficking that has been neglected so far and data about its functioning exist mainly for minors, who are generally involved because their age allows traffickers to avoid legal repercussions.²

At the EU level it is estimated that trafficking for forced criminality amounts to only 10 percent of the whole phenomenon. A large share concerns drug related crimes, such as forced labour in cannabis cultivation and drug smuggling, and organized property crimes,

¹United Nations Office on Drugs and Crime (2024) 'Explainer: What is trafficking for forced criminality?', UNODC Regional Office for Southeast Asia and the Pacific, 10 October. Available at: [UNODC](#)

²Degani, P. and Pividori, C. (2016) *Attività criminali forzate e scenari della tratta di persone nel quadro degli attuali fenomeni migratori: Questioni di diritti umani e risposte di policy*. Padova: Padova University Press

such as pickpocketing and shoplifting. Generally speaking, there are two main groups of activities: status offences and purpose offences. The first type regards immigration, administrative and civil offences, such as irregular entry or stay, lack of documentation, holding a false ID or an irregular work permit, violations of laws related to public order. Sometimes victims are not aware of the unlawful nature of their actions, especially when it comes to documents, as they are made to believe by their traffickers that they hold real, valid documents. Often, traffickers withhold the documents of their victims to exert further control over them. The second type refers to a situation where a victim is coerced into committing illicit activities by the trafficker. In this case the victim is exploited to carry out these crimes solely for the trafficker's financial benefit. Sometimes, a combination of exploitation types, such as sexual exploitation and criminal exploitation, is employed. Traffickers often compel victims to commit offenses that carry the highest risk of detection by the law enforcement to avoid prosecution and maintain impunity for their own criminal actions. Examples of purpose offences are pickpocketing, burglary, forced begging, drug trafficking, selling or cultivation, selling counterfeit products, fraud and trafficking of other victims. Street vending appears in statistics sometimes, but according to Gianfranco Della Valle,³ head of the Numero Verde Antitratta, it is a stretch as it is more an administrative crime. Other offences may include liberation offences, i.e. crimes committed in an attempt to escape the trafficking situation, like attacking the trafficker, causing damage during the escape, or possessing a weapon; and survival offences, which are crimes committed either during or after the trafficking situation, typically in order to meet basic needs, such as stealing food or medicines.⁴

Identifying victims of this form of human trafficking presents significant challenges, particularly due to the difficulty in distinguishing between offender and victim status in trafficked individuals. This complexity is evident in cases, for instance, where victims of trafficking for sexual exploitation are coerced into recruiting new victims, or in drug smuggling where the existence of coercion is difficult to assess.⁵ Since most victims have no other choice but to surrender to their perpetrators, it is not strange to witness victims becoming part of the criminal organizations that trafficked them. For instance, in Italy, a

³G. Della Valle, personal communication, 3 march 2025

⁴La Strada International (2023) Explanatory Brief on the Non-Punishment Principle, November 2023

⁵G. Della Valle, personal communication, 3 March 2025

case saw Chinese victims, with a debt of nearly 20,000 euros and kept in inhumane living conditions, accepting to become part of a criminal organization and ending up in extortion, kidnapping, organized gambling, prostitution and counterfeiting of trademarks.⁶ The identification process is further hindered by authorities' limited awareness of this form of trafficking, as well as the persistence of stereotypes surrounding the ideal trafficking victim as a fragile, vulnerable person, deprived of any autodetermination, and the reluctance or inability of victims to recognize themselves as such.⁷ In a study conducted in Spain⁸ researchers confirmed the above-mentioned issues. In fact, they found that law enforcement personnel, police officers and justice professionals tend to associate trafficking for forced criminality with sexual exploitation. Thus, they do not recognize it as a distinct category, rather as part of a layered exploitation that victims experience once they are already trafficked for prostitution. Examples include supplying drugs to clients, stealing their belongings or charging them more money than promised, and any other activity victims may engage in in order to repay the debt to their trafficker, such as becoming madames themselves. Moreover, professionals tend to portray victims as vulnerable, undocumented people (mainly young women) forced just into prostitution and with no chance of travelling, or more in general moving too far from their traffickers. This image clearly does not correspond to the real picture of a person who is forced to commit crimes, and the consequences are multiple. First, these stereotypes prevent identification for those victims that do not match the profile of the victim authorities have, which may imply conviction for the victim, especially in absence of an hoc clause on non-punishment (a topic that will be addressed later in the chapter). Second, professionals foster the incorrect assumption that if a person possesses all the necessary documents, then they are under a lower risk of being trafficked. It is quite the contrary: in Italy it is quite common that criminal networks take advantage of the 6-months residence permit issued by Territorial Commissions, while the asylum seeker awaits the grant of the refugee status, to recruit women for prostitution when they are still in reception centres.⁹ Moreover, for criminal organizations it is easier

⁶Eurojust, 2015. Eurojust strategic meeting on trafficking in human beings: Annex. [pdf] Available at: [Eurojust](#)

⁷European Parliamentary Research Service (EPRS) (2021) Understanding EU action against human trafficking. Available at: [EPRS](#)

⁸Villacampa, C. and Torres, N. (2017) 'Human trafficking for criminal exploitation: The failure to identify victims', Springer Science+Business Media Dordrecht, 24 May. Available at: [Springer](#)

⁹Pascoal, R. (2020) Motherhood in the Context of Human Trafficking and Sexual Exploitation: Studies on

to exploit victims who possess the refugee status, for example, because it allows the victim to travel legally outside the destination country. In fact, refugees obtain a residence permit valid for three years and the so-called blue passport to travel in the Schengen area (unless specific countries introduce travel restrictions), in conformity with the Geneva Convention.¹⁰ This is particularly advantageous for drug smuggling, as the case study presented for this chapter will demonstrate. Third, potential victims that are outside this rigid depiction of what it means to be a victim may be left unchecked and proceed with their illegal activities. Della Valle affirmed in our interview that in the past, a consistent group of Nigerian young men were not identified as victims because the focus used to be on Nigerian women (given the prevalence of sexual exploitation as the main type of trafficking in Italy back then). They had a debt of more or less 7000 euros and they repaid it dealing drugs.¹¹

Della Valle also highlighted that these crimes are highly profitable and at the same time difficult to investigate. For instance, pickpocketing and mugging are widespread among the Rom community but they do not show up in the statistics because very young girls are involved. Della Valle mentioned the project Veneto has carried out to collect data on forced begging, called Stop For Beg, as an important step forward to better understand this phenomenon.¹² For drug dealing, two elements emerged from the experience of Della Valle and Dario Fava (an operator of the Numero Verde). Della Valle underlined how difficult it is to maintain the efficacy of the programs in the long run specifically because some victims that are drug dealers become consumers themselves. Dario Fava explained, instead, that it is complex to intervene: even in territories where drug dealing is evident, operators cannot step in because it is too dangerous. Della Valle reported during the interview that they receive several calls from the Centri di Accoglienza Straordinaria (CAS) and that once some young men from Tunisia called to ask for help; however, after the call they had a weird behaviour and eventually they were recruited outside the CAS for drug dealing. During the post-covid period lots of Nigerian women travelled

Nigerian and Romanian Women. Cham: Springer. Available at: [Springer](#)

¹⁰European Union Agency for Asylum (2023) 'Residence permits and travel documents', EUAA Asylum Report 2023. Available at: [EUAA](#)

¹¹G. Della Valle, personal communication, 3 march 2025

¹²For more information please visit: <http://www.regione.veneto.it/web/immigrazione/stop-for-beg>

from Ventimiglia to Nice and nobody controlled them, but Della Valle assumes they were involved in drug smuggling since they travelled with a small luggage and they went and came back during the day. Dario Fava reports a recent case of drug smuggling in a CAS of the periphery of Rome, from where drugs were transported on a bus all over Europe.¹³ It is not certain that human trafficking is involved here, but it is very likely according to the operators of Numero Verde who have been following the news.¹⁴ In fact, Di Bari affirms that these crimes are known to the anti-trafficking operators as *reati sentinella* (indicator crimes), in the sense that they serve as early warning signs of a potential situation of trafficking.¹⁵

4.1.2 Data from the Numero Verde Anti-Tratta

This paragraph will shed light on the most common types of illicit activities victims engage in Italy exploring the data provided by Numero Verde. In Italy, according to the data contained in the SIRIT system,¹⁶ the percentage of people involved in illegal activities who emerged and received assistance from the anti-trafficking system was 0.8 percent in 2022. In 2023 this number grew to 2.5 percent and slightly decreased to 2.1 percent in 2024. It is evident that despite representing a small percentage compared to sexual exploitation and labour exploitation, the phenomenon is present and has increased compared to the past. The issue with this type of trafficking is that it is highly under explored. Di Bari explained that it is only in the last five years that the anti-trafficking operators ask victims if they are subject to pending criminal proceedings. Not even territorial commissions, which are responsible for granting the refugee status, are aware sometimes.¹⁷

In the period between 2016 and 2025 (obviously the data for 2025 will be complete next year) we can see an increase in the number of new evaluated persons, with the majority being men. 2023 was the year that showed the highest number with 24 men, 6 women and

¹³For more information please visit: <https://notizie.virgilio.it/roma-piazza-droga-sui-social-per-arrotondare-l-assegno-di-disoccupazione-arrestato-assieme-al-corriere-1664504>

¹⁴G. Della Valle and D. Fava, personal communication, 3 March 2025

¹⁵G. Di Bari, personal communication, 12 February 2025

¹⁶Numero Verde Anti-Tratta Mestre (2025). Dati estrapolati dal sistema informatizzato per la raccolta di informazioni sulla tratta (sirit) in data 11/03/2025 - a cura del Numero Verde Antitratta. Documento interno, Mestre

¹⁷G. Di Bari, personal communication, 12 February 2025

1 trans person. Another interesting fact that emerges from this graph is the fact that this type of trafficking is mainly men-led.

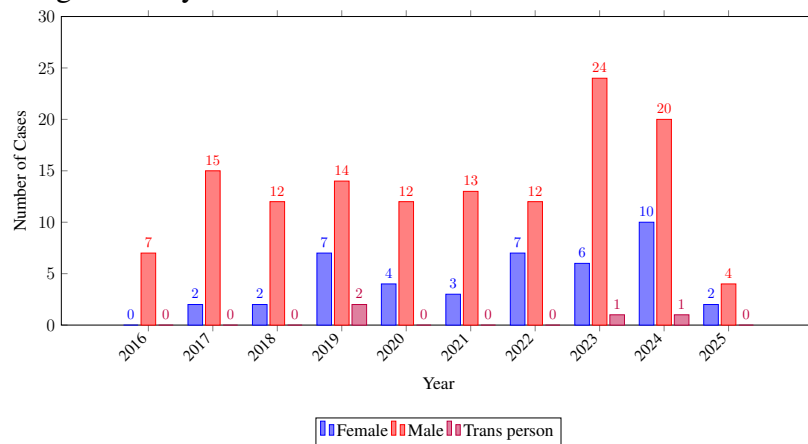


Figure 4.1: Forced Criminal Activities 09.2016 - 03.2025 - New evaluations. Source: Numero Verde

Concerning the types of crimes committed that fall under the definition of forced criminal activities, drug dealing is the most prevalent, constituting 55 percent. These data comprehend selling, possession, transport of drugs, also in dangerous forms, such as eggs, that are usually transported by women. It is followed by theft/fraud (10.6 percent), retailing (6.1 percent), mugging and pickpocketing (1.7 percent), money laundering (1.1 percent) and terrorism (0.6 percent).

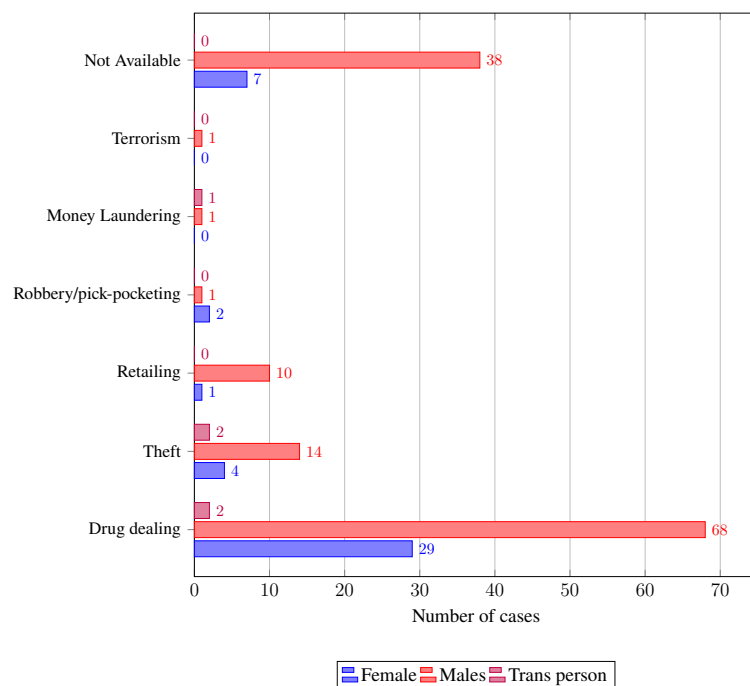


Figure 4.2: Forced Criminal Activities 09.2016 - 03.2025. Source: Numero Verde

When it comes to the countries of origin, in the considered year range, the most prevalent countries are Nigeria (41.7 percent), Tunisia (18.3 percent) and Morocco (6.1 percent).

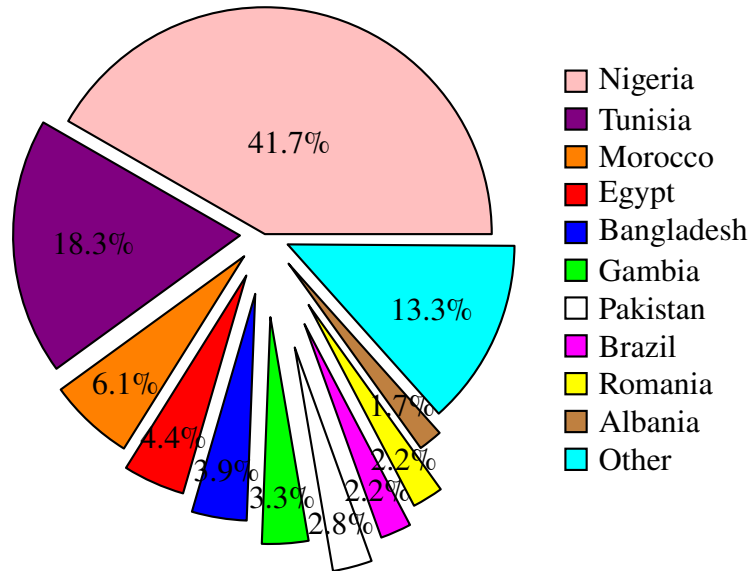


Figure 4.3: Forced Criminal Activities: Countries of Origin. Source: Numero Verde

Regarding the age, as is visible in Figure 4.4, the majority of victims involved in this type of trafficking are young people in the range of 18 till 25, with the highest values corresponding to minors aged 17 (18 in total) and adults aged 18 (19 in total).

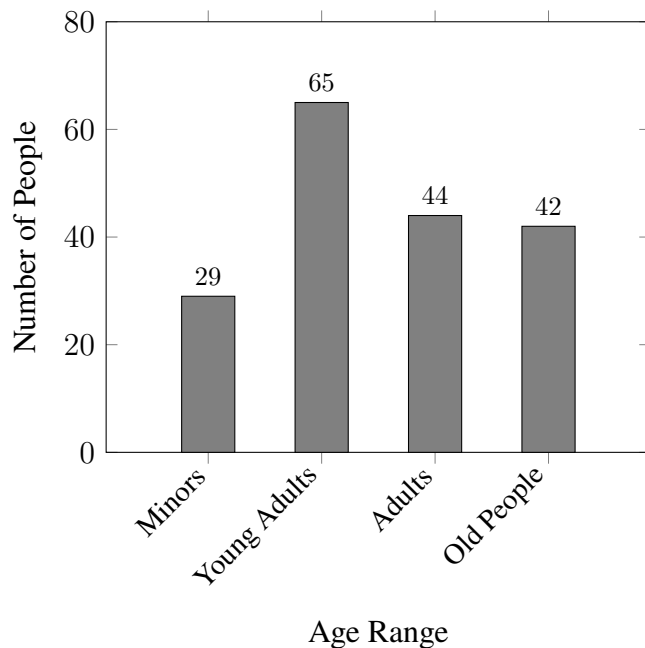


Figure 4.4: Distribution of the population per age range. Source: Numero Verde

The following Figure summarizes the countries of origin and the illicit activities people are recruited for. It is evident that drug dealing performed by Nigerians constitutes the largest share. This data is important to keep in mind given how severely drug related crimes are punished in Italy, as will be explained in the case study.

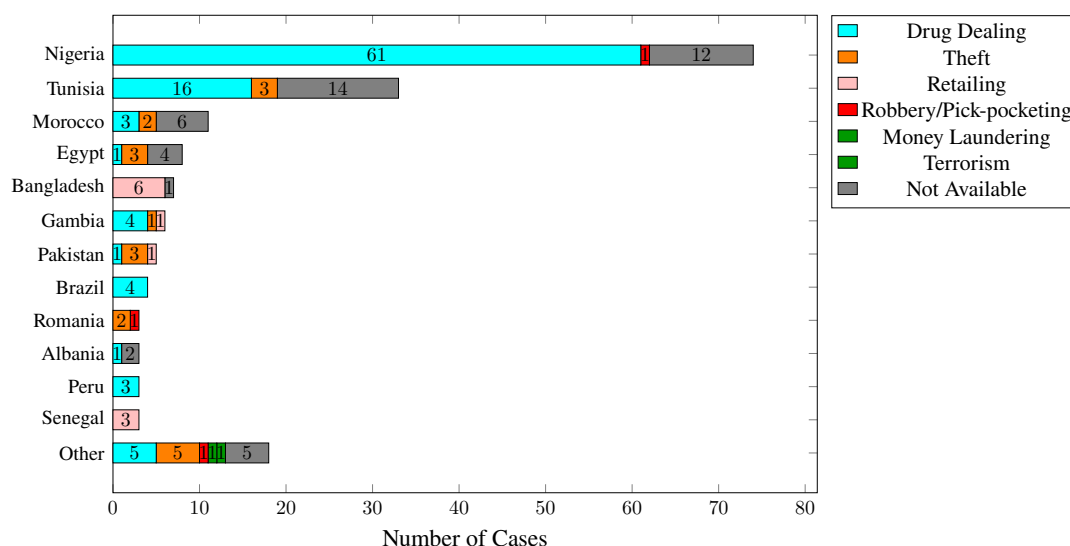


Figure 4.5: Forced Criminal Activities 09.2016 - 03.2025. Country of Origin and Type. Source: Numero Verde

The regions where more victims emerged are Veneto, Lombardy and Emilia-Romagna. Di Bari warns about the interpretation we may attribute to these data. In fact, data are not weighted according to the identification mechanisms that each region has at its disposal. The Veneto region is known to have one of the most advanced anti-trafficking systems, which explains why in reports the region generally has the highest number of assisted people. This does not imply that in Italy traffickers mainly operate in Veneto. “It’s impossible that the Veneto region has more labour exploitation than the southern regions, for example”.¹⁸

¹⁸G. Di Bari, personal communication, 12 February 2025

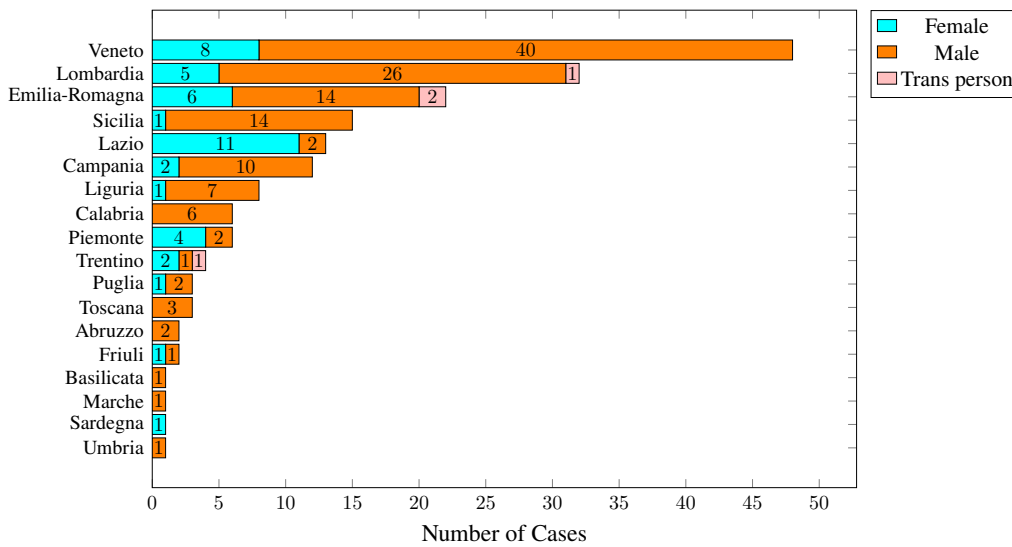


Figure 4.6: Forced Criminal Activities 09.2016 - 03.2025. Region and Gender. Source: Numero Verde

This does not mean that data are not reliable; they are, instead, useful to spark an important reflection on illegal activities: the fact that the percentage of trafficked people involved in illegal activities is inexistent compared to other types of trafficking does not denote the phenomenon does not exist, quite the contrary. The Veneto region carried out an experimental project on unaccompanied minors that were offenders of crimes. The reconnaissance showed that an important number of these minors were victims of trafficking as well, which implies that very likely they were coerced by their traffickers to commit those crimes. This project underlined the necessity for more research into this type of trafficking. Di Bari emphasizes that by asking specific questions, they were able to identify records of Nigerian women, aged 24 or 25, that had been victims first of sexual exploitation and later of forced criminal activities, mandated by traffickers that leveraged on their vulnerability. For a large number of young people this represents the prevalent form of exploitation and recruitment takes place mostly in reception centres at borders (such as the CAS). According to Di Bari this study was enlightening but should be extended to, for instance, jails and anti-violence centres to collect more data.¹⁹ Also Gianfranco Della Valle affirmed that data are few because “the more we stay on the surface, the less things we find”,²⁰ confirming that this type of trafficking is still underresearched.

¹⁹Di Bari, G. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

²⁰G. Della Valle, personal communication, 3 March 2025

4.2 The Non-Punishable Clause

Since trafficking for forced criminality is recognized as one of the forms of trafficking according to the Palermo Protocol definition, and it is an increasing phenomenon in the recent years thanks to experts shedding more light on the topic, the issue of victims' punishment becomes pressing as punishing victims for crimes they have committed during their exploitation may hamper their effective protection and reintegration in society.

4.2.1 Origins of the Clause

The non-punishment principle was first mentioned in Principle 7 of the 2002 non-binding Recommended Principles and Guidelines on Human Rights and Human Trafficking of the United Nations High Commissioner for Human Rights (OHCHR), according to which victims “shall not be detained, charged or prosecuted for unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons”.²¹ States are instructed according to the principles to ensure “that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons”.²² Nevertheless, there is no specification in the principles as to how to determine the causality between the illicit actions perpetrated by victims, and their condition of trafficking.

The first legally binding document to mention the non-punishment principle is the Warsaw Convention of the Council of Europe in article 26: “[e]ach Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”.²³ The 2011 EU Directive clarifies in article 8 that non-punishment means both the non-prosecution and non-application of penalties and that States must take the necessary measures to have trained personnel in this respect. The 2014 Protocol to the 1930 Forced Labour Convention of the ILO echoes these two legal instruments by requiring states to “take the necessary measures to ensure that com-

²¹Council of Europe (2021) Non-punishment of victims/survivors of human trafficking in practice: A handbook for legal practitioners, Available at: [CoE](#)

²²ibidem

²³ibidem

petent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour”.²⁴ This principle has entered into regional legal systems as well, such as the ASEAN Convention against Trafficking in Persons, Especially Women and Children. The principle is now recognized as a general principle of international law since many states have modified their legal systems to comply with these legal provisions. Nevertheless, its interpretation and application is different across countries, with some countries (including Italy) not having it embedded in their domestic legal systems. According to the Warsaw Convention’s Explanatory Report, states can either adopt a criminal or procedural law or any other provision that ensures non-punishment of victims-offenders. In order to ensure its application, GRETA has invited states to introduce an ad hoc clause in the fields of criminal, civil, administrative and immigration law, as they are all intertwined when it comes to the crimes committed by victims.²⁵ As a result, the ratio behind this principle regards the protection of victims’ human rights, the prevention of re-victimization and traumatization, and incentivizing victims to cooperate with the law enforcement without fearing a trial that is supposed to be against their traffickers. This would increase the rate of convictions for traffickers, which, as can be seen from the data provided by Statista (in Figure 4.7),²⁶ is still too low compared to the magnitude of the phenomenon.

²⁴Council of Europe (2021) Non-punishment of victims/survivors of human trafficking in practice: A handbook for legal practitioners, Available at: [CoE](#)

²⁵La Strada International (2023) Explanatory Brief on the Non-Punishment Principle, November 2023

²⁶US Department of State (2025) ‘Number of convictions related to human trafficking worldwide in 2023, by region’. Available at: [Statista](#)

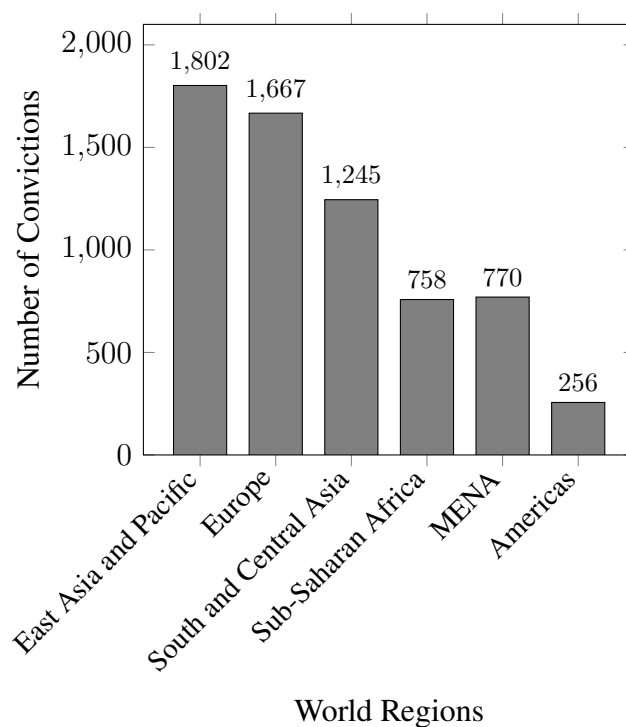


Figure 4.7: Number of convictions related to human trafficking worldwide in 2023, by region. Source: Statista

For the principle to be applicable in a given case, three conditions must be met. Firstly, the individual must be identified as a victim of trafficking. And, as already discussed, this already represents a first obstacle for victims, either because they do not recognize themselves as victims or because their crimes prevail over their condition of victimhood. Secondly, they must have committed an unlawful act. Third, a necessary link between the offence and the trafficking situation must be established, for which there are two primary models. The causation model requires that the offence is either directly related to or committed as a direct consequence of the individual's status as a trafficking victim. Although the term direct may suggest a close causal connection, this requirement should be interpreted broadly, taking into account the complex and long-term impact of trauma endured by trafficking victims. Alternatively, the duress model, adopted in the Warsaw Convention, requires that the victim was compelled to commit the offence due to their trafficking situation. As clarified by the UN Special Rapporteur on Trafficking in Persons, this situation should be recognized as automatically fulfilled in any case where the victim is subjected to illicit means at the time of the offence. Such illicit means, as outlined in the definition of trafficking, include threats, the use of force, deception, abuse of power, and

the exploitation of a position of vulnerability. The scope of duress in cases of trafficking is therefore broader than the general defense of duress found in national legal systems, which is often narrowly defined: compliance with the non-punishment obligation requires that the defense of duress is interpreted in this comprehensive manner when applied to victims of THB.²⁷ It is essential to remember that according to the definition of human trafficking, consent is legally irrelevant. Such irrelevance applies also to the consent given by victims to commit a crime, although sometimes the consent of a victim is used in trials by prosecutors to undermine the credibility of the victim's testimony.²⁸ In some cases, it may appear that victims have provided their consent, but this may be due to socio-economic factors, like being used to working in poor conditions; cultural factors, including women believing they do not possess agency in expressing their dissent to assume certain conducts; psychological reasons, such as fear and shame, which are particularly important for victims who are also offenders.²⁹

4.2.2 Case law of the ECtHR

Two cases of the ECtHR will be the focus of this paragraph, as they set a paramount standard for member states concerning the application of the non-punishable clause.

Rantsev v. Cyprus and Russia

In *Rantsev v. Cyprus and Russia*, the court included the prohibition of trafficking in the scope of application of article 4 of the ECHR, which prohibits slavery, servitude and forced labour. The applicant was the father of a Russian young woman who was in Cyprus with an “artist” visa and died there in unexplained circumstances. When her body was found in the street, Cyprus refused to properly investigate the case: Cypriot authorities declared she had died out of an accident and not due to a criminal act according to the signs she had on her body. Despite the presence of indicators of a trafficking situation, such as the fact that she was in the country with a visa that is typical of trafficked victims, Cyprus did not further investigate: for example, the country did not interview a friend of

²⁷La Strada International (2023) Explanatory Brief on the Non-Punishment Principle, November 2023

²⁸Inter-Agency Coordination Group against Trafficking in Persons (ICAT) (2019) Issue Brief No. 8: Non-punishment of victims of trafficking, United Nations Office on Drugs and Crime (UNODC). Available at: [ICAT](#)

²⁹United Nations Office on Drugs and Crime (UNODC), 2025. The issue of consent. [online] Available at: [UNODC](#)

the victim who had been her colleague during the sexual exploitation they had to endure.³⁰ The consequence of the court's decision has been to expand the system of protection of victims envisaged in the Palermo Protocol, in the Warsaw Convention and Directive 2011/36 of the EU, creating positive obligations to criminalize, prevent and punish human trafficking as well as identify, protect and assist victims.³¹ When it comes to prosecuting victims, the court established that if a victim is prosecuted without assessing whether their illicit behaviour was caused by the situation of trafficking, this may amount to a violation of article 4 of the ECHR. In particular, under article 4 ECHR states have two substantive and one procedural positive obligations: the substantive obligations to have a legislative and administrative framework that prohibits and punishes trafficking, and to apply operational measures to protect victims; and the procedural obligation to effectively investigate situations of potential trafficking if there is credible suspicion of such condition. Prosecuting victims would not be in compliance with these positive obligations and, hence, failure to apply the non-punishment principle can result in a violation of article 4 of the Convention in two ways. Directly, if the state is aware of the trafficking condition of victims, but does not give it adequate consideration when deciding whether to prosecute or punish the individual. Indirectly, if the state fails to identify someone as a victim of trafficking and subsequently punishes them for an offense. In this context, it is not the trafficking itself (committed by the perpetrators) that constitutes the violation of human rights legal standards, rather the state's failure to protect individuals from trafficking or to provide them with necessary support and protection.³²

V.C.L. and A.N. v. United Kingdom Case

Another relevant ECtHR case is V.C.L and A.N. v. United Kingdom of 2021. Here the applicants were two Vietnamese young men who had worked in the UK in a cannabis factory when they were still minors. The British police found them while they were working and accused them of production and sale of drugs. For both, the authorities recognized

³⁰European Court of Human Rights (2010) Rantsev v. Cyprus and Russia, SHERLOC Case Law Database. Available at: [ECtHR](#)

³¹Bernardi, S. (2021) 'The criminalization of victims of trafficking: The European Court of Human Rights on the "non-punishment clause" and the positive obligations of protection deriving from Art. 4 ECHR', Criminal Justice Network, 16 February. Available at: [criminalization](#)

³²La Strada International (2023) Explanatory Brief on the Non-Punishment Principle, November 2023

the status of victims of trafficking, but the prosecutor stated there was no clear evidence of trafficking and that, in any case, the offences they committed were very serious. The two applicants appealed the decision of conviction invoking the violation of article 4 ECHR. The Court clarified that the positive obligations created by article 4 ECHR do not impose a prohibition for states to prosecute victims, rather states should consider the chance not to prosecute those victims that have been forced to commit crimes during the situation of exploitation,³³ as it is axiomatic that prosecuting victims may harm their physical, psychological and social recovery.³⁴ The ECtHR found that the United Kingdom violated its positive obligations under article 4 of the ECHR because the competent authorities should have recognized the two Vietnamese individuals as victims of trafficking as soon as they were found in the cannabis factory, given the clear indicators of their situation. Once a qualified expert assessed the condition of trafficking, any subsequent prosecutorial decisions should have taken that assessment into account.

What this case adds to the previous one is that the Court determined that the UK also breached article 6 of the ECHR, which is the right to a fair trial. The failure to take into account the fact that the two minors were trafficking victims during their criminal proceedings compromised their right to a fair trial, leading to inadequate investigations. Despite having legal representation, they were pressured into pleading guilty in a situation where they were unable to understand or assert their rights,³⁵ such as bringing forward evidence against their trafficker.

Although this case represents a crucial turning point in the court case-law, the ruling lacks clarity on whether specifically the non-punishment of trafficking victims constitutes a positive obligation under article 4 of the Convention and, if so, what that obligation consists of. According to the UN Special Rapporteur on Trafficking in Persons, the state has such a positive duty derived from the positive obligation to implement measures for identification, protection, and comprehensive investigation. However, the ECtHR

³³Bernardi, S. (2021) 'The criminalization of victims of trafficking: The European Court of Human Rights on the "non-punishment clause" and the positive obligations of protection deriving from Art. 4 ECHR', Criminal Justice Network, 16 February. Available at: [criminalization](#)

³⁴Jovanović, M. and Niezna, M. (2023) 'Non-punishment of victims/survivors of human trafficking in practice: A case study of the United Kingdom', Council of Europe, September. Available at: [CoE](#)

³⁵Bernardi, S. (2021) 'The criminalization of victims of trafficking: The European Court of Human Rights on the "non-punishment clause" and the positive obligations of protection deriving from Art. 4 ECHR', Criminal Justice Network, 16 February. Available at: [criminalization](#)

did not explicitly affirm this, arguing instead that the issue falls under the scope of the Warsaw Convention rather than the ECHR. Nonetheless, the Court's decision to interpret article 4 as encompassing human trafficking, as well as subsequent case law, reflect the Court's commitment to an evolving interpretation of the rights contained in the ECHR, aligning with broader developments in international law. The Court consistently maintains that the Convention should not be interpreted in isolation but rather in conjunction with international legal norms, particularly those concerning human rights protection.

The Court's reluctance to provide a definitive stance on the non-punishment clause can then be explained with the principle of subsidiarity. The Court does not seek to impose a uniform legal framework on all 47 contracting states, recognizing the diversity of legal systems and societal contexts. Instead, it aims to establish fundamental principles that can be adapted across different legal traditions. Within this framework, national courts are encouraged to develop their legal systems in a way that aligns with these overarching principles while remaining faithful to their own legal traditions. On the one hand, this approach allows domestic legal systems to evolve while adhering to the broader human rights framework established by the ECHR;³⁶ on the other hand, it risks providing lower protection to victims, whilst granting states an exaggerated margin of appreciation, especially in those countries which are still reluctant to accept the concept of non-punishability of victims-offenders.

Luca Masera, professor of penal law at the University of Brescia, reflected on the importance of this ruling for Italy. He claims that the UK was not condemned by the Court for systemic deficiencies because the country already has an ad hoc norm on non-punishability, rather because authorities decided not to consider the status of trafficking victims of the two minors during the trial. They even highlighted the fact that the two minors had been found alone in the cannabis field and that they had a phone at disposal, implying that they were not subjected to coercion, and they had the tangible alternative to report to the police. The Court sustained that these elements cannot prevail over the indicators of trafficking. The professor further reflects upon the fact that Italy does not possess an ad hoc norm (which will be the topic of the following paragraph) and applies,

³⁶Jovanović, M. and Niezna, M. (2023) 'Non-punishment of victims/survivors of human trafficking in practice: A case study of the United Kingdom', Council of Europe, September. Available at: [CoE](#)

instead, the state of necessity (*stato di necessità*) envisaged in article 54 of the Penal Code. Looking at case law, there are very few rulings from the Italian Court of Cassation that deal with the issue of not punishing trafficking victims. The key difference is that in the UK prosecution is not mandatory, meaning the prosecutor can decide not to pursue a case. In Italy, instead, according to the principle of mandatory prosecution, when a prosecutor learns of a crime committed by a trafficking victim, they must present strong legal grounds to dismiss the case. As a result, it is even more critical for Italy to introduce a tailored legal provision. In the current circumstances, Italy has high chances of a conviction by the ECtHR (although the Court was not clear about the specific positive obligation arising from the non-punishment provision in the UK case). According to the professor, this could be raised as an issue when engaging with lawmakers to convince them of the urgency of introducing the clause.³⁷ Gianfranco della Valle mentioned a case that is very similar to the two Vietnamese's story that happened recently in Sicily: two young men who were involved in cultivating a field of cannabis have been condemned to 20 years in prison with the accusation of international drug smuggling. Della Valle underlined that traffickers and criminal organizations exploit what can be defined as a loophole of the Italian legal system to their advantage.³⁸

4.2.3 Article 54 of the Penal Code

Italy lacks an ad hoc clause of non-punishability and, as will be explained in this section, the way non-punishment is applied in Italian courts has already led several victims to condemnation, even when prompt identification took place. A recent case study provided by doctor Giuseppina Di Bari will exemplify this issue.

Since the first report, GRETA admonished Italy for not having a clause on non-punishability. The country justified this saying that article 54 of the Penal Code may apply in cases where victims are authors of crimes, if they are obliged with violence or threat to commit a crime. This is known as state of necessity (*stato di necessità*). Linked to this provision, article 111 of the Penal Code foresees that responsibility lies on the person who forces someone to commit a crime, in case the person that is obliged

³⁷Masera, L. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

³⁸G. Della Valle, personal communication, 3 March 2025

to commit the crime is not punishable. Responsibility comes with all aggravated circumstances envisaged in article 112 of the Penal Code. Moreover, article 611 punishes the use of violence or threat against persons to oblige them to commit a crime.³⁹ In the 2024 report, GRETA has once again invited Italy to adopt a specific provision in order to ensure compliance with article 26 of the Warsaw Convention, and/or to provide guidance and training to law enforcement officials, prosecutors, and judges on the application of the non-punishment provision established by the Convention. GRETA clearly shows a comprehensive interpretation of the non-punishable clause, as it affirms the necessity to include all illicit activities carried out by victims while they are subject to trafficking, including administrative offences, with the aim to reassure victims that they will not be considered responsible for such acts and encourage them to report their traffickers. In this sense, the newly introduced article 8 of Directive 36 stipulates that "Member States shall take the necessary measures, in accordance with the fundamental principles of their legal systems, to empower national authorities to refrain from prosecuting or imposing criminal penalties on trafficking victims for their involvement in criminal activities or other unlawful acts they were forced to commit as a direct consequence of the offenses outlined in article 2".⁴⁰ The main change in this version is the inclusion of the phrase "or other unlawful acts", which expands the scope of non-punishable offenses beyond strictly criminal acts. However, in practical terms, the provision may have limited effect, as it remains generic and leaves considerable discretion to individual states on how to implement it. It does not clarify whether a specific legal provision is required, whether a distinct exemption from punishment must be established, or whether the principle should be applied through general legal doctrines of justification, mechanisms that are often invoked too late, sometimes only at the conclusion of proceedings against the victim. David Mancini, public prosecutor at juvenile court, suggested that for the non-punishment principle to be effectively implemented, states must ensure that the provision is carefully considered and enforced by the relevant authorities as early as possible. Additionally, any legal proceedings against

³⁹Brambilla, A., Degani, P., Paggi, M., and Zorzella, N. (eds.) (2022) *Donne straniere, diritti umani, questioni di genere: Riflessioni su legislazione e prassi*. Padova: Centro di Ateneo per i Diritti Umani "Antonio Papisca" - Università degli Studi di Padova; ASGI – Associazione per gli Studi Giuridici sull'Immigrazione. ISBN: 978-88-5495-558-5. Available at: [donnestranriere](#)

⁴⁰Mancini, D. (2024) 'La direttiva UE 2024/1712 sulla tratta di esseri umani. Un lungo percorso di revisione, con risultati controversi', *Sistema Penale*, 29 October. Available at: [Mancini](#)

the victim should be swiftly terminated, and all resulting consequences, before and after a potential conviction, should be eliminated. This includes the removal of any references to offenses from criminal records, encompassing fines or other administrative penalties.⁴¹

In absence of an ad hoc clause, the application of the state of necessity works in the following manner. Judicial authorities go through a double assessment process. Firstly, they must ascertain the status of trafficking victim verifying the existence of some indicators, such as the country of origin of the person, journeys through routes that are generally used by criminal organizations, and the presence of debts *inter alia*. If they ascertain the presence of these indicators, they evaluate the application of either the first or the third paragraph of article 54 of the penal code. The difference between the two paragraphs consist in the fact that according to paragraph 1, the victim is not criminally punishable; whilst paragraph 3 foresees that the traffickers are held responsible for the committed crimes.⁴² There are four elements that judges must find in order to apply the article: coercion, the necessity to avoid severe damage to the person involved or other persons, the inevitability of the danger and the imminence of danger. According to the Court of Cassation, the following three crimes meet these criteria and are subject to non-punishability: crimes connected to irregular presence in the territory; crimes where the trafficker is the real responsible (such as theft, drug dealing, and sexual exploitation); and crimes committed to escape the condition of exploitation.⁴³ A correct interpretation of the article foresees that if the danger is caused by another person (i.e. the trafficker), the article should be applied also in cases when there is a partial limitation of the freedom of the victim, and not only when victims are completely annihilated in their freedom of choice. The condition of vulnerability of the victim is necessarily intertwined with the elements of coercion and inevitability of the danger. The concept of vulnerable victim is applied to a person who has committed a crime due to the necessity to protect from further violations persons whose fundamental rights have been violated. It is critical to note that the condition of vulnerability does not necessarily entail the application of article 54, as there must be a causal link between vulnerability and coercion. This means that

⁴¹See supra note 40

⁴²Fazzeri, F. (2021) Stato di necessità ed interpretazione convenzionalmente conforme: la Corte di Cassazione si pronuncia sulla vittima di tratta. Sistema Penale. Available at: [stato di necessità](#)

⁴³ibidem

the offence committed by the victim must derive from their state of vulnerability due to the exploitation they have endured. If this link exists, then also the inevitability of the danger can be derived from the condition of vulnerability. Such an element represents the most difficult to demonstrate; however, the Court of Cassation has affirmed that the actual chance of escaping the perpetrator's control must be assessed in context, taking into account the state of subjective subjugation that often characterizes victims of trafficking. This condition, in practice, leaves them with no viable option other than to endure the abusive treatment. Nevertheless, in many cases, acquittal rulings that apply article 54 are challenged with the explanation that the victims had an alternative choice, as if the article could apply only in cases of total subjugation to the perpetrator. This does not correspond to the realistic picture of the phenomenon of trafficking because, for example, the psychological subjugation traffickers can exercise over their victims can enclose them in cages where they think they cannot escape from. The case study will show this perfectly. Hence, such simplistic interpretation is not in conformity with both international legal standards and the interpretation provided by the Court of Cassation.⁴⁴

Concerning the necessity to safeguard the person involved or others from a danger, threats to life, physical integrity or personal freedom are included. Since they may be intrinsic in the condition of exploitation victims are immersed in, it is a factor subject to rebuttable presumption (meaning that it is taken as true unless evidence proves otherwise). Moreover, in order for the article to apply, the presence of danger must not be interpreted *strictu sensu*, rather peril can also be imminent and persistent. This encompasses situations when an attack on one's right is still in progress and further consequences can be avoided, or when the harm has not yet fully materialized because the situation has not yet shifted from danger to actual damage. In order to have a comprehensive interpretation, in cases of gender-based violence, the significant restriction of a person's moral and personal freedom can be seen as factors that support the presence of an imminent danger.⁴⁵

In ruling 2319 of 2024, the Court of Cassation re-affirmed the aforementioned elements and applied article 54 of the penal code in the case of a Nigerian girl, victim of several acts

⁴⁴Massaro, A. (2021) Stato di necessità per reati commessi da vittime di tratta: l'art. 54 c.p. Giustizia Insieme. Available at: [giustiziainsieme](https://giustiziainsieme.it)

⁴⁵ibidem

of violence, rape, trafficking for sexual exploitation, who later became a drug courier to extinguish her debt. She had been condemned for illicit transport of drugs and she appealed the sentence to the Supreme Court invoking the application of article 54. Although the judges of the first instance court and the court of appeal had recognized the status of victim for the young woman, she was declared guilty because the judges maintained she could have escaped her condition of exploitation by contacting the police. No analytic motivation was provided by the judicial authorities concerning the non-applicability of the article, though.⁴⁶ The Supreme Court, thus, concluded that the article can be applied in cases where a victim of trafficking is subject to the control of criminal organizations that deal with drug smuggling, which coerce the victim to transport the drug and leave no possibilities of escape to the victim.

Several experts of the field gathered in 2022 virtually for a webinar called “the non-punishability of the trafficking victims or enslaved victims that commit illicit activities”, out of which important reflections emerged on the matter. Everyone convened that article 54 has a complex application and is not sufficient to protect victims from conviction. Doctor Di Bari⁴⁷ reported that the regions where people are most likely to emerge are those where projects have implemented collaborations with courts and the criminal sector in general. Reggio Emilia, for instance, provides data to lawyers and prisons that help them identify indicators that would otherwise remain unnoticed, as not all individuals have the specialized training to conduct early identification. Also lawyer Carla Quinto⁴⁸ points out that it is not easy for lawyers to balance the knowledge of the case and the necessity of protection of the victim, and a considerable number of lawyers are not able to understand the complexity of trafficking because they have not been formed adequately. Recently, a case history of secondary exploitation has emerged, which means that some victims experience stratified exploitation, first in one type of exploitation and later in other forms: generally, sexual or labour exploitation are the first type of exploitation victims have to endure, whilst forced criminality is the second. However, some victims are directly

⁴⁶See supra note 44

⁴⁷Di Bari, G. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

⁴⁸Quinto, C. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

exploited to conduct illicit activities as the main and first kind of exploitation. Some criticalities encountered by anti-trafficking organizations include the fact that they meet victims/offenders once the crime has already been committed or the judgment is finalizing, which may limit the efficacy of their intervention in their defense; defense lawyers (usually appointed) often opt for fast-track trials or plea bargaining and do not raise other arguments. Recalling Chapter 2, recurring to such tools aims at decreasing the penalty for offenders, and it may be useful in those cases where it is too late for anti-trafficking organizations to effectively argue in favour of victims' non-punishability, especially in very intricate cases like the case study presented in this dissertation. However, they do not foresee the application of the non-punishment principle and victims are convicted as offenders. Lastly, early identification may not happen because investigators tend not to associate a young, Nigerian asylum-seeking woman caught in the act of a crime with a potential victim. As stressed by lawyer Francesca Nicodemi,⁴⁹ identification is the first pillar for a proper protection of the victim; when it does not take place, the consequence is that there is no referral and the anti-trafficking organizations cannot intervene.

Luca Masera⁵⁰ reflected upon whether the state of necessity suffices to safeguard victims, reaching the conclusion that there are several doubts, especially concerning paragraph 3 of the article. He affirmed the necessity to reason about a formulation of an ad hoc clause that would comply with the Italian legal system, which comprises justification and excuse causes (*cause di giustificazione e scusanti*). According to the former, the logic is objective, which means that the act is declared as lawful and thus the offender is acquitted; according to the latter, the act is unlawful, but the offender is not punished from a subjective point of view because they were not able to self-determine. Clearly, the second option is the most fitting for human trafficking and the types of crimes victims are coerced to commit. In this sense, it is interesting to investigate whether article 54 falls into the objective or subjective logic, which is still debated. Those that are in favour of the objective thesis sustain that the *ratio* behind the state of necessity is to balance opposed interests with the idea that the penal system is used by states to safeguard juridical goods, both individual

⁴⁹Nicodemi, F. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

⁵⁰Masera, L. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

and collective in nature. According to Francesco Antolisei "the foundation of the state of necessity may be found, as in legitimate self-defense, in the absence of social harm. This absence becomes evident when the sacrificed good has a lesser value than the one saved. However, it also occurs when the two goods have the same value. The action of the person in danger, in fact, does not worsen the situation from the standpoint of the social community, as it merely shifts the offense from one individual to another. Since one of the two goods necessarily had to succumb and they are of equal value, there is no harm to the social community. It is therefore quite natural and logical that the State remains indifferent in the face of such a conflict of interests."⁵¹ It is quite difficult not to see social harm in certain crimes victims are obliged to commit, such as drug trafficking. The experts that support the subjective logic affirm that the objective one results contradictory because they do not take a position as to whether the act committed out of necessity is unjust or just. In any case, if an act is unlawful under civil law, it cannot be regarded as if it had been lawfully committed, by virtue of the principle of unity of the legal system. Therefore, the absence of criminal punishment cannot in itself be interpreted as a positive legal judgment regarding the commission of the act. Hence, the excuse cause would be rooted in the idea of the inexigibility (*inesigibilità*), i.e. the idea that, given the specific conditions, it would be unreasonable to expect lawful conduct from the individual. According to other experts, since there are situations that fit the first and others fit the latter, article 54 should foresee two distinct excuses, one of *giustificazione* and one *scusante*, as in the German penal code.⁵² Trafficking cases seem to fit the subjective logic better given the nature of the crimes committed by victims under coercion, aspect which will be better described in relation to the case study.

David Mancini⁵³ points out that according to our penal system criminal action is mandatory, but there are safeguards for victims that complete the application of article 54. For example, article 358 of the penal code obliges the public prosecutor to seek elements in favor of the person under investigation. In this sense, Mancini invites not to focus just

⁵¹Baldovin, o. (2025) Legal memorandum on *Natura e fondamento dell'esimente*. Unpublished document accessed via restricted legal database (One Legale), provided by the author (private communication, May 2025)

⁵²ibidem

⁵³Mancini, D. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

on Nigerian women as it used to be in the past because the phenomenon has evolved and has become increasingly more complex. Article 385 of the CPP prevents arrest when the facts are committed in presence of a special cause of non-punishability or justification. Moreover, if the prosecuting magistrate fails to identify a trafficking victim, the investigating judge might have to evaluate a request for preventive measures against the person under investigation based on the investigative documents. In this case, if there are signs indicating that the accused person has experienced trafficking, the judge should reject the request for preventive measures under article 273 of the CPP and, at the same time, urge the public prosecutor to assess the condition of the accused person under article 421-bis of the CPP.⁵⁴ Then, under the provisions of article 422 of the CPP, the judge may order the collection of evidence that appears decisive to take the decision to drop charges. Lastly, article 530 of the CPP clearly establishes that if the judge doubts about the existence of justification causes or personal causes of non-punishability, they must pronounce a judgment of acquittal. This mechanism would serve to guarantee not only non-punishment, but also non-prosecution. However, according to Mancini such norms are not sufficient, especially in light of the complexity of the phenomenon of trafficking, which requires articulated investigations often focused on dismantling the entire criminal network, rather than on the victim status of the victims who are also offenders. He also stresses that early identification does not always occur, making the specific clause even more crucial.

Dr. Trovato⁵⁵ highlights the important point of autodetermination of the victim: in most cases, judges consider the article cannot be applied because the victims are not deprived entirely of their autodetermination. She underlines that not all traffickers adopt the strategy of menace and that not all victims are deprived of their autodetermination completely. This non-comprehensive interpretation of the elements that characterize article 54 makes it difficult to apply, especially in drug smuggling cases.

Dr. Marco Minnella⁵⁶ reflects upon the fact that article 54 has a strict and limited

⁵⁴Brambilla, A., Degani, P., Paggi, M., and Zorzella, N. (eds.) (2022) *Donne straniere, diritti umani, questioni di genere: Riflessioni su legislazione e prassi*. Padova: Centro di Ateneo per i Diritti Umani "Antonio Papisca" - Università degli Studi di Padova; ASGI – Associazione per gli Studi Giuridici sull'Immigrazione. ISBN: 978-88-5495-558-5. Available at: [donnestranriere](#)

⁵⁵Trovato, L. (2022), *La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite*, Tavola Rotonda, Zoom, 27 January 2022

⁵⁶Minnella, M. (2022), *La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù*

application. He considers whether it is possible to avoid the introduction of an ad hoc clause using the direct applicability of international legal standards, instead. For instance, the ECHR is under the Italian constitution but above ordinary laws in the hierarchy of laws. Article 8 of the Directive 36/2011 would be self-executing if it recognizes rights to the citizens, is of unconditional nature and is not discriminatory. A fundamental principle of the article is that acquittal occurs based on the type of threat and danger to the person, and it cannot be indiscriminate. Hence, according to Minnella an ad hoc clause that is proportionate and has a precise formulation of the definition of danger is necessary.

Lawyer Carla Quinto⁵⁷ highlights that for vulnerable victims that should not be condemned facing a trial corresponds to being re-victimized, which is connected to article 6 of the ECHR (the right to a fair trial). She also points to the problematic nature of the element of inevitability of article 54. As ruling 2319 of 2024, several cases reach the Court of Cassation for this aspect. For example, in 2015 a Romanian girl was accused of obscene acts (*atti osceni*) while she was exploited for prostitution: according to the judges, the article was not applicable because she had the alternative to report to the police. The Supreme Court stated this was an oversimplification of the phenomenon: "to claim, in a case like this, that the victim could have easily escaped danger by turning to law enforcement means trivializing an extremely serious criminal phenomenon that significantly and permanently violates human rights. Moreover, it constitutes a violation of the principles concerning the protection of victims of such crimes and their position in criminal proceedings, as established in international legal sources [...] and in European instruments that are, in any case, binding on our legal system".⁵⁸ The lawyer mentions the Spanish ruling number 7584 of 2nd November 2021 to stress the importance of drafting the ad hoc clause carefully. In fact, in this ruling charges against a 21-year old Peruvian citizen who had transported 25 cocaine eggs were acquitted, but the prosecutor appealed the decision for the severity of the crime. The General Council of the Judiciary under-

che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

⁵⁷Quinto, C. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

⁵⁸Brambilla, A., Degani, P., Paggi, M., and Zorzella, N. (eds.) (2022) *Donne straniere, diritti umani, questioni di genere: Riflessioni su legislazione e prassi*. Padova: Centro di Ateneo per i Diritti Umani "Antonio Papisca" - Università degli Studi di Padova; ASGI – Associazione per gli Studi Giuridici sull'Immigrazione. ISBN: 978-88-5495-558-5. Available at: [donnestraniere](https://www.donnestraniere.it/)

lined the difficulties in applying the Spanish non-punishability clause, firstly concerning the moment of identification: the law sets it can happen in an administrative or judicial court; however, it was not clear if the judge should suspend the trial while waiting for the identification. In this case, the judges affirmed that the moment of identification can take place also during the trial. However, the identification had taken place outside an ad hoc administrative trial, which is why it could not be considered valid. Secondly, the norm applies only after the exploitation has happened, which means that if a woman, for example, provides false personal information during the entry into the country, she would not be protected. Here David Mancini clarifies that now the Spanish norm is not limited to the exploitation phase, but the clause is still too generic. According to Baldovin, instead, if Italy had to apply an ad hoc clause, the Spanish norm would be a proper model to follow as it requires two criteria: the victim committed the crimes as a direct consequence of their condition of exploitation, and the crime must be proportionate.⁵⁹

Lawyer Guido Savio⁶⁰ presents another issue for lawyers, which is the case in which the lawyer faces a situation of conflict of interest: this can happen when the lawyer is nominated by the traffickers to control the victims' declarations and make them obtain the residence permit to then proceed with the exploitation. David Mancini agrees, reporting that a considerable number of Albanian minors found with drugs often have the same lawyers of the gang that is supposed to be the minors' traffickers. Another problem is when victims do not self-identify as such. In this case, Dr. Savio wonders which obligations lawyers have when they suspect a situation of trafficking, but they do not know anything about the assisted person outside the courtroom. Their profession risks being undermined by factors that are outside the control of the lawyer but that exercise an enormous influence over the victim.

The overall conclusions reached by the experts during the conference is that the Italian penal system has tools to allow judges to investigate, find indicators of trafficking and avoid prosecution, but unfortunately they work only in an ideal world (as stated by lawyer Carla Quinto). Hence, an ad hoc clause is necessary to protect victims from the adverse

⁵⁹O. Baldovin, personal communication, 19th May 2025

⁶⁰Savio, G. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

consequences resulting from a conviction. In the following section a complex case study will be presented to highlight the urgency of introducing such a clause.

4.3 Case Study

The case that will be presented in this section is very articulated. It includes both an example of best practice for the use of article 54 of the penal code, and how problematic the lack of a non-punishable clause can be for a victim of trafficking involved in forced criminality. Moreover, this case offers the chance to compare the Italian penal system with the Swedish one, as interestingly the Swedish court reached similar conclusions to the Italian judges. This further underlines the importance of implementing article 26 of the Warsaw Convention and article 8 of the EU Directive 36/2011 not only in the Italian legal system, but also in other countries that have not adopted such a clause yet. As with the first case, all the mentioned names are fictitious to preserve the privacy of the people involved.

4.3.1 History of the victim

The case concerns a Nigerian young woman, here referred to as Fairy, who used to live in decent conditions in her hometown. In fact, she managed to study till the age of 12, when her father got severely ill. At the time she was living with an aunt in Malesia, so she had to go back to Nigeria to stay close to her dad, who died in 2016. At that point the economic conditions of her family deteriorated, as her mother also had had to close off her activity to sustain the expenses for the medical treatments of her husband. A family friend told her about a woman looking for a young woman to go to Europe. She managed to have a meeting with a man, John, who made her in contact with his sister, Claire. The woman told Fairy she would have to repay her 25,000 euros for a job she would know of only once arrived in Europe. Fairy was aware of the phenomenon of prostitution of Nigerian girls in Italy, but she thought this was not the case and given that she had no choice, she accepted the offer despite believing the sum to repay was exaggerated. The following week she had to swear to a voodoo ritual with a native doctor that made her promise to repay the debt, otherwise she would never have luck and she would die in a humiliating manner. She also

promised not to say anything to the police, otherwise she would die.⁶¹

4.3.2 The Journey

After the ritual, Fairy took off for Italy, travelling through Agadez, Sabah and Tripoli, with other men and women. After a month and a half she reached Lampedusa on 1st September 2016. She lived in a reception centre in Sicily for a few days and then was transferred to Benevento. She had been instructed not to use the phone to contact the madame, but she managed to contact her through another girl's phone. The madame put her in contact with another of her brothers, Christian, whom Fairy met telling the operators of the reception centre that Claire was her sister and Christian her brother. The operators of the centre accompanied her because they were suspicious of that description. However, the following day Fairy met Christian again alone and she caught a train for Mestre, Venice.⁶²

4.3.3 Exploitation

Once in Mestre, Fairy met Claire, who was 28 and had been a prostitute before. Claire told the young woman that she had to prostitute herself and give her all the money she would earn to repay the 25,000 euros debt and 250 euros per month for rent, food and bills. Fairy started working from 8 pm till 3 am with another woman. Nevertheless, she had trouble finding clients because she was self-conscious. Hence, the madame changed her working place several times. The tensions with Claire continued as Fairy kept on earning little money, to the point that Claire threatened Fairy and called her brother in Nigeria to exert pressure on the young woman. The apex of this violent behaviour was in 2017 when Fairy said that she did not want to work the night of New Year's Eve because it was too cold and she could not find clients. At that point, Claire beat her, she threw her phone to the wall and she kicked her out of the house. Fairy was welcomed by two friends (also victims of human trafficking) living in Marghera. When her friends were transferred to Bergamo, she contacted a street outreach team that suggested her to contact the Numero Verde Anti-Tratta.

The Project Navigare, who welcomed her, expressed concern for the high chance that

⁶¹Di Bari, G. (2023), *Relazione cittadina nigeriana Fairy*, Unpublished internal report, Padova

⁶²ibidem

Fairy could be a victim of re-trafficking. While she was with the project she came to know that her madame had died in Bergamo. However, Claire's brother, the man who led the voodoo ritual in Nigeria and the connection man threatened Fairy's mother that her daughter should repay the debt anyway once out of the program. The operators of the Navigare project proposed several times to Fairy to cooperate with the law enforcement and sue her traffickers, but Fairy was extremely afraid to and eventually she never sued them. In the meantime, given her family conditions in Nigeria, the journey she undertook to reach Italy, her status of victim of human trafficking, and the risk of re-trafficking, the Territorial Commission granted her the refugee status.

4.3.4 Re-trafficking and First Sentence in Trento

In 2018 Fairy decided to leave the program and went to Naples. Here is where she was a victim of re-trafficking. In fact, she entered in contact with another criminal organization from Nigeria (perhaps connected to the first one), who exploited her condition of vulnerability and hired her for forced criminal activities. They practiced another voodoo ritual where she had to promise not to betray them, otherwise something awful would happen to her given what she had to travel with. The same happened in the Netherlands, where they gave her some backpacks to bring to Italy. On the 28th December 2018 Fairy was caught in *flagrante delicto* while she was carrying drugs. The young woman contacted the Navigare Project once again and was directed to the program SAI (*Servizi di Accoglienza e Inclusione*) in Treviso. During her stay in Treviso, she manifested the interest to study Italian and the operators helped her find a job providing her with courses and orientation.⁶³ At this point, the Navigare Project attested through their psychologist that Fairy had suffered a strong trauma. In particular, she manifested sleep-onset insomnia and negative flashbacks, as well as fear to reach economic autonomy and about the wellbeing of her family for the voodoo rituals. Moreover, she feared being imprisoned for what she did.

The Judge for the preliminary hearing (GUP) of Trento had to issue a judgment on the 18th October 2023 concerning the illegal activity Fairy conducted under the constriction of her traffickers. The crime she committed is regulated under article 73, paragraph 1

⁶³Italy v Fairy (2023) Unpublished criminal judgment. Trento Tribunal, 18 October 2023

and 1-bis of the DPR (*Decreto del presidente della Repubblica*) of the 9th October 1990. Dr. Di Bari⁶⁴ reported that these paragraphs deal with international drug smuggling and foresee a sentence of up to 20 years in prison. The higher the quantity and the quality of the drug, the higher the sentence will be. More specifically, Fairy was found with 140 heroin capsules (corresponding to 1610 grams) and 21 cocaine capsules (equalling 243 grams). The young woman was accompanied to the hospital to ascertain that she did not contain capsules inside her, but this was not possible because she was pregnant at the time.

To issue the sentence, the judge recalled article 26 of the Warsaw Convention, which invites states not to condemn victims of trafficking constrained to conduct illicit activities, and article 8 of the 2011/36/EU Directive, which calls on states to adopt necessary measures not to prosecute victims. As previously discussed, the court highlighted that in the Italian judicial system there is no ad hoc clause but that the state of necessity can be applied according to article 54 of the penal code. The judge found that Fairy was not willing to transport drugs out of her own choice and that she was doing that because she feared retaliation, on her and her family. Eventually, although the public prosecutor had asked for 2 years and 8 months of imprisonment and the payment of a 12,000 euros bill, the judge stood for the request of Fairy's lawyer and acquitted the young woman applying article 54.⁶⁵

4.3.5 Appeal from the Public Prosecutor

This story is, so far, an example of best practice for the application of article 54 so far. However, on 24th January 2024 the public prosecutor appealed the decision of the judge with two motivations. Firstly, the prosecutor called for a violation of article 192 of the CPP, claiming that the whole evidence is based on the young woman's fragility attested by the psychologist. According to Fairy's lawyer, Orietta Baldovin, this objection is reasonable as Fairy was never heard by the judge.⁶⁶ He also stressed the fact that Fairy did not accept the invitation to sue her traffickers and that the reason why she left the protection program is unknown. The response of Fairy's lawyer will be reported below; however, it is essential

⁶⁴G. Di Bari, personal communication, 12 February 2025

⁶⁵Fairy v Italy (2023) Unpublished criminal judgment. Trento Tribunal, Case No. 787/23, 18 October 2023

⁶⁶O. Baldovin, personal communication, 19th May 2025

to point out an important aspect when it comes to protection of victims of THB: they are not obliged to cooperate with the law enforcement if they are not willing to. In fact, as stated in Chapter 1, article 18 of legislative decree 286/1998⁶⁷ presupposes the existence of the social path for those who do not want to sue the traffickers. Hence, Fairy had the right to be assisted by Project Navigare despite not reporting, which makes the point raised by the public prosecutor irrelevant. Secondly, the prosecutor advocated a violation of article 54 of the penal code for *motivazione illogica e carente* (illogic and deficient motivation). Here the prosecutor claimed that the young woman left the protection program out of her own choice, falling back to the criminal network. This framing is highly problematic because it contains a subtle victim blaming rhetoric. Moreover, he affirmed that Fairy had the chance to contact the operators of Navigare, as she had done the first time and as she did a few years later in 2022. The public prosecutor's arguments epitomize his lack of knowledge about the phenomenon, as he seems not to have taken into account the conditions of anxiety, stress and subjugation that are intrinsic in trafficking. Furthermore, he underlined the fact that Fairy was under the obligation to pay 25,000 euros, not to practice a specific activity. Hence, she could have earned the money with a legal activity, perhaps thanks to the help of the Navigare Project.⁶⁸ For these reasons, the prosecutor did not identify the conditions for the application of the *stato di necessità* and asked the Appeal Court of Trento to revise the sentence.⁶⁹

4.3.6 Rejection of the Appeal by the Defense Lawyer

Fairy's lawyer, Orietta Baldovin, indeed requested the judge to reject the appeal. Since the court of Trento has adopted an anti-trafficking protocol, she was surprised that the public prosecutor appealed the acquittal sentence.⁷⁰ To the court she stressed the fact that Fairy was a victim of trafficking, for which she had severe psychological traumas. She also explained that Fairy did not sue her traffickers not because she did not want to be cooperative, rather because she feared repercussions on her family in Nigeria, since

⁶⁷Ministero dell'Interno (1998) 'Decreto Legislativo 25 luglio 1998, n. 286: Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero', Gazzetta Ufficiale della Repubblica Italiana, Serie Generale n.191, 18 agosto. Available at: [gazzettaufficiale](#)

⁶⁸G. Di Bari, personal communication, 12 February 2025

⁶⁹Fairy v Italy (2023) Unpublished appeal judgment. Public prosecutor to the Court of Appeal, 24 January 2024

⁷⁰O. Baldovin, personal communication, 19th May 2025

the first trafficker, the madame's brother and the native doctor knew where her mother lived and threatened her many times. The psychological pressure victims endure leads them to be reluctant to tell their story, to get help or even to acknowledge that they are victims of trafficking. Precisely for the family situation and her condition of vulnerability, which heightened the risk of re-trafficking, she was recognized as a refugee. The lawyer mentioned a similar case in which the Court of Cassation declared that, even though there is not a non-punishable clause in Italy, it is possible to adopt an interpretation that is in line with the Warsaw Convention and the 2011/36/EU Directive through the application of article 54. The lawyer invited the court to take into account the indicators elaborated by the UNODC for the territorial commission in the process of request for international protection: fear of retaliation after pressing charges, being a woman with a difficult economic situation and a low level of education, having debts, coming from countries that are known to be exposed to trafficking and so on and so forth. The use of such indicators also in the context of the tribunal would better protect, assist victims and avoid the phenomenon of secondary victimization according to the Court of Cassation. Thus, the penal responsibility should be assessed through the lenses of the vulnerability of the victim, according to article 90 quater of the CPP: "For the purposes of the provisions of this code, the condition of particular vulnerability of the injured party is inferred, in addition to age and the state of infirmity or mental deficiency, from the type of offense, the manner, and the circumstances of the act being prosecuted. In assessing this condition, consideration is given to whether the act was committed with violence against the person or with racial hatred, whether it is linked to organized crime, terrorism, including international terrorism, or human trafficking, whether it is characterized by discriminatory intent, and whether the injured party is affectively, psychologically, or economically dependent on the perpetrator of the crime."⁷¹ In the present case, according to the lawyer, the condition of vulnerability of the young woman is indisputable: she was very young when she came to Italy and slightly over the majority age when she committed the crime; she was in a severe psychological pain; regarding the crime, it is typical of criminal organizations which exploit young people without a criminal record and her task was an easy one, commensurate to her age. Furthermore, she was constantly under the subjugation of the

⁷¹Brocardi.it (n.d.) Art. 90-quater c.p.p. - Condizioni di particolare vulnerabilità. Available at: [Brocardi](#)

criminal organization, even when she was assisted by the Navigare Project, who was not aware that she still had to repay the debt, nor of the threats she kept on receiving.

Concerning the possibility of earning money with a legal activity, it appears unrealistic given that the “contractual” relationship between the victim and the perpetrators is never a fair one. Indeed, either the victim finds a stable job to repay the debt, or the perpetrator hires the victim in their activity (prostitution or drug smuggling). The first option was realistically not available: Fairy could have covered food and housing with the Navigare Project, but it is implausible that she could find a job that would allow her to earn 25,000 euros quickly. Generally, the second option corresponds to reality and it is much more efficient for the criminal organization, which keeps the victim under persistent control. Hence, Fairy did not decide to commit illicit activities, rather her condition of vulnerability obliged her to obey the criminals so as to avoid any harm for her and her family. The lawyer concluded stating that article 54 could be applied to the case and asking the Court of Appeal to reject the request of appeal.⁷²

In light of this case and many others, lawyer Baldovin affirms that article 54 is not sufficient to protect victims. When analyzing the language adopted by the judge of the Trento court to acquit the young woman, we can read "*il fatto non costituisce reato*", which means that the committed acts are not considered unlawful. This follows clearly the objective logic mentioned above in the chapter. In other words, this interpretation is communicating that drug trafficking did not take place, "but the young woman did traffick drugs and she did so with full knowledge of it."⁷³ Now the biggest concern is not what the prosecutor wrote in the appeal, rather the fact that the Court could accept the appeal overlooking the motivations. The issue is that without an ad hoc clause, judges must force article 54 because they understand something is missing. However, by interpreting article 54 as a *causa di giustificazione* (instead of a *causa scusante*), rulings are more easily open to appeal, like in this case.⁷⁴

⁷²Baldovin, (2024) Richiesta di rigetto dell'impugnazione (Unpublished document). Corte d'Appello di Trento, 16 February

⁷³O. Baldovin, personal communication, 19th May 2025

⁷⁴ibidem

4.3.7 Swedish Sentence

The case does not end here, though. The operators of the Navigare Project found out that Fairy had been caught with drugs also in Sweden in September 2021 and that she had also been investigated there. More specifically, she was found with 6,530 grams of hashish at the airport of Arlanda on 4th September 2021. The public prosecutor asked to expel Fairy from Sweden and prohibit her from going back to Sweden for an amount of years to be decided by the court, besides asking that she stayed in prison till the first hearing for the risk of escape. Fairy had to tell her story to convince the judge that she had committed that crime under the constriction of her traffickers. She told the judge the same things she had told the operators of the Navigare Project, adding details about the vandalistic acts her mother had to suffer in Nigeria, besides being beaten. She was able to witness what the traffickers had done to her family through the video calls Fairy had with her mother. Fairy also explained that her brother tried to defend her mother once, but he got beaten so violently that he had to be brought to the hospital.⁷⁵

More details emerged concerning her life after she left the Navigare Project the first time. She went to Stuttgart, Germany, to avoid the traffickers who constantly threatened her and she lived there for a while with her girlfriend. One day she randomly met Claire's brother who threatened her to do whatever he would tell her. Fearing for the safety of her family, she obeyed the man's order to travel for one year and a half transporting luggages in different countries. Afterwards, she went to Barcelona, where someone gave her the drug that she was supposed to bring to Stockholm. She declared that she never asked what was inside that luggage and went to Sweden, where she was caught by the police at the airport.

The Swedish penal system does not have an ad hoc non-punishable clause, but as in Italy, it foresees the possibility to acquit defendants who were constrained by the circumstances to commit an illicit activity. Thus, the court declared that the public prosecutor should bring solid evidence that this situation was not present in the case of the young Nigerian woman, stressing the fact that the danger affecting the family appears concrete and upcoming. The

⁷⁵Fairy v Sweden (2021) Unpublished judgment. Court of Attunda, 01 October 2021

court concluded rejecting all the requests of the public prosecutor, precisely as it happened a few years later in Italy.⁷⁶

4.3.8 Another Appeal: the Swedish Appeal Court

Nevertheless, the Appeal Court asked to revise the decision; to apply a sentence of 2 years and 3 months of prison for international drug smuggling; Fairy's expulsion from the country with a prohibition to re-enter for 10 years; preventive detention till the execution of the sentence; and a tax of 800 Swedish krona. The reasons provided by the court are similar to those presented in the Italian appeal: the danger for her and her family could not be considered an emergency as she could have contacted the family or the police. Moreover, the court affirmed that when she committed the crime, there was no upcoming threat for her family.

Given she had no previous crime record, she was attributed the minimum of the penalty. Concerning the expulsion the court affirmed that she did not have any link to Sweden nor the other Schengen countries. Furthermore, the court considered that no dangerous consequences would arise from her expulsion from the country and the consequent repatriation to Nigeria, since, according to the Migration Board, the situation in Nigeria would not constitute an obstacle to the execution of this decision. These arguments are highly problematic for two reasons: first, it is not true that Fairy did not have any link with any of the other countries in the Schengen agreement, since she had received the refugee status in Italy. Secondly, one of the primary reasons why Italy decided to grant her protection was the risk of re-trafficking in her home country. This issue will be analyzed more in detail in another section. Here it suffices to say that the majority of victims of THB involved in forced criminal activities in Italy still comes from Nigeria (23.3 percent according to Figure 4.8).⁷⁷ In general, there has been a slight decline of Nigerian victims throughout the years: from a total of 1430 people coming from the country in 2020, they were 1368 in 2021 and 1114 in 2022,⁷⁸ whereas according to the latest report of the Numero Verde

⁷⁶Fairy v Sweden (2021) Unpublished judgment. Court of Attunda, 01 October 2021

⁷⁷Numero Verde Anti-Tratta Mestre (2025). Dati estrapolati dal sistema informatizzato per la raccolta di informazioni sulla tratta (SIRIT) in data 11/03/2025 - a cura del Numero Verde Antitratta. Documento interno, Mestre

⁷⁸Dipartimento per le Pari Opportunità (2022) Relazione numero verde antitratta 2022. Available at: [DPO](#)

in 2024 there has been a reduction of 9.1 percent of new evaluations of Nigerian people compared to 2023, and a reduction of 10.5 percent of Nigerian people that entered assistance programs.⁷⁹ Moreover, many traffickers are organized in large and powerful criminal networks in the country.

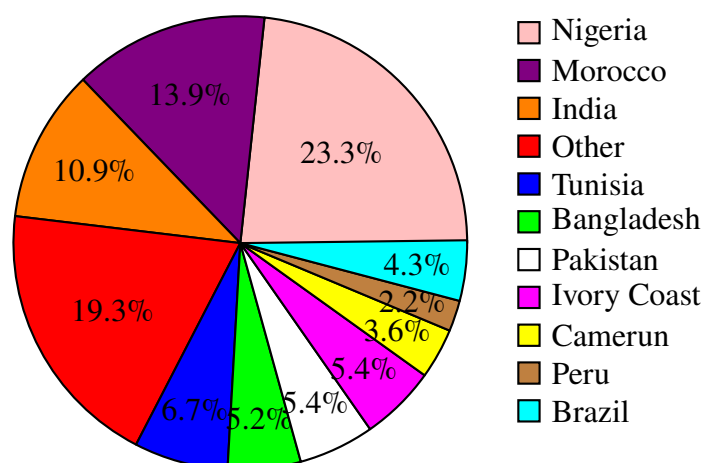


Figure 4.8: Forced Criminal Activities: New Undertakings per Country of Origin. Source: Numero Verde, SIRIT

Hence, claiming that her expulsion would not have any detrimental consequences for Fairy is unrealistic given the peculiar context of the country.

4.3.9 European Arrest Warrant

On 10th November 2024 Fairy was arrested by the Police in Padua after a normal ID check, where the police officers found a European Arrest Warrant (EAW) on the young woman issued by Sweden. The Court of Appeal of Venice reported that after two weeks in the Swedish prison, Fairy was released according to the first decision of the court (who acquitted her) and went first to Germany and then to Italy, where she was arrested. The court certified the arrest because there were reasonable grounds to believe that she might escape.⁸⁰

Concerning the European Arrest Warrant, Italy wanted to clarify the point on the plausible expulsion of the young woman. Sweden replied that it was not the decision of

⁷⁹Osservatorio Interventi Tratta (2024) Relazione 2024: Le attività del Numero Verde Nazionale Antitrattra – Aprile 2024. Available at: [numeroverde](https://www.numeroverde.it/)

⁸⁰Court of Appeal of Venice (2024) Mandato di arresto nei confronti di Fairy (Unpublished arrest warrant). Delegated Judge to the Court of Appeal of Venice, Case No. 97/2024, 10 November

the court nor the Swedish Prosecution Authority, rather the Migration Board's once Fairy served her term in prison. It is important to remember here that it was the Migration Board who had declared that the general situation in Nigeria was safe to execute the expulsion order. Hence, there was no certainty that Fairy would not be extradited to Nigeria. For these reasons, the Court of Appeal in Venice welcomed the request of Fairy's lawyer and decided that Fairy would serve her term in prison in Italy according to the internal legal system.⁸¹ Dr. Di Bari reported that if they had known about the trial in Sweden, they could have intervened, but given the circumstances the best option for her would be to respect the sentence and avoid going back to Sweden: since the country did not exclude the possibility to return her back to Nigeria, she could risk being re-trafficked for the umpteenth time.⁸² Baldovin specified that once a European Arrest Warrant is issued, it is an executive mandate that cannot be changed.⁸³ Currently, Fairy is working, is waiting for the execution of this sentence, and for the trial in Trento to start again, as the prosecutor asked for the testimony of Dr. Di Bari. This will take place on 16th July 2025, but the Court may refuse to hear Di Bari and accept immediately the request of appeal.⁸⁴

4.4 Human Rights Implications: Applying GRETA's and ASGI Considerations

GRETA has highlighted that prosecuting victims of THB violates the State's duty to offer support and assistance, as individuals who are not recognized as victims do not receive the services they are entitled to under the Warsaw Convention. Furthermore, the Group of Experts emphasized that criminalization deters victims from seeking help and cooperating with the law enforcement, thereby obstructing the State's responsibility to investigate and prosecute traffickers. Similarly, the former UN Special Rapporteur on Trafficking in Persons underscored that non-punishment provisions in various international instruments are essential for ensuring that trafficking victims receive the protection they are legally owed, while also preventing their re-exploitation, i.e. the phenomenon of re-trafficking, and for holding perpetrators accountable. The following sections will delve into the issues

⁸¹Fairy v Italy (2025) Unpublished judgment. Court of Appeal of Venice, 21 January 2025

⁸²G. Di Bari, personal communication, 12 February 2025

⁸³O. Baldovin, 19th May 2025

⁸⁴G. Di Bari and O. Baldovin, personal communication, 19th May 2025

of unwillingness to testify and re-trafficking.

4.4.1 Unwillingness to testify

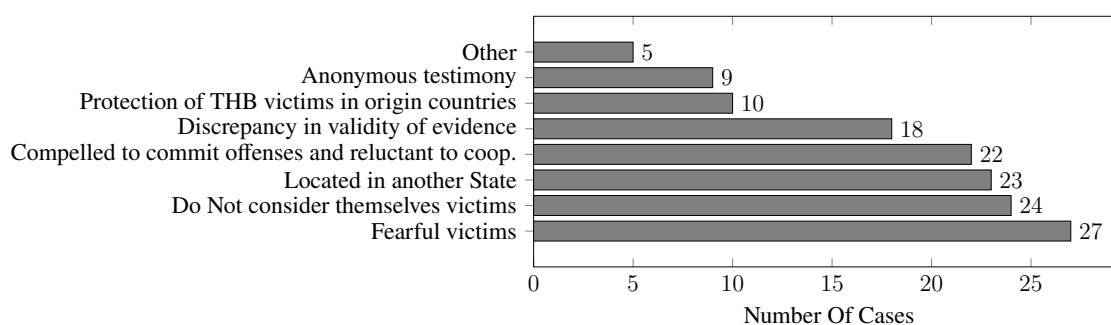


Figure 4.9: Main challenges in securing evidence from victims/witnesses. Source: Eurojust 2015

As can be seen in Figure 4.9, in many cases, victims and witnesses fear reporting their traffickers, leading them to refuse to testify, alter their statements, or withdraw their testimonies. National authorities have provided further insights into this challenge, identifying several contributing factors, such as economic, social, and cultural differences; fear of retaliation from traffickers; concerns over unpaid wages or job loss; the influence of voodoo and juju rituals on Nigerian victims; psychological, economic or physical dependence on traffickers; familial ties between victims and perpetrators; intellectual disabilities; traumatic experiences; the passage of time; substance abuse; threats against victims' families; and the repatriation of victims before legal proceedings can take place. More in detail, victims and witnesses frequently distrust law enforcement and judicial authorities in Member States, particularly those from regions affected by war, terrorism, corruption, or persecution. Di Bari recalled the case of a minor girl who did not trust the operators of the project and went back to her traffickers. Eventually they kidnapped her and killed her.⁸⁵ THB investigations may be discontinued if victims refuse to testify or they retract their statements. For instance, when victims or witnesses do not explicitly confirm that they were coerced into working, authorities may conclude that the suspects' actions do not constitute a criminal offense. Furthermore, victims or witnesses may be unwilling to testify because they do not perceive themselves as victims. In Italy, this issue is particularly prevalent in cases of labour exploitation, where victims, despite being paid significantly below the

⁸⁵G. Di Bari, personal communication, 19th May 2025

legal minimum wage, still earn more than they would in their home country, and are thus satisfied with their salary. Some victims only recognize themselves as such when they receive no payment at all. Meanwhile, victims who “voluntarily” enter exploitative situations (because it was their only option) often display less fear of traffickers. The influence of juju rituals on Nigerian victims further complicates efforts of the authorities to engage with victims and build trust. Even for victims that acknowledge their exploitation, feelings of shame and a lack of interest in testifying may hinder their cooperation.⁸⁶ To address these challenges, the use of alternative forms of evidence has been suggested by experts in Italy, such as the use of electronic surveillance, financial transaction and cash flows tracking, the collection of extensive circumstantial and documentary evidence related to the exploitation, employing specialized investigative techniques, and enhancing international cooperation. However, as previously stated in the dissertation, the phenomenon of trafficking makes victims’ testimony particularly essential during trials.⁸⁷

Figure 4.9 also shows a consistent number of victims who have committed crimes that are reluctant to cooperate.⁸⁸ A research⁸⁹ found that the very environment in which victim identification takes place can create obstacles to the process. In many cases, a victim’s initial contact with professionals who could initiate identification occurs in police settings, such as at an airport for drug couriers (as it happened to Fairy in Sweden) or at a police station following an arrest for a criminal offense, which may create anxiety in traumatized victims. Fear is particularly pronounced in cases of trafficking for forced criminality because it manifests in two ways: not only do they fear the law enforcement, but also traffickers. Victims who are aware that they have committed a crime are concerned about being arrested and imprisoned. Traffickers may manipulate them into believing that being identified by authorities will not free them from exploitation, rather it will prolong the cycle of victimization, pushing victims not to report their condition. Some victims, particularly drug couriers, are worried about being deported to their home countries, knowing that

⁸⁶Eurojust, 2015. Eurojust strategic meeting on trafficking in human beings: Annex. [pdf] Available at: [Eurojust](#)

⁸⁷ibidem

⁸⁸Ward, Tony and Fouladvand, Shahrzad (2018) Human Trafficking, Victims’ Rights and Fair Trials. *The Journal of Criminal Law*, 82 (2). pp. 138-155. ISSN 0022-0183

⁸⁹Villacampa, C. and Torres, N., 2017. Human trafficking for criminal exploitation: The failure to identify victims. Springer Science+Business Media Dordrecht. Available at: [Springer](#)

failing their assigned mission could have severe consequences for themselves or their families. In fact, as in the case of Fairy, traffickers may be in contact with their families back home and prove to victims through videos or photos that they can actually harm them. According to a prison official, some couriers even resist being released from prison out of fear that traffickers will pursue or harm them.

Victims' lack of trust in the system's ability to protect them prevents them from coming forward, with the consequence that it becomes more difficult for authorities to assess whether they are victims of trafficking or just offenders.⁹⁰ Many victims' lack of awareness about their trafficking condition is amplified when they have been forced to commit crimes, as they perceive themselves as offenders rather than victims. Traffickers further reinforce this belief by dehumanizing them and exploiting victims' knowledge of having committed a crime to discourage cooperation with authorities. Professionals working with victims are crucial in this sense because they often act as a mirror, reflecting back their experiences to help them recognize their victimization. Some victims struggle to acknowledge their exploitation due to cultural norms, a sense of obligation to repay debts, or the belief that their traffickers have helped them rather than harmed them. Others require guidance to question whether their situation was truly of their own making or manipulated by someone else. Even in clear-cut situations, identifying victims remains complex, especially when they have committed crimes, have been arrested, and perceive themselves merely as offenders.⁹¹ This is why data may not reflect the real picture of the phenomenon. Dr. Di Bari affirmed that in Italy the SIRIT system does not register forced criminal activities adequately because only recently operators have started investigating this type of trafficking, going for example into jails to interview detainees and see if they present indicators of trafficking.⁹²

It may be assessed that victims' fear and anxiety are heightened in legal contexts where, even when recognized as such, they still face the risk of prosecution due to the absence of a specific non-punishment clause, and the alternative provision, i.e article 54

⁹⁰Eurojust, 2015. Eurojust strategic meeting on trafficking in human beings: Annex. [pdf] Available at: [Eurojust](#)

⁹¹Villacampa, C. and Torres, N., 2017. Human trafficking for criminal exploitation: The failure to identify victims. Springer Science+Business Media Dordrecht. Available at: [Springer](#)

⁹²G. Di Bari, personal communication, 12 February 2025

of the penal code, is rarely applied, further exacerbating their vulnerability. If victims face an environment that leads them to be reluctant to rely on the law enforcement, their right to justice, remedy and assistance are in danger. In case they do not self-identify as victims or they are considered offenders rather than victims and are thus condemned, they risk to face secondary victimization and both their right to protection from criminalization and their right to safety and *non-refoulement* are under threat given that some acts are criminal offences (*ostativi*).⁹³ This implies the impediment to access international protection and compensation, but also the revocation of the residence permit and of the international protection if already obtained. In fact, according to article 5 of legislative decree 286/98,⁹⁴ the residence permit can be lifted if the person represents a threat to public order or the security of the state; whilst article 12 of legislative decree 251/2007⁹⁵ foresees the revocation of international protection for particularly severe crimes (such as drug smuggling).

4.4.2 Re-trafficking

Another major consequence of criminalizing victims is re-trafficking. Usually, this term refers to situations where a person has returned to the country of origin and is then trafficked again. The period in which victims are most likely to be subjected to re-trafficking is within two years from the first exploitation. This definition is problematic because it does not include victims that are re-trafficked before going back to their countries of origin, either in the host country or in another country they may reach after exiting the first situation of exploitation. Cases of re-trafficking in the countries of destinations are not addressed but represent a tangible chance if victims are not assisted in the correct manner.⁹⁶ The most comprehensive definition seems the one provided by the International Organization for Migration (IOM), according to which re-trafficking represents a situation where a person has been trafficked as set forth in the definition provided by the UN Palermo Protocol, to

⁹³Di Bari, G. (2022), La non punibilità delle persone sopravvissute alla tratta o alla riduzione in schiavitù che commettono attività illecite, Tavola Rotonda, Zoom, 27 January 2022

⁹⁴Italy. 1998. Legislative Decree No. 286 of 25 July 1998 – Consolidated Act on Immigration and the Status of Foreigners. Available at: [normattiva](#)

⁹⁵Italy. 2007. Legislative Decree No. 251 of 19 November 2007 – Implementation of Directive 2004/83/EC on Minimum Standards for the Qualification and Status of Refugees and Persons in Need of International Protection. Available at: [normattiva](#)

⁹⁶Eghafona, K.A. 2020. The phenomenon of re-trafficking of women repatriated in Nigeria. Sciabaca and Oruka – ASGI. Available at: [ASGI](#)

then exit the trafficking situation and re-enter in a following moment another trafficking situation. This general definition presupposes that re-trafficking may or may not involve return to the country of origin, taking into consideration, perhaps, that for the second exploitation internal trafficking seems to be more common rather than for the first one.⁹⁷

According to the IOM Human Trafficking Database, the most vulnerable groups to re-trafficking are women, children and young adults, with minors risking highly to be re-trafficked in adult life. The causes of re-trafficking are several. One major cause, which is also connected to the focus of the whole chapter (i.e. non-punishability), is the fact that when victims commit certain crimes, they may lose the status of international protection that they were granted precisely because they are victims of human trafficking, and the residence permit.⁹⁸ This exposes victims to further victimization both in the country of destination because they would be in the territory illegally, and in the countries of origin as they risk being repatriated. In fact, the irregular status may be used by traffickers to drive victims again into trafficking, with the promise that they will be taken care of, or that they may get help in obtaining their permits (which will never happen). As for the risk of repatriation, according to article 33 of the Geneva Convention, “no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.⁹⁹ However, “the benefit of the present provision may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”.¹⁰⁰ They may be saved from repatriation if the conditions of the ECHR, article 3, hold, as according to the convention “no one shall be

⁹⁷International Organization for Migration (IOM). 2021. The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database. Available at: [IOM](#)

⁹⁸Brambilla, A., Degani, P., Paggi, M., and Zorzella, N. (eds.) (2022) *Donne straniere, diritti umani, questioni di genere: Riflessioni su legislazione e prassi*. Padova: Centro di Ateneo per i Diritti Umani "Antonio Papisca" - Università degli Studi di Padova; ASGI – Associazione per gli Studi Giuridici sull'Immigrazione. ISBN: 978-88-5495-558-5. Available at: [donnestranriere](#)

⁹⁹United Nations High Commissioner for Human Rights (OHCHR). 1951. Convention Relating to the Status of Refugees. Available at: [OHCHR](#)

¹⁰⁰United Nations High Commissioner for Human Rights (OHCHR). 1951. Convention Relating to the Status of Refugees. Available at: [OHCHR](#)

subjected to torture or to inhuman or degrading treatment or punishment”.¹⁰¹ In this case, even if a person has committed a crime or represents a threat for the country, they cannot be repatriated. Nevertheless, even this article may not save victims from being repatriated and re-trafficked. If we consider the case of Fairy, she could have risked being repatriated to Nigeria since the Swedish Migration Board did not find any risks in implementing an order of expulsion of the young woman. Actually, human trafficking is an extremely embedded phenomenon in the country, to the point that it is estimated that every family in Benin has at least one member involved as victims, sponsors, madames or traffickers, and re-trafficking has been taking place as soon as human trafficking started to proliferate in the country.¹⁰²

Repatriation may take place also if identification as victims of trafficking does not take place, which may easily happen in cases where victims are also offenders of severe crimes and are identified only as criminals. Repatriation does not come with adequate assessment of the potential risks victims may face after returning back home. Behind this, we find the lack of clear procedures in the destination country, as well as the failure to guarantee a process of repatriation that guarantees the rights and safeguard of the trafficked person. Usually, trafficked persons that are wrongfully deported by destination countries' immigration authorities are generally found by their traffickers and are re-trafficked. Here, it is important to stress that traffickers may also find victims in destination countries after victims are arrested by authorities, which is why investigating more into the issue of re-trafficking in destination countries is a pressing concern.

Further reasons for re-trafficking are, for example, the cooperation and encouragement of victims' families. It may seem paradoxical, but trafficking of family members represents a survival strategy and the only chance to become wealthy for some families. In such instances, victims have reported that their families were not happy to have them back home after being repatriated, to the point that some victims would rather live in a shelter forever instead of constantly living with the rejection of their families and the risk of being

¹⁰¹European Court of Human Rights (ECHR). 1950. European Convention on Human Rights. Available at: [ECHR](#)

¹⁰²Eghafona, K.A. 2020. The phenomenon of re-trafficking of women repatriated in Nigeria. Sciabaca and Oruka – ASGI. Available at: [retrafficking](#)

re-trafficked.¹⁰³ Some victims also face ostracism from their community, especially if they have engaged in prostitution. The consequent internalized feeling of shame can lead victims back into the condition of trafficking, rather than into the hands of the authorities. Since Fairy was exploited both for prostitution and drug smuggling, we cannot exclude that she may have experienced degrading treatment once back in her country. Specifically for Nigerian victims, the juju rituals may be a cause of re-trafficking because victims are made to believe that they cannot get their freedom with ease. Hence, they may not ask for help from the authorities and may not cooperate if they are found guilty, out of fear of retaliation on their families or their own lives given the oaths of loyalty they have made. They may also fear retaliation for not having paid the whole debt and thus continue to obey the traffickers. This was exactly Fairy's situation: she did the juju many times, both in Nigeria before being trafficked, and in Italy, and her traffickers threatened her and her family after her madame died because she had not repaid the debt completely. Furthermore, some countries of origin may not provide the correct assistance to victims in terms of shelters and reception centers, with the consequence that victims are obliged to turn again to their recruiters to go back to the destination country they were exploited in. Once back in the destination country, most victims are re-trafficked.

The IOM found that the majority of victims' families have a poor economic status, while only a minority has a standard economic status; as to their level of education, the majority possess elementary school diplomas.¹⁰⁴ This demonstrates that victims tend to have complicated backgrounds that drive them to trafficking and need careful assistance in order to both exit their trafficking situation and to avoid falling back into the hands of traffickers. In fact, even after having exited the exploitation, they may relive the same difficulties that drove them to migrate and find a better life. For instance, Fairy completed her path with the Navigare Project the first time but then she was in the same situation of poverty and solitude as before, and she had not repaid the whole debt (something which the operators were not aware of), which led her easily back to trafficking.¹⁰⁵

¹⁰³Eghafona, K.A. 2020. The phenomenon of re-trafficking of women repatriated in Nigeria. Sciabaca and Oruka – ASGI. Available at: [retrafficking](#)

¹⁰⁴International Organization for Migration (IOM). 2021. The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database. Available at: [IOM](#)

¹⁰⁵Eghafona, K.A. 2020. The phenomenon of re-trafficking of women repatriated in Nigeria. Sciabaca and Oruka – ASGI. Available at: [retrafficking](#)

Save the Children has expressed its concern for the increasing number of victims that after having exited from the assistance programs are drawn back into the control of their traffickers. The organization attributes the fault to the economic crisis of our country, as well as the excessive bureaucracy surrounding integration paths and the conditions of marginality in which victims live. When individuals receive adequate support in securing employment and housing during their reintegration, their social integration into the local community becomes a strong protective factor against re-trafficking. However, the transition from assisted living to complete independence is a particularly vulnerable stage, where new risks may arise. For example, the appearance of a so-called boyfriend who exploits their fragility and lures them back into the cycle of exploitation using the lover-boy method. Even in cases where victims obtain economic independence, they may still experience marginalization, hindering their process of healing.¹⁰⁶ For male minors subjected to labor exploitation, the most critical challenges reported by Save the Children after leaving reception programs stem from their arrival in Italy, which often happens just before they turn 18. The limited time available to initiate an effective protection and social inclusion process means that, once reaching adulthood, they often find themselves excluded from support systems and forced to return to exploitative work conditions. "The transition to adulthood brings immense psychological pressure, as they struggle to secure stable employment and housing while, in many cases, also financially supporting their families back home. This overwhelming burden can drive them to adopt coping mechanisms such as substance or alcohol abuse or turning to gambling"¹⁰⁷ the report notes.

Hence, failing to respect the non-punishment principle may lead to imprisonment, forced repatriation and expulsion, unjust revocation of international protection, financial strain due to imposed fines, family separation, and lack of a fair trial.¹⁰⁸ The implications in terms of human rights violations are the breach of the right to protection from criminalization, the right to safety and non-refoulement, the right to access justice and remedies, the right to assistance and support, the right to have guarantees of non-repetition and the positive

¹⁰⁶Save the Children Italy. 2023. *Tratta e sfruttamento: cos'è il fenomeno del re-trafficking*. Available at: [savethechildren](#)

¹⁰⁷Redattore Sociale. 2023. *Re-trafficking: quando le vittime ricadono nelle reti di vecchi o nuovi aguzzini*. Available at: [redattoresociale](#)

¹⁰⁸Jovanović, M. and Niezna, M. (2023) 'Non-punishment of victims/survivors of human trafficking in practice: A case study of the United Kingdom', Council of Europe, September. Available at: [CoE](#)

obligation of the state to provide satisfaction.

Fairy experienced a double re-victimization in which she was always subjugated by the threats she received by her traffickers, and the evidence she received from her mother that the traffickers knew her family and could seriously harm them. This, alongside her condition of marginality and poor economic conditions (especially after her father's death), created the perfect conditions for traffickers to engage her in illegal activities after she had been trafficked the first time for the purpose of sexual exploitation. Furthermore, had she been in prison in Sweden, she might have been repatriated to Nigeria, where she was highly likely to be trafficked a third time.

The non-punishment principle reflects a victim-centered approach in addressing human trafficking that prioritizes the protection of victims' human rights. Holding trafficked individuals accountable for offenses committed as a direct consequence of their exploitation contradicts states' obligations to acknowledge victims' rights and ensure their support, protection, and access to effective remedies. Such punitive measures also obstruct their recovery process. The fear of prosecution and punishment discourages victims from seeking protection and cooperating with law enforcement, further empowering traffickers who exploit this fear to maintain control. When the state punishes trafficking victims instead of providing protection, it fails in its duty to investigate and prosecute traffickers, potentially violating the ECHR. Charging and convicting victims rather than perpetrators not only perpetuates traffickers' impunity but also weakens efforts to combat human trafficking.¹⁰⁹ In the specific case of Italy, experts maintain that the introduction of an *ad hoc* clause would not have just a symbolic meaning, rather it could help those that have a restricted knowledge on the matter to apply the clause, better understand the complexity of human trafficking, foster identification and avoid re-victimization. The lack of a specific norm does not foster identification, nor a culture of intervention, at the social, judicial and police levels. In fact, too often in these cases identification takes place as a formality, and not due to the professionalism and experience of the operators involved, with all the possible implications already illustrated.¹¹⁰

¹⁰⁹La Strada International (2023) Explanatory Brief on the Non-Punishment Principle, November 2023

¹¹⁰See supra note 98



Conclusions

Human trafficking remains one of the most egregious violations of human rights, exposing victims to severe exploitation and abuse. One of the most critical issues explored in this thesis is the concept of effective remedy. The dissertation presented the several legal protections that Italy has put at disposal of victims. However, the research has demonstrated that often the existence of legal protections remains on paper, which is insufficient: when these protections are not implemented in practice, they constitute a breach of international law. As a matter of fact, despite the formal recognition of human trafficking as a crime under international law and national legislations, victims of trafficking in human beings continue to face significant legal and systemic challenges in Italy. As this thesis has sought to prove, THB victims are inherently vulnerable subjects who should, under a functioning rule of law framework, receive comprehensive protection. However, this is often not the case, particularly when their legal struggles extend beyond the specific context of human trafficking. The topics addressed in Chapter 2 and 3, i.e. the excessive duration of trials and the related role of the public prosecutor, and the use of *incidente probatorio*, illustrate this. Consequently, the perpetrators are not only the traffickers, but also institutional systemic inefficiencies, which are the cause of failure to uphold the fundamental rights of THB victims, leaving them exposed to further harm and marginalization. A fundamental principle of justice is that rights must be actionable and enforceable. It is evident that victims are sometimes unable to access such remedies due to procedural barriers, structural weaknesses, or political reluctance, which makes the

entire legal system fail to serve its intended purpose. The absence of effective remedies does not merely disadvantage individual victims; it undermines the credibility of the legal framework itself, rendering jurisdictional protections illusory rather than substantive and concrete.

Chapter 4's topics of forced criminality and non-punishability highlight another critical point. Victims encounter in this case an overall lack of institutional support, despite the presence of clear guidelines on the matter at the international level. This discrepancy between legal commitments and their actual enforcement exposes a gap that must be urgently addressed to prevent re-victimization and ensure justice for victims.

In light of these findings, this thesis underscores the necessity for Italy to bridge the gap between legal theory and practical implementation, as genuine rule of law must prioritize not only the existence of rights but also their concrete application. Without such an effort, the promise of justice remains an unfulfilled aspiration, and the legal system risks perpetuating human trafficking, which the country is trying to eradicate instead. Only by addressing the systemic deficiencies that hinder the realization of effective remedies can legal frameworks fight the injustices and atrocities of human trafficking, and attain change, thereby restoring the integrity of the rule of law and upholding the fundamental rights of the most vulnerable members of society.

Acronyms

- CAS** Centri di Accoglienza Straordinaria. 62, 63, 67
- CoESPU** Centre of Excellence for Stability Police Units. 8
- CPP** Code of Criminal Procedure. 19, 20, 27, 29, 31–34, 38, 41–43, 82, 88, 90
- DDA** Direzione Distrettuale Antimafia. 48
- DPO** Dipartimento per le Pari Opportunità. 6, 8, 29
- EAW** European Arrest Warrant. 94
- ECHR** European Convention on Human Rights. 12, 13, 17, 42, 44, 52, 71–74, 83, 100, 104
- ECtHR** European Court of Human Rights. 10, 12, 17, 24, 42, 53, 71–73, 75
- GRETA** Group of Experts on Action against Trafficking in Human Beings. 10, 17, 24, 27, 28, 31, 37, 69, 75, 76, 95
- GUP** Judge for the preliminary hearing. 87
- ICAT** Inter-Agency Coordination Group against Trafficking in Persons. 11
- ICCPR** International Covenant on Civil and Political Rights. 10
- ILO** International Labour Organization. 10, 68
- IOM** International Organization for Migration. 99, 100, 102
- NGOs** Non-Governmental Organizations. 6
- NRM** National Referral Mechanism. 8
- OHCHR** United Nations High Commissioner for Human Rights. 68

- OSCE** Organization for Security and Co-operation in Europe. 8
- PNRR** Piano Nazionale di Ripresa e Resilienza. 43
- SIRIT** Computerized System for the Management of the Identification and Reception of Trafficked Persons. 8, 63, 98
- SOPs** Standard Operating Procedures. 8
- THB** Trafficking in Human Beings. 7, 8, 12, 13, 19–21, 24, 27, 28, 30, 31, 40, 47–49, 52, 55, 58, 71, 89, 93, 95, 96
- UN** United Nations. 5, 10
- UNHCR** United Nations High Commissioner for Refugees. 8
- UNODC** United Nations Office on Drugs and Crime. 12, 90
- UNTOC** United Nations Convention against Transnational Organized Crime. 11, 12

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