



# **Implementation of Selected OSCE Commitments on Human Rights and Democracy in Italy**

**Independent Evaluation Report on the occasion  
of the Italian OSCE Chairmanship 2018**



**Sant'Anna**  
School of Advanced Studies – Pisa



Ministero degli Affari Esteri  
e della Cooperazione Internazionale  
FARNESINA

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## Introduction

In 2018, Italy takes over the Chairmanship of the Organization for Security and Co-operation in Europe (OSCE). The Organization, which counts 57 participating States from North America, Europe and Asia, is the largest regional security organization and it is well known for having played a significant function during the Cold War, serving as an important multilateral forum for dialogue and negotiation between East and West. Recently, the OSCE has regained its role as a major regional player in response to the crisis in Ukraine, Nagorno-Karabakh, Transnistria and Georgia. Thanks to its peculiar nature and its presence in the terrain with field missions, it represents a unique entity capable of facilitating dialogue as a fundamental tool to prevent conflict escalation. Ever since the establishment of the Organization, formerly known as the CSCE (Conference on Security and Cooperation in Europe) in 1975, Italy has assured its support to OSCE both financially (Italy is the third largest contributor to OSCE's unified budget) and with human resources (excluding the Special Mission to Ukraine, Italy is currently the top contributor of officials to OSCE). Furthermore, this year is the second time Italy steers the wheel of OSCE since it has previously taken the Chairmanship in 1994 in a post-Cold War era.

Beginning with the Helsinki Final Act signed in 1975, the 57 participating States have adopted several politically binding commitments relating to the so-called human dimension security concept. Although they are not legally binding, the OSCE commitments encourage States to observe internationally recognized standards, and represent a political instrument to promote legislation within its member States. All OSCE participating States have agreed that lasting security cannot be achieved without respecting of human rights and democratic institutions. In 2010, these commitments have been reinforced at the Astana Summit in Kazakhstan, in which States have reaffirmed their support to the comprehensive approach to security based on three main areas: trust and transparency in the politico-military field, rational economic and environmental policy and, the full-fledged respect of human rights, basic freedoms and the rule of law.

## 1. The Practice of the State Reporting System from 2014 to 2018

The practice of an evaluation report is not new, and it has become a good practice for OSCE States since when the Swiss Chairmanship introduced its first report in 2014. The aim of the Report<sup>1</sup> was to review the implementation status of existing commitments in the human dimension of the Swiss Chairmanship of the OSCE in 2014 and, to assess the credibility of the country chairing the OSCE, vis-à-vis the respect of the fundamental values of the Helsinki Final Act and other commitments.

Italy, on a voluntary basis, follows the examples of the Swiss,<sup>2</sup> the Serbian,<sup>3</sup> the German<sup>4</sup> and the Austrian<sup>5</sup> Chairmanships in the presentation of the Report as an example of a well-established good practice with the aim of strengthening the role of OSCE as a regional actor and to promote the effective implementation of the OSCE commitments.

In this regard, Italy, through its Ministry of Foreign Affairs and International Cooperation requested the Sant'Anna School of Advanced Studies (Scuola Superiore Sant'Anna) to draft under the guidance of Prof. Andrea de Guttry, Chair of Public International Law and Director of the ITPCM, an independent report on the implementation of selected OSCE human rights (human dimension) commitments undertaken by Italy.

## 2. Sant'Anna School of Advanced Studies

The Sant'Anna School of Advanced Studies is an Italian public university institute – with special autonomy – working in the field of applied sci-

<sup>1</sup> The Swiss Self-evaluation report is available at: [http://www.skmr.ch/cms/upload/pdf/141204\\_Self-Evaluation\\_OSCE\\_Chairmanship\\_Updated\\_Version.pdf](http://www.skmr.ch/cms/upload/pdf/141204_Self-Evaluation_OSCE_Chairmanship_Updated_Version.pdf).

<sup>2</sup> Also based on the lessons learnt included in the Swiss report, which are: the strategic timeframe, the topic selection, the monitoring fatigue, the stakeholder familiarity with the OSCE.

<sup>3</sup> The Serbian Self-evaluation report is available at: [http://www.mfa.gov.rs/en/images/Finalna\\_verzija\\_EN\\_1\\_5.pdf](http://www.mfa.gov.rs/en/images/Finalna_verzija_EN_1_5.pdf).

<sup>4</sup> The German self-evaluation report is available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Weitere\\_Publikationen/Implementation\\_of\\_Selected\\_OSCE\\_Commitments\\_on\\_Human\\_Rights\\_and\\_Democracy\\_in\\_Germany\\_09\\_2016.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/Implementation_of_Selected_OSCE_Commitments_on_Human_Rights_and_Democracy_in_Germany_09_2016.pdf).

<sup>5</sup> The Austrian self-evaluation report is available at: <https://volksanwaltschaft.gv.at/downloads/fhu08/OSZE%20Berichtsentwurf.pdf>.

ences including Economics and Management, Law and Political Sciences. In 2018, the Times Higher Education World University Rankings,<sup>6</sup> ranked Sant’Anna School number one university at the national level, number 151 at the global level, and number nine at the world level as best young university. Within the Sant’Anna School of Advanced Studies operates the International Training Programme for Conflict Management (ITPCM), which has a more than 20 year long consolidated tradition in researching linkages between human rights and conflict management theory and practice. Since its birth in 1995, advanced research activities have been promoted and a strong expertise has been developed in a number of fields: peacekeeping, humanitarian assistance, election monitoring, human rights promotion and protection, post-conflict rehabilitation.<sup>7</sup>

### 3. Goal and Purpose of the Report

During its 2018 Chairmanship, Italy underlined the importance of taking a pro-active approach to OSCE’s three security “dimensions” (politico-military, economic and environmental, human rights) and on the new transnational threats (terrorism, cyber security, combating illegal trafficking). In addition, it reaffirmed that high priority shall be given to the Third Dimension (human rights), in the belief that respecting rights, fundamental freedoms and the rule of law are aspects that are indissolubly tied to security.

The goal of this report is to evaluate how the political OSCE commitments in the area of the “human dimension” are being implemented in and by Italy. More in particular, a reconnoitring of selected relevant human rights commitments has been undertaken with the objective of displaying major challenges and ways and means enacted to overcome them.

The report is an independent document prepared by the Sant’Anna School of Advanced Studies in close consultation with civil society actors, academia and governmental institutions as relevant stakeholders.

<sup>6</sup> The Times Higher Education World University Rankings is available at <https://www.timeshighereducation.com/>.

<sup>7</sup> More information about the International Training Programme for Conflict Management are available at the following link: <https://www.santannapisa.it/it/istituto/dirpolis/itpcm-international-training-programme-conflict-management>.



Italy, as the country chairing the Organization commissioned this report to lead by example and to make sure that it respects the fundamental values and other commitments with the ultimate goal of ensuring the credibility of the OSCE and fostering other members to continue with this practice.

#### 4. The Methodology Used to Prepare this Report

The methodology used in the preparation of the report is similar, although not identical, to the one used in previous editions by the other Chairmanships and includes the involvement of relevant stakeholders like civil society actors, academia and governmental institutions.

The research work revolved around two pillars: (a) Time frame of the research: the temporal scope of the research covers the last 5 years and (b) thematic scope of the research: the objective of the report will be to critically evaluate the implementation status of OSCE commitments in selected thematic areas in Italy.

The preparation of the report was organized in three main phases:

The first phase included the identification of fifteen possible themes, which were submitted to more than 200 relevant Italian stakeholders, identified among civil society actors, NGOs, academia and governmental institutions. Answering specific questions, thanks to an online survey, these actors were able to give their preferences for the themes that they considered more relevant and to be analysed in the report. As a result of the survey, the stakeholders which, demonstrated an active engagement, open criticism and a clear interest in the exercise, identified five main areas

- Migration, refugees and asylum seekers
- Violence against women
- Trafficking in human beings
- Women, peace and security
- Racism, xenophobia and anti-Semitism

The second phase consisted in the drafting of the chapters on the above-mentioned themes, by the team of researchers led by Professor de Guttry of the Sant'Anna School of Advanced Studies.

This activity required a certain amount of desk research, which has

been very important for the collection of background material and original fact-finding research. The evaluation includes developments from the past five years and publicly available data until June 2018. Desk research included the systematic, qualitative examination of available literature and secondary sources of information (including web sources) in the context of the topics of the report. It consisted of identifying, locating, reviewing, and extracting relevant information and data from legal documents, studies, reports, previous evaluations, policy documents, scientific publications, proceedings from conferences and expert hearings and the like. Interviews with stakeholders and surveys to relevant sources were also used as a research tool. A dedicated webpage has been created to foster avenues for establishing a transparent process that informs about the phases of its preparation, the measures enacted for ensuring consultations with relevant stakeholders and to constitute a hub for gathering feedback, comments, and observations through a participatory process.

Finally, during the third phase, stakeholders were required to submit comments, critiques and feedbacks to the first draft of the Chapters, through an online platform. These comments were duly taken into consideration by the authors who integrated their initial draft with new aspects suggested by the stakeholders, or deepened their research with more data available.

## 5. Acknowledgements

The report has been drafted under my scientific supervision, by a team of researchers composed of:

Ms. Mariangela Bizzarri, International Expert on gender issues, protection of human rights and gender-based violence;

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Dr. Francesca Capone, Senior Research Fellow in Public International Law at Sant'Anna School of Advanced Studies;

Professor Dr. Chiara Favilli, Associate Professor of European Union Law at the University of Florence;

Dr. Silvia Scarpa, Adjunct Professor of Political Science at John Cabot

University and Adjunct Professor of International Law at LUISS Guido Carli University.<sup>8</sup>

Finally, I would like to take the opportunity to express my most sincere thanks to the Italian Ministry of Foreign Affairs for having chosen the Sant'Anna School of Advanced Studies to draft this Report, and all the Italian stakeholders who actively participated in the preparation of the document providing useful insights and comments; to all the members of the team of researchers for their work and to Jacopo Bertini who supported the coordination of the preparation of the report.

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<sup>8</sup> The full biographies of the contributors are available at the following link: <http://www.rapitosce2018.santannapisa.it/en/contributors>.

# Chapter 1

## The Implementation of the OSCE Commitments Relating to Migration in Italy

by Chiara Favilli\*

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## 1.1. OSCE Commitments and Relevant International Framework

The OSCE commitments agreed during the several meetings held in the past years address economic, political and social aspects of migration.

The international movement of people was already addressed in the 1975 Helsinki Final Act. According to the principles enshrined in this basic document, specific OSCE commitments that refer to migration governance in a comprehensive way have been adopted. At first, OSCE commitments have been framed in the economic dimension, focusing on the connections between migration and economic growth. The most relevant decisions in this regard are:

1. MC Decision No. 2/05 on Migration;<sup>1</sup>
2. MC Decision No. 5/09 on Migration Management.<sup>2</sup>

Key aspects of a good migration governance are taken into account, recalling the international legal framework, such as legal and orderly migration, protection of migrants' personal and social welfare, attention to recruitment practices, equality of treatment of migrants' workers and nationals regarding employment and social security. Simplification of migration procedures, such as visa policies and documents related to the legal staying in the host country is particularly underlined as a technical but very effective tool in order to have an efficient migration policy.

More recently the issue of refugees and displaced persons has emerged as a priority, together with the topic of minors and integration of migrants. A report "Towards Comprehensive Governance of Migration and Refugee Flows" – was issued in July 2016 by the Swiss Chair of the OSCE's Informal Working Group on the Issue of Migration and Refugee Flows. Two ministerial decisions have then been adopted:

1. Decision No. 3/16 on OSCE's Role in the Governance of Large

<sup>1</sup> OSCE (2005), Decision No. 2/05 on Migration, adopted during the Ministerial Council meeting held in Ljubljana, 6 December 2005, available at: <https://www.osce.org/mc/17339?download=true>.

<sup>2</sup> OSCE (2009), Decision No. 5/09 on Migration Management, adopted during the Ministerial Council meeting held in Athens, 2 December 2009, available at: <https://www.osce.org/cio/40711?download=true>.

Movements of Migrants and Refugees, adopted during the Ministerial Council Meeting;<sup>3</sup>

2. Decision No. 4/16 on Strengthening Good Governance and Promoting Connectivity.<sup>4</sup>

The OSCE's commitments reflect the need for a multi-layered approach to migration, entailing specific actions to address large movements of persons, as well as long-term approaches taking into account the needs and the reality of increasingly interconnected labour markets. The following is a tentative classification of the specific contents of the OSCE's guiding principles and commitments:<sup>5</sup>

General legal framework

- promoting international dialogue and cooperation;<sup>6</sup>
- adherence to international standards;<sup>7</sup>

Migrants

- gradually simplify administrative procedures for exit and entry;<sup>8</sup>
- lowering the costs of permits of stay;<sup>9</sup>
- visapolicy: lowering the costs of visa, including issuing of multiple entry visa;<sup>10</sup>
- facilitating labour mobility for development;<sup>11</sup>

<sup>3</sup> OSCE (2016), Decision No. 3/2016 on OSCE's Role in the Governance of Large Movements of Migrants and Refugees, adopted during the Ministerial Council meeting held in Hamburg, 9 December 2016, available at: <https://www.osce.org/cio/289491?download=true>.

<sup>4</sup> OSCE (2016), Ministerial Council Decision No. 4/16 on Strengthening Good Governance and Promoting Connectivity, adopted during the Ministerial Council meeting held in Hamburg, 9 December 2016, available at: <https://www.osce.org/cio/289316?download=true>.

<sup>5</sup> See also OSCE Commitments relating to Migration and Integration. A Guide Prepared for the OSCE Human Dimension Seminar on "Migration and Integration", Warsaw, 11-13 May 2005, available at: <https://www.osce.org/odihr/14634?download=true>.

<sup>6</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, "Co-operation in the Field of Economics, of Science and Technology and of the Environment", "Economic and Social Aspects of Migration", para 6.

<sup>7</sup> OSCE (2005), Decision No. 2/05 on Migration, adopted during the Ministerial Council meeting held in Ljubljana, 6 December 2005, available at: <https://www.osce.org/mc/17339?download=true>.

<sup>8</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1975, para d).

<sup>9</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, "Co-operation in the Field of Economics, of Science and Technology and of the Environment", "Human Contacts", paras 27, 28.

<sup>10</sup> Ibid.

<sup>11</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, "Co-operation in the Field of Economics, of Science and Technology and of the Environment", "Eco-

- enabling reintegration and employment in origin countries;<sup>12</sup>

### Refugees

- protection of refugees – reference to the 1951 Geneva Convention;<sup>13</sup>
- prevention of mass flows of refugees and displaced persons;<sup>14</sup>

### Integration

- protect fundamental human rights, including freedom of religion;<sup>15</sup>
- equality of rights for migrant workers regarding conditions of work and to social security;<sup>16</sup>
- combating discrimination, intolerance and xenophobia towards migrants and their families;<sup>17</sup>
- participation in the life of the society of the participating State;<sup>18</sup>
- provide language and vocational training for migrant workers;<sup>19</sup>
- promote projects in order to incorporate gender aspects, with particular attention to women, in migration policies;
- supporting family reunification, marriage and family unity;<sup>20</sup>
- granting the right to freedom of movement and residence within the country and the right to leave any country, including his own;<sup>21</sup>
- satisfactory living conditions; same opportunities for migrants as nationals in the event of unemployment;<sup>22</sup>
- access to education for migrant children;<sup>23</sup>

conomic and Social Aspects of Migration”, para 6.

<sup>12</sup> Ibid.

<sup>13</sup> Concluding Document of Helsinki – The Fourth Follow-up Meeting, 1992, Decisions, Chapter VI, paras 36-45.

<sup>14</sup> Ibid.

<sup>15</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, “Human Contacts”, paras 27, 28.

<sup>16</sup> Ibid.

<sup>17</sup> Concluding Document of Budapest, 1994, Decisions, Chapter VIII, paras 28-32.

<sup>18</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, paras 33, 38-38.4.

<sup>19</sup> Ibid.

<sup>20</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, paras 27, 28, “Human Contacts”.

<sup>21</sup> Concluding Document of Vienna – The Third Follow-up Meeting, 1989, “Questions relating to Security in Europe”, paras 13.7, 13.8, 20-22.

<sup>22</sup> Final Act of the Conference on Security and Co-operation in Europe, “Economic and social aspects of migrant labour”, Helsinki, 1975.

<sup>23</sup> Concluding Document of Vienna – The Third Follow-up Meeting, 1989, “Co-operation

- protecting migrant workers, their families and in particular minor children;<sup>24</sup>
- access to education for migrant children.<sup>25</sup>

## 1.2. Legal and Institutional Framework in Italy

On 31 December 2016, the number of aliens legally residing in Italy was 8.2% of the population (5,026,153 out of 60,665,551 inhabitants).<sup>26</sup> An estimate of 670,000 migrants are illegally staying in Italy although it is not possible to determine the exact number.<sup>27</sup> Aliens are spread over the different areas of the country as follows: Northwest 35%; Northeast 26%; Central 25%; 14% South and Islands. The top five nationalities as regards the number of residents are Romania, Albania, Morocco, China, and Ukraine. When taken together they represent almost half (47%) of the foreign population legally resident in Italy. Romania and Albania, the first two nationalities, accounted for 30% of total non-EU citizens.<sup>28</sup>

Since 2015 a rising number of migrants, mostly refugees, began arriving to Europe, triggering the so-called EU migrants' crisis. The estimated figure of migrants who have arrived in Italy in 2015 is 153,842, in 2016 is 181,436 and in 2017 is 119,369.<sup>29</sup>

The responsibility for immigration is usually divided among several ministries, with a prominent role played by the Home Office (*Ministero dell'Interno*), in charge of everything concerning the status of migrants such as entry, stay, expulsion and citizenship. Most of the procedures are carried out electronically by the immigration offices which are located in each of the provinces throughout the Italian territory. A relevant role is also

in other areas", paras 40-44.

<sup>24</sup> Concluding Document of Vienna – The Third Follow-up Meeting, 1989, "Co-operation in other areas", "Human Contacts"; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, paras 5.9, 9.5, 19, 19.1-19.3, 22-22.4; Charter of Paris for a New Europe, 1990, "Human Rights, Democracy and Rule of Law" (...) "Migrant Workers".

<sup>25</sup> Concluding Document of Vienna – The Third Follow-up Meeting, 1989, "Co-operation in other areas", paras 40-44.

<sup>26</sup> Istat (2016), available at [https://www.istat.it/it/files/2016/12/Sintesi\\_ASI\\_2016.pdf](https://www.istat.it/it/files/2016/12/Sintesi_ASI_2016.pdf).

<sup>27</sup> Centro Studi e Ricerche IDOS (2017), *Dossier Statistico Immigrazione*, p. 9.

<sup>28</sup> <http://demo.istat.it/altridati/noncomunitari/index.html>.

<sup>29</sup> *Cruscotto statistico al 30 Aprile 2018*, available at [www.interno.gov.it](http://www.interno.gov.it).



played by the Ministry of Foreign Affairs and International Cooperation (*Ministero degli Affari Esteri e della Cooperazione Internazionale*), especially for issuing visas through the network of embassies and diplomatic missions located in third countries.<sup>30</sup>

As regards the division of legislative powers between the State and the Regions, according to Article 117, para 2, of the Italian Constitution, the State has exclusive power over migration while Regions are responsible for issues related to integration and social policies. It should be noted that the State has exclusive power on the ‘determination of the basic standards of welfare related to those civil and social rights that must be guaranteed in the entire national territory’, while Article 117, paragraph 7, explicitly establishes that ‘regional laws shall remove all obstacles which prevent the full equality of men and women in social, cultural and economic life, and shall promote equal access of men and women to elective offices’. The provision thus recognizes a regional legislative power in the implementation of substantive equality, including the integration of migrants according to the international, European and national legal framework.

Italy is part of many international treaties, either adopted at international or regional level, either general or devoted to a specific sector, either multilateral or bilateral. In particular, Italy is part to all the relevant conventions agreed within the ILO. According to Article 10, para 2, of It. Const., laws related to the status of aliens shall be in accordance with all the relevant international provisions binding Italy; moreover, Article 2 of the Aliens Act states that aliens on Italian soil are guaranteed fundamental rights according to international law.<sup>31</sup>

However, Italy, like the other EU members States, is not part to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990.

At regional level, primary role is played by the *European Convention on Human Rights and Fundamental Freedoms* ratified in 1955 (ECHR), included Protocols 1, 4, 6 and 7<sup>32</sup> and many other conventions among which

<sup>30</sup> <http://vistoperitalia.esteri.it/home.aspx>.

<sup>31</sup> The Aliens Act has been adopted on 1998 by Law No. 40 of 6 March 1998, on ‘Provisions governing immigration and regulations concerning the status of aliens’, then merged into the Legislative Decree 25 July 1998, no. 286 ‘Consolidation Act of Provisions concerning Immigration and the Rules on the Condition of Aliens’, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286/vig->.

<sup>32</sup> Before the entry into force of Protocol no. 11, Italy had also accepted the optional clauses of Articles 25 and 46, recognising the competence of the Convention’s bodies to re-

it is worth to mention the *European Social Charter* (revised in 1996). At universal level, Italy is part of almost all the United Nations family conventions such as the *Convention on Refugee status* (1951) and the related *Protocol* (1967); the *Convention on the elimination of all forms of Racial Discrimination* (1965); the 1966 *Covenants*, recognising the jurisdiction of the Human rights committee in relation to individual complaints and the *Second Optional protocol to the Civil and Political Rights aiming at the Abolition of the Death Penalty* (1989). Moreover, Italy is part of several ILO<sup>33</sup> and UNESCO<sup>34</sup> Conventions. Entry, treatment and expulsion of aliens as well as measures to counter irregular migration are contained in the Aliens Act No. 286/1998 and the implementing regulation No. 394/1999<sup>35</sup>. This law is still in effect although it has been modified by subsequent legislation, at times adopted in order to implement EU Directives or judgements of the Court of Justice of the European Union. Since 1999, the role and impact of policy developments and legislative measures taken by the EU have had an increasing impact at national level, changing not only the laws in force but also national policies and practices.

### 1.3. Assessment on the Implementation of the OSCE Commitments

#### 1.3.1. Migrants

Since 1986, in order to enter Italy for employment, it is first of all necessary to be sponsored by an employer who is already resident in Italy: entering Italy to find a job is excluded. The possibility to enter Italy for other reasons and then staying for work, even when there is a concrete offer of a

ceive individual complaints and to interpret the ECHR.

<sup>33</sup> ILO Convention (no. 29) on Forced Labour (1930); ILO Convention (no. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951); ILO Convention (no. 111) concerning discrimination in respect of Employment and Occupation (1958); ILO Convention (no. 143) on Rights of Migrant Workers (1975).

<sup>34</sup> UNESCO Convention against Discrimination in Education (1960).

<sup>35</sup> Presidential Decree 394 of 31 August 1999, 'Regulations for the Implementation of the Aliens Act concerning Immigration and the Rules on the Condition of Aliens, in accordance with Article 1, para 6, of the Legislative Decree of 25 July 1998, No. 286, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1999-08-31;394!vig=>.

job, is limited to certain residence permits, excluding those issued with a short stay visa (e.g., tourism, business, religion). The stay is in fact limited to the purpose for which the visa was issued and, in order to stay for a different purpose, it is necessary to return to the country of origin and apply for a new visa for employment purpose. In particular, the law excludes the possibility of converting a residence permit for reasons of tourism into one for employment purposes. Should a tourist find work while in Italy it will, in any case, be necessary to return to the country of origin and follow the specific procedure for entry for employment purposes.

This applies also to domestic workers, such as *caregivers* or *maids*, despite that employers only hire workers for housework or as caregivers if the employee is already known to them. It should be noted that in Italy the demand for this type of work covers a large proportion of the total jobs done by aliens in the country.

Anyone remaining in Italy after the expiry date specified on the visa without compelling reason will be considered irregularly resident and will be punishable by removal with a ban on return to other Schengen countries. However, the practices of the past twenty years have been totally the opposite, with many aliens entering on a short stay visa (especially for tourism) and then remaining irregularly and working without a contract while awaiting regularization of their situation by means of the amnesties that have been periodically approved.<sup>36</sup>

The most recent regularization was provided for by Legislative decree No. 109/2012,<sup>37</sup> implementing Directive 2009/52/EC *providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*. The regularization was limited to the workers already staying in Italy at 31 December 2011 and employed at least for three months since 9 May 2012, plus other conditions to be fulfilled. The lack of more recent regularization has direct effects on the increased number of irregular migrants staying in Italy.

Moreover, except for some special categories of workers, entry for work is based on the quota system: Italy, in fact, sets the maximum number of workers who may enter each year. This maximum number is then further

<sup>36</sup> Barbagli M. et al (2004), *I sommersi e i sanati. Le regolarizzazioni degli immigrati in Italia*, Bologna, p. 51.

<sup>37</sup> Legislative Decree 16 July 2012, No. 109, Attuazione della direttiva 2009/52/CE che introduce norme minime relative a sanzioni e provvedimenti nei confronti di datori di lavoro che impiegano cittadini di Paesi terzi il cui soggiorno è irregolare, in OJIR 25 July 2012 No. 172, p. 1 ff.

broken down by country of origin (special quotas are reserved for those countries with which Italy has concluded special agreements on migration and readmission of illegal immigrants) or by type of work: subordinate, self-employed or seasonal. It is only possible to enter if the maximum quota has not been reached, otherwise it is necessary to await entry the following year. Residual quotas can be used in the following calendar year, unless the Ministry responsible, usually the Ministry of Labour, decides otherwise. There are jobs for which entry remains outside the annual quotas. These are generally job positions for which there is a shortage of workers in Italy, like nurses or highly skilled workers (so-called out of quota entry). The visa can thus be requested at any time of year and there is no ceiling on entries.

According to Article 3, paragraph 1, of the Aliens Act, in fact, the Government must draw up a three-year policy planning paper on the basis of which the decree of the President of the Council of Ministers will be issued by each 30 November setting the annual quotas for entry of aliens for employment purposes for the calendar year following that in which the decree was adopted. The quota decree is adopted after a wide range of consultations. Nothing prevents the Government from adopting any number of flow decrees in the same year, or indeed, from adopting none at all. In practice, both situations have come about, with a tendency to differentiate between flow decrees regulating the entry of seasonal workers from those regarding all other workers. When there is no annual flow decree, Article 3, paragraph 4, of the Aliens Act allows the President of the Council of Ministers to adopt a 'transitional' decree within the limit of the maximum quota provided for the flow decree of the previous year. Note that the last three-year policy planning paper dates back to 2005 (Decree of the President of the Republic of 13 May 2005, Approval of the policy paper on immigration policy and aliens in the territory of the State, for 2004-2006). This evident deficiency on the part of the Italian Government which continues to use the transitional annual program was justified on the basis of the national economic situation that makes it impossible to programme flows over a three-year period given the general reduction of labour demand.

If all the checks proceed successfully, the Immigration Office will verify the unavailability of Italian workers.<sup>38</sup> If this is confirmed, the employer

<sup>38</sup> Verification is made via Internet and relates to national, EU or third-country nation-

will be asked to confirm the application. The granting or refusal of clearance must be made within forty days of the filing of the application.

Once authorization has been obtained, the procedure enters the next stage with the foreign worker contacting the Italian Consulate or Embassy representation in his/her country of residence. The foreign worker will fill out a visa application form providing a variety of information and will attach documentation. Information must be provided on the purpose of journey, means of transport used, the sponsorship by an employer in Italy, the accommodation in Italy and insurance cover. The alien will obviously hold a passport or similar travel document that will be valid for travel abroad and that will expire at least three months after the expiry date on the visa. The fee for this visa will be EUR 116.

The alien will then be convened for an interview to verify the actual reason for entry and possession of appropriate documentation. The overall length of the procedure will depend on the number of applications that each particular Italian consular office receives. The diplomatic or consular representation will issue the visa within thirty days after certification of the general requirements for entry. Issue is conditional not only to the possession of all the required documentation but also the passing of preventive security checks that are made by consulting the list of ineligible aliens in the Schengen area, either electronically or via internet.

In case of refusal, the provision must be communicated in a written, reasoned document in a language that the foreign national understands or failing that, in English, French, Spanish or Arabic. It is possible to appeal against the refusal in Italy. It is necessary to instruct a lawyer in Italy to follow the entire procedure.

After entry to Italy, the alien must report to the Immigration Office located in the area of employment within eight working days. The application procedure for a residence permit for employment purposes will thus start. Once the application has been lodged the worker may start work and the receipt of the permit application will be sufficient to demonstrate that he/she is legally resident.

As far as seasonal work, Italian law establishes which activities may be carried out as seasonal work, from a minimum of twenty days to a maximum of nine months per year. The maximum length of the residence permit

als who are enrolled with the Job Centre as unemployed and must be completed within twenty days.

for purposes of seasonal work is nine months. In the event of dismissal or resignation, the employee may be registered as unemployed, but only for the period of validity remaining before the expiry that remains on the permit. Foreign workers who respect the duty to leave Italy on expiry of the residence permit will have precedence over other foreign workers who will apply for entry for seasonal employment for the following year with the same employer. In addition, from the second consecutive year of entry for seasonal work, aliens will be able to convert their residence permit for seasonal employment into a permit for employment purposes if they are offered a temporary or permanent work contract, provided it falls within the annual quotas and the normal other requirements are met.

Moreover, the so-called multi-year application (up to three years) is also envisaged for foreign workers who can demonstrate that they have worked repeatedly doing seasonal jobs for two years running. This requirement must be certified by presenting a passport or other equivalent document that shows the date of departure from Italy at the end of previous residence for seasonal work.

After two years of seasonal work, it is possible to apply for authorization to perform three years of seasonal work. In this case, a single residence permit will be valid for the three years, but a new visa must be applied for each year. The duration of stay each year will be of the same length as that of the previous two years.

This special permit shall be revoked if improperly used by the alien, that is, if he/she should not leave Italy at the end of the yearly period of validity of the visa.

Where required, aliens must also have an entry or transit visa. A visa is always required if the proposed stay exceeds ninety days, from whatever non-EU country the alien comes. The length of the visa is variable but does not exceed twelve months. Visas exceeding 90 days are 'visas type D' also called 'long-stay' or 'national visas', falling under the exclusive competence of individual Member States. They allow entry and residence only in Italy and a limited circulation in other States, but for a period not exceeding ninety days and do not allow for settlement in other States, for example, for work or study purposes.<sup>39</sup> Visas up to 90 days are Uniform Schengen visa

<sup>39</sup> In Italy, the competent office is the Visa Office of the Ministry of Foreign Affairs which has a database that enables individuals to check whether or not a visa is required, available at <http://www.esteri.it/visti/home.asp>. An administrative fee is always charged; this is currently EUR 60.

and issued according to the Visa Code.<sup>40</sup> USV are the easiest to obtain and enable to free movement within the Schengen area up to a maximum of ninety days. Likewise, the USV issued by diplomatic and consular representations of the other Member states part of the Schengen area, allow access to Italian territory too. Applications for USV may be made at any time throughout the year. Obtaining a national long-term visa is complex and conditional to the presentation of many documents to be submitted to the Italian Consulate or Embassy in the alien's country of residence, by filling in the relevant form.<sup>41</sup> Sometimes the procedure for entry requires that a declaration of no impediment (*nulla osta*) has been requested and obtained in Italy at the Immigration Office (*Sportello unico per l'immigrazione*) of the province where one wants to reside.

A crucial step in the procedure for issuing visas to aliens is the interview conducted by officials belonging to the visa office in the diplomatic representation abroad. The interview is intended to verify the actual reason for entry and the possession of the appropriate documents. A considerable amount of time may pass between the lodging of the application and the interview as the visa offices generally have few staff who must deal with a large number of applications, that in certain Countries may be as many as hundreds each week.

In case of denial of a visa application, reasons must be given and must be communicated to the person involved in a language which he/she understands or, failing that, in English, French, Spanish or Arabic. The refusal of a visa may be appealed against in Italy.

### 1.3.2. Refugees

Asylum seekers enjoy a right to entry and to access to asylum procedures according to the general prohibition of *non-refoulement*. Since the legal status of asylum seekers involves a right of entry and residence, the regulations that punish the illegal entry or residence of foreign nationals on the territory of the State will not be applicable. Access to asylum may-

<sup>40</sup> EC Regulation No. 810/2009 of 13 July 2009, establishing a Community Code on Visas (Visa code). For detailed and updated information see the webpage [ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm). A consolidated version has been published on 18 October 2013.

<sup>41</sup> It is possible to consult a database of the Ministry of Foreign Affairs, available at <http://vistoperitalia.esteri.it/home.aspx>, which indicates the relevant offices, locations and contact addresses and from which you can download the relevant form. In addition, each office usually has its own website where you can find a summary of the rules in force.

be sometimes hindered by refusals of entry, in particular when bilateral agreements (e.g. the one with Egypt) applies.<sup>42</sup>

According to Article 10, paragraph 3, of the Italian Constitution, ‘the foreigner who is denied in his own country the real exercise of the democratic liberties guaranteed by the Italian Constitution has the right of asylum in the territory of the Republic, in accordance with the conditions established by law’. Thus the Italian Constitution grants the right of asylum not only to those who are persecuted individually, that is, the refugees under the Geneva Convention of 1951, but also to those foreigners who flee their country to save their lives, or protect their own safety from dangers resulting from serious and current situations of war, civil war, generalized civil unrest or even more simply, those who are prevented from the exercise of the democratic freedoms recognized by the Constitution itself.<sup>43</sup>

The constitutional right to asylum is granted under the conditions provided for by national law. However, a national law on asylum has never been enacted.<sup>44</sup> The legal framework has now changed thanks to the implementation of the EU directives regarding asylum that forced Italy to set up an organic system of asylum, adopting legislations on refugee status and subsidiary protection, reception conditions and procedures for granting international protection.<sup>45</sup> An external agency was set up and based in Malta, the European Asylum Support Office (EASO), which is supporting Italy,

<sup>42</sup> For a compilation of readmission treaties signed by Italy see the 2016 issues of the *Journal Diritto, Immigrazione e cittadinanza*.

<sup>43</sup> Bonetti P. (2011), ‘Il diritto di asilo nella Costituzione italiana’, in C. Favilli (2011), ‘Procedure e garanzie del diritto di asilo’, Padova, Cedam, p. 37.

<sup>44</sup> Thus, for many years the right of asylum was only recognized in its more limited form as envisaged by the Geneva Convention. It was not until 1997 that the Supreme Court (Corte di Cassazione), made a landmark ruling that recognized the direct application of the subjective right to asylum enshrined in the Constitution, despite the absence of an ordinary law of implementation; Judgement No. 4674/97, in *Rivista di diritto internazionale*, 1997, p. 845.

<sup>45</sup> *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, OJ, L 187 2001, p. 45; *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection*, OJ, L 180 2013, pp. 60-95; EC, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*, OJ, L 180 2013, pp. 96-116; EC, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*, OJ, L 337 2011, p. 9.



like other Member States, in the implementation of EU asylum measures.<sup>46</sup>

According to EU Law the notion of international protection applies, encompassing all the different sort of protection granted to a person: refugee status under the Geneva Convention, subsidiary protection and temporary protection. The relationship between recognition of the right to asylum in the Italian Constitution and international protection as provided for in EU law has been defined as similar to that between genus and species. The constitutional right of asylum establishes the general category into which all forms of international protection are placed. Moreover, it is necessary to include a residual form of protection, left to national legislation, defined as humanitarian protection.

The status of subsidiary protection complements the right to asylum. Subsidiary protection is granted to non-EU foreigners or stateless persons who have applied for international protection and do not meet the conditions for obtaining the refugee status. In order to be qualified as refugee a person must have a well-founded fear of individual persecution, while to get a subsidiary protection it is 'sufficient' that the person faces the real risk of serious harm, that is the death penalty or execution, torture or inhuman or degrading treatment or punishment and the serious and individual threat to his/her life in the country of origin. Actors of persecution or serious harm may be the State but also individuals and/or non-state institutions when the State is unable, or unwilling, to provide protection, either because of the absence of effective instruments to ensure their safety and/or these instruments are not accessible to the applicant.

The question may arise as to whether it is formally possible to apply for asylum to the Italian authorities while outside the Italian territory. According to the Constitutional Court the right of asylum is not dependent upon the presence of the applicants in Italy.<sup>47</sup> However, this is an isolated judgement that has not found any consequent practices or consistent decisions. Moreover, Italian laws implementing EU directives now require that asylum applications shall be made within the MS' territories. Applying directly Art. 10, para 3, It. Const., from outside the territory is still possible, but it is likely that the Constitutional court would state a different principle.

<sup>46</sup> EU Regulation No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ 2010, pp. 11-28.

<sup>47</sup> Court of Rome, Judgment 1 October 1999, in *Diritto immigrazione e cittadinanza* (1999), p. 101.

### 1.3.2.1. Procedure: State responsible for the examination of the asylum application - Dublin Regulation

The very first step of the procedure is the assessment of the country competent to examine the application. Under Article 7, the applicant is allowed to stay in Italy throughout each stage of the procedure, under Regulation No. 314/2013, the so-called *Dublin procedure* before the asylum application starts. The transferal of asylum seekers from a country to another one is based on the assumption that all European countries can be considered ‘safe’ for asylum seekers; however, this is in contrast with the reality, as the asylum systems are pretty different, even between EU countries. Moreover, every Member State has different welfare systems and different labour market so that one Member State may be far more attractive than another one.

The result is that the Dublin system has proven ineffective as evidenced in the data on actual returns between Member States of asylum seekers and beneficiaries of international protection, in accordance with the criteria, rules, and procedures laid down therein.<sup>48</sup> One of the reasons is the unavailability of asylum seekers after notification of the transfer decision and difficulties underlying practical cooperation between the administrations of the member States. The difficulties in implementing transfers are exacerbated by the numerous attempts to circumvent identification upon arrival in some Member States, for instance in Italy, which impede the application of the core criterion set out in the Dublin Regulation. Without proper identification of applicants upon their arrival, it is almost impossible to prove the State of first entry, where the application should be lodged and to where the asylum seeker should be sent back if detected in another EU Member State.<sup>49</sup>

Circumvention of identification procedures and, therefore, the nullifica-

<sup>48</sup> European Commission, ‘Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system’, COM (2007) 299 of 6 June 2007, p. 4; ‘Evaluation of the Implementation of the Dublin III Regulation. Final report’, 18 March 2016, available at: [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>49</sup> Another reason of the Dublin crisis is the so called ‘Dublin Saga’, between the two European Courts. See the factsheet on the “Dublin Cases” edited by the Press Unit of the ECtHR, available at [http://www.echr.coe.int/documents/fs\\_dublin\\_eng.pdf](http://www.echr.coe.int/documents/fs_dublin_eng.pdf). ECtHR, *T.I. v The United Kingdom*, No. 43844/98, 2008; *K.R.S v The United Kingdom*, Appl. No. 32733/08; ECtHR, *M.S.S. v Belgium and Greece*, No. 30696/09; *Sharifi and Others v Italy and Greece*, No. 16643/09, 2014. CJEU, *N.S.*, C-411/10, 2011, para 83; *Tarakhel v Switzerland*, No. 29217/12.

tion of the application provisions of the Dublin Regulation, was partly supported by the Italian authorities themselves by setting free those who actually wished to go to other EU countries, without providing for identification, registration and fingerprinting. This situation had already partly occurred during the “Arab Spring” when only a fraction of the people who landed on Italian shores requested international protection, while the others were given a residence permit, travel documents and enough money to meet the requirements of the Schengen Borders Code for the border crossing.<sup>50</sup> While this “bizarre” solution allowed people to reach their desired destinations, it significantly undermined the principle of mutual trust between Member States in the implementation of the obligations arising from the EU. One of these obligations is that of border control, namely the requirement to apply the common rules on the principle of sincere cooperation and effectiveness, so that the rules indeed achieve their goal and maximise effectiveness. Consider that in 2014 of the roughly 160,000 entries in Italy, only around 90,000 people were identified, and it is likely that many reached other European countries, including those who were identified.<sup>51</sup>

For this reason, the “hotspot” centres were opened in Italy and Greece, under the pressure by the EU institutions. In particular, EU Decisions No. 2015/1523 and 2015/1601 on relocation have also provided at Art. 7 operational support measures for Italy and Greece, to improve identification procedures and the initiation of procedures for granting international protection, by sending experts coordinated by the EASO and other relevant agencies. More analytical measures were envisaged in the Roadmap agreed by the Italian Government with the Commission. Within the “hotspot” centres, Italian authorities should make the distinction between asylum seekers and irregular migrants and identify all the migrants by means of registration and digital fingerprinting according to EU Regulation No. 603/2013, establishing Eurodac.

<sup>50</sup> Carrera S. et al (2011), *A Race against Solidarity: The Schengen Regime and the Franco-Italian Affair*, available at: [www.ceps.eu](http://www.ceps.eu). The requirements foreseen for a third-country citizen to cross internal borders are: a valid permit of stay issued by a member State or a Schengen visa, a passport or an equivalent document, sufficient financial resources for the stay and return; not be considered a threat to public policy, public security or public health.

<sup>51</sup> European Commission, ‘Non-Paper for SCIFA on Best Practices for Upholding the Obligation in the Eurodac Regulation to Take Fingerprints’, 13 October 2014. See also Pastore F., Roman E. (2014), ‘Implementing Selective Protection. A Comparative Review of the Implementation of Asylum Policies at National Level Focusing on the Treatment of Mixed Migration Flows at EU’s Southern Maritime Borders’, FIERI Working Papers.

Being closed centres, compliance with Art. 13 of the Italian Constitution and Art. 5 of the ECHR is required. However, the Government, while implementing the EU decisions and the Roadmap, had not provided for a specific legal provision on “hotspots” and treatment of aliens therein. For this reason, Article 17 of Law No. 46/2017 introduces into the Aliens Act a new Article 10-*ter* that refers back to the first-aid centres provided for at Law 29 December 1995, no. 563 and to the facilities mentioned at Article 9 of Legislative Decree 18 August 2015, No. 142, implementing Directives 2013/32/EU and 2013/33/EU. Yet, the above provision appears to be still insufficient to conform with Articles 5 ECHR and 13 of Italian Constitution, to the extent that there is no rule specifically governing the deprivation of liberty of migrants in first aid centre. In particular, there is no provision applying in cases where the length of detention is prolonged for a time not compatible with the nature of a custody or of first aid assistance, as stated by the ECtHR in the case of *Khlaifia* of 15 December 2016. There Italy was found to have violated Art. 5, para 1, let. f), ECHR, according to which “No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ... f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”. The Court found that Italy failed to provide a legal source to the deprivation of liberty of the claimants, after their landing in the island of Lampedusa. More in general, Italy had not provided for a legal basis to the deprivation of liberties connected to the procedures of identification immediately after the arrival of migrants and required by the so-called “hotspot” approach. On 15 March 2018 the Committee of Ministers of the Council of Europe agreed a resolution where the lack of implementation of the *Khlaifia* Judgment has been stressed. In particular the Committee notices “the lack of a legal basis and judicial review in respect of the deprivation of liberty of migrants placed in reception centres, together with the absence of remedies enabling such persons to complain before a national authority about the conditions of their reception” and called the Government to send a detailed report by the end of June 2018 and to indicate “what measures have been adopted or envisaged to ensure that persons placed in such centres are not arbitrarily deprived of their liberty”.

### 1.3.2.2. The Administrative Procedure

Where Italy is the competent Member State according to the Dublin regulation, the procedure for granting international protection applies. That procedure is laid down by the so-called Procedures Decree, implementing Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, now recasted by Directive 2013/33/EU.<sup>52</sup>

There is a single procedure, the same for the assessment of applications of asylum, subsidiary or humanitarian protection. Besides the regular procedure, prioritised and the accelerated procedures apply when the request is deemed manifestly well-founded; the asylum claim is lodged by an applicant considered vulnerable; the applicant is placed in an administrative detention centre; the applicant had previously been subject of an expulsion order and there is a risk of absconding; if he/she is deemed as a threat to public order or national security; if he/she is suspected of being affiliated to a mafia-related organization or has conducted or financed terrorist activities per when an exclusion clause applies (Arts. 27 and 28-*bis* of Legislative Decree No. 25/2008). It is worth it to mention that EU Directive optional provisions on border or admissibility procedures have not been transposed into Italian law yet.

There are thirty Territorial Commissions for International Protection plus a National commission, all belonging to the Home Office of the Government.<sup>53</sup> A key step in the examination of the application is the interview with the person seeking asylum. The interview is, in fact, essential for the Commission to acquire the information necessary to reach a sound decision, especially in cases where there are not written evidences and the personal statement of the applicant is the unique piece of evidence. The burden of proof is not only borne by the applicants but is shared between the applicants themselves and the Commission. Applicants must be as-

<sup>52</sup> Legislative Decree 28 January 2008 No. 25, *on implementation of 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status* as amended by Legislative Decree 18 August 2015 No. 142, implementing Directive 2013/32/EU and Directive 2013/33/EU. The recommendations for the minimum standards for the procedure for the recognition of refugee status are contained in the document of the ExCom, *Refugee status determination*, October 1977.

<sup>53</sup> The Commissions are appointed by the President of the Council of Ministers, upon proposal of the Ministry of Interior and are made up of two representatives of the Home Office (one is a senior civil servant who will act as chairman), a representative of UNHCR and a representative designated by the national associations of Italian municipalities (ANCI).

sisted by an interpreter in their language or in a language they understand. Moreover, where necessary, the documents produced by the applicant shall be translated. However, translation services may not be always available depending on the language spoken by asylum seekers.

Hearings should be arranged by the Commission within thirty days of receipt of the application; a decision should be taken within 3 working days after the interview but in practice several postponements take place due to the high workload. In practice the regular procedure usually lasts several months.

In addition to the hearing, the commission shall assess the application by acquiring information about countries of origin (COI – Country Origin Information). The National Commission shall ensure the updating and circulation of the reports on countries of origin among all the Territorial Commissions as well as among the courts called upon to rule on appeals. A stronger support has been given in recent years by the European Asylum Support Office.

Pursuant to Article 32, paragraph 1, the Commission may grant international protection, and thus recognize the refugee status or the subsidiary protection or may decide to reject the application if the conditions for the recognition of international protection are not met or if there is a ground of exclusion. According to Article 32, paragraph 3, of the ‘Procedures Decree’ in cases where the application for international protection is rejected, the Territorial Commission considers if there are serious humanitarian reasons. If so, it will send the documents to the Police Authorities for the issuance of a two-year residence permit for humanitarian reasons under Article 5, paragraph 6, of the Aliens Act.<sup>54</sup>

### 1.3.2.3. Access to Justice and the Right to an effective Remedy against the Denial of International Protection

The Territorial Commission’s decision may be appealed to the competent Civil Tribunal according to the provision laid down by the ‘Procedures Decree’, as amended by Legislative Decree No. 142/2015. The applicant may obtain legal protection both against a decision of rejection, revocation or ending of international protection.<sup>55</sup> Moreover, even the asylum seeker

<sup>54</sup> Supreme Court (*Corte di Cassazione*), Judgment 19 May 2009, No. 11535, available at [www.asgi.it](http://www.asgi.it).

<sup>55</sup> The Supreme Court (*Corte di Cassazione*) affirmed the exclusive jurisdiction of the

who is not fully satisfied by its provisions, for example, if granted subsidiary protection rather than refugee status, has the right to judicial appeal against that decision.

Thus, once the administrative procedure is over the judicial phase may start. The Court is then entirely responsible to assess the right to international protection and to control the compliance of the asylum procedure with relevant requirements. The appeal shall result in the automatic suspension of the contested decision. This is of major importance for the asylum seeker as from the time that the appeal has been lodged he/she has the right to stay on Italian territory for the duration of the appeal and the right to obtain a residence permit for asylum seekers valid for three months and renewable. Moreover, according to Legislative Decree No. 142/2015 an accommodation is ensured until a final judgement is given, when the Court issues a positive decision on the suspensive request. Generally, applicants remain in the same accommodation where they are living.

The assistance of a lawyer is required to lodge an appeal, and if the asylum seeker does not have the economic resources to pay legal costs, he/she can apply for free state-funded legal aid. According to Article 74 of the Presidential Decree No. 115/2002 legal aid is available for indigent citizens with regard to the criminal, civil, administrative, accounting, tax trials and in cases of non-litigious jurisdictions. The law specifies that in case of income acquired abroad, the foreigner needs a certification issued by the consular authorities of their country of origin. Because of the particular situation the applicants for international protection are in, a reasonable arrangement is necessary in their favour, given the impossibility to contact their diplomatic missions to obtain the otherwise necessary certification. Thus, Article 94 of the Presidential Decree No. 115/2002 applies to the requirement related to certification of any income produced abroad; this Article allows to replace the documentation required by Article 79, paragraph 3 (foreign income) with a self-certification. Therefore, rules on legal aid essentially require a single condition for obtaining legal aid: that the applicant does not have an income above the limit to be set annually. With the provision for receiving legal aid, the beneficiary is exempted from the payment of all expenses for the introduction of the proceedings, but also all the expenses necessary for the defence (including copies of the pleadings,

ordinary court: Judgment No. 11535/2009.

official records of the trial), and obviously will not have to pay any fees to the lawyer appointed for the proceedings.

In order to tackle the exponential rise of number of applications for international protection and of appeals recorded since 2014, Law Decree no. 13/2017 was adopted, converted into Law no. 46/2017. The Law seeks to establish more rapid administrative procedures for the recognition of international protection, as well as to accelerate the related judicial procedures.

Law no. 46/2017 brings radical changes to the procedures for examining applications for international protection, in particular to the rules concerning appeal against negative decisions. Actually, these are the most controversial provisions of the Decree. The law provides for the abolition of the second appeal on the merits. This means that decisions issued by Tribunals can no longer be appealed before the Court of Appeal: they may be appealed only before the Supreme Court on points of law. This makes the system of remedies applying to international protection a special system, different from those applying to other individual rights, even those not covered by constitutional guarantees. Strikingly, the second appeal on the merit is also provided for civil disputes of limited value comparing to those connected to the recognition of international protection, which is expressly covered by Art. 10, para 3, of the Italian Constitution. Thus, whilst the abolition of the appeal on the merits is not unconstitutional or illegal *per se*, its application confined only to actions in the field of international protection sounds in breach of the principles of equality and of reasonableness of laws (Article 3 of the Constitution). Moreover, the abolition of the appeal will increase the number of actions before the Supreme Court, thus exacerbating the already serious problems of structural flaws that the Government was supposed to overcome. Indeed, the impact of the Law Decree on the Italian system of civil justice is one of its most troublesome features. This must be read in the context of a judicial system that is already facing a dramatic crisis for several and different reasons.

Another relevant provision of Law No. 46/2017 is the establishment of 26 specialized chambers devoted to international protection, immigration and free movement of EU citizens. While it is appropriate and reasonable that all matters relating to asylum and foreigners are attracted to the full jurisdiction of ordinary courts, even with the establishment of specialized chambers, the reality is a diversification of competence regarding migra-



tion and asylum, with different judges competent on different issues. Actually, justices of the peace (“giudici di pace”), ordinary judges and administrative courts are all competent for different issues related to removal, stay or citizenship.

Law no. 46/2017 introduces also changes to the appeal procedure before Tribunals. A chamber should decide the action without, as a rule, the oral hearing of the applicant. The Government justified the introduction of this procedure by referring to the existing practices in Austria and Germany. Moreover, judges may adopt a decision based on the videos of the interviews of applicants, made and recorded by the administrative authorities, called Territorial commission. Hearings will be recorded with the help of a voice recognition system (Art. 6, para 1, letter c).

The use of video-recording of applicants’ hearings, instead of their presence before the Tribunals, raises serious doubts of compatibility with fundamental rights as protected both at national and European levels. According to Art. 46 of the “asylum procedures directive” (APD), Member States are under the duty to recognize an effective remedy against the denials of requests, qualified as a fundamental right of the European Union, as expressly recalled under recital 50 of the directive. Moreover, Art. 46 APD must be interpreted in line with Art. 47 of the Charter of Fundamental Rights of the European Union (CFREU) and of Art. 13 ECHR. In addition, also the provisions stemming from Art. 6 of the ECHR in the field of “due process” apply. Art. 47 (2) of the Charter corresponds to Art 6 ECHR, but with one major difference: whilst within the ECHR system the right to a fair trial does not apply to proceedings relating to migration and asylum (it applies ‘only’ to proceedings concerning “civil rights and obligations” or “any criminal charge”), this restriction is not reproduced in the text of Art. 47(2) CFREU. Indeed, the latter has a general scope of application. The explanations relating to the Charter make clear that Article 47(2) has been intentionally formulated extensively, so as to be of general application in all cases of remedies involving a right derived from European Union law, including judicial appeals in the field of international protection.

An appeal before the Supreme Court (*Corte di Cassazione*) may be lodged within sixty days of notification of the judgment and the Court rules in closed session pursuant to Article 375, Italian Code of Civil Procedure. The appeal to the Supreme Court does not automatically suspend the effect of the judgment under appeal.

### 1.3.2.4. Reception of Asylum Seekers

As far as reception, applicants for international protection who do not have sufficient financial means for the health and support of themselves and their families, are placed in one of the local reception centres, set up by the local authorities using funding from the Ministry of Interior.<sup>56</sup>

Upon arrival, asylum seekers may be placed in the governmental accommodation centres (CARA) in order to carry out the necessary operations to define the legal position of the foreigner concerned. It is also guaranteed in the temporary facilities, specifically set up by the Local Representative of the Government (*Prefetto*) upon the arrival of a great influx of refugees, due to unavailability of places in the first and second level accommodation centres (CPSA). Indeed, accommodation in temporary reception structures is limited to the time strictly necessary for the transfer of the applicant in the first or second reception centres. The first reception centres (CARA/CDA and CPSA) have been turned into Regional Hubs, which are reception structures where the applicants will formalise their asylum requests. Generally, the asylum seekers can stay in these centres for a period ranging from 7 to 30 days and thus ensure a fast turnover of guests.

Second-line reception is provided under either the System for the Protection of Asylum Seekers and Refugees (SPRAR) or the Centres of reception of Asylum Seekers (CAS). The SPRAR, established in 2002 by Law No. 189/2002, is a publicly funded network of local authorities and NGOs which accommodates asylum seekers and beneficiaries of international protection. It is formed by small reception structures where assistance and integration services are provided. In contrast to CAS, large-scale facilities, SPRAR is composed of smaller-scale decentralised projects and is much more successful in terms of integration of beneficiaries of international protection.<sup>57</sup> The reception facilities must provide minimum services, namely facilitating access to services provided in the territory, health care with a compulsory

<sup>56</sup> The assessment of the inadequacy of means of subsistence, will refer to a period of no longer than six months, and will be carried out by the Local office of the Government (*Prefettura*) according to the criteria for the permit for reasons of tourism, defined by the Ministry of the Interior. Currently, the criteria establish less than EUR 5227, for one person, and less than EUR 3186 per person, in the case of a family unit. However, the assessment of financial resources is not carried out in practice by the Local office of the Government (*Prefettura*), which considers the self-declarations made by the asylum seekers as valid.

<sup>57</sup> See ANCI et al. (2017), *Rapporto sulla protezione internazionale in Italia*, available at: [https://www.unhcr.it/wp-content/uploads/2017/10/Rapporto\\_2017\\_web.pdf](https://www.unhcr.it/wp-content/uploads/2017/10/Rapporto_2017_web.pdf).

medical examination upon entry, compulsory school attendance for minors, enrolment in educational courses for adults (Italian language courses, in particular) and subsequent monitoring of attendance, assistance in obtaining knowledge of the local area (transport, post offices, chemists, associations, etc.), linguistic and cultural mediation intended to remove difficulties connected with bureaucracy, language and society. Applicants for international protection are guaranteed meals (where possible in respect of the cultural and religious traditions of those admitted), clothing, bedding, personal hygiene products and minimum financial resources for modest daily expenses.

Where sixty days have already elapsed from the submission of the application for asylum, the applicant is allowed to work, thanks to the new provisions set forth by Legislative Decree No. 142/2015. Reception should match the needs of asylum seekers and their families, especially vulnerable people such as children, persons with disability, elderly, pregnant women, single parents with minor children, people that have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Moreover, respect for family life and the integrity of the family unit should be granted. Lawyers and representatives of UNHCR and authorized associations or bodies for protection are permitted access to the reception centres. Access to reception facilities is provided from the moment when application for international protection is filed.

Throughout the length of the procedure, the asylum seeker is enrolled in the national health system, with equal rights and duties as an Italian citizen (Article 34, paragraph 1, b), of the Aliens Act).

Home Office adopted a National integration plan for beneficiaries of international protection, which should be implemented by national, regional and local authorities together with no profit organizations. According to the Plan, integration is a biunivocal relationship, where the migrant makes any efforts to integrate him/herself by learning Italian, share the values embedded in the Italian Constitution, respect laws and participate in the economic, social and cultural life. National bodies grant equality of treatment, respect human dignity, freedom of religion, access to education and projects aiming to foster social inclusion and full sharing of national common values.<sup>58</sup>

In Italy, in case of mass influx a temporary protection status maybe

<sup>58</sup> <http://www.interno.gov.it/it/notizie/bilanciare-diritti-e-doveri-sfida-primo-piano-nazionale-integrazione>.

issued according to Article 20 of the Aliens Act, which complements and completes the protection offered by refugee status, subsidiary protection and humanitarian protection. It is a residual measure that may be used exceptionally and if needed by means of a general provision adopted in accordance with decisions of the Italian government. The President of the Council of Ministers may issue a decree that introduces temporary protection measures on grounds of serious humanitarian needs during conflicts, natural disasters or other particularly serious events occurring in non-EU countries.

A temporary protection regime was granted in the past to provide protection for refugees fleeing the conflict in Kosovo.<sup>59</sup> More recently, this regime was applied during the period of extraordinary influx from North Africa to persons who arrived in Italy between 1 January and 5 April 2011.<sup>60</sup> These non-EU nationals were granted a residence permit on humanitarian grounds for a period of six months, then renewed until the end of 2013.

A residence permit issued on grounds of temporary protection generally allows the holder to move within the Schengen up to 90 days; however, the other requirements envisaged by the Schengen Borders Code must be met, that is, a document valid for travel abroad, sufficient resources for staying and for returning to the country of origin; no alert issued for the purpose of refusing entry to the Schengen area.<sup>61</sup>

Temporary protection may also be ordered pursuant to a European Council decision in the event of a mass influx of displaced persons, according to Directive 2001/55/EC on the granting of temporary protection in situations of mass influx of displaced persons, implemented in Italy thanks to Legislative Decree 85/2003. To date, the European Council has never applied this Directive, neither during the inflows of migrants from North Africa to Italy that occurred in the first half of 2011, and which were regulated by Italy according to national law, namely Article 20 of the Aliens Act; nor after the much larger influx of migrants and asylum seek-

<sup>59</sup> Prime Ministerial Decree, 30 December 1999.

<sup>60</sup> Prime Ministerial Decree, 5 April 2011.

<sup>61</sup> Nascimbene, B. (2011), 'La "direttiva rimpatri" e le conseguenze della sentenza della Corte di giustizia (El Dridi) nel nostro ordinamento', *Gli Stranieri*, p. 7 ff.; Nascimbene B., Di Pascale A. (2011), 'L'Unione Europea di fronte all'afflusso eccezionale di persone provenienti dal Nord Africa. Una colpevole assenza?', *Diritto immigrazione e cittadinanza*, p. 17 ff.; Favilli, C. (2011), 'L'attuazione della direttiva rimpatri in Italia: dall'inerzia all'urgenza con scarsa leale cooperazione', *Rivista di diritto internazionale*, p. 693 ff.

ers started since 2014. Not surprisingly, the Commission has envisaged its withdrawal.<sup>62</sup>

### 1.3.3. Integration

#### 1.3.3.1. Right to Family Reunification

Family reunification is one of the main tool to foster integration of migrants as underlined by OSCE commitments. In Italy, entry for family reasons is allowed if there is already a family member that is legally resident with a long-term permit. Family members shall individually meet the conditions for short stay. There are no annual quotas which set a maximum inflow for family reasons and the application may be submitted at any time of the year.

Family members that may be reunited are: live-in spouses, minor children, even of only one of the two spouses, parents of 65 years and over who are totally disabled or are dependents of aliens resident in Italy and without other children in their country of origin.

Even if same-sex marriages are not allowed in Italy, after the approval of Law 76/2016 on civil unions, the right to family reunion is extended even to same-sex couples.<sup>63</sup>

An alien who applies for family reunification must give proof of adequate resources to support all family members; this sum may also include the income of the spouse or other family members in the same household. It is also necessary to have accommodation that is suitable to lodge the family members, demonstrated by presenting a certificate to that effect issued by the authorities of the municipality of residence.

The first stage of the procedure is the application for a declaration of no impediment which is presented by the legally resident alien through the website of the Ministry of Interior and then personally to the One-Stop-Shop for Immigration. When the declaration of no impediment has been issued, it will be sent directly to the overseas Italian embassy or consulate abroad where the family member will apply for the visa application.

Proof of kinship may prove to be particularly complex. Should it be

<sup>62</sup> Commission Communication COM (2016) 197 of 6 April 2016, *Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, p. 7.

<sup>63</sup> Law 20 May 2016, No. 76, Rules on civil unions between same-sex partners and of de facto relationships (Regolamentazione delle unioni civili tra persone dello stesso sesso e disciplina delle convivenze).

impossible to fulfil this requirement if, for example, there is no organized system of registry, then kinship may be proved through DNA testing performed at the expense of the applicants. It is also permissible to adopt alternative means to prove family ties, such as the presentation of documents issued by international bodies deemed suitable by the Ministry of Foreign Affairs. Moreover, suitable translated and legally certified documentation is also required to attest the state of health, 'dependency' status and lack of adequate family support for the parent. The certificate of legalization is obtained at the Italian Embassy or the Diplomatic or Consular delegation. Should suitable certification be lacking for the state of health the Italian Diplomatic or Consular delegation may nominate a doctor whose fees will be borne by the applicants requesting family reunification.

Further difficulty may arise in determining the age of minor dependent children, especially when the documentation submitted is not sufficiently reliable. In this case the documentation may be replaced by a certification issued by the Italian Embassy or Consulate drawn up on the basis of tests such as that of bone densitometry. For minors it is also necessary that the visa application be signed by the other parent in the presence of a member of the Italian Embassy/Consulate staff from the Visa Office.

Once the family member has obtained the visa he/she may enter Italy and must then apply for the residence permit for family reasons which has the same length and grants the same rights as that of the alien who requested family reunification.

The residence permit for family reasons enables the holder to carry out subordinate or self-employed work or study, without requiring that the permit is converted to a work permit or study permit. However, it is possible to convert the permit for family reasons to a permit for specific purposes at expiry and renewal.

In the case of death of the family member eligible for family reunification or in the case of legal separation or dissolution of the marriage, the residence permit for family reasons may be converted to a residence permit for subordinate or self-employed work or study.

In order to marry in Italy, an alien must submit an official declaration from the competent authorities in his/her home country that has been translated and legalized, showing that there is no impediment to marriage under the laws to which he/she is subject. It is possible to proceed without the declaration of no impediment or without respecting it when: it is issued

on the condition that the other spouse belongs to a particular religion; the lack of impediment is apparent from other documents; the failure to issue the declaration of no impediment is unjustified or based on discriminatory reasons, thus constituting an unlawful preclusion of the right to marry.

It is not necessary to be legally resident in order to marry in Italy; in fact, the government cannot require a residence permit to celebrate marriage, as clarified by the Constitutional Court in its judgment No. 245/2011. However, if it turns out that the marriage has been celebrated in Italy purely in order to gain entry, it is annulled by the Civil Tribunal according to Article 117 of the Italian Civil Code upon an appeal referred to by the Public Prosecutor.

The law does not allow for the recognition of marriages celebrated in Italy at the consulate of a foreign State, when an Italian citizen is involved. However, a marriage celebrated in Italy before foreign diplomatic or consular authorities and between foreign citizens is valid and will be recognized if there are relevant international agreements and provided that such marriages are not in conflict with Italian public policy (e.g., they are not between people of the same sex, or between members of the same family, the husband/wife does not have other spouses).

#### 1.3.3.2. Equality of Treatment

The condition of reciprocity does not apply when dealing with fundamental rights of any person, including aliens, based on the several articles of the Constitution or on international law. Conventions based on the reciprocity clause and having a limited scope of application (economic, commercial, political, etc.) are, however, considered as compatible with the Constitution, as a special type of treaty with a specific content. The Constitutional Court has also stated that all the rights granted to persons should be granted also to aliens, even though the Constitution only makes specific reference to citizens.<sup>64</sup> Thus the principle of equality is recognized to aliens, according to Article 3 of the Constitution: they cannot be discriminated on the basis of race, language or religion as expressly stated in the text, nor suffer unreasonable differences in treatment based solely on the requirement of citizenship.

Legally staying foreign workers and their families are guaranteed equal

<sup>64</sup> Judgments of the Constitutional Court, 23 November 1967 No. 120; 20 January 1977 No. 46.

rights with respect to Italian workers except in the case of activities which are specifically reserved for Italian citizens. This equal treatment is expressly stated by Article 2, paragraph 1, Aliens Act, and by ILO Convention No. 143/1975, ratified in Italy by Law No. 158/81. In particular, the residence permit for subordinate employment allow: compulsory enrolment in the National Health System; access to council social housing on the same terms as Italian citizens where the alien holds a permit valid for two years; access to social welfare where the alien holds a permit valid for at least one year; access to study equal study rights as Italian citizens; family reunification if they hold a residence permit of at least one year; change of employment or self-employment; access to training and retraining; access to legal aid (Presidential Decree No. 115/2002).

In addition, fundamental rights are also guaranteed to illegal workers not legally staying in the Italian territory, just as they apply to any person on Italian territory. Equal treatment with Italian citizens is limited by the existence of activities reserved for Italian citizens, and specifically, activities involving the exercise of official authority or connected with the protection of national interests.

Additional prohibitions of discrimination are provided by the Aliens Act and the non-discrimination laws enacted in 2003 to implement EU Directives.<sup>65</sup> In particular, national legislation prohibits discrimination with regard to social advantages, as formulated in the Racial Equality Directive. The national provision contains the same wording as the directive (*prestazioni sociali* in Italian) and is included in the provisions of Decree 215/2003 concerning the scope of application, which is Article 3(1) (g). The inclusion of social advantages is also derived from Article 43 of Legislative Decree 286/1998 (the Immigration Decree) and Article 1 of the Disability act 67/2006, stating that both are acts with general application. As far as migrants are concerned, the enjoyment of social advantages may be limited for third-country nationals. However, different treatments grounded only on nationality are not admissible.<sup>66</sup> On the contrary, a distinction based on the length of residency in the municipality or in the region is acceptable, whether or not it is proportional and only in cases where the benefit granted goes beyond the basic needs of persons.<sup>67</sup>

<sup>65</sup> Legislative Decree 9 July 2003 No. 215, implementing EU Directive 2000/78/EC.

<sup>66</sup> CJEU, *Martinez Silva*, C-449/16, 21 June 2017.

<sup>67</sup> Italian Constitutional Court no. 141/2014.



Like all workers, seasonal workers too are entitled to equal treatment. However, access to certain services and social welfare will be limited where these are authorized only for those who have a residence permit valid for at least a year, a requirement that will never be satisfied by a seasonal worker. For example, seasonal workers may never apply for family reunification, as this right is recognized only to holders of a residence permit valid for at least one year.

Some jobs are entirely closed to foreigners. These are activities that involve the exercise of official authority or pertaining to the protection of national interests. These include the posts of senior level officials in Government departments and those of other relevant public authorities, magistrates and lawyers or public prosecutors, employees of the Presidency of the Council of Ministers, the Ministries of Foreign Affairs, Interior, Justice, Defence, Finance, and the State Forestry Corps, except those which can be accessed without competitive examination. Over the last few years, there has been a fairly lively litigation against those public authorities concerning these limitations that have been interpreted extensively to limit access by aliens to certain jobs in the public administration.

The combined application of Article 2, paragraph 3, of the Aliens Act which enshrines equality of treatment between citizens and legally resident foreign nationals in conjunction with Articles 10 and 14 of ILO Convention No. 143/1975 on equal treatment of migrant workers has been applied to support an extensive interpretation of these rules.<sup>68</sup>

According to the general right to equal treatment, in principle migrants are entitled to participate to the public life of the society, for instance becoming member of a political party, trade union or any public or private association. However, also due to the cuts in public spending, concrete actions to support and promote integration have not put in place during the last years.

From a legal point of view, Italy is part to the 1992 Strasbourg convention on the participation of foreigners to the public life at local level but has not ratified the Chapter C, the one that would allow foreigners to vote at local level when satisfying the conditions provided for by national law.<sup>69</sup> Therefore, legally staying foreigners, even long-term ones, may participate

<sup>68</sup> Ordinance of the Constitutional Court, No. 139/2011.

<sup>69</sup> Convention on the Participation of Foreigners in Public Life at Local Level, 5 February 1992, available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/144>.

to the consultative committees set up by local municipalities on a voluntary basis; however, they are not entitled to vote in any political elections, both at national or regional/local level. Only EU citizens staying in another EU country have the right to vote and to stand as candidate to the municipal election (Art. 20 TFEU).

In the event of dismissal or resignation, if the permit is expiring it is thus possible to obtain a permit for job seekers pending employment which will be valid for up to six months after the job is ended. In the absence of a new contract at the end of these six months, the worker must leave the territory of the State, unless he/she can obtain a residence permit on alternative grounds, such as family reasons or humanitarian grounds.

The holder of a residence permit for work may change employment or become self-employed and vice versa (Article 6, paragraph 1, of the Aliens Act). However, on change of the employment relationship a new contract of residence must be signed which transfers the burden of housing and repatriation expenses to the new employer. It is also possible to convert a residence permit for employment purposes into a permit for 'elective residence', if the holder draws a pension in Italy.

### 1.3.3.3. Unaccompanied Minors

Foreign minors are considered unaccompanied if on Italian territory without the assistance or legal representation of their parents or other legally responsible adults under Italian law (Regulation of the Committee for foreign minors, Prime Ministerial Decree No. 535/99). More specifically, as stated in the 2003 guidelines of the Committee for foreign minors, minors are to be considered 'accompanied' if they have been legally entrusted to relatives within the third degree, while in all other cases they are considered 'unaccompanied'.

Any person who becomes aware of the presence of unaccompanied minors in Italy must notify the Public Prosecutor at the Juvenile Court. This obligation applies also to persons who legitimately provide a permanent home to a child that has been abandoned (Article 9, paragraph 4, of Law No. 184/1983) when the period of hospitality exceeds six months and the person is not a relative of the child within the fourth degree.

Unaccompanied minors will be placed in a safe place under the care of the local authorities, that is, the municipality where the child's presence

is notified. The minor will be guaranteed those rights relating to temporary residence, health care, schooling and other welfare guaranteed by law (Prime Ministerial Decree No. 535/99). There are a number of projects in operation to ensure that unaccompanied children have an appropriate reception which actively involve activities by the National Association of Italian municipalities (ANCI), and non-governmental organizations, that are frequently brought into play through agreements funded by central Government.

The probate judge at the District Court of the location where the minor's main interests are present is the competent authority for enacting measures for the child's welfare, with the intervention of the social care services. Specifically, the judge will appoint a guardian. Pending this appointment, guardianship is exercised by the public service institution or by the legal representatives of the family-type community or institutional community where the child has been placed. These representatives must request the appointment of an external guardian within thirty days. Where possible the minor is entrusted to a family, preferably with other minor children, but should such a solution be impossible they will be entrusted to a single person. Alternatively, the minor may be fostered in a family-type community or an institution of public or private welfare.

Another institution that is competent is the Committee for foreign minors (Prime Ministerial Decree No. 535/99) which works to protect unaccompanied foreign minors and minors received in Italian territory in accordance with the 1989 United Nations (UN) Convention on the Rights of the Child. One of the most important of the many responsibilities of this Committee is the promotion enquiries to trace the families of unaccompanied minors, including through agreements with other bodies. The Committee for Foreign Minors must, in fact, make inquiries to determine whether it is possible to repatriate the child to his/her own country, given that repatriation is considered in the child's best interests when it is possible to trace parents or other relatives. Where repatriation is not appropriate, the Committee declares there will be no repatriation and informs the court to assess the state of abandonment (and subsequent action to be taken) and the social services to provide suitable foster care as well as calling on the public and private bodies responsible for the child's reception to draw up a project of social and civil integration that will last no less than two years.

Particular safeguards are put in place to protect unaccompanied minor asylum seekers. Anyone who becomes aware of the presence of an unaccompanied minor is required to inform them of the possibility of applying for asylum, where necessary with the help of a mediator and an interpreter, and to invite them to express their own opinion on this opportunity.

## 1.4. Key Findings of the Assessment

The assessment made with this report shows a satisfactory level of conformity of legislations in force in Italy with the OSCE commitments on migration. On the contrary, the practical implementation of laws appears to be weaker, both at national and local level. Lacking a National Plan on Migration, despite being required by the Aliens Act, the Italian migration policy looks to be managed without a long-term approach, but only with measures adopted to solve specific and actual issues.

### General legal framework

- promoting international dialogue and cooperation;<sup>70</sup>
- adherence to international standards;<sup>71</sup>

Italy is part to every international conventions and organizations dealing with migration and asylum. A number of agreements and dialogues in migration have been signed and opened with countries of origin and transits. National law is in line with international standards, at least from a formal point of view.

### Migrants

- gradually simplify administrative procedures for exit and entry;<sup>72</sup>
- lowering the costs of permits of stay;<sup>73</sup>

<sup>70</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, “Economic and Social Aspects of Migration”, para 6.

<sup>71</sup> OSCE (2005), Decision No. 2/05 on Migration, adopted during the Ministerial Council meeting held in Ljubljana, 6 December 2005, available at: <https://www.osce.org/mc/17339?download=true>.

<sup>72</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1975, para d).

<sup>73</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, “Human Contacts”, paras 27, 28.

- visa policy: lowering the costs of visa, including issuing of multiple entry visa;<sup>74</sup>
- facilitating labour mobility for development;<sup>75</sup>
- enabling reintegration and employment in origin countries;<sup>76</sup>

A general feature of migration law is the lack of a General Plan on Migration, although the Aliens act requires the Government to adopt it every three years. Rules on entry and stay of migrants are still highly complex to apply, although in the most recent years computerized procedures have been introduced, speeding up certain steps of the procedures.

Visa applications require payment of administrative fees for each applicant, to be paid before a positive decision has been issued. Ones in Italy additional administrative fees have to be paid in order to get the permit of stay and at each renewal.

One of the most critical point is the practical lack of legal channels for economic migrants, with the system still based on the previous agreement on an employment contract, theoretically to be signed even before employer and employees have met.

Reintegration and employment in origin countries lack of specific and effective actions.

### Refugees

- protection of refugees – reference to the 1951 Geneva Convention;<sup>77</sup>
- prevention of mass flows of refugees and displaced persons;<sup>78</sup>

Italian asylum system has been shaped according to the European common asylum system. Therefore, the legislative framework is now well structured with different forms of protection to be granted to asylum applicants. However, the European asylum system faces a serious crisis mainly due to the application of the Dublin regulation, i.e. the determination of which State has the obligation to evaluate the asylum claims lodged by people who

<sup>74</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, “Human Contacts”, paras 27, 28.

<sup>75</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, “Economic and Social Aspects of Migration”, para 6.

<sup>76</sup> Ibid.

<sup>77</sup> Concluding Document of Helsinki – The Fourth Follow-up Meeting, 1992, Decisions, Chapter VI, paras 36-45.

<sup>78</sup> Ibid.

arrive in Europe. The opening of hotspots centres, the lack of coordination and solidarity between MS in both search and rescue operations and relocation of migrants, are the key reasons of the so said migrants' crisis, affecting the European Union as a whole.

Looking at the Italian law, one of the most critical point is the reception system, where an emergency approach still prevails and there is a lack of clear and effective pathways to integration of asylum seekers. Asylum procedures, both administrative and jurisdictional, show a lack of human resources; additionally, the most recent reforms aim to lower the jurisdictional rights of asylum seekers in order to speed up the proceedings. Moreover, the hotspot approach adopted since the application of the EU Decisions on relocation of 2015, is lacking a legal basis as required by the ECHR.

### Integration

- protect fundamental human rights, including freedom of religion;<sup>79</sup>
- equality of rights for migrant workers regarding conditions of work and to social security;<sup>80</sup>
- combating discrimination, intolerance and xenophobia towards migrants and their families;<sup>81</sup>
- participation in the life of the society of the participating State;<sup>82</sup>
- provide language and vocational training for migrant workers;<sup>83</sup>
- incorporate gender aspects, with particular attention to women, in migration policies;<sup>84</sup>
- supporting family reunification, marriage and family unity;<sup>85</sup>
- granting the right to freedom of movement and residence within the coun-

<sup>79</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, “Human Contacts”, paras 27, 28.

<sup>80</sup> Ibid.

<sup>81</sup> Concluding Document of Budapest, 1994, Decisions, Chapter VIII, paras 28-32, 40.

<sup>82</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, paras 33, 38-38.4.

<sup>83</sup> Ibid.

<sup>84</sup> OSCE (2009), Guide on Gender-Sensitive Labour Migration Policies, available at: <https://www.osce.org/secretariat/37228?download=true>.

<sup>85</sup> Concluding Document of Madrid – The Second Follow-up Meeting, 1983, “Co-operation in the Field of Economics, of Science and Technology and of the Environment”, “Human Contacts”, paras 27, 28.

try and the right to leave any country, including his own;<sup>86</sup>

- satisfactory living conditions; same opportunities for migrants as nationals in the event of unemployment;<sup>87</sup>

- access to education for migrant children;<sup>88</sup>

- protecting migrant workers, their families and in particular minor children;<sup>89</sup>

From a legal point of view Italian law is in line with the OSCE commitments on integration of migrants and their family. A general principle of equality of treatment between aliens and citizens apply and where differences of treatment have been made, Courts have quashed the potential discriminatory measures. The right to family unit is granted in more open terms than in other EU MS: in particular, no prerequisite of language knowledge is required before entering as a family member. The right to education to migrant's children is fully recognized.

The right to free movement within the Italian territory is granted to every person legally staying in Italy.

Participation in the life of the society is allowed by granting the right to be member of any associations or trade unions. However, there is still no recognition of a right to vote neither in municipal elections nor in national ones.

The critical points are the potential differences between different regions, since social inclusion and integration are a regional competence. In particular, the lack of resources devoted to social policies in general, reflects also in the lack of projects and measures to facilitate the integration of migrants.

<sup>86</sup> Concluding Document of Vienna – The Third Follow-up Meeting, 1989, “Questions relating to Security in Europe”, paras 13.7, 13.8, 20-22.

<sup>87</sup> Final Act of the Conference on Security and Co-operation in Europe, “Economic and social aspects of migrant labour”, Helsinki, 1975.

<sup>88</sup> Concluding Document of Vienna – The Third Follow-up Meeting, 1989, “Co-operation in other areas”, paras 40-44.

<sup>89</sup> Concluding Document of Vienna – The Third Follow-up Meeting, 1989, “Co-operation in other areas”, “Human Contacts”; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, paras 5.9, 9.5, 19, 19.1-19.3, 22-22.4; Charter of Paris for a New Europe, 1990, “Human Rights, Democracy and Rule of Law” (...) “Migrant Workers”.

## 1.5. Recommendation and Measures to Be Taken by Italy to Be in Line with OSCE Standards and Commitments

Against the above background, the Italian Government should:

- adopt a new National Plan on Migration, covering at least a period of three years, drafted with the involvement of regional and local authorities, as well as relevant stakeholders. The National Plan should be updated each year;
- strengthen measures in order to enhance skills, participation and integration of migrants: despite a right to equal treatment granted to migrants regarding in the field of employment, a set of practical measures is lacking while this is one key issue to foster social inclusion of migrants;
- promote the participation in the society of the hosting State;
- Italy should ratify the Chapter C of the Strasbourg convention on the participation of Foreigners to the public life at local level of 1992;
- actions and projects should be funded and promoted;
- adequate funding should be added to promote projects in order to raise awareness about the effective contribution of migrants to society, provide for language and vocational training for migrant workers;
- promote projects in order to incorporate gender aspects, with particular attention to women, in migration policies;
- promote projects to grant informal recognition of skills and qualifications;
- simplification of administrative procedures relating to entry and stay;
- strengthening the ordinary system of reception of asylum seekers and using properly the extraordinary system of reception only as a last resort measure;
- Starting integration projects since the beginning of the reception of asylum seekers, providing for effective language and professional trainings;
- Granting effective asylum procedures with adequate and qualified human resources;
- Granting access to justice against the denial of international protection including: effective legal aid, equal treatment in the judicial procedures and right to a fair trial;
- Providing for a legal basis and judicial review in respect of the depriva-



tion of liberty of migrants placed in reception centres according to the ECHR *Khlaifia* judgment.

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## Chapter 2

# Italy and the Implementation of the OSCE Commitments on Women Peace and Security

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## 2.1. OSCE Commitments and Relevant International Framework

### 2.1.1. The Women, Peace and Security Agenda

In 2000 the United Nations Security Council unanimously adopted resolution 1325 “Women, Peace and Security”,<sup>1</sup> which for the first time explicitly looked at women and their role as victims, as well as active contributors and activists in conflict situations. The resolution stressed the importance of women as agents in the prevention and resolution of conflicts, humanitarian response and in post-conflict reconstruction and peace building and elaborated the responsibility of all parties to ensure women’s equal and meaningful participation in decision-making on conflict prevention and resolution and in the overall efforts for the maintenance of peace and security. Seven related resolutions followed as a result of the increasing awareness among policymakers and experts of the importance of integrating a gender dimension in security-related decision-making.<sup>2</sup> These resolutions complement SC Res. 1325 and deepen the commitment to broader aspects pertaining to women and girls in conflicts.<sup>3</sup> Among them, SC Res. 1820, 1888, 1960, and 2106 deal specifically with the protection of women from conflict-related sexual violence and call for states to end impunity for crimes of gender-based violence in armed conflicts.<sup>4</sup> Taken together these eight resolutions make up the Women, Peace and Security agenda. Broadly understood, this agenda recognizes for the first time the centrality of women’s and girls’ rights to international peace and security processes and outcomes. In 2010 a set of indicators were developed to track and account for the implementation of SC Res. 1325 and subsequent resolutions. The indicators are organized in four pillars of participation, protection,

<sup>1</sup> From now on referred to as SC Res. 1325, UN Doc, S/RES/1325 (31 October 2000).

<sup>2</sup> SC Res. 2242, UN Doc, S/RES/2242 (13 October 2015); SC Res. 2122, UN Doc, S/RES/2122 (18 October 2013); SC Res. 1960, UN Doc, S/RES/1960 (16 December 2010); SC Res. 1889, UN Doc, S/RES/1889 (5 October 2009); SC Res. 1888, UN Doc, S/RES/1888 (30 September 2009); SC Res. 1820, UN Doc, S/RES/1820 (19 June 2008); SC Res. 1325, UN Doc, S/RES/1325 (31 October 2000); which addresses new challenges in international peace and security such as climate change, violent extremism, and the increased number of refugees and internally displaced persons.

<sup>3</sup> Any reference to SC Res. 1325, UN Doc, S/RES/1325 in this paper should be intended as including all resolutions that followed to form the Women, Peace and Security agenda.

<sup>4</sup> These are SC Res. 1325, UN Doc, S/RES/1325; SC Res. 1888, UN Doc, S/RES/1888 (30 September 2009); SC Res. 1960, UN Doc, S/RES/1960 (16 December 2010); and SC Res. 2106, UN Doc, S/RES/2106 (24 June 2013).

prevention, and relief and recovery, which, together with the overarching principle of gender mainstreaming<sup>5</sup> well summarize States' obligations to uphold the rights of women and girls in conflicts. The four pillars are closely connected with one another and are mutually reinforcing. Among them, participation is cross-cutting and a means for the achievement of the other pillars and of gender equality more in general.



More specifically on participation, SC Res. 1325 'Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management and resolution of conflict'.<sup>6</sup> Prevention refers both to armed conflicts and prevention of sexual and gender-based violence, and women's participation and role therein. Conflict prevention often includes early warning, confidence building, preventive diplomacy and mediation, and so on. The protection pillar includes protection of the human rights of women and girls, protection of women from specific risks, including protection from sexual and gender-based violence, as well as the protection needs of displaced women. Among the concrete examples, SC Res. 1325 'Calls upon all parties to armed conflict to respect fully international

<sup>5</sup> Gender mainstreaming is a globally recognized strategy for the promotion of gender equality, which entails the '*process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels*'. Economic and Social Council Agreed Conclusions 1997/2.

<sup>6</sup> SC Res. 1325, UN Doc, S/RES/1325 (31 October 2000), para 1.

law applicable to the rights and protection of women and girls',<sup>7</sup> while SC Res. 1820 'Calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation'.<sup>8</sup> Finally, the relief and recovery pillar concerns issues such as providing humanitarian aid and Disarmament, Demobilization, and Reintegration (DDR) plans. On this, SC Res. 1325 'Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design', and 'Encourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants',<sup>9</sup> among others.

Though not legally binding *per se*, the resolutions that form the Women, Peace and Security agenda draw upon binding commitments grounded in international human rights law, international humanitarian law, international refugee law, and customary law.<sup>10</sup> As such, despite their non-binding nature, they remind states of binding commitments toward the protection and promotion of women's rights in armed conflict, and should be understood as forming an integrated part of the legal framework<sup>11</sup> on women,

<sup>7</sup> Ibid., para 9.

<sup>8</sup> SC Res. 1820, UN Doc, S/RES/1820 (19 June 2008), para 4.

<sup>9</sup> SC Res. 1325, UN Doc, S/RES/1325 (31 October 2000), paras 12, 13 respectively.

<sup>10</sup> More specifically, the resolutions recall obligations contained in the 1949 Geneva Conventions and related 1977 Additional Protocol; in the Refugee Convention of 1951; in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); in the 1989 Convention on the Rights of the Child and in the Rome Statute of the International Criminal Court. SC Res. 1325 also emphasizes the responsibility of States to end impunity and prosecute those responsible for genocide, crimes against humanity, and war crimes, which reflects states' obligations under International humanitarian law and treaties such as CEDAW, the Rome Statute, Common Article 3 of the Geneva Conventions, and the Statutes of the International Criminal Tribunals for the former Rwanda, Sierra Leone and Yugoslavia. Saying that they are legally binding is not meant to underestimate the fact that these resolutions are important in their own right, rather recognizing these synergies is meant to enhance their implementation and impact.

<sup>11</sup> Reference is mostly to the Convention on the Elimination of All Forms of Discrimination against Women adopted on 18 December 1979, 1249 UNTS 13 (CEDAW), and its General Recommendation No. 30 on women in conflict prevention, conflict, and post-conflict situations,

peace and security, particularly in relation to non-discrimination, protection of civilians and prevention and response to gender-based violence.

### 2.1.2. OSCE Commitments to the Women, Peace and Security Agenda

With 57 participating States across North America, Europe and Asia, OSCE is the largest regional security organization in the world, working to ensure peace, democracy and stability. According to OSCE, the role of security is not only to defend states interests but to also protect its citizens and to address threats to human security by upholding human rights and fundamental freedoms. This is what the OSCE calls the ‘human dimension’ of security. As such, the security concerns of men and women alike are paramount to the organization’s comprehensive security concept and policy framework.<sup>12</sup> Moreover, being active in all conflict phases from prevention, to resolution, rehabilitation and peace-building, OSCE is well placed to ensure enhancing comprehensive security, including the provision of support to participating States to fulfil their gender equality commitments.

OSCE has long recognized the importance of enhancing implementation of SC Res. 1325 and subsequent resolutions and, to this end, has made gender mainstreaming an integral part of its work. While committed to the implementation of all the aspects governing the women, peace, and security agenda,<sup>13</sup> the Organization focus has been on security-related issues such as early warning mechanisms, conflict management and mediation, women’s participation in reconstruction efforts, and prevention of gender-based persecution, violence and exploitation. In addition, OSCE has been providing support to participating states for the overall implementation of Sec Res 1325. Such an approach is reflected in its policy framework with the 2004 OSCE Action Plan for the Promotion of Gender Equality,<sup>14</sup> and other Ministerial Council Decisions<sup>15</sup> that recall the SC Res. 1325 and

adopted on October 2013 CEDAW/C/GC/30 (CEDAW GR No. 30). Articles 7 and 8 of the Convention provide the normative basis of women’s participation, while GR No. 30 provides a mean of holding Member States accountable for the implementation of CEDAW by reporting to the Committee on the Elimination of Discrimination Against Women every four years.

<sup>12</sup> OSCE comprehensive approach to security encompasses politico-military, economic and environmental, and human dimensions.

<sup>13</sup> In the words of the OSCE Senior Adviser on Gender Issues ‘the women, peace and security agenda is a common thread throughout all our work’.

<sup>14</sup> OSCE MC.DEC/14/04.CE and PRIO9.

<sup>15</sup> One such decision is OSCE MC.DEC/14/05.CE and PRIO9.



emphasize the significant role women play in the prevention and resolution of conflicts and peace building. They also envisage OSCE's supporting role vis-à-vis participating States in the development of programmes and projects to enhance women's participation in peace and security efforts.

The 2004 Action Plan stresses the importance of a broader approach to gender, rather than one that focuses on the specificities of participation only, including in security analysis. More specifically, priorities include: (a) in countries without OSCE missions, 'projects to support measures in the areas of prevention of violence against women, promotion of women in the public, political, and economic spheres, and support for national gender mainstreaming; (b) 'ensuring non-discriminatory legal and policy frameworks' through, among others, assisting participating States in complying with international instruments, and reviewing legislation accordingly, and developing specific programmes, strategies and action plans to promote women's rights and gender equality; (...) (d) 'ensuring equal opportunity for participation of women in political and public life' through, among others, monitor and report on women's participation in electoral processes, and building local capacities and expertise on gender; (g) 'building national mechanisms for the advancement of women' through support to building democratic institutions for advancing gender equality and facilitating dialogue and cooperation between civil society, media and government.<sup>16</sup>

Among the other relevant documents, the 2005 Decision on Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation encourages participating states to 'ensure that women are fully informed of and encouraged to apply for positions in the area of conflict prevention and post-conflict rehabilitation processes, in particular for senior management positions',<sup>17</sup> and to encourage training and educational programmes focusing on women and girls, as well as projects aimed at women's participation in building sustainable peace. In addition, the 2005 Ljubljana Decision specifically focuses on 'Preventing and Combating Violence against Women'.<sup>18</sup> The 2009 Decision on Women's Participation in Political and Public Life calls on participating States to, among others, 'consider taking measures to create equal opportunities within the security services, including the armed forces, to allow for balanced recruitment, retention and

<sup>16</sup> OSCE MC.DEC/14/04.

<sup>17</sup> OSCE MC.DEC/14/05.

<sup>18</sup> OSCE MC DEC/15/05. See Chapter 4 by Capone in this volume.

promotion of men and women'.<sup>19</sup> The 2011 Decision in Vilnius reaffirmed the 'significant role of women in the prevention and resolution of conflicts and in peace-building' with a focus on peace processes.

The OSCE Gender Section and the Office for Democratic Institutions and Human Rights (ODIHR) are the main references on SC Res. 1325 and related resolutions at the policy level, including assisting participating States in drafting National Action Plans (NAP) on SC Res. 1325, and assessing implementation. Respect for human rights and the promotion of gender equality is done through the *Gender and Security Sector Reform Toolkit* and the *Guidance Note on Gender in Security Sector Oversight*<sup>20</sup> and other human right related initiatives particularly in the area of training and awareness raising. The ODIHR's Human Rights, Gender and Security Programme (HRGS) promotes the understanding that 'integrating a gender perspective in security matters is key to addressing the needs, contributions, and security perceptions of women and men while strengthening overall security'.<sup>21</sup> Advancing the implementation of SC Res. 1325 by providing support to the drafting and revision of NAPs, and by encouraging respective voluntary reporting by participating States, is the first of three programme priorities.

Among the efforts in this regard, the OSCE conducted a review of 27 NAPs in its region to 'get a clearer understanding of the implementation of SC Res. 1325 throughout the OSCE participating States and to identify common problems and challenges as well as to share best practices'.<sup>22</sup> NAPs are believed to be powerful tools for governments, multilateral organizations and civil society to coordinate and track results on women's role in conflict prevention, peace-building and security processes. At the time the study was conducted, some participating countries such as Italy had already launched their second plan.<sup>23</sup> However, only the first Italian NAP (2010-2013) was finally reviewed. Ultimately, the goal was to provide some common tools for revision and development of such plans to enhance coherence and ensure progress in the implementation of the Women, Peace and Security agenda among participating States. At the time this contribution was written, in the OSCE region 31 of 57 participating states have developed NAPs or similar

<sup>19</sup> OSCE MC.DEC/07/09.

<sup>20</sup> OSCE (2008) and OSCE (2014B).

<sup>21</sup> OSCE (2016A), p. 92.

<sup>22</sup> OSCE (2014A), p. 15.

<sup>23</sup> Others were Sweden, Norway, Finland, Denmark, Austria, the Netherlands, Switzerland and Italy. Ormhaug (2014), p. 34.

for the implementation of SC Res. 1325.<sup>24</sup> These represent nearly half of those developed globally.<sup>25</sup> Drawing on the results of this review, since 2016 OSCE has been organizing a NAP Academy on Women, Peace and Security for all practitioners from across the OSCE region to facilitate the exchange of experiences and collaboration while strengthening the impact of their NAPs on SC Res. 1325.<sup>26</sup> The 2016 gathering resulted in the development of the tool *Designing Inclusive Strategies for Sustainable Security: Results-Oriented National Action Plans on Women, Peace and Security* to enhance the implementation potential of NAPs. Annual information exchanges within OSCE on security provides further opportunities to voluntarily share information on the implementation of SC Res. 1325. The Forum for Security Cooperation Support Section of the OSCE Conflict Prevention Centre (CPC) in 2016 saw the contribution of 32 participating States on this.<sup>27</sup>

OSCE also engages with the Women, Peace and Security (WPS) National Focal Points Network.<sup>28</sup> An example of capacity building activity on women's leadership is the specialized trainings for women border guards offered by the Border Management Staff College in Dushanbe, Tajikistan.<sup>29</sup>

Despite these efforts *vis-a-vis* participating States, internal challenges remain; for example, in relation to female representation in staffing across levels. Latest available data indicate that while gender balance has been achieved across OSCE professional and general service categories, the percentage of women in senior positions diminished from 35 per cent in 2015 to 28 per cent in 2016.<sup>30</sup> The representation of women at the Heads of Mission and Deputy Heads of Mission levels also remain low, mostly due to the low number of women in working in the security sector in participating States.<sup>31</sup>

<sup>24</sup> Statement delivered by Amarsanaa Darisuren, Senior Adviser on Gender Issues, 27 October 2017.

<sup>25</sup> As of March 2018, 73 countries in the world have adopted a NAP. Peace Women 2018.

<sup>26</sup> The idea of an expert workshop came from the review conducted in 2014 of existing NAPs in the OSCE region, which identified the need for better understanding and improved capacity to implement the resolution. The event is co-organized by the OSCE Gender Section and the Washington-based organization Inclusive Security.

<sup>27</sup> OSCE (2016A), p. 15.

<sup>28</sup> The Network has been established in September 2016 as part of Spain's commitments in relation to the Women, Peace and Security agenda.

<sup>29</sup> Ibid., para 1.

<sup>30</sup> OSCE (2016A), p. 7.

<sup>31</sup> Of the 29 nominations put forward by participating States for 9 vacant Head of Mission posts, only 4 were women. Similarly, only 12 of the 57 candidates nominated for two Deputy Head of Mission posts were women. Ibid., p. 11.

## 2.2. Legal and Institutional Framework in Italy

Since its adoption in 2000, Italy has regularly reported on the implementation of SC Res. 1325. In pursuant of the Security Council request, Italy is among the 73 countries globally, the 31 out of 57 within OSCE<sup>32</sup> and the 17 among the 28 NATO member states<sup>33</sup> that have adopted a NAP for the implementation of SC Res. 1325.<sup>34</sup> The first Italian NAP was developed in 2010 and covered the period 2010-2013. This was followed by a revised version in 2014-2016, and a third NAP in 2016-2019.<sup>35</sup>

In addition to the OSCE overall commitment to the women, peace and security framework, Italy's efforts towards the implementation of the Women, Peace and Security agenda have been in alignment with the EU Document "Comprehensive EU Approach to the Implementation of Security Council resolutions 1325 and 1820, on Women, Peace and Security",<sup>36</sup> which guides the Union's external actions to protect women and promote equality during and after armed conflicts. Another important framework of reference is the NATO's Policy and Action Plan on Women Peace and Security,<sup>37</sup> which Italy contributed to define, as well as the NATO BI-SC 40-1 Directive, which boosted Italy efforts on the integration of a gender perspective in the army and on missions. Italy has reportedly been a regular member of the NATO Committee on Gender Perspective (NCGP),<sup>38</sup> and progress on the NATO's implementation of SC Res. 1325 is also reported in the NAPs.<sup>39</sup>

<sup>32</sup> As of October 2017.

<sup>33</sup> Latest data are from 2015. NATO (2015A), p. 6.

<sup>34</sup> The Security Council presidential statement of 28 October 2004 called upon member states to develop national action plans for the implementation of resolution 1325. The first country to develop a NAP was Denmark in 2005, followed by the UK, Sweden, and Norway in 2006.

<sup>35</sup> Italian Inter-ministerial Committee for Human Rights (CIDU) 2016.CIDU 2010.

<sup>36</sup> Comprehensive EU Approach to the Implementation of Security Council resolutions 1325 and 1820, on Women, Peace and Security [2008] 15671/1/08.

<sup>37</sup> NATO Policy for the Implementation of SC Res. 1325 on Women, Peace and Security and Related Resolutions was first adopted in 2007 within the Euro-Atlantic Partnership Council (EAPC), and then reviewed every two years, with the latest dated 2014. The Policy and related guidelines, together with the appointment of a Special Representative for Women, Peace, and Security are meant to assist member states in the implementation of SC Res. 1325. The third Special Representative took office in January 2018. NATO 2018.

<sup>38</sup> The NCGP promotes gender mainstreaming in the design, implementation, monitoring and evaluation of policies, programmes and military operations.

<sup>39</sup> One such example is the appointment in 2012 of a Special Representative on 'Women,

Essentially, NATO has been calling on member States to integrate the principles of SC Res. 1325 into their national defence and security policies: 1. The integration of a gender perspective in all military operational activities; 2. The promotion of women in the military and gender equality in military forces and institutions; 3. Gender mainstreaming; and 4. Zero tolerance for sexual exploitation and abuse.<sup>40</sup>

NAPs provide the institutional framework for the implementation of the Women, Peace and Security agenda in general and the OSCE commitments therein, and they contain a quite comprehensive overview of the legislations Italy adopted in this regard. As far as the OSCE commitments are concerned, evidence shows that the most important steps taken by Italy have been in relation to the prevention of violence against women; increasing diversity in the security sector through equal employment, treatment and career opportunities for men and women in the police, armed forces and other similar organizations; and mainstreaming human rights and gender in training curricula and initiatives. The same adoption of NAPs is also to be seen as an indication of Italy's efforts for the implementation of OSCE commitments in the area of Women, Peace and Security, especially considering the efforts made by OSCE in relation to them.<sup>41</sup> Hence the emphasis on them in the following paragraphs together with examples of existing legislations.

The first NAP was set to 'strengthen and coordinate efforts to protect the human rights of women, children and the most vulnerable groups in a conflict area'.<sup>42</sup> It illustrates the state of the art in Italy with regards to the priorities set forth by SC Res. 1325. As such, it is a hybrid between a baseline and an actual plan, as it highlights a series of initiatives and actions taken by Italy both at national and international levels in line with the dictate of the SC Res. 1325 and the WPS agenda more generally, as the basis against which others are planned or suggested for consideration by the actors responsible for implementation.<sup>43</sup>

Peace and Security', assisted by an expert on gender issues. Italy Revised NAP (2014-2016).

<sup>40</sup> NATO (2015A), p. 6.

<sup>41</sup> See relevant section on this in this volume.

<sup>42</sup> These are briefly summarized as follows: prevention of violence, participation of women in peace processes, and gender-based approach in peace projects. NAP 2010.

<sup>43</sup> Among them, the establishment of women's voluntary military service in 1999, initially with a maximum quota, then eliminated to ensure full access of female personnel in 2006.

The 2010 NAP contained six priority areas: 1. Increase the number of women in the national police, armed forces, and in peace operations and the decision-making bodies of peace operations; 2. Promote the inclusion of a gender perspective in all peacekeeping operations; 3. Provide specific training for personnel on peace missions; 4. Protect the human rights of women, children, and other vulnerable groups and strengthen women's participation in peace processes; 5. Support civil society's commitment to the implementation of SC Res. 1325; and 6. Conduct monitoring and follow-up activities. These same priorities remained relevant in the second edition of the NAP (2014-2016), which aimed to:

build on the initiatives that Italy already supports or is implementing to reduce the negative impact of conflict and post-conflict situations on women and children, promoting, at the same time, the participation of women in the resolution and prevention of conflicts as '*agents of change*'.

As said, NAPs contain specific reference to the major institutional and legislative measures undertaken by Italy in each priority area, and for the implementation of SC Res. 1325 more generally.<sup>44</sup> For example, anticipating the OSCE commitment to women and diversity in the security sector,<sup>45</sup> *Legislative Decree No.24 of January 31 2000*<sup>46</sup> provided for the recruitment, status and career advancement of female military personnel, and the *Decree No. 198 of April 11 2006* that established the *Code of equal opportunities between men and women*.<sup>47</sup>

Also, in line with the OSCE commitment to more effective, accountable and transparent security sector institutions, Italy issued new legislative measures for the implementation of the Criminal Code for the Military Operations abroad as 'a first step towards a wider review of both Peacetime Military Criminal Code and Wartime Military Criminal Code'.<sup>48</sup> More spe-

<sup>44</sup> NAP 2014-2016 specifically refers to a page in the Italian Defence Ministry's official website pertaining to all information about applicable legislation that however only refers to the existing international framework, which besides all relevant SC Res. also comprises the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that Italy ratified in June 1985. Also, at the time it was consulted, the only NAP listed there is from 2010, suggesting that the page has not been updated for some time. Ministero della Difesa (2000B) . Ministero della Difesa (2000C).

<sup>45</sup> Reference is to the Decision on Women's Participation in Political and Public Life, OSCE MC.DEC/07/09.

<sup>46</sup> Ministero della Difesa (2000A).

<sup>47</sup> No. 198 *Code of equal opportunities between men and women* 2006 (Italy), OSCE MC.DEC/07/09.

<sup>48</sup> NAP (2014-2016), p. 39.

cifically, to address an existing vacuum, in 2006 the application of the Peacetime Military Criminal Code was extended to all military operations abroad.<sup>49</sup> Among the regulations introduced there is the intent to ‘fully protect the “vulnerable groups” affected by military operations; and harsher punishment in the case of offences such as sexual violence, gang rape, forced pregnancy, and so on.’<sup>50</sup>

Another important step in legislation is represented by the ratification of the Istanbul Convention on preventing and combating violence against women and domestic violence in June 2013,<sup>51</sup> which triggered a series of regulatory measures aimed at protection and prevention of violence against women as well as punishment of perpetrators. Among them, a new Article was introduced in the Consolidation Act on Immigration granting stay permits to foreign victims of domestic violence regardless of cooperation with the judicial authorities.<sup>52</sup> Since its entry into force in 2015, the Convention became the first legally-binding instrument with a comprehensive legal framework and approach to combat violence against women, with a focus on preventing domestic violence, protecting victims and prosecuting offenders.<sup>53</sup> This is consistent with the priority given by OSCE to the prevention of gender-based persecution, violence and exploitation.

As far as the civil society is concerned, the *Constitutional Law no. 147* of 27 December 2013 (Art. 1, para 253) provided for the experimental introduction of Civil Peace Corps, which were later regulated by the *Inter-ministerial Decree* of 7 May 2015. This represent a fundamental step by Italy in the recognition of the role of civil society organizations in the field of international peace and security.

The Inter-ministerial Committee on Human Rights (CIDU) is the national focal point on SC res. 1325, and is the entity responsible for drafting, monitoring and following up on the implementation of the NAP.

<sup>49</sup> Act No. 247 of 4 August 2006. NAP (2014-2016), p. 39.

<sup>50</sup> Of particular relevance to this is the 2008 Gender and Security Sector Reform Toolkit. NAP (2014-2016), p. 39.

<sup>51</sup> Act No. 77 of 26<sup>th</sup> June 2013. NAP (2014-2016), p. 40.

<sup>52</sup> Ibid.

<sup>53</sup> See Chapter 4 by Capone in this volume.

## 2.3. Assessment on the Implementation of the OSCE Commitments

This paper intends to account for and assess the status of the Italian implementation of the OSCE commitments in relation to the women, peace and security agenda over the past five years. To do so, the focus has been primarily on the NAPs as the primary and perhaps most visible tool adopted by Italy for implementing the Women, Peace and Security agenda in general and OSCE-specific commitments therein. The emphasis on NAPs is not only relevant but also purposely efficient, as they well summarize all the different activities undertaken by Italy in relation to women, peace and security, which would be otherwise difficult to identify and assess. It is worth noting that NAPs are not the only way for implementing the SC Res. 1325 and to the extent possible, within the limited timeframe, other initiatives and strategies have also been reviewed and accounted for. The way NAPs have been designed is also discussed to gauge Italy's level of commitment and as instrumental for the effectiveness of the measures contained. Finally, NAPs are a showcase of Italy's efforts and intent to comply with the advice provided by OSCE on how to best ensure implementation of Sec Res 1325.

More specifically on the latter, OSCE identified the following criteria as key to a successful NAP: 1. Inclusive design: involvement of both the government and civil society organizations in the design, implementation, monitoring and evaluation of NAPs; 2. Results-based design: including a log frame linking inputs to outputs, to outcomes, and specifically defined indicators; 3. Political will: the WPS should be treated as a national priority, and not just a 'gender' issue; 4. Resources: allocation and tracking of financial and other resources.<sup>54</sup>

<sup>54</sup> These criteria are the results of the observations gathered in 2014 during the OSCE's review of 27 participating States' national strategies, and the discussion on this held during the 2016 NAP. (OSCE 2016B), 7. In addition to the OSCE, the SC Res.1325 NATO Scorecard provides some other useful criteria for the assessment of member states' efforts on Women, Peace and Security. The 1325 Scorecard is a tool to evaluate how well the principles of the UNSCR 1325 are implemented within the armed forces of NATO countries. Differently from other assessment tools, the Scorecard only looks into military institutions and operations. It encompasses a set of indicators to measure performance of member states at two main levels: 1. At the political level, the Scorecard examines whether there is political will to implement the principles of UNSCR 1325; 2. At the institutional policy and practice level, it measures whether gender perspectives are integrated in all phases of military operations, specifically



These elements combine to provide a comprehensive analysis of the Italian NAPs with a particular focus on the 2014-2016 NAP, and the most recent one 2016-2019 one, as well as other initiatives undertaken by Italy towards the implementation of the Women, Peace and Security agenda.

First, however, some general considerations from the 2014 OSCE review of the NAPs of 27 participating, which could serve to better situate findings and observations about Italy within the broader context of the efforts made by various states for the implementation of the UNSCR 1325. Broadly, the OSCE review found implementation of the Women, Peace and Security agenda slow, incoherent, ad-hoc and unsystematic<sup>55</sup> and identified the need for a better understanding of what gender mainstreaming means in practice for States. Among the reasons for the lack of progress on UNSCR 1325, the OSCE review identified: 1. Lack of capacity and commitment by the actors involved; and 2. scarce resources being earmarked to implement the Women, Peace and Security agenda.<sup>56</sup>

## 2.4. Key Findings of the Assessment

This section provides a summary of the key findings on Italy's implementation of the OSCE commitments in relation to the women, peace and security framework. Findings are organized in achievements and challenges, which formed the basis of a specific set of recommendations. Also, while findings are reported in a succinct form here, a more detailed discussion is found in the following section together with some useful considerations on the efforts made by Italy to progressively comply with the guidance provided by OSCE on the development and effectiveness of NAPs.

how the military deals with gender-based violence; and whether monitoring and accountability mechanisms are in place, including the extent of sex-disaggregated data collection and lessons learned.

<sup>55</sup> Similar conclusions emerged from the application of the NATO Scorecard in 2015. NATO (2015A), p. 4.

<sup>56</sup> OSCE (2014A), p. 21. Similarly, NATO stressed the lack of political will with only 17 out of 28 member states having adopted a NAP; the general ignorance on gender issues within military institutions and practices; the limited representation of women in military institutions, including in international peace operations; the uneven approach to incidences of sexual assault, abuse, and other misconduct; and the lack of systematic and transparent monitoring and reporting mechanisms, including on best practices and lessons learned. The analysis concluded that 'without implementation at the national level the integration of gender perspectives in NATO-led operations will fall short'. NATO (2015A), p. 11.

### 2.4.1. Achievements

As far as the development of NAPs is concerned, progress by Italy is evident in three out of the four criteria identified by OSCE, namely the adoption of a much more inclusive approach, the allocation of specific resources for the implementation of the plan, and the inclusion of a set of indicators. Italy's efforts in the implementation of the OSCE commitments on women, peace and security, have yielded important results in the area of:

**Participation:** efforts have focused primarily on increasing the number of female personnel in the national police, armed forces, and in peace operations and decision-making bodies of peace operations, with no discrimination with regards to recruitment, roles and responsibilities as compared to their male colleagues.

**Protection:** the protection of the human rights of women, children, and other vulnerable groups has long been a priority for Italy. Together with participation, this is the area where Italy has focused most of its efforts on and where initiatives have been more evenly spanned across the international and national levels, not only in relation to migrants or refugees, but also to nationals. Training and awareness raising initiatives on human rights, the advancement of gender equality, and protection from sexual and gender-based violence cuts across all SC Res pillars and have been numerous and ever increasing and are illustrative of the wide-range of efforts made by Italy in this regard.

**Relief and Recovery:** noteworthy is the establishment of Female Engagement Teams and Gender Advisors to enhance cooperation with the local population, protect women's rights, and of Civil-Military cooperation (CIMIC) projects to promote activities in the social, economic and political realms. Civil Peace Corps provide scope for enhanced civil society organizations engagement in the maintenance of international peace and security, including in the areas of mediation and reconciliation.

### 2.4.2. Challenges

These include both untapped areas and those where more efforts are needed to implement a sustained, systematic approach to women, peace and security, and OSCE commitments more specifically. In general, among the areas that necessitate improvement, there remains a disproportionate focus on military operations and training of military forces vis-à-vis other

relevant personnel, including on the principles of equal opportunity, equality, tolerance, and mutual respect between the sexes; lack of a solid peace-building approach, particularly in relation to mediation, reconciliation and reconstruction; lack of clarity on the synergies and engagement with civil society organizations, and women networks at the grassroots level working on women's peace-building and service provision, including on funding related issues. Specific challenges include:

**Participation:** the number of female uniformed personnel remains critically low (see data below), and particularly so in senior management positions.<sup>57</sup> At political level, and in peace processes more generally, there remain some major gaps in areas of interest to OSCE such as the limited female representation in decision-making position in the Italian Ministry of Foreign Affairs.

**Prevention:** the assessment found little or no reference to the efforts by Italy on early warning and preventive diplomacy, and prevention activities more in general, which, despite OSCE emphasis, remains a largely untapped area of work for Italy.

**Relief and recovery:** besides efforts to increase women's involvement in the stabilization and reconstruction processes through increased interaction with the local female population, Italy lacks a solid peace-building approach as manifested by the limited focus on gender-inclusive mediation processes, on building the capacity of women at the grassroots level, and better defining the role of civil society in the efforts for the maintenance of peace and security.

## 2.5. The State of the Art of Implementation by Italy

Italy's efforts towards the implementation of the women, peace and security agenda have been, and continue to be, multiple and diverse. The three consecutive NAPs signs Italy's sustained commitment to the implementation of UNSCR 1325 and following resolutions, including the security-related issues that are in the OSCE realm, and clearly showcase Italy's intention to progressively align with the guidance provided by OSCE for the design of effective mechanisms for implementation of such resolutions.

<sup>57</sup> See OSCE commitment on this in OSCE, MC.DEC/14/05.

Given the five years' time frame, the focus has been primarily on the last two NAPs. Before looking into them however, it is first important to lay out a few general considerations that apply to all three. Firstly, the Italian NAPs have been developed in compliance with relevant EU and NATO policies and frameworks and lay out priority activities at both domestic and international levels. Secondly, the focus has laid heavily on women's participation and presence in military forces at both national and international levels, and the progress made by Italy on this front. Combating violence against women is another stated priority in Italy's agenda for peace and security as expressed by the series of initiatives both at national and international levels and highlighted in the respective reporting across the three plans.<sup>58</sup> Among them, the Action Plan on Violence against Women Italy first adopted by the State-Regions Conference on October 2010,<sup>59</sup> and the 2013 Declaration on the Prevention of Sexual Violence in Conflict (PSVI),<sup>60</sup> as well as the 2013 Istanbul Convention on preventing and combating violence against women and domestic violence are just a few examples.

A third consideration relates to the learning process which Italy went through in the context of the development of the plans, as evident by the improvements made with each subsequent action plan, and their enhanced potential for effectiveness. The first NAP, for example, mainly focused on the number of women in the national police and armed forces and in peace operations. It provided a description of achievements and commitments in all the indicated sub-goals, but lacked timelines, lines of responsibility and a dedicated budget. On the other hand, the second NAP features a slightly stronger reference to the importance of the active participation of civil society in the context of the newly established inter-ministerial working group led by CIDU, presents a more detailed plan and includes good practices and indicators for measuring results.<sup>61</sup>

Despite these improvements, at the time the 1325 NATO Scorecard was

<sup>58</sup> For example, the first NAP posed a particular emphasis on Female Genital Mutilation/Cutting, while the second focused on forced/or early marriage. NAP 2010-2013 and NAP 2014-2016.

<sup>59</sup> Reference to it can be found in the 2010 NAP, while the 2014 NAP mentioned the preparation of a new one. NAP 2014-2016, p. 3.

<sup>60</sup> Ibid., p. 10.

<sup>61</sup> Indicators are in line with the EU-Indicators for the Comprehensive approach to the EU implementation of the UN Security Council Resolutions 1325 and 1820 on women, peace and security [2011], 9990/11.

applied in 2015, Italy failed in each category of the template.<sup>62</sup> More specifically, findings pointed to the lack of a specific budget allocated to the implementation of the NAP; disproportionate outward focus with little or no attention to the advancement of the Women, Peace and Security agenda at the national level; and very limited attention to refugee and migrant women, besides issues such as trafficking and FGM. Procedurally, it highlighted that the role of civil society in both implementation and review, remained rather limited.

Much progress has been made since. Compared to the first two editions, the third generation NAP was designed in a much more inclusive way, with the involvement of many civil society actors active in the field of Women, Peace and Security. Crucially, this involvement stemmed from extensive consultations with civil society actors themselves that took place between July and November 2016.<sup>63</sup> Amongst the new features that resulted from such dialogue is the emphasis on women as agents of change, as well as recognition of the transformative nature of UNSCR 1325, which calls for non-violent and inclusive approaches to achieve peace and security. Other novelties introduced with the third NAP are a dedicated budget of two million euros for a period of three years, and the stated need for an integrated approach between the various initiatives of the government in this regard.

All of the above speaks to the gradual alignment of Italy with the criteria identified by OSCE for successful NAPs. More specifically, progress is evident in three out of the four criteria identified by OSCE, namely the adoption of a much more inclusive approach, the allocation of specific resources for the implementation of the plan, and the inclusion of a set of indicators.

Content-wise, the efforts made by Italy for the implementation of the women, peace and security agenda are broadly analysed around the four

<sup>62</sup> Importantly, the Scorecard encompasses a simple set of indicators that evaluate how well or how poorly NATO member states (and partners) are implementing the principles of UNSCR 1325 in military organizations and operations. Indicators are not intended to be comprehensive, rather they provide a picture of where a country stands in meeting the objectives of UNSCR 1325 in national security policies and operations.

<sup>63</sup> Consultations took place within the framework of the recently established Platform on Gender-sensitive Interventions and Peace Processes (GIPP), which comprises the following civil society organizations: Centro Studi Difesa Civile, Pangea ONLUS, Women International League for Peace and Freedom (WILPF) Italia, Agenzia per il Peacebuilding, Movimento Nonviolento, Punti di Vista, Differenza Donna, Un Ponte per Libera. Associazioni, nomi e numeri contro le mafie, A Sud and a few independent experts. Pasquinelli (2017).

pillars of: participation, prevention, protection and relief and recovery. Inter-linkages between them are also reflected where relevant.

### 2.5.1. Participation

In line with the findings from the OSCE review and with a general trend observed for other States,<sup>64</sup> participation is by far the most developed pillar of all four, and the one Italy has focused most of its efforts on. The pillar refers to enhancing women's full participation in all processes related to peace and conflict. This includes female presence in the police and armed forces as well as participation at political level, and in peace processes more generally, including in decision-making positions. Actions in the direction of increased female participation take the form of appointments of gender advisors and increased percentage of female uniformed personnel, while women's participation in the political sphere as well as in peace processes typically lag behind. Full implementation of the Sec Res 1325, in fact, requires both a domestic and international focus that covers activities at both levels, including procedures, policies, training means and assets, and gender balance within the forces.

While participation has been priority one across all Italian NAPs, efforts have been mostly directed to 'increase the number of women in the national police, armed forces, and in peace operations and decision-making bodies of peace operations'. Important progress has been made on this. Since 2000 more than 12.000 women have joined the Italian Army and Carabinieri, with no restriction with regards to recruitment, roles and responsibilities as compared to their male colleagues.<sup>65</sup> In addition, once granted, entrance by women was not precluded in any of the sectors or specialties. Moreover, training, deployment, career path and opportunities have always been the same for both male and female personnel, both nationally and when employed on missions abroad. Currently, women account for about 5% of the personnel in the Armed Forces. According to the most recent data collected in December 2016, the number of women is 5.991 (6.30%) in the armed forces; 1.246 (3.10%) in the aeronautics; 2.041 (5.20%) in

<sup>64</sup> OSCE (2014A).

<sup>65</sup> Since 2006 the maximum quotas initially established by act No. 380 of October 20, 1999 have been abolished in favour of full access of female personnel. Currently, there are only adjusting fitness standards as deemed necessary to take into account physiological differences.

the Navy; and 2.569 (2.47%) in the Carabinieri.<sup>66</sup> The State Police was the first body to allow access by women in 1959. As of June 2013, the Italian Police accounted for 15,219 women, which represented about 30% of the total personnel.<sup>67</sup>

The latest data on the number of women employed at the Italian Ministry of Foreign Affairs dates December 2016. It yielded a ratio of 15 women to 32 men in Directorial positions; 57 women to 52 men as APC officials; 209 women to 958 men as diplomats; and the number of women exceeded the number of men in functional area positions.<sup>68</sup> The Italian Ministry of Defence seems to be faring much better with 8,000 women covering about 50% of management positions, and a woman Minister of Defence since 2014.<sup>69</sup>

While the presence of female uniformed personnel has now become a normal occurrence both nationally and internationally, female numbers still remain critically low. Italy's contribution to peacekeeping missions dates back to the 1960s, just a few years after its admission in the UN. Italy has since participated to 33 UN peacekeeping operations worldwide, and the engagement with the UNFIL II mission in Lebanon since 2006 remains Italy's largest contribution. Moreover, Italy is currently the top contributor to UN peacekeeping operations from NATO, the EU and the Western European and Others Group (WEOG), with 1,126 mission personnel as of April 2018.<sup>70</sup> Of them, however, only 45 are women. In addition to date, there is still not a single woman serving in the Italian Special Forces.

Italian peacekeepers are sourced from national contingents and therefore tend to reflect the percentage of female personnel employed there. The number of female officers in senior positions is also limited due to their relatively recent entry into the armed forces and the need to follow the traditional career path.

Another important advancement is noteworthy. Since 2014, the Italian Ministry of Defence has created a Gender Advisor position at Commander level to advice on gender at both strategic and operational levels. This resulted from a specific recommendation put forward by NATO following

<sup>66</sup> Rauti (2018), para 4.

<sup>67</sup> NAP (2014-2016), p. 14.

<sup>68</sup> Italian Ministry of Foreign Affairs (2017), p. 24.

<sup>69</sup> Roberta Pinotti has been Italian Minister of Defence since February 2014.

<sup>70</sup> Almost all (1096) are deployed to UNIFIL, available at <https://peacekeeping.un.org/en/troop-and-police-contributors>.

the application of the 1325 Scorecard to member states in 2015.<sup>71</sup> Gender Advisors are requested to undertake a NATO certified training, the content of which can be consulted in the page of the Italian Ministry of Defence.

## 2.5.2. Prevention

Similarly, to other states, Italy interprets this pillar as relative to the prevention and resolution of conflicts as well as to the prevention of sexual and gender-based violence, and the importance of women's equal and meaningful participation therein.

Activities under this pillar generally include early warning systems, preventive diplomacy and mediation, and efforts to tackle the root causes of conflict. Consistently with what was observed in the OSCE review, activities in the area of conflict prevention and women's roles therein, are rarely included in NAPs.<sup>72</sup> Italy is no exception to this. Besides a quick reference to General Recommendation No. 30, which details among other the role of women in conflict prevention,<sup>73</sup> as an international obligation Italy abides to, there is no activity specifically meant to enhance women's role and representation in either formal or informal prevention efforts such as preventive diplomacy or mediation or addressing early warning systems and the need for a gender perspective therein.

On the other hand, references to the prevention of sexual and gender-based violence abound. Since the terms prevention and protection are often used interchangeably with reference to sexual violence, and the activities lying in the prevention and protection remit related to sexual violence overlap, discussion of them will be grouped under the pillar of protection, to avoid repetition.

A slight improvement was observed in NAP 2016-2019 with two actions listed under Goal 1 on 'Strengthening the role of women in peace processes and in all decision-making processes' that make reference to prevention. More in particular, action 3 calls for the creation of a Network of women mediators from the Mediterranean area; while action 4 for building the capacity of women and their civil society organizations to engage in prevention and response efforts, especially in sectors such as

<sup>71</sup> Ministero della Difesa (2015).

<sup>72</sup> OSCE (2014), p. 54.

<sup>73</sup> Revised NAP (2014-2016), p. 9.



DDR, electoral processes, etc.<sup>74</sup> The way activities are formulated as well as references to typical post-conflict sectors such as Election and DDR may however suggest a focus on the relief and recovery pillar rather than on prevention.

This is perhaps the area of major divergence between Italy and OSCE, and the one that necessitates more improvement.

### 2.5.3. Protection

In pursuant of the OSCE's commitment to the prevention of gender-based persecution, violence and exploitation,<sup>75</sup> Italy identified the protection of the human rights of women, children, and other vulnerable groups among the six priorities set forth in the first NAP in 2010, which was maintained throughout the most recent NAP 2016-2019.

Italy has been a forerunner in the fight against sexual and gender-based violence, and a significant supporter to the adoption of resolution 1820 (2008) on sexual violence in armed conflicts, and its recognition as a threat to international peace and security.<sup>76</sup> It was one of the first countries to support the Istanbul Convention on preventing and combating violence against women and domestic violence, as ratified by Act No. 77 dated 26 June 2013. In this context, the Italian government also committed to raise awareness of the ratification among all EU partners.<sup>77</sup>

On this, both the 2014-2016 and the 2016-2019 Plans list a wide spectrum of activities ranging from support to activities on protection of women and girls from violence conducted by international organizations such as IOM and UNFPA in the Middle East and other regions, to the extension of the Peacetime Military Criminal Code to all military operations abroad, to the provision of assistance to victims of FGM, domestic and other forms of violence, in compliance with the provisions of the Istanbul Convention.

Importantly, this is also the area where efforts by Italy have been more evenly spanned across the international and national levels, not only in relation to migrants or refugees, but also to nationals. In July 2015, an Extraordinary National Action Plan against Sexual and Gender-Based Violence was adopted and a National Observatory on Violence was set up,

<sup>74</sup> NAP (2016-2019), p. 12.

<sup>75</sup> OSCE MC DEC/15/05.

<sup>76</sup> Revised NAP (2014-2016), p. 8.

<sup>77</sup> Revised NAP (2014-2016), p. 2.

made up of three working groups on legislation, protection paths and a strategic framework.<sup>78</sup> The Plan addresses all forms of violence against women and recognizes the importance of a holistic and multilevel approach that includes prevention, protection of victims, punishment of offenders, and risk reduction.<sup>79</sup>

Another issue of grave concern to Italy is human trafficking, as evident by the its references found in the second and third NAPs, as well as by the numerous initiatives undertaken by Italy in this regard, including the adoption of the National Action on the Fight against Trafficking in February 2016. In occasion of its one month Presidency of the UN Security Council in November 2017, Italy held an Open Debate on the Maintenance of Peace and Security, with a focus on trafficking in persons in conflict situations.<sup>80</sup> Most statements made specific reference to the Women, Peace and Security Agenda and recognized women as disproportionately affected by human trafficking, especially in relation to sexual and gender-based violence (SGBV), sexual slavery and servitude. Moreover, evidence found women being special targets of terrorist groups who employ various forms of sexual violence as tactics of war. Finally, prevention of harmful traditional practices such as Female Genital Mutilation is also high on the Italian priority list, including at the international level.<sup>81</sup> Perhaps one area that still lags a little bit behind is protection from Sexual Exploitation and Abuse (PSEA), as evident by the limited reference to it in both NAPs as compared to other forms of violence.<sup>82</sup>

Among the provisions of UNSCR 1820, Member States are requested to train peacekeepers on how to prevent, recognize and respond to sexual violence.<sup>83</sup> Similarly, training is critical to raise awareness on gender issues and to build the right skills to address them in conflict prevention, response, and peace-building activities. This is in line with the OSCE commitment to upholding human rights and equality between men and women

<sup>78</sup> A new updated Plan was meant to be adopted by Italy in the summer of 2017, but the author could not find any reference to it. Revised NAP (2014-2016).

<sup>79</sup> See both Chapter 4 by Capone and Chapter 3 by Scarpa in this volume.

<sup>80</sup> Security Council Open Debate ‘Maintenance of International Peace and Security: Trafficking in Persons in Conflict Situations’.

<sup>81</sup> Promotion of women’s rights, the fight against gender-based violence, and in particular the practice of female/genital mutilation (FGM) are listed among the priorities of the Italian Cooperation since the 2010. NAP (2010-2013), p. 10.

<sup>82</sup> Revised NAP (2014-2016), and NAP (2016-2019).

<sup>83</sup> SC Res. 1820, UN Doc, S/RES/1820 (19 June 2008), para 8.

are essential to sustainable peace and security, including through training and awareness raising initiatives.

Training, particularly of personnel on peace missions, is set as a priority in all NAPs and cuts across all SC Res. pillars. Due to the multidimensional nature of peacekeeping operations, unformed personnel have been increasingly trained on issues such as civil-military cooperation, interaction with the local population, sexual violence, protection of human rights, and trafficking of persons. Italian efforts on training and awareness raising on issues of relevance to the Women, Peace and Security agenda have been numerous over the years. While a comprehensive account of them is outside the scope of this paper, few of them are worth mentioning as they are particularly exemplary and illustrative of the wide-range of efforts made by Italy in this regard.

First, established as an Italian-US initiative, the Centre of Excellence for Stability Police Units (CoESPU) has been operating in Vicenza since 2005 under the authority of the Carabinieri Force to provide specific training for police personnel from various troop-contributing countries for deployment in peacekeeping operations. Among the courses provided, many are of relevance to the Women, Peace and Security agenda such as: Conflict related Sexual Violence, International Legal Framework on Gender Equality, Mentoring and advising on SGBV, as well as Protection from Sexual Exploitation and Abuse. Of particular relevance to this paper, the COESPU has, since 2014, established a specific course on Gender and Protection in Peace Support Operations with contribution from gender and protection experts from academia, the army, and practitioners from various international organizations.<sup>84</sup> Other initiatives include the International Institute of Humanitarian Law's (IIHL) project on 'Enhancing training on Women, Peace and Security: integrating a gender perspective into international operations' targeted to all personnel engaged in armed conflict scenarios, as well as the workshop organized jointly by the IIHL and CoESPU on 'Enhancing Diversity Skills in International Operations' in March 2018.<sup>85</sup> Importantly, this is one of the few initiatives looking into diversity issues such as sex, sexual orientation and gender identity, ethnicity, race,

<sup>84</sup> The author of this paper has been a founder and active contributor to this course, as well as to other courses held by CoESPU.

<sup>85</sup> This is the first of a series of three workshops organized within the framework of the 'Enhancing training on Women, Peace and Security: integrating gender perspective into international operations' project in 2018.

and other diversity backgrounds, and how these traits shape a person's opportunities, capacities, needs and risks.

Of relevance, trainings have been targeted to both national and international personnel, from both the army and civilian sectors. While generally the focus has been primarily on personnel taking part in peace operations, NAPs also contained references to training for the judiciary and Customs and Excise police, particularly in relation to migration and refugees, as well as for health workers on health assistance to migrant women and children.

#### 2.5.4. Relief and Recovery

Finally, relief and recovery are a very comprehensive endeavour that comprises a wide variety of activities such as provision of humanitarian aid as well as stabilization, rehabilitation and reconstruction efforts.

Civil-military cooperation (CIMC) has long been recognized as an essential dimension of the redefined peacekeeping missions' multidimensional and comprehensive approach, which goes beyond purely military interventions to also include activities in the social, economic and political realms. Integrating a gender perspective in CIMIC activities contributes to operational effectiveness, as it allows to better reach to the whole population and has the potential to increase local support and acceptance of the mission.<sup>86</sup> CIMIC initiatives within peace operations also provide important opportunities for women's participation in stabilization and reconstruction efforts, including facilitating women employment in local institutions and inclusion across the various phases of the peace process, all of which are areas of interest to OSCE.

Along with the changes that have characterized peacekeeping missions in the past years, and in response to the need for a closer and more effective interaction with local populations, Italy established the so-called Female Engagement Teams (FETs) in 2005.<sup>87</sup> FETs are special units specifically mandated and equipped to cooperate with the local population, particularly women, in peacekeeping missions. Additional responsibilities of FETs are

<sup>86</sup> Istituto Affari Internazionali (IAI) (2017), p. 10.

<sup>87</sup> For example, FETs have been used to engage with women in Afghanistan. Existing evaluation of the use of FETs indicated their effectiveness in rapport building, enabling access to women on the ground, thus increasing the chances of better capturing their needs and priorities and influence. Rohwerder (2015) and FIDAPA BPW Italy (2017).

to protect women's rights and encourage the development of Civil-Military cooperation (CIMIC) projects to promote gender balance.

Italy is leader of the Multinational CIMIC Group (MNCG),<sup>88</sup> an Italian Army Unit specialized in civil military cooperation affiliated with NATO. Other contributing states are Greece, Romania, Slovenia, Portugal and Hungary. The Group is responsible for the training of the Female Engagement Team (FETs), among other tasks. The training is specifically meant for female personnel who will be deployed overseas and is designed to equip FETs to conduct a series of tactical tasks such as facilitating women employment in local institutions and promoting local projects and social activities to the benefit of the female population.<sup>89</sup>

Both the establishment of Gender Advisors and FETs are usually referred to as part of the efforts to increase women's involvement in the stabilization and reconstruction processes whereby their unique potential for interaction with the local female population to the benefit of the latter, is underlined. For these reasons, the initiatives been accounted for under the relief and recovery pillar. Moreover, together with CIMIC and other projects they can offer opportunities for advancing the view of women as 'agents of change', not just victims in their communities, as well as active players in institutional and social building and reconstruction efforts.

A recent review of the Italian intervention in Afghanistan provides a very complimentary picture of the capacity of the Italian mission in Herat to integrate a gender perspective in its operations, both prior to and following the adoption of the first NAP in 2010. Among the most significant measures that followed the NAP are the establishment of the Gender Advisor position and of the FETs within ISAF operations, as well as other projects specifically realized by the Italian forces such as the construction of a correctional centre for women, a female orphanage, shelters for women, and several female schools.<sup>90</sup> In general, addressing and integrating gender issues in the Italian mission in Afghanistan have allowed building a rapport with the local population, thus increasing the force's acceptance as well as the security of the Italian presence.<sup>91</sup> Finally, the review highlighted the role of CIMIC personnel and projects as critical to

<sup>88</sup> CIMIC Group (1999), para 1.

<sup>89</sup> The first training took place in Herat, Afghanistan, in 2011. Ministero della Difesa (2000D), para 2, and CIMIC Group 2017.

<sup>90</sup> Sartori, Scalia (2017), p. 17.

<sup>91</sup> Ibid., p. 19.

the empowerment of women and to streamline gender-related activities in conflict situations.

As far as other activities are concerned, action 2, Goal 5 of the third NAP reads ‘Supporting the relief, recovery and rehabilitation of women and girls, affected by conflict and post-conflict areas’.<sup>92</sup> Reference however is again to the training for health-care personnel assisting migrants carried out in collaboration with IOM, which Italy had already reported on the second NAP.

Refugees remain a largely disregarded category both in the 2014-2016 and in the 2016-2019 NAP. Reference to the refugee cohort was only found in relation to the System for the Protection of Asylum-seekers and Refugees (SPRAR), an integrated system used by national authorities, local bodies and associations for assisting people fleeing from war and persecution, and to the upcoming ‘Guidelines on health-care and rehabilitation of refugees and those entitled to subsidiary protection, who have been victims of torture, rape, or any other serious form of violence’.<sup>93</sup> In general, the assessment found little attention by Italy to diversity factors such as ethnicity, race, religion, sexual identity and orientation, which are gaining momentum in the narrative and practice of conflict prevention and peace building, and are key to a full understanding of and for effectively addressing the needs, risks and capacities of all.

Finally, the National Civil Service established in Italy 2001<sup>94</sup> is worth mentioning in relation to the active and meaningful engagement of the Italian civil society to the promotion and realization of human rights both nationally and internationally, thus contributing to international peace and security. The Civil Service was created as an alternative to mandatory national military service, as a possibility given to young people from 18 to 28 years old to dedicate a year of their lives toward a solidarity commitment.<sup>95</sup> Among the realms of action of relevance to peace and security is aid to refugees and migrants, in support of their integration in the social fabric. Of importance, the establishment of the Civil Peace Corps (CPCs) in 2016 has provided for an enhanced role and new scope for civil society organiza-

<sup>92</sup> NAP (2016-2019), p. 20.

<sup>93</sup> NAP (2016-2019), p. 21.

<sup>94</sup> Law n. 64 6th March 2001.

<sup>95</sup> Between 2001 and 2016, a total of 382,598 volunteers have been participating in the service, available at <http://www.serviziocivile.gov.it/menusx/servizio-civile-nazionale/scn-in-cifre/volontari.aspx>.

tions in the Italian efforts towards the maintenance of international peace and security, including in the areas of mediation and reconciliation.<sup>96</sup> The assessment however did not find any evidence of projects specifically targeted to women, or aimed at increasing women's participation at different level of gender mainstreaming efforts more in general, which could be inserted among Italy's efforts for the implementation of the women, peace and security agenda.

## 2.6. Recommendations and Measures to Be Taken by Italy to Be in Line with OSCE Standards and Commitments

While progress in the past years has been growing steadily, some areas of focus suggested by the SC Res 1325 remain largely untapped by Italy. Recognizing it is a process, continue efforts are needed by Italy to maintain and build on the achievements made so far to advance on women, peace and security agenda in general and better align Italy's priorities and actions to those set forth by OSCE. Close monitoring of activities established with the latest NAP and strengthen investments in areas where Italy is still lagging behind would certainly ensure further improvements in view of the deadline of 2019.

Albeit with the aforementioned challenges, NAPs remain important soft law tools to advancing the implementation of SC Res. 1325. Adoption in itself constitutes a compliance pull as it shows commitment to a set of goals and actions the government will be held accountable for. Importantly however, the compliance capacity of a NAP depends largely on the way goals and intentions are formulated and measured. As far as Italy is concerned, only the last NAP with its better-defined targets and benchmarks provides a credible and effective framework to evaluate the state's performance against the implementation of the women, peace and security provisions, consistently with OSCE suggestions in this regard.

Below is a set of recommendations for addressing the challenges described above and to enhance adherence by Italy to the OSCE's commitments on women, peace and security. As for the findings, recommendations have been broadly organized around the four pillars of participation,

<sup>96</sup> Mascia, M., Papisca, A. (2017).

prevention, protection and relief and recovery, with training cutting across all four and thus discussed at the fore. Recommendations are both procedural (how to) and content-related (what) and are meant to enhance the implementation of the women, peace and security agenda as well as Italy's alignment with OSCE.

### Training

- Continue investing in building the capacity of all relevant personnel on gender mainstreaming, women's rights and protection from gender-based violence, in order to ensure a basic understanding across the board regardless of position and role both on mission as well as in-country; therefore, assuming that responsibility for gender integration does not rest solely with the Gender Advisor or expert.
- Ensure attention to diversity (national, race, ethnicity, religious, etc.) is progressively reflected in all capacity building initiatives.
- Building on the Roster on Experts on SC Res. 1325 established by CIDU, ensure specific expertise on gender, protection, including Protection from Sexual Exploitation and Abuse (PSEA) and GBV is available on short notice and on a roaming basis, with a particular focus on female candidates.

### Participation

- Continue investing in female representation and meaningful participation at political and military levels, with a particular focus on key management and decision-making positions in conflict prevention, peace building and reconstruction efforts.
- Consider initiatives for the promotion of women's participation at the national and local levels, including with the active participation of civil society, and grassroots organizations.
- Increase the number of Gender Advisors at the Commander level and their influencing potential both nationally and in peace operations abroad.
- Consider having a clear entry-point for women to participate in the Special Forces.
- Consider positive actions to speed up the process of participation of women, including in international tasks, with a particular focus on management and decision-making level and position.



### Prevention

- Consider investing in the area of conflict prevention, and gender-inclusive mediation. Examples in alignment with efforts at OSCE level on this are: engaging women in preventive diplomacy and mediation processes; engaging women in arms control efforts; and integration of gender-sensitive indicators in early warning systems.
- Clearly signpost the boundaries of activities, budgets and personnel related to electoral processes and DDR amongst others, en route to the conflict prevention agenda.

### Protection

- Actively include men and boys in the efforts against SGBV.
- Increase and systematize efforts to counter Sexual Exploitation and Abuse by troops and other personnel employed on mission, including awareness of consequences and procedures for prosecution of offenders.
- Enhancing synergies with civil society on the prevention and protection from various forms of GBV, both nationally and in peace missions abroad.

### Relief and Recovery

- Expand the focus on women refugees and asylum seekers, beyond issues of violence.
- Clarify what regarding women as ‘agents of change’ entails in the policy and practice of Italian personnel both nationally and abroad, including the ‘how to’ of supporting women’s roles as change agents in peace processes.
- Consider investments in other relief and recovery efforts in line with the priorities set by OSCE such as for example gender-inclusive mediation processes, and the inclusion of women in peace-building and reconstruction efforts.
- Take the opportunity of Civil Peace Corps volunteers and projects to further ensure gender mainstreaming and the participation of women’s in all phases of conflict prevention, and post-conflict reconstruction and recovery.

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## Chapter 3

# The Implementation of the OSCE Commitments on Trafficking in Human Beings by Italian Authorities

by Silvia Scarpa\*

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### 3.1. OSCE Commitments and Relevant International Framework

The OSCE commitments in the field of combating trafficking in human beings are comprehensive and multi-dimensional and they are solidly founded on legal standards promoted internationally by relevant international organizations. An overview of the commitments and of the international and regional standards on human trafficking that are relevant to the independent assessment of the Italian legal and institutional framework, which was promoted by the OSCE Italian Chairmanship, follows.

#### 3.1.1. The OSCE Human Rights Based and Victims-Centred Approach to Trafficking in Persons

The fight against trafficking in human beings figures prominently among the priorities of the Organization for Security and Cooperation in Europe (OSCE) and it fits well all the three OSCE dimensions – namely the politico-military, economic and environmental and human ones – and comprehensive approach. The first reference to the necessity to fight against ‘all forms of traffic in women and exploitation of the prostitution of women’ was made by the OSCE participating States in the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE held in October 1991.<sup>1</sup> It is, however, at the Istanbul Meeting held in November 1999 that the focus of OSCE participating States is broadened to guarantee that the fight would comprehend ‘all forms of trafficking in *human beings*’.<sup>2</sup> Finally, in 2000 the OSCE participating States recognize that trafficking in persons is ‘an abhorrent human rights abuse’.<sup>3</sup> Since then the organization has been at the forefront of the promotion of the fight against trafficking in persons in its 57 participating States and has greatly contributed to the promotion of a Human Rights Based and Victim-Centred Approach, through the development of a series of advanced and comprehensive anti-trafficking political commitments that are solidly founded on the 2003 *OSCE Action Plan to Combat Trafficking in Human Beings*, on its 2005 *Addendum addressing Special Needs of Child Victims of Trafficking for Protection and Assistance*, and 2013 *Addendum*

<sup>1</sup> OSCE (1991), para 40.7.

<sup>2</sup> OSCE (1999), para 24. Emphasis by the author.

<sup>3</sup> OSCE (2000), para 1.



*to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later.*<sup>4</sup>

The 2003 OSCE Action Plan to Combat Trafficking in Human Beings – annexed to the OSCE Ministerial Council Decision on Combating Trafficking in Human Beings adopted in Maastricht – constitutes the backbone of such a system of commitments.<sup>5</sup> The latter ones are framed in terms of the so-called ‘3Ps’ of prosecution, prevention, and protection of victims’ rights. A fourth ‘P’ dedicated to partnerships was subsequently included in the *2013 Addendum*, thus emphasizing the importance of co-operation with other States, international organizations and other partners in the fight against trafficking in human beings. In this way, the OSCE anti-trafficking commitments are aligned to the ‘4Ps’ model widely promoted internationally.

The OSCE Action Plan adopts a comprehensive approach to human trafficking that includes not only a focus on the actions framed in terms of the ‘4Ps’, but also attention to the ‘political, economic, legal, law enforcement, educational and other aspects of the problem’.<sup>6</sup> In the framework of such a multi-dimensional approach, the OSCE Action Plan places the focus on the respect for the human rights of the victims of trafficking, thus mainstreaming this issue into all the anti-trafficking commitments.

In 2003 the OSCE also established the position of a Special Representative and Co-ordinator for Combating Trafficking in Human Beings, which was rendered permanent within the Secretariat of the Organization in 2006. The OSCE Special Representative promotes the implementation of the anti-trafficking commitments by the 57 OSCE participating States and, upon request, assists them in this task;<sup>7</sup> moreover, she co-ordinates the OSCE efforts in fighting against trafficking in persons and can conduct country visits. In this framework, the OSCE Special Representative visited Italy for the first time in 2013.<sup>8</sup>

The OSCE has no system in place for monitoring the implementation by the participating States of the anti-trafficking commitments.

<sup>4</sup> Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2015), p. 22.

<sup>5</sup> OSCE Ministerial Council (2003).

<sup>6</sup> OSCE Ministerial Council (2003), para 1.1.

<sup>7</sup> Ibid., para 1.

<sup>8</sup> Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013), p. 1.

However, during its OSCE Chairmanship in 2014, Switzerland initiated a process of independent evaluation of the national implementation of OSCE commitments. A similar assessment was subsequently conducted by Serbia in 2015 and it was further consolidated by Germany in 2016. While Serbia and Austria didn't include trafficking in human beings among the topics discussed in their independent evaluations,<sup>9</sup> the independent evaluations conducted by Switzerland and Germany contained a relevant analysis of the national implementation of OSCE commitments in this field.<sup>10</sup>

The OSCE commitments addressing the issue of human trafficking are multidimensional, comprehensive and detailed. On the contrary, there is not a permanent and independent mechanism in place for evaluating their implementation by the 57 OSCE participating States. Therefore, it is suggested that the monitoring process is streamlined in the future and integrated into the regular work of relevant OSCE offices and mandates. In particular, for what concerns the issue of combating against trafficking in persons, 'the OSCE Special Representative could contribute to the self-evaluation by the Chairmanship' ... '[and] could make a visit to the OSCE Chairmanship country' ... '(unless human trafficking is unlikely to be part of the self-evaluation)'<sup>11</sup>, as a way to support the work of the selected national independent institution tasked with the evaluation of the respect of the OSCE commitments by the OSCE Chairmanship country.

### 3.1.2. International and Regional Standards in the Field of Trafficking in Persons

The relevant international framework on trafficking in human beings applicable to Italy is rich and comprehensive. Italy is in fact a party to many international treaties containing obligations in the field of trafficking in persons. The country ratified the most important universal treaties in this field, namely the Convention against Transnational Organized Crime and the two Protocols on Trafficking in Persons, in Particular Women and Children and on the Smuggling of Migrants by Land, Sea and Air on 6

<sup>9</sup> See: Ministry of Foreign Affairs of the Republic of Serbia (2015); European Training and Research Centre for Human Rights and Democracy (2017).

<sup>10</sup> See: German Institute for Human Rights (2016), p. 63; Swiss Centre of Expertise in Human Rights (2014), p. 96.

<sup>11</sup> Swiss Centre of Expertise in Human Rights (2014), p. 100.

August 2006. The Convention and Protocols were rendered effective in Italy with the adoption of Law No. 146 of 2006.<sup>12</sup>

The country is also a party to all the core UN human rights treaties,<sup>13</sup> including *inter alia* the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography that are of particular relevance to this assessment.

In the framework of the International Labour Organization (ILO), Italy is a Party to 75 treaties including all the 8 Fundamental Conventions and 4 Governance ones.<sup>14</sup> Of particular relevance for the area of human trafficking are the following treaties ratified by Italy: the Convention No. 29 concerning Forced and Compulsory Labour, the Convention No. 105 concerning the Abolition of Forced Labour, the Convention No. 182 on the Worst Forms of Child Labour, the Convention No. 81 concerning Labour Inspection in Industry and Commerce, the Convention No. 129 concerning Labour Inspection in Agriculture, and the Convention No. 189 concerning Decent Work for Domestic Workers. It is worth noting, however, that Italy has not yet ratified the Protocol of 2014 to the Forced Labour Convention No. 29, so that it is recommended that the country considers ratifying such treaty as a matter of urgency.

At the regional level, Italy – which is a member of the Council of Europe (CoE) since its establishment – is a Party to a relevant number of treaties<sup>15</sup> promoted by this organization, including, in particular, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>16</sup> to the 2005 CoE Convention on Action against

<sup>12</sup> *Legge 16 marzo 2006, n. 146 – ‘Ratifica ed esecuzione della Convenzione e dei Protocolli delle Nazioni Unite contro il crimine organizzato transnazionale, adottati dall’Assemblea generale il 15 novembre 2000 ed il 31 maggio 2001’* 2006 (Italy).

<sup>13</sup> With the only exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It is worth noting, however, that the latter has been ratified by a low number of countries.

<sup>14</sup> International Labour Organization (2018).

<sup>15</sup> Also, of special relevance are, *inter alia*, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Council of Europe Convention on preventing and combating violence against women and domestic violence, the Convention on Cybercrime, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

<sup>16</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, CETS No. 194.

Trafficking in Human Beings,<sup>17</sup> and the European Convention on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT).<sup>18</sup>

While the ECHR doesn't refer specifically to trafficking in persons, since 2010 the European Court of Human Rights has interpreted its Article 4 prohibiting slavery, servitude and forced labour as including a prohibition of trafficking too.<sup>19</sup> *M. and Others v. Italy and Bulgaria* is the only individual complaint against Italy recently examined by the European Court of Human Rights.<sup>20</sup> However, while the Court found a procedural violation of Article 3 by Italy for having failed to effectively investigate the case of ill-treatment of M., a young Bulgarian girl of Roma origin who travelled to Italy for being married to a Serbian citizen who supposedly ill-treated and forced her to work, it considered manifestly ill-founded the remainder of the complaint concerning the allegation that M. had been trafficked.

Italy deposited its instrument of ratification of the 2005 CoE Trafficking Convention on 29 November 2010, so that the treaty entered into force on 1 March 2011. The treaty is the most comprehensive and advanced international binding instrument dealing with all the aspects of human trafficking existing worldwide. It is founded on the '4Ps' model of measures aimed at preventing human trafficking, prosecuting the offenders, protecting the victims and laying down partnerships to guarantee the necessary cooperation among the relevant actors, for the purpose of fighting against the phenomenon. Moreover, it promotes a human rights-based approach, gender mainstreaming and a child-rights approach.<sup>21</sup>

When compared with the UN Trafficking Protocol, a great innovation of the CoE Trafficking Convention is the establishment of a monitoring mechanism that supervises the implementation of the Convention by the Parties. Such monitoring mechanism is composed by two bodies: 1. The Group of Experts on Action against Trafficking in Human Beings (GRE-

<sup>17</sup> Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings, 2005, CETS No. 197 (CoE Trafficking Convention).

<sup>18</sup> Council of Europe, European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, 1987, ETS No. 126.

<sup>19</sup> *Rantsev v Cyprus and Russia* Application No 25965/04, Merits and Just Satisfaction, 7 January 2010.

<sup>20</sup> *M. and Others v Italy and Bulgaria* Application No 40020/03, Merits and Just Satisfaction, 31 July 2012.

<sup>21</sup> Article 5.3 of the COE Trafficking Convention.

TA) that is a technical body composed by highly qualified experts; and 2. The Committee of the Parties, a political body composed of representatives of all the States Parties to the Convention.<sup>22</sup> GRETA has already carried out two evaluation visits to Italy. The first visit was carried out in 2014. This led to the adoption of a Recommendation by the Committee of the Parties on 5 December 2014 and to the subsequent submission of a report by the Italian authorities on the measures taken to comply with it. In addition to this, an urgent procedure was conducted by GRETA, as including a country visit of GRETA experts that took place from 21 to 23 September 2016 and that led to the adoption of a second report on the situation in the country. Finally, a delegation of GRETA visited again Italy between 29 January and 2 February 2018 as part of its second evaluation round, but the Group has not yet published its report on the results of the visit.

Italy is also bound to respect relevant European Union (EU) legislation. The most important EU act in the field of trafficking in persons is 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. The Italian authorities transposed Directive 2011/36/EU with Legislative Decree No. 24/2014. The latter – as it will be better explained *infra* - introduced relevant amendments to Articles 600 and 601 of the Criminal Code, namely the two relevant provisions criminalizing slavery and trafficking in human beings.

Italy is also bound to respect and render effective the provisions included in relevant EU legislation, including *inter alia* Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subjects of an action to facilitate illegal immigration, and who co-operate with the competent authorities, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, Directive 2004/80/EC relating to compensation to crime victims and, finally, all the acts enacted in the field of the common asylum system.<sup>23</sup>

<sup>22</sup> Articles 36 - 38 of the COE Trafficking Convention.

<sup>23</sup> See Chapter 1 by Favilli in this volume.

## 3.2. Legal and Institutional Framework in Italy

The Italian legal and institutional framework in the area of human trafficking is complex and it has been subjected to various amendments aimed at improving the system in place. Therefore, an analysis of the legislation in the fields of trafficking in human beings, unlawful gang-mastering and labour exploitation, and migrant unaccompanied minors at risk of trafficking in so far as this is relevant for assessing the implementation by Italy of the OSCE commitments follows. Some considerations on the legislation in the fields of immigration and international protection that might be relevant to trafficking are also included in this section.

### 3.2.1. Trafficking in Human Beings

The geographical location of Italy in the centre of the Mediterranean area and its extended coastline of more than 8.000 kilometres contribute to rendering the country a relevant transit and destination point for irregular migrants and asylum seekers who want to reach European shores. Since the beginning of the Arab Spring and with the subsequent outburst of the war in Syria and the persistent situation of insecurity and stagnation in many Central and Western African countries, the country has seen a sharp increase in arrivals by sea starting from 2014.<sup>24</sup> It is believed that the increased number of arrivals by sea of irregular migrants and asylum seekers led to a consequent increase of victims of human trafficking in the country. For instance, the International Organization for Migration estimates that approximately 80% of the 11.009 Nigerian women, who arrived in Italy in 2016, are likely to be victims of human trafficking.<sup>25</sup> The number of victims doubled in respect of the previous year in which *only* 5.633 Nigerian women arrived in Italy. Moreover, the organization believes that many of the women are told by the traffickers to lie to the authorities and, therefore, they claim to be adults while they are instead minors. In such a way it is easier for their traffickers to get in contact with them and to collect them once that they are placed in accommodation centres for adults.<sup>26</sup>

<sup>24</sup> According to the Italian Ministry of the Interior, 181.436 migrants arrived in Italy in 2016 and 119.369 the following year. Data collected in the first months of 2018 show that there were 7.551 arrivals between 1 January and 20 April 2018. See: Ministero dell'Interno (2018).

<sup>25</sup> International Organization for Migration (2017), p. 9.

<sup>26</sup> *Ibid.*, p. 10.

Moreover, according to the European Migrant Smuggling Centre (EMSC) of the European Union Agency for Law Enforcement Cooperation (EUROPOL), approximately 25% of the smugglers transporting individuals across the borders towards European countries are poly criminals having links with trafficking in human beings.<sup>27</sup> Save the Children also confirms that there are links and porous borders between migrant smuggling and human trafficking, with an increase in the number of detected cases of children trafficked and exploited as a way to repay the debt incurred for being smuggled across the border.<sup>28</sup> The stories of migrants show a serious overlapping among the legal categories of trafficking in persons, the smuggling of migrants and asylum seekers with a consequent difficulty for authorities to identify correctly individuals, whose complex relationship with criminal organizations transporting and/or accommodating them and fragmented travel stories might be arduous to categorise.<sup>29</sup> This difficulty was recently acknowledged by the Parliamentary Commission of Inquiry on Mafias and Other Criminal Organizations, including Foreign Ones (*Commissione Parlamentare d'Inchiesta sul Fenomeno delle Mafie e sulle Altre Associazioni Criminali, anche Straniere*) that emphasizes how the recent evolution of the phenomenon of migration has rendered the crimes of human trafficking and the smuggling of migrants difficult to distinguish, so that every irregular migrant should be considered as a presumed victim of trafficking, thus deserving protection and assistance, pending the completion of the identification process.<sup>30</sup> This conclusion supports the one of some academics who – after the adoption of the Palermo Convention and Protocols - warned about this problematic aspect of the two definitions and about the possibility of an overlapping that might render ineffective the protective framework established for irregular migrants who are also trafficking victims, if they were not properly identified as such.<sup>31</sup>

The most common forms of exploitation for victims of human trafficking in Italy are sexual and labour exploitation. As reported by EUROPOL, Italy is one of the most common destinations for victims of trafficking for both

<sup>27</sup> EUROPOL European Migrant Smuggling Centre, (2018), p. 8.

<sup>28</sup> Save the Children (2017), p. 7.

<sup>29</sup> See, for instance: Degani and Pividori (2016), p. 7.

<sup>30</sup> Commissione Parlamentare d'Inchiesta sul Fenomeno delle Mafie e sulle Altre Associazioni Criminali, anche Straniere (2017), p. 63.

<sup>31</sup> Gallagher (2002), p. 27; Scarpa (2008), p. 69.

sexual and labour exploitation in Europe.<sup>32</sup> This latter form of exploitation occurs especially in agriculture, in the manufacturing and services' sectors and in meat processing plants.<sup>33</sup> There are also other residual forms of exploitation for trafficking victims in Italy, including in particular: forced begging – that is imposed especially on children - domestic exploitation and forced marriages.<sup>34</sup> Moreover, research demonstrates the extensive use of internet and social networks, in particular in the field of trafficking for the purpose of sexual exploitation, in some cases for e-recruitment activities but mostly for the advertisement of sexual services offered by victims.<sup>35</sup>

It is in this difficult framework that, in the last two decades, Italy has developed and fine-tuned an advanced and comprehensive legislative framework aimed at tackling trafficking in human beings. In particular, Article 18 of the Legislative Decree No. 286 of 25 July 1998<sup>36</sup> (*Italian Immigration Decree*) was the first piece of legislation in Europe aimed at combating trafficking in persons and guaranteeing protection to victims.<sup>37</sup> This provision, which is internationally recognised as a model in the field of victims' protection, foresees the granting of a special residence permit to trafficking victims for guaranteeing their social protection. The provision states that the residence permit can be issued to the trafficking victim on the basis of two procedures: the judicial path, for those victims who want to co-operate with the authorities by bringing charges against traffickers and exploiters and the social path, in which victims do not want to report to the authorities, but they are nonetheless in a situation of danger. Social assistance programmes are mostly run by local non-governmental organisations (NGOs) or social services; the latter bodies can file the application for the

<sup>32</sup> The other top-destinations for victims of sexual exploitation are Austria, Belgium, France, Germany, Greece, the Netherlands, Spain and the United Kingdom, while those for victims of labour exploitation are: Austria, France, Greece, the Netherlands, Spain, Portugal, Switzerland and the United Kingdom. See: EUROPOL 2016, paras 21, 24.

<sup>33</sup> In meat processing plants of the Region Emilia Romagna, concerns connected with the phenomenon of unlawful gang mastering and serious exploitation of the workers have recently emerged. See: Maccarrone 2017.

<sup>34</sup> For what concerns forced marriages, some cases of trafficking connected with marriage contracts between families belonging to Roma and Sinti communities have been recorded, with victims being exploited in forced begging and illicit activities. See: Save the Children (2017), p. 74.

<sup>35</sup> Di Nicola, et al (2017), paras 49-54.

<sup>36</sup> *Decreto Legislativo 25 luglio 1998, n. 286 'Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero'* 1998 (Italy).

<sup>37</sup> Special Rapporteur on Trafficking in Persons, especially Women and Children (2014), p. 7.



issuing of a residence permit under Article 18 on behalf to the victims to the local Police office (*Questura*). Thus, the Italian legislation recognizes the important role played by NGOs in protecting the victims and promoting their rehabilitation and reintegration into society.

The Article 18 permit-to-stay is issued for a duration of six months and it is renewable for an additional year or, eventually, for the duration of the judicial proceeding. It enables the victims to have access to social services and education and to be included in the national unemployment lists. Moreover, the permit can be converted into a residence permit for reasons of education or work, thus guaranteeing the possibility of a long-term stay for the trafficking victim in the country.

The success of this piece of legislation in helping victims getting out from situations of serious exploitation by trafficking rings is widely recognized and the Italian model constitutes the basis upon which the protection model included in Article 14 of the COE Convention on Action against Trafficking in Persons and Article 11 of Directive 2011/36/EU was founded. However, the uneven implementation of the legislation by some *Questure* led to the adoption on 28 May 2007 of a recommendation (*Circolare*) adopted by the Ministry of the Interior and aimed at underlining the importance of guaranteeing a full implementation of the protection framework included in Article 18.

Moreover, Law 119 of 2013 introduced a new Article 18-*bis* in Legislative Decree No. 286/1998 that guarantees the issuance of a residence permit for humanitarian reasons to a foreign national – eventually including also EU citizens and members of their families – who are victims of domestic violence and are in danger because of their intention to escape from such situation or because of the statements made during preliminary investigations or during a trial.<sup>38</sup> Cooperation with law enforcement and judicial authorities is not mandatory and the residence permit is issued for the duration of 1 year and it is renewable for as long as the humanitarian reasons that determined its issuance persist. The permit can also be converted into a permit to stay for reasons of work. Article 18-*bis* is applicable to cases in which domestic violence occurs within the family or in any case

<sup>38</sup> Article 4 Legge 15 ottobre 2013, n. 119 ‘Conversione in legge, con modificazioni, del decreto legge 14 agosto 2013, n. 93, recante disposizioni urgenti in materia di sicurezza e per il contrasto della violenza di genere, nonché in tema di protezione civile e di commissariamento delle province’ 2013 (Italy). See also Chapter 4 by Capone in this volume.

when there is an affective relationship – including cases of married couples – between the victim and the perpetrator. However, it defines violence as including physical, sexual, psychological and economic forms of violence. Therefore, the provision might prove useful in cases of domestic violence committed against mail order brides, in cases of arranged marriages but also, eventually, in certain cases of domestic exploitation of migrant workers who are at times also victims of sexual abuses perpetrated by their employers.<sup>39</sup>

For what concerns the prosecution of traffickers, in 2003 the Italian Parliament adopted Law No. 228 of 11 August 2003 on ‘Measures against Trafficking in Persons’,<sup>40</sup> which – in line with the 2000 Palermo Trafficking in Persons Protocol - amended Article 600 on ‘Placing or holding a person in a condition of slavery or servitude’, Article 601 on ‘Trafficking in persons’ and Article 602 on the ‘Purchase and sale of slaves’ of the Italian Criminal Code. This is only the first of a series of amendments to the Italian Criminal Code that have recently rendered the national system in place in Italy more effective in fighting against trafficking in persons.

Law No. 228/2003 considers trafficking in persons as an organized criminal activity, so that prosecution functions are exercised by the Anti-Mafia Directorate (*Direzione Nazionale Antimafia*). Moreover, the duration of preliminary investigations is extended to 2 years and specific tools - including undercover operations, wiretapping, electronic surveillance, etc. – are at the disposal of law enforcement authorities. Moreover, Article 13 of Law No. 228/2003 established a short-term protection programme of three months that may be extended for other three months, open to both Italian and foreign victims of slavery, servitude and trafficking and aimed at guaranteeing accommodation, food and healthcare to them. At the end of the programme, victims of trafficking continued to be supported through their inclusion in the Article 18 programme, which is open to both EU citizens and third country nationals. Since there were two protection programmes in place – one for short term assistance and another one for longer term protection – Article 12 of Law No. 228/2003 created an Anti-Trafficking Fund aimed at financing the social protection programmes provided by Article 18 of the Italian Immigration Decree and guaranteeing a long-term assistance to victims while Article 13 established another Fund for financing a

<sup>39</sup> Palumbo (2016), p. 12.

<sup>40</sup> *Legge 11 agosto 2003, n. 228 ‘Misure contro la tratta di persone’* 2003 (Italy).

special short-term assistance programme aimed at guaranteeing the initial accommodation and healthcare for trafficking victims.

However, the adoption of Decree of 16 May 2016 by the Italian Prime Minister, together with the Ministers of the Interior, Labour and Social Policy and Health, eliminated the dual system of assistance for trafficking victims that had existed in the country since the adoption of Law No. 228/2003.<sup>41</sup> The new system in place is aimed at guaranteeing the existence of a single State assistance programme for victims and potential trafficking victims, which is to be implemented through projects run at the regional level. The Department of Equal Opportunities is the central authority that manages the Anti-Trafficking Fund. The Department launches a call every year for project proposals that can be submitted by certified NGOs and local authorities. It is important to emphasize that funds assigned by the Department of Equal Opportunities were recently tripled; while in 2015 they amounted to 8 million Euros, in 2017 they were raised to 22,5 million Euros, thus financing 21 projects – namely one per Italian Region.<sup>42</sup>

Other amendments to the Italian Criminal Code were made by the Italian authorities upon the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings and of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, which led to the adoption of Laws No. 108/2010 and 172/2012. Subsequently, Legislative Decree No. 24 of 2014 laid down the transposition of Directive 2011/36/EU, by *inter alia* providing for further amendments to Article 600 and Article 601 of the Criminal Code, but also by foreseeing the adoption by the Italian institutions of a National Action Plan, the setting up of a State compensation fund for victims, improved measures aimed at guaranteeing the protection of victims and the obligation to include training modules on trafficking in persons for relevant public officials in the framework of trainings organized independently by the relevant public authorities. In particular, a reference to the situation of vulnerability is to be included in both Article 600 and 601 of the Criminal

<sup>41</sup> *Decreto del Presidente del Consiglio dei Ministri del 16 maggio 2016 recante 'Definizione del Programma unico di emersione, assistenza ed integrazione sociale a favore degli stranieri e dei cittadini di cui al comma 6 bis dell'Art. 18 del decreto legislativo 25 luglio 1998, n. 286, vittime dei reati previsti dagli articoli 600 e 601 del codice penale, o che versano nelle ipotesi di cui al comma 1 dello stesso articolo 18' 2016* (Italy).

<sup>42</sup> Dipartimento per le Pari Opportunità (2017B).

Code by making specifically reference to the condition of vulnerability of the victim, thus broadening the scope of these provisions to guarantee protection to vulnerable victims. Moreover, among the forms of exploitation included in Article 600 a specific reference was added to illicit activities and to the removal of organs. As regards the right to compensation for victims of trafficking, Article 6 of the Decree specifies that the Anti-Trafficking Fund is to be used for the purpose of compensating victims awarding to them the amount of 1,500 Euros on the basis of the rules indicated by the provision. In addition to this, Article 4 of the Decree is specifically dedicated to migrant unaccompanied minors who are victims of trafficking and it provides for the duty for States' authorities to provide them with relevant information on their rights, as including the right to have access to international protection.

Moreover, since Article 19 of Directive 2011/36/EU required Member States to appoint National Rapporteurs or relevant equivalent mechanisms, Legislative Decree No. 24 of 2014 identifies the Department of Equal Opportunities of the Presidency of the Council of Ministers as the Italian Equivalent Mechanism. It is to be noted, however, that while the creation of such a mechanism is also foreseen by Article 29.4 of the Council of Europe Convention on Action against Trafficking in Human Beings, paragraph 298 of the Explanatory Report, reference is made to its independence, which would be fundamental for guaranteeing that it is able to monitor States' institutions in their anti-trafficking efforts and guarantee the implementation of national legislation. Such issue was also recently raised by the OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings,<sup>43</sup> and by GRETA.<sup>44</sup>

The first *National Action Plan against Trafficking in Persons and Serious Exploitation of Human Beings* for the period 2016-2018 was adopted on 26 February 2016, after the conclusion of a wide participatory process of consultation of all the relevant stakeholders led by the Department of Equal Opportunities. The Plan is in line with the 5 priority actions identified by the EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016). These priority actions are focused on: 1. the iden-

<sup>43</sup> OSCE Special Representative and Co-ordinator on Trafficking in Human Beings (2014), para 24.

<sup>44</sup> Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human beings (2014), 4.

tification, protection and assistance to be granted to trafficking victims; 2. putting in place adequate measures aimed at preventing trafficking in persons; 3. Increase the efforts in the area of criminal prosecutions for traffickers; 4. improving activities aimed at guaranteeing coordination and cooperation among relevant stakeholders and policy coherence; 5. Raising awareness on emerging trends and issues in the area of human trafficking, thus guaranteeing an effective response.<sup>45</sup> Moreover, the Plan follows the so-called ‘4Ps’ model based on prevention, prosecution, protection and partnership widely promoted at the international level.

Another important step was made by the Italian authorities with the adoption of Legislative Decree No. 212 of 15 December 2015,<sup>46</sup> aimed at implementing Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.<sup>47</sup> This Decree introduces a new provision – namely Article 90-*bis* – in the Code of Criminal Procedure that guarantees to victims of crime – as including trafficking victims – that since the first contact with law enforcement authorities they receive, in a language that they can understand – information on a wide variety of rights and on the modalities for rendering them effective.

Lastly, Legislative Decree No. 21 of 1 March 2018, which entered into force on 6 April 2018, modified Article 601 (Trafficking in Persons) and Article 601-*bis* (Trafficking in organs extracted from a living person) of the Criminal Code.<sup>48</sup> In addition to this, Article 5 of the Decree includes in the Criminal Code a new provision that considers as an aggravating circumstance the involvement of a transnational criminal group in the commission of a crime for which the minimum sanction is 4 years of prison. In these cases, the penalty can be raised from one third to a half and Article 416-*bis*.1 of the Criminal Code is also applicable, including extenuating

<sup>45</sup> European Commission (2012), p. 5.

<sup>46</sup> *Decreto Legislativo 15 dicembre 2015, n. 212 ‘Attuazione della direttiva 2012/29/UE del Parlamento europeo e del Consiglio, del 25 ottobre 2012, che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI’ 2015.*

<sup>47</sup> Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57.

<sup>48</sup> Article 2 *Decreto Legislativo 1 marzo 2018, n. 21 ‘Disposizioni di attuazione del principio di delega della riserva di codice nella materia penale a norma dell’articolo 1, comma 85, lettera q), della legge 23 giugno 2017, n. 103’ 2018.*

circumstances for repented members of the criminal organizations who cooperate with the authorities.

Therefore, in light of the recent amendments, the Italian Criminal Code includes a comprehensive and well-drafted catalogue of crimes that are relevant to the area of human trafficking. The two fundamental provisions of the Criminal Code are Art. 600 (*Placing or holding a person in a condition of slavery or servitude*) and Article 601 (*Trafficking in Persons*). As currently formulated, Article 600 states that:

Anyone who exerts on a person powers attaching to the right of ownership or places or holds a person in a condition of continuous subjugation, obliging the person to be involved in sexual or labour activities or begging or illicit activities in a condition of exploitation or subjects the person to the removal of organs, is sentenced with a custodial term between eight and twenty years. The placement or maintenance in a condition of subjugation occurs when use is made of violence, threat, deceit, abuse of authority or of a position of vulnerability, of physical and psychological disability or of a state of necessity, or of the giving or receiving of payments or other benefits given to the person exercising control over another person.<sup>49</sup>

Article 601 (*Trafficking in persons*) of the Criminal Code – as modified by Legislative Decree No. 24 of 2014 and Legislative Decree No. 21 of 2018 – contains a definition of human trafficking that is put in line with the one included in the UN Trafficking Protocol, the COE Council of Europe Convention and Directive 2011/36/EU and a penalty – both in the case in which the victim is an adult and a minor – identical to the one included in Article 600. A harsher penalty, which is increased up to one third of the previously mentioned custodial terms, is instead provided for the commander or the official of a ship flying the Italian flag or the one of another country. A prison term between three and ten years is instead the penalty for the personnel on board of ships transporting trafficked individuals, even in the case in which exploitation has not yet taken place.

The Legislative Decree No. 21 of 2018 also introduces changes in Article 601-bis (*Trafficking in organs extracted from living individuals*). The provision states that: ‘Anyone who in an illegal way commercializes, sells, buys, or in any way procures or traffic organs or parts of organs extracted from living individuals is sentenced with a custodial term between three and twelve years and a pecuniary sanction between 50.000 and 300.000 Euros’.<sup>50</sup> The

<sup>49</sup> Unofficial translation of the author.

<sup>50</sup> Unofficial translation of the author.

Legislative Decree No. 21 of 2018 has introduced a new paragraph generally dedicated to intermediaries in transplantations with living donors, whose aim is economic gain: the sanction in this case includes a custodial term between 3 and 8 years and a fine between 50.000 and 300.000 Euros. Moreover, if the mentioned crimes are committed by a health professional, the sanction includes a permanent ban on their professional activity. Finally, the provision includes a sanction also for those who organize or publicize trips abroad for so-called *health tourism* or *transplantation tourism* or promote in any way ads, whose aim is trafficking in organs or of parts of organs; they are in fact sentenced with a prison term between three and seven years and a fine between 50.000 and 300.000 Euros.

In addition to these crimes, Articles 600-*bis/ter/quarter/quarter.1/* and *quinquies* deal with the issues of child prostitution, child pornography, holding of pornographic material, online pornography, and child sex tourism. Another specific provision, namely Article 600-*octies* is specifically dedicated to the criminalization of the use of children in begging activities and it states that whoever uses, allows or permit others to use minors to beg is sanctioned with a custodial term of up to three years. Finally, it is worth noting that, according to Article 604, all the mentioned crimes included in Section II of Heading I of the Criminal Code – namely, from Article 600 to Article 603 *bis* – have an extraterritorial dimension, so that Italian authorities have jurisdiction on the crime committed against an Italian citizen or by an Italian citizen abroad or by a foreign citizen in cooperation with an Italian one. The jurisdiction on the foreign citizen is, however, limited to more serious crimes for which a penalty of no less than 5 years is foreseen and if a request is formulated by the Ministry of Justice.

### 3.2.2. Unlawful Gang-Mastering and Labour Exploitation

The problem of labour exploitation affecting high numbers of irregular migrants in agriculture became more prominent and visible after the clashes between migrant workers and local population in Rosarno, a small agricultural village in the southern Italian Region of Calabria. The protest shed a light on the appalling living and working conditions of agricultural migrant workers.<sup>51</sup> The Osservatorio Placido Rizzotto states that there are 80 areas in Italy in which forms of serious exploitation of agricultural work-

<sup>51</sup> Amnesty International (2002), p. 7.

ers and unlawful gang-mastering were observed and it estimates that between 400.000 and 430.000 agricultural workers are potentially subjected to various forms of unlawful gang-mastering, with 100.000 considered as being in a serious condition of exploitation and vulnerability.<sup>52</sup> This problem is, however, difficult to tackle. The supply chains in the agricultural sector in Italy are usually complex and are frequently characterized by the infiltration of Mafia-style criminal organizations. The supply chains see traders and retailers in a position of power, while agricultural producers, in particular the small and medium sized ones, find themselves unable to strongly push for higher prices or to collectively organize themselves to collectively bargain fairer prices or, finally, prefer to continue to employ migrant workers in a condition of serious exploitation, since this raises their profits.<sup>53</sup>

In this context, a much needed new provision to fight against the unlawful gang-mastering and labour exploitation phenomena in Italy, namely Article 603-*bis* (*Intermediazione illecita e sfruttamento del lavoro*) of the Criminal Code, was introduced by Law Decree No. 138 of 13 August 2011 converted into Law No. 148 of 14 September 2011 and, subsequently, modified by Law No. 199 of 20 October 2016. The provision imposes sanctions on those who recruit or use, hire and employ workers with a view to exploiting them and by taking advantage of their condition of necessity. The article also includes a list of indicators of exploitation, including *inter alia*: the reiterated underpayment of workers, the violation of legislation on working hours, rest, holidays, etc. and the lack of respect for health and safety regulations in the workplace. The crime of gang-mastering and labour exploitation is punishable with a prison term between one and six years and a fine ranging between 500 and 1.000 Euros. Violence or the use of threat are considered as aggravating circumstances, so that the sanctions are raised to a custodial term of between five and eight years and a fine of between 1.000 and 2.000 Euros per worker. A mitigating circumstance is instead in place for those who decide to cooperate with the law enforcement authorities. Moreover, the Law attributes the proceeds acquired through confiscations to the Anti-Trafficking Fund. Finally, the conviction of the trafficker(s) determines *ipso facto* a compulsory confiscation of the assets – eventually through a confiscation of the equivalent amount or value (*confisca per equivalente*).

<sup>52</sup> Osservatorio Placido Rizzotto (2018).

<sup>53</sup> Palumbo (2016), pp. 27-28.



Moreover, Legislative Decree No. 109 of 2012 (the so-called *Rosarno Law*) – guaranteeing the implementation in Italy of Directive 2009/52/CE – introduced some novelties into the legal system, including some aggravating circumstances to the crime of employing irregular migrant workers, including the case of particularly exploitative working conditions, as well as the sanction for the employer of paying the cost of return of the worker to their country of origin. Moreover, the Decree modified Article 22 of Legislative Decree No. 286/1998 (*Italian Immigration Decree*) to allow the issuance of a residence permit for humanitarian reasons to foreign nationals who are victims of particularly exploitative working conditions and who report their employers and cooperate with the relevant authorities in criminal proceedings against them.<sup>54</sup> However, differently from Article 18 of the same Decree, the new provision unfortunately doesn't foresee any social path. However, it is important that Law No. 199/2016 guarantees the access of the foreign national in particularly exploitative conditions to the Anti-Trafficking Fund.

### 3.2.3. Migrant Unaccompanied Minors at Risk of Trafficking

Other relevant legislative developments were recently made in the area of migrant unaccompanied minors (MUAMs). MUAMs are particularly at risk of being trafficked and exploited once in Italy. According to data released by the Italian Ministry of the Interior, unaccompanied minors constitute a relevant part of the migratory flows towards Italy; 25.846 MUAMs arrived in 2016, 15.731 in 2017 and 1.116 between 1 January and 19 April 2018.<sup>55</sup> In this context, the work carried out by the outreach units of Save the Children in 2016 and in the first six months of 2017 shows increasing numbers of Nigerian and Romanian children forced into street prostitution, as well as more Egyptian and Bengalese children who end up in labour exploitation or are involved in delinquent activities, such as drug dealing and prostitution.<sup>56</sup> The Italian Ministry of Labour and Social Policies indicates that as of 31 December 2017 there were 18.303 MUAMs in Italy. Therefore, there was an increase in the number of migrant unaccompanied mi-

<sup>54</sup> Article 1 *Decreto legislativo 16 luglio 2012, n. 109 'Attuazione della Direttiva 2009/52/CE che introduce norme minime relative a sanzioni e a provvedimenti nei confronti dei datori di lavoro che impiegano cittadini di Paesi terzi il cui soggiorno è irregolare'* (2012) Italy.

<sup>55</sup> Ministero dell'Interno (2018).

<sup>56</sup> Save the Children (2017), p. 9.

grants in respect of previous years (+ 5,4% in respect of 2016 and +53,5% in respect of 2015).<sup>57</sup> Most of them are boys (93,2%) and have 16-17 years of age (83,4%).

On the basis of the Law adopted on 7 April 2017 n. 47 (the so-called *Zampa Law*) MUAMs who arrive on Italian shores are to be granted the same protections of Italian or EU minors, but they are considered as more vulnerable and, therefore, are not subjected to procedures of repatriation, except in cases in which they pose a threat to law and order or national security, or when it is in their best interest to be reunited with other family members.<sup>58</sup> Article 17 of the Law provides that a specific assistance programme for MUAMs who are victims of trafficking is put in place, so as to guarantee a long-term solution, which might extend even beyond adulthood.

MUAMs are generally hosted by first and second line reception Centres until they reach the age of majority. The increase in arrivals of MUAMs has, however, led to an overcrowding of the Centres that should host them, so that their stay in Hotspots is extended. According to the National Guarantor for the Rights of Persons Detained or Deprived of Liberty: 'The situation is understandable but unacceptable, and it requires immediate action, even though the problem cannot be conceived as a proper emergency, yet'.<sup>59</sup>

A fundamental problem affecting MUAMs is connected with the procedure for the determination of their age. The Decree of the President of the Council of Ministers No. 234 – that was adopted on 10 November 2016 and entered into force on 6 January 2017 – introduces common procedures based on the principle of the best interest of the child, for the age determination process of MUAMs who are believed to be victims of human trafficking. The new multidisciplinary procedure that is to be used when there are reasonable doubts on the age of the minor, is to be conducted by specialized staff, with the involvement of diplomatic institutions if necessary, and by taking into consideration the ethnic and cultural background of the minor.<sup>60</sup> As underlined by the National Guarantor for the Rights of Persons Detained or Deprived of Liberty, a practice that should be spot-

<sup>57</sup> Ministero del Lavoro e delle Politiche Sociali (2018), p. 5.

<sup>58</sup> Article 1 *Legge 7 aprile 2017, n. 47 'Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati'* 2017 (Italy).

<sup>59</sup> National Guarantor for the Rights of Persons Detained or Deprived of Liberty (2017), p. 98.

<sup>60</sup> The procedure previously in place was based on an X-ray of the wrist of the minor but such determination method has a margin of error of approximately 2 years.

ted and eliminated is that: ‘When minors do not know their exact date of birth, but the year only, they are registered as born on the 1st January. This might entail some risks for those minors close to their 18th birthday, as they might be considered as adults, though they are not’.<sup>61</sup> This determined the fact that in one of its visits to a hotspot, the National Guarantor noticed that all the individuals born in 1999 who did not know the exact day and month of birth were registered as being born on 1 January 1999, so that at least for some of them this might have entailed being considered as adults while being instead minors.<sup>62</sup>

Another pressing issue concerning MUAMs is that the number of those who disappear is quite high, with 5.828 children who disappeared as of 31 December 2017.<sup>63</sup> While many of them might have disappeared because of their willingness to continue their trips towards Northern European countries, they nonetheless might constitute an easy prey for organized criminal groups of traffickers and exploiters.

Finally, it is to be noted that Article 11 of Law 47/2017 established the volunteer tutor, thus allowing Italian citizens or citizens of other countries or stateless persons who legally reside in Italy and have an adequate knowledge of the Italian culture and language to become legal tutors of MUAMs, thus supporting their integration process and reducing their vulnerability. While all these legislative developments allow the country to make a step in advance in guaranteeing the rights of MUAMs, the monitoring of their consistent implementation will be fundamental to guarantee that such a result is achieved.

### 3.2.4. Legislation in the Fields of Immigration and International Protection Relevant to Trafficking in Human Beings

Other legislative acts adopted in the areas of immigration and international protection might also be of specific relevance to the area of trafficking in persons. First of all, it is to be noted that Law No. 67 of 28 April 2014 adopted by the Parliament empowered the Government to abolish the criminal offence of irregular entry and stay in the country that had been introduced with Law No. 94 of 2009, transforming it in an administrative offence. However, the Government has not so far adopted the legislative

<sup>61</sup> National Guarantor for the Rights of Persons Detained or Deprived of Liberty (2017), p. 98.

<sup>62</sup> *Ibid.*, p. 99.

<sup>63</sup> Ministero del Lavoro e delle Politiche Sociali (2018), p. 5.

decree that would render such law effective.<sup>64</sup> In this respect, it is worth noting that as underlined by the OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings:

‘restrictive migration policies – and in particular policies criminalizing irregular entry and residence in the country – have detrimental consequences on migrants, exacerbating their vulnerability to abuse and exploitation. ‘...’ Especially victims who are undocumented migrants are prevented from breaking the silence because of fear of detention and/or deportation.’<sup>65</sup>

For this reason, the Special Representative recommended to the Italian authorities to abolish the crime of illegal entry and stay while GRETA asked to them to study the effects that such legislation might produce on the identification and protection of trafficking victims as well as on the prosecution of traffickers.<sup>66</sup>

In addition to this, in 2010 the Italian Constitutional Court declared that the aggravating circumstance of irregular entry and stay in the country (the so-called *aggravante della clandestinità*) is unconstitutional.<sup>67</sup> On the basis of this judgment, the Italian Supreme Court (*Corte di Cassazione*) declared that the executing judge has the power to exempt individuals sentenced for other crimes from the penalty connected with the aggravating circumstance of irregular entry and stay.<sup>68</sup>

Moreover, as regards the area of international protection, Legislative Decree No. 142 of 2015 – as modified by Law No. 160 of 2016 and by Law Decree No. 13 of 2017 – added *inter alia* victims of human trafficking to the list of individuals considered as ‘vulnerable persons’ by Article 8 of the Legislative Decree No. 140 of 2005, so that the examination of applications for international protection submitted by trafficking victims is given priority by the Territorial Commissions for the Recognition of International Protection.<sup>69</sup> Moreover, Article 17 of the Decree guarantees that asylum

<sup>64</sup> Ruggiero (2017). See Chapter 1 by Favilli in this volume.

<sup>65</sup> OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings (2014), para 56-57.

<sup>66</sup> Ibid., para 58; GRETA (2014), p. 9.

<sup>67</sup> Corte Costituzionale, Sentenza N. 249/2010, decisione del 5 luglio 2010, G.U. 14 luglio 2010, n. 28.

<sup>68</sup> Cass. Pen., Sez. I, 27 ottobre 2011, n. 977, ric. P.m. in proc. Hauohu.

<sup>69</sup> Article 17.1 *Decreto legislativo n. 142 del 18 agosto 2015 ‘Attuazione della direttiva 2013/33/UE recante norme relative all’accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale 2015 (Italy)’.*

seekers identified as trafficking victims are to be included in Article 18 social protection programmes.

### 3.3. Assessment on the Implementation of the OSCE Commitments

This independent assessment of the recent efforts of the Italian Authorities aimed at combating trafficking in human beings takes the relevant OSCE commitments in the field of trafficking in human beings as a reference point. However, given the extensive number of recommendations adopted by the Organization since 2003, the attention is placed on particularly challenging issues as well as on areas in which best practices are identifiable. Recommendations formulated to the Italian authorities by relevant institutions, including *inter alia* the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) and the United Nations Human Rights Committee were considered as particularly relevant. In total, eight areas have been assessed: 1. The National Referral Mechanism and the identification of victims; 2. Identification and protection of child trafficking victims; 3. Protection and assistance to trafficking victims; 4. Repatriation of irregular migrants who are presumed to be trafficking victims; 5. Data collection; 6. Financial investigations; 7. Capacity building and training; 8. Trafficking for labour exploitation in agriculture and supply chains.

#### 3.3.1. The National Referral Mechanism and the Identification of Victims

The establishment of a National Referral Mechanism (NRM) is a prerequisite for guaranteeing an effective identification and protection framework for trafficking victims. The OSCE has been at the forefront in the development of such a conceptual framework for institutional cooperation since the adoption in 2004 of a handbook containing guidelines on how to establish such a mechanism.<sup>70</sup> The NRM is:

<sup>70</sup> OSCE (2004).

a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.

The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection. NRMs can establish national plans of action and can set benchmarks to assess whether goals are being met.<sup>71</sup>

The *2013 Addendum* recommends participating States to adopt the most appropriate measures for the purpose of guaranteeing that:

relevant NGOs, trade unions and social welfare services, through a National Referral Mechanism (NRM) or other relevant structures, may initiate referrals for the assistance of victims of all forms of trafficking, regardless of their nationality, and co-operate with relevant authorities by providing information in the victims of THB identification process.<sup>72</sup>

Moreover, participating States should ensure that the system of referrals is ‘fair, transparent and respects the human rights and fundamental freedoms of the victims’.<sup>73</sup>

The Italian National Plan of Action 2016-2018 sets up for the first time a comprehensive National Referral Mechanism in Italy. It established a Steering Committee (*Cabina di Regia*) chaired by the Italian Minister in charge of Equal Opportunities and composed by representatives of other central public bodies, Regions and local authorities. Four working groups were established, and they deal with the issues of protection, prevention, cooperation and coordination between the protection system for asylum seekers and refugees and the one for victims of human trafficking. Representatives of NGOs and other civil society organizations take part to the activities of the working groups, whose outputs are periodically submitted to the Steering Committee for approval.

Six annexes to the *National Action Plan* were also adopted and they:

1. Establish the National Referral Mechanism (NRM);<sup>74</sup>
2. Provide all the relevant stakeholders with guidelines on the proper identification of victims of trafficking in persons and serious exploitation<sup>75</sup>;
3. Include a translation

<sup>71</sup> Ibid., p. 15.

<sup>72</sup> OSCE Ministerial Council (2013), para 1.2.

<sup>73</sup> Ibid., para 1.3.

<sup>74</sup> Dipartimento per le Pari Opportunità (2016).

<sup>75</sup> Dipartimento delle Pari Opportunità (2016B).

and re-adaptation of an International Labour Organization's manual for labour inspectors;<sup>76</sup> 4. Adopt a transnational methodology developed in the framework of the project AGIRE co-financed by the European Commission and aimed at strengthening the partnership between public institutions and civil society organizations in identifying and protecting child victims of trafficking or at risk of being trafficked in Europe;<sup>77</sup> 5. Adopt standard operational procedures for identifying and protecting child victims of trafficking developed in the framework of the same project;<sup>78</sup> 6. Enlist a set of indicators for the proper identification of child victims of trafficking.<sup>79</sup>

In this respect, it is worth noting that, as recognized by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings:

Italy can rely on a solid backbone of institutions and organizations specialized in assisting victims of trafficking, including public welfare services, civil society associations and NGOs. Such a network is an asset to the Italian system of victim assistance and protection and has played a leading role in designing and implementing anti-trafficking actions over the past 15 years.<sup>80</sup>

While the system of cooperation among all the relevant actors in the field of human trafficking is currently solidly based on the Steering Committee and the working groups, it will be important to guarantee that the mechanism is inclusive and continues to assure the widest participation of all the relevant actors working in the field of trafficking in persons.

Another important tool used by the Italian authorities for the purpose of favouring an increased emergence of the phenomenon, getting into contact with presumed victims of trafficking and guaranteeing a referral to relevant institutions throughout the national territory is the national anti-trafficking tool-free number 800 290 290. The tool-free number is a 24/7 service coordinated by the Municipality of Venice and available all over Italy. Operators speak multiple languages, including English, Albanian, Romanian, French, Spanish, Arabic, Nigerian, Mandarin Chinese, etc. Calls to the toll-free number have recently increased significantly: + 25% in the first

<sup>76</sup> Carchedi and Quadri (2011).

<sup>77</sup> Save the Children (2010A).

<sup>78</sup> Save the Children (2010B).

<sup>79</sup> Save the Children (2015).

<sup>80</sup> OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2014), para 11.

half of 2017 if compared to 2016 and + 75% in comparison with 2015.<sup>81</sup> It is interesting to note a great increase of the number of calls from non-governmental organizations, including many who manage centres for the accommodation of asylum seekers (+173%) and from socio-sanitary institutions (+215%). An increase of the number of calls – even if to a lesser extent – made by potential victims (+45%) is also recorded, as well as – for what concerns the reasons for calling – a high increase of reporting of cases of trafficking or of serious exploitation (+44% in respect of 2016 and + 125% in respect of 2015).<sup>82</sup>

As regards the early identification of victims of trafficking, the recent migratory crisis has determined a situation of concern in particular for the identification procedures for trafficking victims placed in first and second line accommodation centres and identification and expulsion centres (*Centri di Identificazione ed Espulsione – CIE*). Besides the recent legislative modifications already discussed *supra*, Sect. 3.2.1, 3.2.3 and 3.2.4, some other relevant activities conducted by the Italian authorities deserve to be mentioned. First of all, in June 2016 the Ministry of the Interior released the ‘Standard Operating Procedures Applicable to the Italian Hotspots’ that include *inter alia* relevant guidelines on the identification of trafficking victims.<sup>83</sup> Moreover, the Ministry of the Interior co-funded, through the Asylum, Migration and Integration (AMIF) Fund 2014-2020, the project *Aditus*, whose activities are implemented by the International Organization for Migration (IOM) since 1 January 2017.<sup>84</sup> The *Aditus* project follows previous activities conducted by IOM in the framework of the *Praesidium* project (2006-2015) initially co-financed by the European Commission and the Ministry of the Interior and, subsequently, only by the latter institution. In 2015 the latter project was substituted by the projects *Assistance* and *Monitoring* funded by the Ministry of the Interior through the AMIF Fund.

The *Aditus* project is aimed at: 1. promoting legal counselling for migrants at landing points and the early identification and assistance to trafficking victims and unaccompanied minors; 2. conducting training sessions for the staff of first reception centres for unaccompanied minors funded by

<sup>81</sup> See: Dipartimento per le Pari Opportunità (2017A).

<sup>82</sup> Ibid., p. 2.

<sup>83</sup> See: Ministry of the Interior (2016), p. 19.

<sup>84</sup> International Organization for Migration (2017), p. 11.



the AMIF on family reunification, protection of minors who might be potential victims of trafficking or of other forms of serious exploitation, and psychosocial support mechanisms; 3. conducting continuous trainings on counter trafficking and counter-exploitation schemes for the officers of the Prefectures, police offices, social services, local health authorities, and the staff of first and second reception centres on trafficking in human beings for sexual and labour exploitation; 4. conducting monitoring activities of the reception standards, so as to guarantee that the human rights of migrants are respected. Within the framework of the project, IOM teams, composed by legal experts and cultural mediators, are present in Sicily - including Lampedusa - Apulia and Calabria to provide direct assistance to migrants.

Secondly, another important step in advance is constituted by the adoption in 2016 of relevant Guidelines for the Territorial Commissions on International Protection on the identification of victims of trafficking among asylum seekers and individuals requesting other forms of international protection and the referral mechanism in place.<sup>85</sup>

### 3.3.2. Identification and Protection of Child Trafficking Victims

The OSCE 2005 Addendum Addressing Special Needs of Child Victims of Trafficking for Protection and Assistance places much emphasis on the early identification and protection of child trafficking victims. The document extends protective measures to presumed trafficking victims by claiming that OSCE participating States should, in appropriate cases, guarantee that:

presumed child trafficking victims who are not nationals or residents of the country in which they are identified with appropriate status entitling them to stay, at least temporarily, in the country and be eligible to receive immediate assistance which should include safe shelter, medical and psychological care, legal assistance, social services and education.<sup>86</sup>

The Special Representative and Co-ordinator on Combating Trafficking in Human Beings in her report on the visit to Italy 'note[d] that Italy has developed an advanced system for the protection of unaccompanied children<sup>87</sup>. However, her visit was conducted before the recent migration

<sup>85</sup> Commissione Nazionale per il Diritto d'Asilo e Alto Commissariato delle Nazioni Unite per i Rifugiati 2017.

<sup>86</sup> OSCE Ministerial Council (2005), para 8.

<sup>87</sup> OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings (2014), p. 8.

crisis. In its Concluding Observations on the sixth periodic report of Italy, the Human Rights Committee acknowledged, on one hand, the ‘difficult challenge’ faced by Italy because of the very high number of MUAMs arriving on its shores but, on the other, it showed concerns for ‘the insufficient safeguards for such children, in particular relating to the inadequate age determination procedure, delays in the appointment of guardians and conditions in first-level reception centres’.<sup>88</sup> The recommendations formulated by the Committee indicated that Italy should:

(a) Ensure that the age assessment procedure is based on safe and scientifically sound methods, taking into account the children’s mental well-being; (b) Review the guardian assignment procedure to ensure that each unaccompanied minor is provided with a legal guardian in a timely manner; (c) Ensure adequate conditions for unaccompanied minors in reception facilities, including their segregation from adults; (d) Take the measures necessary to prevent the disappearance of children and to find the whereabouts of those already missing.<sup>89</sup>

The legislative development mentioned *supra*, Sect. 3.2.3 show that, since the adoption of the OSCE Special Representative’s report and Human Rights Committee’s Concluding Observations, the steps in advance made by the Italian authorities are numerous and relevant. A new age assessment procedure was introduced and, since the adoption of the Zampa Law, in one year 3.981 volunteer tutors were trained and are ready to become guardians.<sup>90</sup>

Two other recent developments deserve to be mentioned here. First of all, Law No. 112 of 12 July 2011 established the mandate of the Italian Authority for Children and Adolescents, whose task is centred on guaranteeing the respect and promotion of the rights of the child. For this reason, the Authority has *inter alia* the power to conduct visits and inspections to public and private institutions in which minors are hosted.<sup>91</sup> Keeping in mind the special vulnerability of MUAMs, the Authority launched in 2016 the project ‘Qualifica del sistema nazionale di prima accoglienza dei Minori Stranieri non Accompagnati (MSNA)’ (Assessment of the National System

<sup>88</sup> Human Rights Committee (2017), para 26.

<sup>89</sup> *Ibid.*, para 27.

<sup>90</sup> Save the Children (2018). Data don’t include the volunteer tutors of Veneto, Apulia and of the Autonomous Province of Trento since these two Regions and one Province already had laws in place for nominating volunteer tutors, so that no calls for selecting new ones were opened in the last year.

<sup>91</sup> Article 4.2 *Legge 12 luglio 2011, n. 112 ‘Istituzione dell’Autorità garante per l’infanzia e l’adolescenza’* (2011).

of First-line Reception of Foreign Unaccompanied Minors), financed by the Ministry of the Interior through the AMIF Fund 2014-2020 aimed at conducting visits to first-line reception facilities.<sup>92</sup>

Secondly, the Ministry of the Interior launched in 2017 the ‘Pilot Action for Unaccompanied minors: Early Recovery Intervention (PUERI)’ project – co-funded by the European Commission and the AMIF Fund 2014-2020 of the Ministry of the Interior – in cooperation with the Fondazione nazionale degli Assistenti sociali and the Centro Informazione e Educazione allo Sviluppo (CIES). Unaccompanied minors that arrived in the four hotspots of Lampedusa, Pozzallo, Taranto, and Trapani were interviewed for four times at different intervals, so as to be screened at various stages of their reception process by a multidisciplinary team of experts composed by psychologists, social workers, and cultural mediators.<sup>93</sup> The project, while keeping in mind the best interest of the child, intends to ameliorate the current reception system for MUAMs and provide children with a protective framework aimed at preventing their disappearance and their recruitment and exploitation by criminal groups in sexual, labour or illicit activities. If the evaluation of the project demonstrates that it produced positive results, the activities would continue to be conducted in a systematic way covering all the MUAMs transiting through the hotspots.<sup>94</sup>

### 3.3.3. Protection and Assistance to Trafficking Victims

Numerous OSCE commitments address in a comprehensive way the issues of protection and assistance of trafficking victims. The OSCE 2003 Action Plan – as supplemented by its two Addendums - contains the most comprehensive and relevant recommendations in this field. In particular, it recommends to OSCE participating States to protect trafficking victims by harmonizing ‘victim assistance with investigative and prosecutorial efforts’. This might be achieved by ‘Encouraging investigators and prosecutors to carry out investigations and prosecutions without relying solely and exclusively on witness testimony. Exploring alternative investigative strategies to preclude the need for victims to be required to testify in court.’<sup>95</sup> The 2013 Addendum to the Action Plan adds that OSCE participating States should

<sup>92</sup> Italian Authority for Children and Adolescents (2017).

<sup>93</sup> See: Fondazione Nazionale Assistenti Sociali (2017B).

<sup>94</sup> Fondazione Nazionale Assistenti Sociali (2017A).

<sup>95</sup> OSCE Ministerial Council (2003).

ensure that the protection and assistance provided to trafficking victims is not made conditional to their cooperation in criminal proceedings against their traffickers.<sup>96</sup>

As already emphasized, Italy has at its disposal Article 18 of Legislative Decree 286/1998, which is a far-reaching and advanced measure for guaranteeing the protection of trafficking victims. The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings during her visit to Italy conducted in 2013 said that she praises this comprehensive approach to victim protection as a good practice and a model.<sup>97</sup> The Special Representative, however, highlighted that civil society actors report a very weak implementation of the unconditional option (the social path): the granting of a residence permit has been made *de facto* conditional to their cooperation in criminal investigations. Such a practice of implementation nullifies the innovative nature and added value of this provision.<sup>98</sup>

Moreover, the provision has also been recently restrictively interpreted, so that only those individuals who are exploited on the Italian territory can avail themselves of the existing protection framework, while those who – within complex migratory processes – were exploited during their long and tortuous trips, but before their arrival in Italy, would not be in a position to be identified as trafficking victims.

The Italian authorities should, therefore, continue to monitor the implementation of Article 18 by the *Questure* and collect data on the participation of individuals to, respectively, the judicial and social paths. As also recognized by the Parliamentary Commission of Inquiry on Mafias and Other Criminal Organizations, including Foreign Ones (*Commissione Parlamentare d'Inchiesta sul Fenomeno delle Mafie e sulle Altre Associazioni Criminali, anche Straniere*), the restrictive interpretation of Article 18 of Legislative Decree 286/1998 should be abandoned, as a way to guarantee that those who were severely exploited during their trips to Italy might be granted a humanitarian permit to stay.<sup>99</sup>

Notwithstanding that, it should be underlined how the assistance and

<sup>96</sup> OSCE Ministerial Council (2013).

<sup>97</sup> OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings (2014).

<sup>98</sup> Ibid. See also: GRETA (2014).

<sup>99</sup> Commissione Parlamentare d'Inchiesta sul Fenomeno delle Mafie e sulle Altre Associazioni Criminali, anche Straniere (2017).

protection mechanism existing in Italy has allowed the country to reach ‘outstanding results’.<sup>100</sup> As reported by the Department of Equal Opportunities, the legislative framework in place in the country for providing protection and assistance to trafficking victims has in fact allowed the identification and liberation from conditions of serious exploitation of more than 25.000 trafficking victims since 2000.<sup>101</sup>

### 3.3.4. Repatriation of Irregular Migrants who are Presumed to Be Trafficking Victims

The OSCE 2003 Action Plan includes specific recommendations for OSCE participating States on standards for the repatriation of trafficking victims. First of all, the Action Plan stresses that repatriation of trafficking victims to their country of origin should preferably be voluntary and, secondly, that an emphasis on ‘due process in all return and removal proceedings, taking into account a humanitarian and compassionate approach’ should be guaranteed.<sup>102</sup> The risk that persons might end up in detention centres for irregular migrants or in prison for having being involved in criminal activities increases the chances that they might suffer from double-traumatization and re-trafficking if subjected to forced returns to their country of origin.

In this respect, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) developed a set of guiding principles on the human rights of trafficked persons who are returned to their country of origin.<sup>103</sup> The seven recommendations include relevant principles for OSCE participating States dealing with: 1. Safe return; 2. Due process; 3. Protection measures when return is not an option; 4. Special protection measures for the return of child victims of trafficking; 5. Durable solutions without harm; 6. Access to effective remedies; 7. Cooperation of monitoring of returns. Moreover, the 2013 Addendum to the OSCE Action Plan recognizes the important role that NGOs play in identifying trafficking victims and, consequently, considers important that OSCE participating States ‘facilitat[e], where ap-

<sup>100</sup> These are the words used by the OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings Maria Grazia Giammarinaro in her report on her mission to Italy. See: OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings (2014), para 14.

<sup>101</sup> Dipartimento per le Pari Opportunità (2018).

<sup>102</sup> OSCE Ministerial Council (2003), para 7.2.

<sup>103</sup> See: OSCE Office for Democratic Institutions and Human Rights (2014).

appropriate, simplified procedures for relevant NGOs to obtain permits from the competent authorities to access State facilities, including social service and immigration reception centres, prisons and detention facilities, to contribute to the timely identification of trafficked persons'.<sup>104</sup>

In this respect it is to be noted that, in its report on the first visit to Italy, GRETA showed concern for the respect of basic human rights, including the principle of *non-refoulement*, safety and dignity of victims and for the status of legal proceedings by Italian authorities during the return of trafficked persons to their country of origin.<sup>105</sup> The Human Rights Committee in its Concluding Observations on the visit to Italy presented similar concerns.<sup>106</sup> The establishment of the mandate of the independent National Guarantor for the Rights of Persons Detained or Deprived of their Liberty guarantees that a continuous monitoring of the conditions in which the repatriation process of irregular migrants is conducted.

### 3.3.5. Data Collection

The 2003 OSCE Action Plan recommends to OSCE participating States 'to develop common standards for the collection of statistical data'<sup>107</sup> and considers fundamental improving research into and analysis of the character and scale of human trafficking and the mechanisms used by the organized criminal groups to maintain trafficked victims in a condition of exploitation, so as to be able to develop effective and well-targeted prevention measures on trafficking in human beings. This kind of research presupposes the existence of a variety of sets of data.

Data on human trafficking in Italy are collected by various national and local institutions, as well as by NGOs and other relevant actors. The most comprehensive data available are those collected by the Department of Equal Opportunities that since 2010 runs the Computerised system for the collection of information on trafficking in human beings (*Sistema Informatizzato di Raccolta Informazioni sulla Tratta - SIRIT*) on victims participating to protection and assistance projects for victims of trafficking and/or victims of serious forms of exploitation.<sup>108</sup> However, in addition to this, the

<sup>104</sup> OSCE Ministerial Council (2013), para 1.4.

<sup>105</sup> GRETA (2014), para 27.

<sup>106</sup> Human Rights Committee (2017), para 29.

<sup>107</sup> OSCE Ministerial Council (2003), para 3.4.

<sup>108</sup> Dipartimento per le Pari Opportunità (2017C). The Department of Equal Opportuni-

National Anti-Mafia Directorate (DNA) runs a database concerning investigations and criminal proceedings on the crimes of slavery (Article 600), trafficking in persons (Article 601), and the slave trade (Article 602) of the Italian Criminal Code on the basis of information provided by the 26 District Anti-Mafia Directorates (DDA). Furthermore, the Italian Ministry of Justice recently conducted a research based on a sample of judgments delivered between 2009 and 2013 on the crimes of slavery (Article 600), trafficking in persons (Article 601), and the slave trade (Article 602) of the Italian Criminal Code.<sup>109</sup> Finally, the Ministry of the Interior collects data on police investigations through the Police National Electronic Database (CED).

The mentioned sets of data collected by central authorities are not comparable and this raises concerns. In addition to this, the OSCE Special

ties claims that in 2016, 1.172 victims participated to this protection framework (including 111 minors, corresponding to 9,5% of the total number of victims); 81.4% of these victims were women, 17,6% were men and 1% were transsexuals. The four most common nationalities among victims were: Nigerians (59.4%), Romanians (7.4%), Moroccans (5.3%) and Albanians (3.6%). While the greatest majority of the victims were sexually exploited (57,5%), labour exploitation was also an issue (7,8% of the cases) and multiple forms of exploitation were also present (6,1%).

<sup>109</sup> Ministero della Giustizia (2015). Most of the analysed proceedings were founded on Article 600 of the Criminal Code (73%), with the remaining ones being based on Article 601 (23%) and Article 602 (4%). Condemnations are in the range of 69% of the cases for slavery, 67% for trafficking in persons and 50% for the slave trade for judgements delivered by courts of first instance and they generally increase to 79% of the cases in appeals. The medium age for victims of trafficking is 25 years of age; 77,5% of the victims are women, 22,5 are men and children constitute 15,7% of the total. The greatest majority of these victims are foreign nationals (96,9%) coming from Romania (51,6%), Nigeria (19%), Albania (8,6%), Bulgaria (7,7%), China (3,2%) and other countries. Most of them freely decided to get to Italy for employment purposes (84,5%) and only 4,4% declared that they were coerced. Some differences are to be noticed in the forms of exploitation to which men and women are subjected. 3 out of 4 of the women were sexually exploited (77,7%), others were subjected to forced begging (10%), to labour exploitation (7,3%) and to being involved in illicit activities (7,3%). Men were instead mostly subjected to labour exploitation (48,3%), to illicit activities (36,2%) and to forced begging (29,3%). The median duration of the trafficking experience was 14 months, but cases in which victims remained in a condition of subjugation and exploitation for as much as 10 years were unfortunately also recorded. Finally, the median earnings per day made by the trafficking victims was 220 euros; it is not surprising that in 97,8% of the cases such amounts of money ended up entirely in the hands of traffickers. The Ministry of Justice also collected information on the traffickers, who have a median age of 35 years, are in 2 out of 3 cases men (66,6% of the total) and are for the most part foreign citizens, with a high prevalence of Romanians (45,2%), Albanians (14,9%), and Nigerians (10,1%) who in a high number of cases traffic and exploit individuals from their home-countries. 83% of the individuals involved in human trafficking also commit other related crimes, so that the median duration of prison time for those who are found guilty of human trafficking is five and a half years, which is raised to nine years of jail for those traffickers who also committed other related crimes.

Representative and Co-ordinator on Combating Trafficking in Persons underlined that ‘monitoring and evaluation of antitrafficking measures and policies [are] an essential tool to improve effectiveness and cost-efficiency in order to adapt operational strategies to the ever-changing nature of the trafficking phenomenon’. Therefore, in her report on the country visit to Italy, while - on one hand - she praised the availability of data from multiple sources, on the other, she underlined that ‘a unified system and compatible criteria for data collection, elaboration and reporting are critical for the development and review of anti-trafficking policies and measures’.<sup>110</sup> Similarly, GRETA recommended to the Italian authorities ‘to develop a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors, and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, internal trafficking)’ as a way to draft, monitor and evaluate anti-trafficking policies. The adoption of the Action Plan and the establishment of the Steering Committee and working groups offer to the Italian authorities the chance to deal with this issue.

### 3.3.6. Financial Investigations

Up until very recently most of the efforts conducted worldwide to fight against trafficking in persons had not proactively included attention to seizing and confiscating the proceeds derived from and invested in such a criminal activity. This problem was due to the lack of cooperation and comprehensiveness in the approach to the fight against trafficking in human beings (THB), so that:

The communities involved in anti-trafficking and in anti-money laundering work in isolation from one another. Law enforcement agencies are often unaware of, or unequipped to handle, THB-related financial activity, whereas financial investigators generally lack knowledge of THB operations. Interagency and international co-operation on THB is particularly limited with respect to THB-related financial investigations.<sup>111</sup>

In this respect, the 2013 Addendum to the OSCE Action Plan to Combat THB suggests: the promotion of the use of financial investigations linked with trafficking-related offences, as well as the enhancement of the capac-

<sup>110</sup> OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings (2014), para 24.

<sup>111</sup> OSCE (2016), p. 48.



ity, on one hand, of anti-money-laundering authorities and other relevant authorities to identify financial activities linked to this criminal activity and, on the other, of tracing, freezing and confiscating the instrumentalities and proceeds of human trafficking.<sup>112</sup>

In this respect, it is to be noted that the adoption of Legislative Decree No. 90 of 2017 allowed to make a step in advance in the legislative framework regulating the activities of money transfers in Italy.<sup>113</sup> Such legislation was, however, adopted with the intention to fight against terrorism and not trafficking in persons, so that, according to the *Italian Parliamentary Inquiry Commission on Mafias and Other Criminal Organizations, including Foreign Ones* some critical aspects in the legislative framework remain.<sup>114</sup> Moreover, the organization of the first national training course modelled on the trainings and simulations conducted within the framework of the project *Combating Human Trafficking along Migration Routes* (see *infra* Sect. 3.3.7) is to be praised.

### 3.3.7. Capacity Building and Training

The fundamental importance of conducting trainings for ‘border officials, law enforcement officials, judges, prosecutors, immigration and other relevant officials in all aspects of trafficking in persons’ was emphasized since the adoption of the OSCE Action Plan in 2003.<sup>115</sup> Equally important was considered the focus on human rights, children rights and gender-sensitive issues in such training courses, as well as the relevance of the co-operation with NGOs, other relevant organizations and other elements of civil society.<sup>116</sup> The 2013 Addendum included a relevant focus on certain fundamental topics that should be covered in trainings, as including ‘all recent trends and aspects of THB, including methods used by traffickers to abuse legal process and methods to coerce their victims, the use of the

<sup>112</sup> OSCE (2013), para II.2.1.

<sup>113</sup> Decreto Legislativo 25 maggio 2017, n. 90 ‘Attuazione della direttiva (UE) 2015/849 relativa alla prevenzione dell’uso del sistema finanziario a scopo di riciclaggio dei proventi di attività criminose e di finanziamento del terrorismo e recante modifica delle direttive 2005/60/CE e 2006/70/CE e attuazione del regolamento (UE) n. 2015/847 riguardante i dati informativi che accompagnano i trasferimenti di fondi e che abroga il regolamento (CE) n. 1781/2006’ 2017 (Italy).

<sup>114</sup> Commissione Parlamentare d’Inchiesta sul Fenomeno delle Mafie e sulle Altre Associazioni Criminali, anche Straniere (2017), p. 64.

<sup>115</sup> OSCE Ministerial Council (2003), para 5.1.

<sup>116</sup> *Ibid.*, para 5.2.

Internet and other information and communication technologies (ICTs) for committing THB related crimes, as well as training on the use of financial investigation techniques linked with THB related cases, and exchange of best practices'.<sup>117</sup>

While the various central and local authorities, as well as NGOs and other stakeholders conduct trainings directed at the various professionals involved in dealing with trafficking in human beings in Italy, the adoption of the National Action Plan and the work conducted by the Italian Department of Equal Opportunities as the equivalent body offers to the Italian institutions the possibility to proceed with the creation of a centralized database containing information on training activities.

A best practice in the criminal justice response against human trafficking along migratory routes that has to be noted is the project *Combating Human Trafficking along Migration Routes* launched by the Special Representative and Co-ordinator on Combating Trafficking in Human Beings in 2016.<sup>118</sup> The project's activities are centred on three simulations that were conducted at the Centre of Excellence for Stability Police Units (CoESPU) of Vicenza (Italy).<sup>119</sup> The three simulations were attended by 192 participants<sup>120</sup> from 47 OSCE participating States and 4 partners for co-operation and they involved a 5-days programme including 1 day devoted to theoretical, methodological and technical training on combating trafficking in persons in the framework of a mixed migration context and four days of simulations based on cases of human trafficking for sexual and labour exploitation and child trafficking. The project adopted a human rights and victims-centred approach and the trainings also paid specific attention to the use of financial investigations by the participants as a way to seize and confiscate traffickers' illicit profits and compensate the victims.<sup>121</sup> The project was financed by Andorra, Austria, France, Germany, Hungary, Italy, Monaco, and Switzerland. In addition to the Office of the Special Representative and CoESPU, project partners included, *inter alia*:

<sup>117</sup> OSCE Ministerial Council (2013), para 4.1.

<sup>118</sup> OSCE Office of the Special Representative and Co-ordinator on Combating Trafficking in Human Beings (2018).

<sup>119</sup> The first simulation was conducted in November 2016, the second one in June 2017 and, finally, the third one in September 2017.

<sup>120</sup> Participants' included financial and criminal investigators, labour inspectors, prosecutors, staff of NGOs, public officials, lawyers, cultural mediators and journalists.

<sup>121</sup> OSCE Office of the Special Representative and Co-ordinator on Combating Trafficking in Human Beings (2017), 22.

the European Union Agency for Law Enforcement Training (CEPOL), Interpol, EUNAVFOR, the International Centre for Migration Policy Development (ICMPD) and the United Nations High Commissioner for Refugees (UNHCR). On the basis of the results of this project, the Italian authorities decided to finance another training course based on the same format for Italian professionals working in anti-trafficking activities.

### 3.3.8. Trafficking for Labour Exploitation in Agriculture and Supply Chains

A relevant number of OSCE commitments exists in the areas of trafficking for labour exploitation. First of all, the OSCE 2003 Action Plan requires OSCE participating States to address ‘the problem of unprotected, informal and often illegal labour, with a view to seeking a balance between the demand for inexpensive labour and the possibilities of regular migration’.<sup>122</sup> Secondly, the OSCE Ministerial Council also recognizes that irregular migrants are a group at risk of being specifically targeted by this form of exploitation.<sup>123</sup> For these reasons, it recommends to OSCE participating States to ‘[e]nsure effective complaint procedures where individuals can report in a confidential manner circumstances that might be indicative of a situation of trafficking for labour exploitation, such as exploitative working and living conditions’.<sup>124</sup>

As for sexual exploitation, the OSCE Ministerial Council considers fundamental the role of NGOs in promoting outreach strategies and in providing information to migrant workers and other individuals in vulnerable conditions in sectors such as agriculture, construction, garment or restaurant industries, and in domestic work.<sup>125</sup> However, in her visit to Italy, the Special Representative and Co-ordinator on Combating Trafficking in Human Beings called the Italian authorities to guaranteeing ‘the involvement of a wide range of stakeholders in prevention, outreach and assistance measures targeting trafficked and exploited workers, such as trade unions and “Patronati” ...’, including migrants’ associations and especially the diaspora.<sup>126</sup> Moreover, the 2013 Addendum to the Action Plan focused the attention on

<sup>122</sup> OSCE Ministerial Council (2003), para 3.2.

<sup>123</sup> OSCE Ministerial Council (2007), Preamble.

<sup>124</sup> Ibid., para 11.

<sup>125</sup> OSCE Ministerial Council (2006), para 6.

<sup>126</sup> OSCE Special Representative and Co-ordinator (2014), para 12.

the supply chains that allow the exploitation of vulnerable workers and on the adoption of codes of conduct to encourage business enterprises to respect workers' rights, as a way to prevent trafficking in human beings.<sup>127</sup>

Recent developments in Italy include the legislative amendments to Article 603-*bis* of the Criminal Code and to Article 22 of the Legislative Decree No. 286/1998 discussed *infra* Sect. 3.2.1, but also Article 6 of Law 116 of 2014,<sup>128</sup> which established a network for quality agricultural work (*Rete del lavoro agricolo di qualità*), so that agricultural companies that comply with the respect of the rights of workers obtain a label certification (*bollino etico*) that renders their ethical conduct more visible to consumers. On 27 May 2016 an Experimental Protocol against the illegal gang mastering and labour exploitation in agriculture was adopted by the Ministry of the Interior, the Ministry of Agricultural Policies and the Ministry of Labour and social Policies, the National Labour Inspectorate, various Italian Regions (Basilicata, Campania, Calabria, Piedmont, Apulia, and Sicily) and non-governmental actors including *inter alia* Coldiretti, Confagricoltura, Copagri, Cia, Caritas, Libera and the Italian Red Cross.<sup>129</sup> The Protocol should have led to the creation of a Coordination and Monitoring Group and it should have been in force until 31 December 2017. Unfortunately the Protocol and its ambitious measures have not so far been implemented. However, it is to be noted that after the adoption of the national Protocol various provincial protocols were developed, as well as a few local initiatives.

While the establishment of the network and the introduction of the label certification are considered as very positive steps, their promotion among the various stakeholders as a way to increase the number of businesses involved and the promotion of awareness raising campaigns directed at consumers are considered as fundamental steps to determine progresses in this area. Moreover, frequent checks of businesses having acquired the certification should be conducted as way to discourage deviant behaviours.

<sup>127</sup> OSCE Ministerial Council 2013, para III.1.7.

<sup>128</sup> Article 6 Legge 11 agosto 2014, n. 116 'Conversione in legge, con modificazioni, del decreto-legge 24 giugno 2014, n. 91: Disposizioni urgenti per il settore agricolo, la tutela ambientale e l'efficientamento energetico dell'edilizia scolastica e universitaria, il rilancio e lo sviluppo delle imprese, il contenimento dei costi gravanti sulle tariffe elettriche, nonché per la definizione immediata di adempimenti derivanti dalla normativa europea' 2014 (Italy).

<sup>129</sup> Ministero del Lavoro et al (2016).

### 3.4. Key Findings of the Assessment

The OSCE has been at the forefront of the battle against human trafficking since the early 1990s, so that the OSCE commitments in this field are diverse and comprehensive, covering all the areas of work in this sector. Therefore, this study selected 8 relevant areas - namely the ones connected with the establishment of the National Referral Mechanism and the identification of victims, the identification and protection of child victims of trafficking, the protection and assistance afforded to trafficking victims, the repatriation of irregular migrants presumed to be victims of trafficking, data collection, financial investigations, capacity building and training, and trafficking for labour exploitation in agriculture and the supply chains – and assessed the level of implementation of the relevant OSCE commitments by Italy, for the purpose of understanding whether the national efforts are already sufficient or if recommendations for a strengthened or improved framework are to be formulated.

In this framework, it is first of all to be acknowledged that, on the basis of the assessment conducted in the previously mentioned 8 areas, Italy has a legislative and institutional framework in place that fully meets the requirements included in the selected OSCE commitments on human trafficking, even if some shortcomings remain in its implementation. It is worth mentioning that Italy has been at the forefront of the promotion of a human rights-centred approach to the issue of human trafficking worldwide with the adoption of Article 18 of Legislative Decree No. 286 of 1998 and has continued to be committed to prevent and fight against this criminal activity and to guarantee protection for victims, with numerous amendments being made to the Criminal Code and the introduction of various relevant pieces of legislation. In addition to this, the existence of a vibrant civil society with numerous non-governmental organizations and associations engaged in guaranteeing support and assistance to victims is also to be emphasized and praised. Moreover, it is also to be fully recognized that the recent migrant crisis has determined multiple challenges for the country and it has unfortunately also produced an impact on its efforts in the area of trafficking in human beings. Therefore, while the difficulties that Italy has faced were unprecedented and exceptional, it is of fundamental importance that the country continues to remain committed to guaranteeing that its efforts in the field of human trafficking are not affected by it. Further-

more, the recent focus on trafficking for the purpose of labour exploitation needs to be further supported and enhanced.

On the basis of the analysis conducted *supra* and of these preliminary considerations on the level of implementation by Italy of the relevant OSCE commitments in the field of human trafficking, some recommendations for the Italian authorities follow.

### 3.5. Recommendations and Measures to Be Taken by Italy to Be in Line with OSCE Standards and Commitments

It is recommended that, to be fully in line with the OSCE commitments, Italy promotes the following measures:

- Continues to work to strengthen the National Referral Mechanism, promotes its inclusiveness and conducts periodic assessments of its effectiveness.
- Continues to work to promote the proper identification of trafficking victims among irregular migrants and asylum seekers.
- Facilitates the access of the staff of non-governmental organizations to first and second line reception centres for irregular migrants, identification and expulsion centres, and centres for the accommodation of asylum seekers, prisons and other detention facilities.
- Continues to work to guarantee the proper identification of child trafficking victims among migrant unaccompanied minors arriving in the country.
- Monitors the implementation of Article 18 of Legislative Decree No. 286 of 1998 by the *Questure* and considers collecting data on the participation of individuals to the social and judicial paths.
- Considers that repatriation for trafficking victims should preferably be voluntary.
- Respects basic human rights, the principle of *non-refoulement*, safety and dignity of victims of trafficking during their return to the country of origin and guarantees that a humanitarian and compassionate approach is promoted.
- Promotes the centralization of the collection of data and the adoption of standard rules for data collection.

- Continues to promote the use of financial investigations linked with human trafficking offences and to organize relevant training activities for the financial investigators working in this field.
- Continues to conduct training courses on human trafficking based on a human rights centred approach, on children rights and on gender mainstreaming for law enforcement officials, judges, prosecutors, border guards, immigration and other officials.
- Addresses the problem of unprotected, informal and illegal work in the agricultural sector.
- Guarantees that effective complaint mechanisms exist for individuals to report in a confidential matter circumstances that might be *indicia* of labour exploitation.
- Continues to promote the network for quality agricultural work and the label certification, organizing awareness raising campaigns supporting these initiatives.
- Promotes the adoption by the private sector, trade unions and relevant civil society institutions of codes of conduct as a way to guarantee the respect of human rights and fundamental freedoms of workers throughout the supply chain, thus preventing the exploitative situations that foster human trafficking.

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## Chapter 4

# The implementation of the OSCE Commitments to Fight Violence against Women in Italy

by Francesca Capone\*

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## 4.1. OSCE Commitments and Relevant International Framework

### 4.1.1. Rationale for the Selected Topic

The topic of violence against women has been selected as one of the areas of investigation of the present Report due to the unprecedented levels reached by this phenomenon in Italy. The Italian National Institute for Statistics (*ISTAT*) has carried out two comprehensive studies, called ‘Violence against Women inside and outside the Family’, published respectively in 2007 and 2015,<sup>1</sup> a third study is going to be completed by the end of 2018. The available and most recent data show that 6 million 788 thousand women in Italy, corresponding to 31,5% of Italian women between 16 and 70 years old, have experienced some form of gender based violence at some point in their lives.<sup>2</sup> At the regional level a survey conducted by the European Union Agency for Fundamental Rights (FRA) reports that one in three women (33%) in Europe has experienced physical and/or sexual violence since she was 15 years old. At the global level it is estimated that one in every three women has been beaten, coerced into sex or abused in some other way, most often by someone she knew.<sup>3</sup>

Violence against women is, thus, endemic in every society, and encompasses different forms of physical, sexual and psychological abuse. Nonetheless, in spite of its scale and social impact, violence against women remains largely under-reported and relatively under-researched in key areas.<sup>4</sup> The 2011 Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (hereafter ‘Istanbul Convention’) defines violence against women as:

[...] a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in,

<sup>1</sup> ISTAT (2007), *La Violenza e i Maltrattamenti contro le Donne dentro e fuori la Famiglia* (hereafter ‘ISTAT Report 2007’), available at: <http://www.istat.it/it/files/2011/07/testointegrale.pdf?title=Violenza+contro+le+donne+-+21%2Ffeb%2F2007+-+Testo+integrale.pdf>; ISTAT (2015) *La Violenza contro le Donne dentro e fuori la Famiglia*, p.1, (hereafter ‘ISTAT Report 2015’), available at: [https://www.istat.it/it/files/2015/06/Violenze\\_contro\\_le\\_donne.pdf?title=Violenza+contro+le+donne+-+05%2Fgiu%2F2015+-+Testo+integrale.pdf](https://www.istat.it/it/files/2015/06/Violenze_contro_le_donne.pdf?title=Violenza+contro+le+donne+-+05%2Fgiu%2F2015+-+Testo+integrale.pdf).

<sup>2</sup> Ibid.

<sup>3</sup> WHO (2013) *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and non-Partner Sexual Violence*, available at: [http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625\\_eng.pdf;jsessionid=F76C0ACC6CF26047B12C02ED021B3984?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=F76C0ACC6CF26047B12C02ED021B3984?sequence=1).

<sup>4</sup> FRA Report (2014), p. 7.

physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>5</sup>

This broad definition of violence against women clearly underscores that, for the purpose of the Istanbul Convention, violence against women shall be understood to constitute a violation of human rights *and* a form of discrimination. This fully reflects the goal of the Istanbul Convention set out in Article 1(b) and represents a key tenet for States parties when implementing the Convention.<sup>6</sup> Italy has ratified the Istanbul Convention on 27 June 2013 and is committed to fight violence against women in accordance with the definition provided for under this agreement; furthermore, Italy is bound to address, through a ‘four pillars system’ that will be discussed in more detail in the next section, all forms of violence against women, including domestic violence, by adopting measures aimed at: *i*) preventing violence, *ii*) protecting victims, and *iii*) prosecuting the perpetrators. The OSCE human dimension commitments related to violence against women and the Istanbul Convention, as the most developed international legal instrument in this field, will be used as a yardstick against which measuring Italy’s progress and the efforts undertaken, focussing in particular on the last five years. Building on these premises and after outlining in more detail the existing legal framework at the international and regional levels, the present chapter’s objective is to investigate how Italy expresses its commitments to eliminate all forms of violence against women, prosecute the perpetrators, and protect victims of gender-based violence;<sup>7</sup> and what measures have been implemented so far to comply with these international obligations.

#### 4.1.2. An Overview of the OSCE Commitments Related to Violence against Women

The OSCE has identified the ‘Prevention of Gender-Based Persecution, Violence and Exploitation’ as one of its key commitments related to threats

<sup>5</sup> CoE, Convention on Preventing and Combating Violence against Women and Domestic Violence [2011] CETS No. 210, Art. 3(a). For an overview of the key tenets of the Istanbul Convention see Poggi (2017).

<sup>6</sup> Explanatory Report to the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, p. 7, para 40.

<sup>7</sup> Art. 3(d) Istanbul Convention.



to human security.<sup>8</sup> Such commitment has been spelled out in a number of OSCE's documents and decisions.<sup>9</sup> Without lingering on each of them, the most relevant to the present analysis are:

- OSCE Action Plan for the Promotion of Gender Equality, adopted during the Ministerial Council held in Sofia in 2004;<sup>10</sup>
- Decision on Preventing and Combating Violence against Women, adopted during the Ministerial Council held in Ljubljana in 2005;<sup>11</sup>
- Decision on Preventing and Combating Violence against Women, adopted during the Ministerial Council held in Basel in 2014.<sup>12</sup>

The 2004 OSCE Action Plan for the Promotion of Gender Equality, which built on the 2000 OSCE Action Plan for Gender Issues,<sup>13</sup> was adopted in order to encourage 'gender awareness raising' and to promote equality in rights and full and equal participation of women and men in society. This is in line with the United Nations (UN) declared goal to promote the practice of gender equality and 'gender-mainstreaming'.<sup>14</sup> More in detail, the 2004 OSCE Action Plan for the Promotion of Gender Equality identifies the priorities of the OSCE in promoting gender equality, in the Organization as well as in all Participating States, and to ensure the monitoring of

<sup>8</sup> OSCE (2012), OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition), p. 242 (hereafter '2012 OSCE Human Dimension Commitments'), available at: <https://www.osce.org/odihr/76894?download=true>.

<sup>9</sup> Notably, decisions are documents adopted by the Ministerial Council, which is the meeting of foreign ministers from OSCE States and the central decision-making and governing body of the OSCE. The OSCE Action Plans are adopted through decisions and are documents that outline in detail the priorities and the strategy of the OSCE, both within the Organization and in the Participating States, in relation to certain issues.

<sup>10</sup> OSCE (2004), Permanent Council Decision No. 638 - 2004, 'OSCE Action Plan for the Promotion of Gender Equality' (hereafter '2004 OSCE Action Plan on Gender Equality'), available at: <https://www.osce.org/mc/23295?download=true>.

<sup>11</sup> OSCE (2005), Permanent Council Decision No.15/05, 'Preventing and Combating Violence against Women' (hereafter '2005 OSCE Decision on Violence against Women'), available at: <https://www.osce.org/mc/17451?download=true>.

<sup>12</sup> OSCE (2014), Permanent Council Decision No, 7/14, 'Preventing and Combating Violence against Women' (hereafter '2014 OSCE Decision on Violence against Women'), available at: <https://www.osce.org/cio/130721?download=true>.

<sup>13</sup> OSCE (2000), Permanent Council Decision No. 353/00, 'Action Plan for Gender Issues' (hereafter '2000 OSCE Action Plan for Gender Issues'), available at: <https://www.osce.org/pc/26462?download=true>.

<sup>14</sup> In the words of the UN General Assembly 'mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels'. Official Records of the General Assembly, Fifty-second Session, Supplement No. 3 (A/52/3/Rev.1), para 4.

its implementation. With regard to the Participating States, the 2004 Action Plan clearly affirms that they 'bear the primary responsibility and are accountable to their citizens for the implementation of their commitments on equality of rights and equal opportunities for women and men'.<sup>15</sup>

In relation to the specific recommendations made directly to the Participating States, they encompass a number of key actions, the most relevant being: *i*) establishing or strengthening existing mechanisms for ensuring gender equality, *inter alia* by making available the services of an impartial and independent person or body, such as an Ombudsman/Human Rights Commissioner, to address gender related discrimination against individual citizens; *ii*) adhering to and fully implementing the international standards and commitments they have undertaken concerning equality, non-discrimination and women's and girls' rights; *iii*) complying with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>16</sup> if they are parties, or, if they have not already done so, consider ratifying or acceding to this Convention; *iv*) supporting national and international efforts to bring to justice those who have perpetrated crimes against women which, under applicable rules of international law, are recognized as war crimes or crimes against humanity, and ensuring that existing national legislation on violence against women is enforced, and that new legislation is drafted where necessary.<sup>17</sup> The actions envisaged include also a particular focus on women victims of human trafficking and refugee women,<sup>18</sup> notably, those issues will be addressed in more detail in other Chapters of the present Report and only incidentally in the present one.

Concerning the 2005 OSCE Decision on Violence against Women, it is worth stressing that in this Decision, besides reaffirming the key recommendations listed above, the OSCE also reinforced the focus on women victims of violence and urged the Participating States to: *i*) ensure that all female victims of violence will be provided with full, equal and timely access to justice and effective remedies, medical and social assistance, including emergency assistance, confidential counselling, and shelter; *ii*) adopt and implement legislation that criminalizes gender-based violence and establishes adequate legal protection; *iii*) provide in a timely manner

<sup>15</sup> OSCE (2004), Action Plan on Gender Equality, p. 8, para 41.

<sup>16</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1979, 1249 U.N.T.S. 13.

<sup>17</sup> OSCE (2004), Action Plan on Gender Equality, pp. 9-10, para 42.

<sup>18</sup> See, respectively, Chapter 1 by Chiara Favilli and Chapter 3 by Silvia Scarpa in this Report.

physical and psychological protection for victims, including appropriate witness protection measures; *iv*) investigate and prosecute the perpetrators, while addressing their need for appropriate treatment; *v*) promote the full involvement of women in judicial, prosecutorial and law enforcement institutions and ensure that all relevant public officials are fully trained and sensitized in recognizing, documenting and processing cases of violence against women and children; and *vi*) meet the special needs for protection and assistance of girl victims of violence.<sup>19</sup>

Finally, with regard to the 2014 OSCE Decision on Preventing and Combating Violence against Women it is important to highlight that, after reaffirming all previous commitments, the document's core achievement is the clarification and systematization of the approach followed by the Organization, which calls on Participating States to implement five strands of action. The first strand of action tackles the domestic legal frameworks' compliance with the international legal instruments in place, in particular the Istanbul Convention.<sup>20</sup> Furthermore, Participating States are requested to intensify the efforts undertaken to collect, maintain and make public reliable, comparable, disaggregated, and comprehensive evidence based data and statistics regarding all forms of violence against women.<sup>21</sup> The second strand is represented by prevention, which encompasses the following crucial aspects: raising public awareness, develop programmes to work with the perpetrators during and after the sentence, prevent victims' secondary victimization. The third element highlighted in the Decision is protection, which focuses on support services for victims and victims' empowerment.<sup>22</sup> The fourth strand is prosecution, which centres on enhancing the legal framework in order to strengthening criminalization, prosecution, punishment and victims' redress. The fifth and final strand focuses on the need to establish effective cooperation amongst all relevant national stakeholders involved in fighting violence against women. In particular the Decision encourages Participating States to achieve this goal through the adoption of comprehensive and coordinated national policies.<sup>23</sup>

Therefore, the OSCE commitments related to violence against women can be described as wide and comprehensive, focussing especially on five

<sup>19</sup> OSCE Decision on Violence against Women (2005), p. 2, para 4.

<sup>20</sup> OSCE Decision on Violence against Women (2014), p. 2, para 1.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid., p. 3, para 5.

<sup>23</sup> Ibid., p. 4, para 8.

core issues, i.e. legal framework's compliance with international standards, prevention, protection, prosecution, and partnership. The emphasis is placed on the necessity to punctually implement the obligations enshrined in the exiting international legal framework, which in 2004-2005 mainly revolved around the CEDAW, and in 2014, at least for the countries, like Italy, that ratified it, is predominantly centred on the Istanbul Convention.<sup>24</sup>

#### 4.1.3. The International Legal Framework

As underscored above, the most recent and innovative legal instrument dealing with violence against women is represented by the Istanbul Convention, currently ratified by 30 States and signed also by the European Union (EU), which has not yet finalized its commitment to become a party to the Convention.<sup>25</sup> Besides the Istanbul Convention, at least two more legal instruments deserve to be briefly introduced in order to outline Italy's international commitments in the sphere of violence against women. Such instruments are the CEDAW and the EU Directive of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime.<sup>26</sup> The present section will present an overview of the key principles and norms underpinning the current international legal framework, as they will be instrumental to assess the adequacy of Italy's actions in this sphere.

##### 4.1.3.1. CEDAW

It is worth emphasizing that the CEDAW, which has a universal breadth and deals more generally with gender equality, has also made a significant contribution to thwarting violence against women – despite containing no express reference to this issue – especially through the work of its monitoring body, i.e. the CEDAW Committee. The CEDAW Committee's recommendation No. 19 deals expressly with violence against women,<sup>27</sup> and it has been updated in 2017 with the adoption of recommendation No. 35 on

<sup>24</sup> The Istanbul Convention entered into force on 1 August 2014.

<sup>25</sup> European Parliament, Policy Department (2017), *Violence against Women and the EU Accession to the Istanbul Convention*, pp. 84-92 (hereafter 'EP Report Violence against Women 2017'), available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596815/IPOL\\_STU\(2017\)596815\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596815/IPOL_STU(2017)596815_EN.pdf).

<sup>26</sup> Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 (hereafter 'Victims' Rights Directive').

<sup>27</sup> General recommendation No. 19: Violence against women, UN Doc. A/47/38 (1992).

gender-based violence against women.<sup>28</sup> In line with the 2004 OSCE Action Plan the CEDAW General recommendation No. 35 explicitly stresses the necessity to set up mechanisms or bodies to coordinate, monitor and collect data on violence against women.<sup>29</sup> Another important point raised by the CEDAW Recommendations is the necessity to prosecute and punish the perpetrators of violence against women. In this regard General recommendation No. 35 requests States to ensure, *inter alia*, that perpetrators are brought to trial in a fair, impartial, timely and expeditious manner and subjected to adequate penalties.

Furthermore General recommendation No. 35 requires States to refrain from mandatorily referring gender-based violence against women to alternative dispute resolution procedures, including mediation and conciliation, and to guarantee victim's access to reparations.<sup>30</sup> Measures to strengthening victims' protection are also envisaged and they encompass gender-sensitive court procedures and measures, appropriate and accessible protection mechanisms to prevent further or potential violence – without the precondition for victims/survivors to initiate legal actions – including through removal of communication barriers for victims with disabilities, access to financial aid and free or low-cost high quality legal aid, medical, psychosocial and counselling services, education, affordable housing, land, child care, training and employment opportunities for women victims/survivors and their family members.<sup>31</sup>

As mentioned above the CEDAW does not contain any explicit mention of violence against women, nonetheless, based on the interpretation of the CEDAW set forth in the General recommendations that tackle this topic, the CEDAW Committee frequently makes specific recommendations to States parties dealing with this issue. In fact, in its Concluding Observations on the periodic reports submitted by States parties under the CEDAW monitoring procedure the Committee often expresses its views on how States are addressing gender-based violence. Also, under the individual communications procedure contained in the Optional Protocol to the CEDAW, the Committee has found States to be in violation of the

<sup>28</sup> General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (2017). For an analysis of the General recommendation see McQuigg (2017).

<sup>29</sup> General recommendation No. 35, paras 48-53.

<sup>30</sup> Ibid., paras 44-47.

<sup>31</sup> Ibid., paras 40-43.

Convention in several instances relating to violence against women.<sup>32</sup> With regard to individual communications submitted by victims of violations of the Convention perpetrated in Italy, for the time being the only submission has been dismissed by the Committee as inadmissible.<sup>33</sup> Concerning the Concluding Observations on the periodic reports submitted by Italy, in the most recent document, issued in July 2017, the CEDAW Committee has welcomed the measures taken to combat violence against women, including the adoption and implementation of Law No. 119/2013 on urgent provisions on safety and to combat gender-based violence (also known as the ‘Law on femicide’, which transposes into the Italian legal framework the obligations undertaken under the Istanbul Convention),<sup>34</sup> the establishment of a national observatory on violence and a national database on gender-based violence.<sup>35</sup> Nonetheless, the Committee has also expressed its concern with regard to a number of issues that will be underscored in the coming sections to the extent that they mirror the OSCE commitments.

#### 4.1.3.2. EU Directive on Establishing minimum Standards on the Rights, Support and Protection of Victims of Crime

The EU Directive on common minimum standards on the rights, support and protection of victims provides a general framework, which is relevant/applicable also to victims of violence against women. The Directive obliges Member States to support the victims and/or their family members – thus expanding the notion of victims of crime – to protect the victims but also to satisfy victims’ right to be informed during all the relevant proceedings. Member States must also provide training to officials who deal with victims in order to ensure that they are capable to address their specific needs. As enshrined in Article 9 (3) (b) protection and support for women who have become victims of gender-based violence has been specifically included in the Directive.

<sup>32</sup> *AT v Hungary* (2/200), Views, CEDAW/C/32/D/2/2003; *Fatma Yildirim v Austria* (6/2005), Views, CEDAW/C/39/D/6/2005.

<sup>33</sup> *Zhanna Mukhina v Italy* (027/2010) Inadmissibility decision, CEDAW/C/50/D/27/2010.

<sup>34</sup> Law No 119 of 15 October 2013 (G.U. No. 242 of 15 October 2013), converting Decree Law No 93 of 14 August 2013 (*Disposizioni urgenti in materia di sicurezza e per il contrasto alla violenza di genere nonché in tema di protezione civile e di commissariamento delle province*).

<sup>35</sup> Committee on the Elimination of Discrimination against Women (2017), Concluding observations on the seventh periodic report of Italy (hereafter ‘CEDAW Committee Concluding Observations 2017’), CEDAW/C/ITA/CO/7, p. 8, para 27.

Moreover, great attention is placed on the importance of avoiding the risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings (as spelled out in Articles 12, 18, 22, and 26). The Directive has been transposed into the Italian framework and implemented through the adoption of Legislative Decree No. 212 of 15 December 2015.<sup>36</sup> The Legislative Decree, which introduced a number of amendments to the Italian Code of Criminal Procedure,<sup>37</sup> focuses in particular on victims' right to information,<sup>38</sup> victims' right to participate in criminal proceedings benefiting from victim-friendly procedures, e.g. video recording of interviews,<sup>39</sup> and victims' right to protection from secondary victimisation.<sup>40</sup> Notably, in its preamble the Directive recommends Member States to consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.<sup>41</sup> Italy so far has not implemented the recommendation, as it does not represent an obligation incumbent upon Member States; nonetheless some countries, like Belgium, created a one-stop shop/centralised contact point managed by the Ministry of Justice to assess and inform victims through one line of communication.<sup>42</sup>

In Italy, a scoping exercise is being carried out to assess the degree of victim support at the national level, but it is only once this exercise is complete that an accurate assessment of data gaps will be carried out; for the time being a recent study on the implementation of the Victims' Rights Directive in the EU Member States has underscored that the level of victim

<sup>36</sup> Legislative Decree No. 212 of 15 December 2015 (Attuazione della Direttiva 2012/29/UE del Parlamento Europeo e del Consiglio, del 25 ottobre 2012, che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI. 15G00221) (G.U. No. 3 of 5 January 2016).

<sup>37</sup> For example the introduction of Art. 90-*quarter*, which defines the concept of 'vulnerability'.

<sup>38</sup> Art. 1.2 Legislative Decree No. 212 of 15 December 2015.

<sup>39</sup> Art. 1.1(c) Legislative Decree No. 212 of 15 December 2015, amending Art. 134.4 of the Italian Code of Criminal Procedure.

<sup>40</sup> Ferranti (2016), pp. 9-10.

<sup>41</sup> Victims' Rights Directive, para 62.

<sup>42</sup> European Parliament, European Parliamentary Research Service (2017) The Victims' Rights Directive 2012/29/EU: European Implementation Assessment, p. 88, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS\\_STU\(2017\)611022\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS_STU(2017)611022_EN.pdf).

support and protection varies significantly across the country, with some Regions having more developed systems in place than others.<sup>43</sup>

#### 4.1.3.3. The Istanbul Convention

The Istanbul Convention set forth obligations incumbent on States parties structured around four main pillars: *i*) integrated policies, *ii*) prevention of all forms of violence, *iii*) protection of victims from further violence, and *iv*) prosecution of perpetrators.<sup>44</sup> Under each pillar the Convention identifies and imposes a number of key obligations.<sup>45</sup> Concerning the integrated policies, these encompass: adopting effective, comprehensive and coordinated policies to prevent and combat violence; allocating appropriate financial and human resources; supporting civil society and Non-Governmental Organisations (NGOs); and collecting statistical data. Notably, the Istanbul Convention requests States parties to develop ‘integrated policies’,<sup>46</sup> but leaves it up to each State to decide whether these policies would be laid out in several policy documents or just in one, for instance in the form of a national action plan (NAP) or strategy. Italy, alongside several parties to the Convention, in 2015 has adopted a NAP to lay down a progressively comprehensive national policy on violence against women covering 2015-2017.<sup>47</sup> In 2017 Italy restated its commitment by adopting a new strategic plan for 2017-2020.<sup>48</sup>

The second pillar requests States parties to comply with the following actions: taking measures, including legislative ones, to prevent all forms of violence, address prejudice, traditions and practices contributing to violence; promoting awareness raising; educating and training professionals; setting up intervention and treatment programmes for perpetrators. Under the ‘protection pillar’, States shall adopt measures to ensure the protection

<sup>43</sup> Ibid., p. 69.

<sup>44</sup> Art. 1 Istanbul Convention.

<sup>45</sup> Di Stefano (2012).

<sup>46</sup> Art. 7.1 Istanbul Convention.

<sup>47</sup> Prime Minister Decree (2015), Extraordinary national action plan against sexual and gender-based violence, covering the period 2015-2017. (hereafter ‘Extraordinary national action plan 2015-2017’ or ‘first NAP’), available at: <http://www.pariopportunita.gov.it/wp-content/uploads/2018/01/Piano-violenza-2015-2017.pdf>.

<sup>48</sup> Extraordinary National Strategic Plan on Men’s Violence against Women, covering the period 2017-2020 (hereafter ‘Extraordinary National Strategic Plan 2017-2020’ or ‘second NAP’), available at: <http://www.pariopportunita.gov.it/wp-content/uploads/2018/03/testo-piano-diramato-conferenza.pdf>.



of all victims from further violence; set up general and specialised support services, including safe shelters, helplines, assistance for complaints, etc...; and adopt legislative measures to ensure civil remedies.<sup>49</sup>

Finally, the obligations concerning the prosecution of gender-based violence against women include: taking the necessary measures so that all forms of violence are criminalized and investigated without delay and that adequate and immediate protection is provided to victims; ensuring an assessment of risks for victims;<sup>50</sup> establishing emergency barring orders, restraining or protection orders; and *ex officio* investigation and prosecution of physical violence, sexual violence, forced marriage, FGM and forced abortion and forced sterilisation.<sup>51</sup> As is well known, the Istanbul Convention sets apart domestic violence as a specific form of violence that affects women disproportionately,<sup>52</sup> and has a negative impact also on the lives of child victims or witnesses.<sup>53</sup> Furthermore, the Istanbul Convention includes specific provisions on various forms of violence against women, e.g. sexual violence (Article 36), forced marriage (Article 37), psychological violence (Article 33), stalking (Article 34), FGM (Article 38), forced abortion and forced sterilisation (Article 39).

Lastly, the far-reaching provisions of the Istanbul Convention are reinforced by the existence of a monitoring mechanism consisting of two distinct, but interacting, bodies. The independent expert body, i.e. the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), which is currently composed of 10 members;<sup>54</sup> and a political body, the Committee of the Parties, which is composed of representatives of the States parties to the Istanbul Convention. Each State party to the Convention must appoint a coordinating body responsible for the application, monitoring and evaluation of policies and measures taken under the Convention.<sup>55</sup> State parties are expected to report to GREVIO via this

<sup>49</sup> EP Report Violence against Women (2017), pp. 43-44.

<sup>50</sup> The assessments need to be carried out in relation to three matters: the lethality risk, the seriousness of the situation and the risk of repeated violence. Art. 51.1 Istanbul Convention.

<sup>51</sup> Art. 55 Istanbul Convention.

<sup>52</sup> Art. 3(b) Istanbul Convention, which defines domestic violence as ‘...all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim’.

<sup>53</sup> See for instance Art. 56.2 Istanbul Convention.

<sup>54</sup> One of GREVIO’s current members is Ms Simona Lanzoni, from Italy.

<sup>55</sup> Art. 10 Istanbul Convention.

coordinating body. Italy, together with the Netherlands and Serbia, started the GREVIO's country-by-country evaluation procedure in February 2018 and GREVIO will adopt its final report and conclusions on Italy – and the other countries in this slot – by January 2020. In Italy, the Department for Equal Opportunities, established within the Presidency of the Council of Ministers, acts as the coordinating body for the implementation of policies on violence against women and it is currently filling in the GREVIO questionnaire. Notably, the Department for Equal Opportunities has in practice little effectiveness, largely due to the failure of the President of the Council of Ministers to re-establish a Ministry with decision-making powers and sufficient resources.<sup>56</sup>

## 4.2. Legal and Institutional Framework in Italy

As already mentioned, Italy has adopted a number of domestic laws to comply with its international commitments to foster gender equality and thwart violence against women. The most relevant legal instruments *enacted prior* to the adoption of Law No. 119/2013 are:

1. Law No. 154 of 8 April 2001, 'Measures against violence in family relations', which included innovative instruments to combat domestic violence and ensure victims' protection – albeit on a temporary basis.<sup>57</sup> The Law has the merit of introducing in the Italian framework new measures such as the removal of the perpetrator from the family home and the possibility for the victim to receive spousal support from the perpetrator (or directly from his employer).<sup>58</sup>

2. Legislative Decree No. 198/2006 (also known as the 'Code of Equal Opportunities between Men and Women')<sup>59</sup> which serves the purpose of

<sup>56</sup> From 1996 to 2011 the Italian Government had a Ministry for Equal Opportunities; from 2011 to 2013 and again since June 2013 the Department for Equal Opportunities has been established and has been headed by Ministers who held other important offices at the same time (e.g. Labour, Welfare), or high government officials (*Sottosegretario*), as in the present cabinet. See also CEDAW Committee Concluding Observations 2017, p. 6, para 22.

<sup>57</sup> Law No. 154 of 4 April 2001 (G.U. No. 98 of 28 April 2001).

<sup>58</sup> Art.1 Law No. 154 of 4 April 2001.

<sup>59</sup> Amended by Legislative Decree No. 5 of 25. January 2010, transposing Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L 204/23.

thwarting gender-based discrimination and enhancing equality between men and women. The Code was lastly amended in 2017 to strengthen the protection granted to victims of sexual harassment in the workplace.<sup>60</sup>

3. Law No. 39 of 23 April 2009,<sup>61</sup> which introduced the specific crime of ‘stalking’ (section 612-*bis* of the Italian Criminal Code), punishable with imprisonment ranging from 6 months to up to 4 years, as well as a preventative measure, i.e. the so-called ‘warning’ to be applied by the chief constable (*Questore*) upon request by the offended person.

Italy’s legal and institutional framework, as amended following the ratification of the Istanbul Convention, will be analysed in detail in the coming paragraphs that deal with Italy’s abidance by the OSCE commitments concerning violence against women. As recalled in the previous section, the commitments, which include also strengthening the compliance of the Participating States’ domestic framework with the existing international standards, are outlined in three main documents. The more recent document, i.e. the 2014 OSCE Decision on Preventing and Combating Violence against Women, has the merit of clearly requesting Participating States to focus their efforts in this area on five strands of actions – legal framework’s compliance with international standards, prevention, protection, prosecution, and partnership.

### 4.3. Assessment on the Implementation of the OSCE Commitments

In order to assess Italy’s compliance with the five strands of action identified by the OSCE in the documents outlining its commitments on combating violence against women the present section will provide a comprehensive and critical overview of the measures undertaken by Italy and the current status of their implementation.

#### 4.3.1. Legal Framework’s Compliance with International Standards

Italy’s abidance by the current international standards can be primarily assessed in light of the obligations stemming from the CEDAW and the Istanbul Convention. In order to strengthen its legal framework’s compliance

<sup>60</sup> Art. 218, Law No. 205 of 27 December 2017 (G.U. No. 302 of 29 December 2017).

<sup>61</sup> Law No. 38 of 23 April 2009 (G.U. No. 95 of 24 April 2009).

with the existing international provisions Italy has adopted three new laws, focussing respectively on transposing the Istanbul Convention into the Italian domestic system, compensating victims of violence against women, and enhancing the rights of orphans of domestic violence crimes.

#### 4.3.1.2. Law No. 119/2013

As a preliminary caveat, it is worth noting that Italy, which was the fifth State to ratify the Istanbul Convention (after Albania, Portugal, Turkey and Montenegro), adopted Decree Law No. 93/2013 implementing urgent measures establishing stricter criminal sanctions against perpetrators of ‘particularly heinous events against women’ only two months after ratification,<sup>62</sup> perhaps missing out on the possibility to thoroughly reflect on the wide breadth of the Convention. The Decree was characterized by the clear rhetoric of emergency,<sup>63</sup> with a strong focus on criminal repression, and these characteristics were maintained when the Decree was converted in Law.<sup>64</sup> Concerning the criminal repression of acts of violence against women, Italy had already criminalized several conducts, including stalking (Article 612-*bis* Italian Criminal Code) and psychological violence, which can be connected to several criminal offences, e.g. threats (Article 612 Italian Criminal Code), mistreatment of family members (Article 572 Italian Criminal Code), and insults (Article 594 Italian Criminal Code).<sup>65</sup>

Overall, the novelties introduced by Law No. 119/2013 mainly concern new aggravating circumstances in the Italian Criminal Code.<sup>66</sup> First, an aggravating circumstance has been introduced to the criminal offence of sexual violence ex Article 609-*bis* of the Criminal Code, which now applies to all victims in a relationship with the perpetrator, regardless of marriage or cohabitation. Second, a general aggravating circumstance is now applicable to all offences against life and physical integrity, including domestic violence, and consists of having committed such offences in the presence of a minor or against a pregnant woman. Third, pursuant to the new Article 612-*bis*, the criminal offence of stalking, aggravated by the fact

<sup>62</sup> Law No. 77 of 27 June 2013 (G.U. No. 152 of 1 July 2013).

<sup>63</sup> Lo Monte (2013), pp. 2-3.

<sup>64</sup> Staiano (2015), p. 271.

<sup>65</sup> The Italian Parliament is currently discussing the introduction of three new provisions in its Criminal Code (Arts. 605-*bis*, *ter* and *quater*), which would criminalize forced marriage, compelled trips to conclude a marriage, and child marriage, respectively.

<sup>66</sup> Pavich (2013), pp. 7-8.

that the perpetrator is the spouse, now applies also in case of separation and divorce.<sup>67</sup> Furthermore, Article 55 of the Istanbul Convention affirms that States parties shall ensure that investigations into or prosecution of offences listed in the Convention are not wholly dependent upon a report or complaint filed by the victim and that the proceedings may continue even if the victim withdraws her or his statement or complaint. This provision has not been duly transposed in the Italian national legislation, with the exception of the cases envisaged by Article 612-*bis* paragraph 4.<sup>68</sup> This aspect is particularly relevant if analysed against the backdrop of the very low rate of proceedings initiated by the victims *ex parte*; in fact according to the ISTAT Report issued in 2015 only 11,8% of the Italian women who experienced some form of gender-based violence report it to the police.<sup>69</sup>

Concerning the other three pillars of the Istanbul Convention, i.e. integrated policies, prevention of all forms of violence, and protection of victims from further violence, Law No. 119/2013 has introduced some changes to the existing framework. With regard to measures of prevention from further violence it is worth signalling that when a fact that is deemed to fall within the offences of battery or grievous bodily harm in a context of domestic violence is reported, *not anonymously*, to the law enforcement authorities, the *Questore*, also in the absence of a complaint, can caution the offender after collecting the necessary information from the investigative bodies and after hearing the persons informed of the facts. Moreover, the *Questore* may request the Prefect of the place of residence of the person to be cautioned a suspension of his/her driving license for a period from one to three months.<sup>70</sup>

In relation to victims' protection the relevant measures include the obligation for law enforcement authorities, health facilities and public institutions to inform the victims of certain crimes – including sexual crimes and child pornography – of the presence of local anti-violence centres, or to put them in contact with said centres *upon express request of the victim*.<sup>71</sup> Another important change is represented by the new Article 384-*bis* of the Italian Code of Criminal Procedure, which introduces the possibility for the criminal police, upon the public prosecutor's authorization, to adopt a precautionary measure – i.e. the urgent removal from the family

<sup>67</sup> Staiano (2015), pp. 272-273.

<sup>68</sup> Merli (2015), p. 53.

<sup>69</sup> ISTAT Report (2015), p. 1.

<sup>70</sup> Art. 3 Law No. 119/2013.

<sup>71</sup> Art. 3(5) Law No. 119/2013.

house – against the person caught in the act of committing specific crimes (including sexual violence, sexual acts with a minor, corruption of a minor, group sexual violence), if there are well-grounded reasons to believe that the criminal behaviours might be reiterated, thus seriously endangering the victim's life or integrity.<sup>72</sup> Remarkably, victims must be promptly informed if the urgent removal from the family house – or any other measures imposed on the abuser – is revoked or replaced.<sup>73</sup>

With respect to foreign nationals, Article 4 of Law No. 119/2013 modifies the Consolidated Text on Immigration (*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*) by introducing Article 18-*bis*. The new provision establishes that a resident permit can be granted to victims of domestic violence when – in the course of police operations, investigations or a criminal proceeding concerning one of the offences punished under the Italian Criminal Code,<sup>74</sup> or under Article 380 of the Italian Code of Criminal Procedure (arrest *in flagrante delicto*) – situations of violence against or abuse of a foreign national are ascertained and a concrete and present danger for his/her safety emerges as a consequence of his choice to escape said violence or of the declarations made during the preliminary investigations or trial.<sup>75</sup> Notably, this provision has come under sharp scrutiny and was criticized by anti-violence organizations, lawyers, immigration experts and gender issues specialists because it links the issuance of a residence permit to the victim's willingness to lodge a formal complaint.<sup>76</sup>

Finally, concerning the integrated policies, Italy is among the States parties to the Istanbul Convention that decided to implement this pillar through the adoption of a comprehensive national plan or strategy. Article 5 of Law No. 119/2013 specifically deals with the first of these endeavours, i.e. the 2015-2017 extraordinary national action plan against sexual violence and gender-based violence, which *de facto* complements the provisions enshrined in the Law by focussing in particular on preventive and protective measures.

<sup>72</sup> Art. 2(d) Law No. 119/2013.

<sup>73</sup> Art. 2(b) Law No. 119/2013, amending Art. 299 of the Italian Code of Criminal Procedure.

<sup>74</sup> Art. 572 (Mistreatment of family members and co-habitants); Art. 582 (Bodily injury); Art. 583 (Aggravating circumstances); Art. 583-*bis* (FGM); Art. 605 (Kidnapping); Art. 612-*bis* (Stalking).

<sup>75</sup> Art. 4(1) Law No. 119/2013.

<sup>76</sup> CEDAW: Work in Progress (Shadow Report) 2016/2017, p. 9.

#### 4.3.1.2. Compensation of Damages

Until the adoption of Law No. 122 of 7 July 2016,<sup>77</sup> Italy was the only State party to the Istanbul Convention that did not comply with the requirement enshrined in Article 30(2).<sup>78</sup> Article 30(2) of the Istanbul Convention establishes a subsidiary obligation for the State to compensate victims when the damage is not covered by other sources, such as the perpetrator, insurance or State-funded health and social provisions. Article 30(3) of the Convention, moreover, provides that such compensation should be granted ‘within a reasonable time’. Articles 11-14 of Law No. 122 of 7 July 2016 establish the (many) conditions to access the ‘reimbursement’ (the Law uses the Italian term *indennizzo*, which does not exactly match the English word compensation),<sup>79</sup> in particular: the victim must qualify for legal aid (meaning that the determination of who can access the procedure is dependent on the social status of the victim); the submission of the request must take place within 60 days from the last documented attempt to obtain compensation from the perpetrators, the victim must not have benefitted from any other financial support granted by public *and/or* private actors. A Ministerial Decree determined the exact amount of the ‘reimbursements’,<sup>80</sup> establishing a ‘rate table’ that has been strongly criticized and does not match at all the compensation for damages awarded by national judicial bodies.<sup>81</sup>

#### 4.3.1.3. Orphans of Domestic Violence Crimes

The new Law No. 4/2018 dealing with orphans of domestic violence crimes provides legal protection and assistance to orphans who are victims of certain crimes and who, in addition to the harm suffered as a result of the crimes themselves, experience other highly adverse economic

<sup>77</sup> Law No. 122 of 7 July 2016 (G.U. No.158 of 8 July 2016). The Law stems from Italy’s failure to comply not only with the Istanbul Convention, but also with Directive 2004/80/EC relating to compensation to crime victims [2004] OJ L 261/15, Art. 12(1). Italy’s lack of compliance with the Directive has been ascertained also by the Court of Justice of the European Union (CJEU); see Case C-601/14 *European Commission v Italian Republic* [2016] ECLI:EU:C:2016:759.

<sup>78</sup> EP Report Violence against Women (2017), p. 59.

<sup>79</sup> Sforza (2017).

<sup>80</sup> Ministry of Internal Affairs, Decree of 31 August 2017 (*Determinazione degli importi dell’indennizzo alle vittime dei reati intenzionali violenti*) (G.U. NO. 237 of 10 October 2017).

<sup>81</sup> Ibid., Art. 1: murder EUR 7.200; murder committed by the partner or former partner EUR 8.200; sexual violence EUR 4.800; other relevant crimes EUR 3.000 to cover medical expenses.

and practical consequences.<sup>82</sup> For the benefit of those belonging to this vulnerable category the Law has introduced important amendments to the Italian Civil Code, Criminal Code, Code of Criminal Procedure and other provisions. In particular it is worth stressing that Law No. 4/2018 extends the benefit of *pro bono* representation by a Government attorney for both criminal and civil procedures to minor children and adult sons and daughters of victims of domestic violence who are not financially self-sufficient, regardless of income.<sup>83</sup> The *pro bono* legal representation is envisaged when the beneficiaries become ‘one-parent orphans’ as a result of a homicide committed by the spouse of the deceased parent, regardless of whether the two were separated or divorced before the homicide took place, or even if their civil union had already ceased. Orphans are also eligible for *pro bono* representation when the person who committed the homicide was in an emotional relationship with the deceased and stably cohabiting with him or her.

Furthermore, as stated in Article 5, the new Article 463-*bis* of the Italian Civil Code suspends the right of a married or legally separated spouse or member of a civil union who is under investigation for the manslaughter or tentative homicide of his or her partner to succeed the deceased until a temporary or permanent acquittal order is issued. A suspension applies also to the right to claim pensions benefitting the married, legally separated, or divorced spouse, and the partner in a civil union, even if the civil union has ceased, when that party is accused of homicide.<sup>84</sup> Other relevant provisions include the incremental disbursement of funds allocated for scholarships for orphans who are victims of domestic violence crimes;<sup>85</sup> the loss of housing benefits for the perpetrators;<sup>86</sup> and the possibility for the orphans to legally change their surname.<sup>87</sup>

<sup>82</sup> See Law No. 4 of 11 January 2018 (G.U. No. 26 of 1 February 2018).

<sup>83</sup> Art. 4(1) Law No. 4/2018.

<sup>84</sup> Art. 7 Law No. 4/2018. During the period of the suspension, minor children or adults who are not financially self-sufficient will receive the proceeds of those pensions without an obligation to return the amounts, even if an acquittal sentence is ultimately issued.

<sup>85</sup> Art. 11(4) Law No. 4/2018. According to this provision the existing fund, which was originally established for victims of mafia crimes, extortion demands and usury, has been renamed to include among its beneficiaries also the children orphaned by domestic crimes.

<sup>86</sup> Art. 12 Law No. 4/2018.

<sup>87</sup> Art. 13 Law No. 4/2018.



### 4.3.2. Prevention

With regard to prevention, the second strand of action identified by the 2014 OSCE Decision on Preventing and Combating Violence against Women, Italy has predominantly implemented its commitments in this area through the adoption of two extraordinary national action plans. The first NAP, established by Law No. 119/2013 and for which approximately EUR 10 million per year have been allocated, pursued five main lines of action, covering: *i*) communication/information to contrast gender stereotypes; *ii*) education (encompassing both initiatives to educate children and adolescents as well as training for school teachers and school personnel); *iii*) training for all the relevant stakeholders involved (focussing on three main areas: recognition of the signs of violence, assistance to the victims, and support throughout the transition from violence); *iv*) risk assessment; *v*) psychological and physical assistance to the victims; *vi*) victim's reintegration in the society; *vii*) rehabilitation of the perpetrators. The first NAP strived to outline, although not in detail, the functions and relative tasks of central administration, Regions, and local entities. In particular, what emerges quite strongly is the pivotal role attributed to the Italian Regions, which, following the Constitutional Reform of 2001 (*Riforma del Titolo V della Costituzione del 2001*), exercise legislative powers and jurisdiction on certain matters and incorporate in the regional legislations the principles stemming from European and international agreements. According to the allocation of tasks established by the 2015-2017 NAP, Italian Regions are in charge of, *inter alia*, providing the necessary training to the health operators; assisting victims' employment and social reintegration; attributing funding to and collecting reliable information about the safe shelters, i.e. anti-violence Centres and safe houses,<sup>88</sup> operating in each Region.<sup>89</sup>

<sup>88</sup> The relevant definitions and the minimum requirements to establish anti-violence Centres and safe houses are spelled out in the Agreement, ex Art. 8 (6) of Law No. 131/2003, between the Government, the Regions, the Autonomous Provinces of Trento and Bolzano, the regional and local self-government units, Concerning the Minimum Requirements of anti-violence Centres and safe houses, according to Art. 3 (4) D.P.C.M. of 24 July 2014. (Rep. Atti n. 146/CU) (15A01032) (G.U. No. 40 of 18 February 2015).

<sup>89</sup> Extraordinary national action plan 2015-2017, p. 16. The management of the safe shelters is usually regulated through an agreement between women's NGOs or networks, the local authorities (*Enti locali*) and the consortium of municipalities (*Unione dei Comuni*), see WeWorld (2015), p. 8.

The second NAP was approved during the State-Regions Conference (*Conferenza Stato-Regioni*) held in November 2017. The new strategic plan, building on the previous one, enlarges the scope of envisaged actions by placing particular emphasis on aspects underscored by the Istanbul Convention, but not addressed in the first NAP, such as victims' empowerment,<sup>90</sup> and the necessity to prevent victims' secondary victimisation, with a particular focus on the special needs of the 1.500 children orphaned by 'femicides' in the past 12 years, as reflected also in the recent legal development discussed above.<sup>91</sup> The new national strategic plan revolves around three main axes – i.e. prevention, protection and support, prosecute and punish – and one transversal axis, named assistance and promotion. Concerning the first axis, the second NAP foresees a number of actions aimed at strengthening the protective measures in place and establishing new ones, especially with regard to women refugees, migrants and asylum seekers.<sup>92</sup> The 'prevention axis' focuses on the need to increase public opinion's knowledge of the causes and consequences of male violence against women. This is a crucial aspect tackling the systemic inequality between women and men, a disparity that is deeply rooted in the public perception and perpetuated through, *inter alia*, gender stereotypes, lack of equal opportunities, sexism in the public and private sectors.<sup>93</sup> Particular emphasis is placed also on the role of the Ministry of Education, University and Research (*MIUR*) by underscoring, for example, the importance of developing an *ad hoc* curriculum on violence against women for the relevant Departments, e.g. Law, Medicine, and Sociology.<sup>94</sup>

The second axis concerns the protection and support that must be granted to victims of violence, including child witnesses, and aims in particular at bolstering the role of local actors belonging to the so-called 'anti-violence network', especially anti-violence Centres and safe houses, highlighting their essential contribution to achieve victims' recovery and reintegration in the society. The third axis pursues the purpose of strength-

<sup>90</sup> This approach is also in line with the G7 'Roadmap for a Gender-responsive Economic Empowerment', 2017, Taormina.

<sup>91</sup> Extraordinary National Strategic Plan 2017-2020, p. 25. See *infra* Sect. 3.1.3.

<sup>92</sup> The second NAP envisages training activities for all the actors that, in various capacities, work with asylum seekers, refugees and migrants. Extraordinary National Strategic Plan 2017-2020, p. 19.

<sup>93</sup> *Ibid.*, pp. 12-15.

<sup>94</sup> *Ibid.*, p. 19.

ening three aspects of the existing legal framework, i.e. improving the risk assessment and the law enforcement agencies' capacity to intervene as promptly and effectively as possible; identifying and sharing best practices across the Italian Tribunals to increase the efficacy of judicial proceedings dealing with violence against women; and intensifying the focus on the persecution of crimes committed against women refugees, migrants and asylums seekers.<sup>95</sup> The fourth, transversal, axis focuses on the assistance and promotion of the NAP and it is also concerned with the evaluation of the measures adopted, an essential issue that was utterly neglected in the previous extraordinary national action plan.

Whereas the 2014 OSCE Decision on Preventing and Combating Violence against Women is silent on the issue of monitoring, the 2004 OSCE Action Plan for the Promotion of Gender Equality on the other hand has strongly stressed the importance of establishing or strengthening existing mechanisms to monitor and oversee the implementation of the measures undertaken.<sup>96</sup> The establishment of national bodies or mechanisms to deal with the coordination, monitoring and implementation of the measures adopted by Italy to comply with its international obligations is recommended *and* required also by, respectively, the CEDAW Committee in its General recommendation No. 35 and Article 10 of the Istanbul Convention.

Italy's 2015-2107 NAP foresaw the establishment of a National Observatory on violence,<sup>97</sup> set up only in November 2016, to monitor the implementation of the extraordinary national action plan, identify best practices and support the work of the so-called Control Room (*Cabina di Regia*). The *Cabina di Regia*, which is the inter-institutional team that coordinates the NAP, is presided by the Ministry for Constitutional Reforms and Relation with the Parliament and composed of: the Ministry of Health, the Ministry of Regional Affair, the representatives of other Ministries (Internal Affairs, Justice, Education, Foreign Policies, Economic Development, Defence, Economy and Finance, Labour and Social Policies, Public Administra-

<sup>95</sup> Ibid., p. 45. See also Senato della Repubblica, Camera dei Deputati (2016) Documentazione per le Commissioni, Riunioni interparlamentari. Le donne rifugiate e richiedenti asilo nell'UE (FEMM), available at: <https://www.senato.it/service/PDF/PDFServer/BGT/00966319.pdf>.

<sup>96</sup> 2004 OSCE Action Plan on Gender Equality, p.10, para 42.

<sup>97</sup> Extraordinary national action plan 2015-2017, p. 8, para 3.1. The National Observatory is made of three Working Groups, on: Legislation, Protection paths, and Strategic Framework.

tion), and the representatives of regional and local entities.<sup>98</sup> The first NAP conceived also the establishment of a national database (*banca dati*), operated and managed by ISTAT, aimed at collecting the relevant data on acts of violence against women perpetrated across the country and providing a more comprehensive picture of the relevant trends.<sup>99</sup>

After the first NAP came to an end – even though a number of measures had not been implemented/completed yet and the effectiveness of the plan had not been assessed – the second one was approved and it is about to take over. Notably, under the extraordinary national strategic plan the National Observatory on violence has been replaced by a Technical Support Committee, which is going to be in charge of the same tasks.<sup>100</sup> Furthermore, the fourth transversal axis of the second NAP envisages the adoption of measures aimed at reinforcing the collection of relevant data and assessment; as well as promoting a stricter and more efficient monitoring of the plan, combining a three steps evaluation, i.e. *ex ante*, *in itinere* and *ex post*,<sup>101</sup> and distributing tasks and responsibilities to all the relevant actors involved at the national, regional and local levels. The evaluation will be conducted by the Department for Equal Opportunities together with the Institute for Research on Population and Social Policies of the National Research Council and it will ascertain if and to what extent the measures envisaged by the NAP have been implemented and which results have been successfully achieved.<sup>102</sup> Lastly, it is worth stressing that the second NAP is not yet under implementation and that national NGOs, women's networks and Trade Unions are currently urging the Government and the Parliament to make available the resources destined to the enforcement of the plan.<sup>103</sup>

As mentioned above the CEDAW Committee welcomed the establishment of the National Observatory, now Technical Support Committee,<sup>104</sup> but

<sup>98</sup> Ministry for Constitutional Reforms and Relation with the Parliament, Decree of 25 July 2016.

<sup>99</sup> Extraordinary national action plan 2015-2017, pp. 11-12; Memorandum of Understanding between the Ministry for Constitutional Reforms and Relation with the Parliament and ISTAT.

<sup>100</sup> Extraordinary National Strategic Plan 2017-2020, p. 38, para 5.1.

<sup>101</sup> *Ibid.*, p. 35.

<sup>102</sup> *Ibid.*

<sup>103</sup> D.i.Re Donne in Rete contro la Violenza (2018), Sindacati e associazioni: 'Il Governo attui il Piano strategico per la lotta alla violenza maschile sulle donne', available at: <https://www.direcontrolaviolenza.it/sindacati-e-associazioni-il-governo-attui-il-piano-strategico-per-la-lotta-alla-violenza-maschile-sulle-donne/>.

<sup>104</sup> CEDAW Committee Concluding Observations (2017), p. 8, para 27.

noted that Italy has not yet set up a national human rights institution, to be established in compliance with the principles relating to the status of national institutions (the Paris Principles), mandated to protect and promote all human rights,<sup>105</sup> including women's rights.<sup>106</sup> The recommendation to create an independent national human rights institution with a section dedicated to women's rights was also made by the Special Rapporteur on violence against women, its causes and consequences.<sup>107</sup> It is difficult to determine when and if Italy will comply with the commitment to set up an independent national human rights institution, however in the Introductory Statement before the UN CEDAW Committee, the Italian Representative affirmed that the draft legislation for the establishment of such body is currently under discussion and that an amended text has been submitted to the Inter-ministerial Committee for Human Rights.<sup>108</sup> Therefore, for the time being Italy has not fully complied with the commitment to deal with the coordination, monitoring and implementation of the measures undertaken in the intertwined spheres of gender equality and violence against women, neither at the institutional level, where a Ministry for Equal Opportunities and an independent national human rights body are still lacking, nor at the policy level, where the first NAP has been implemented without a proper assessment of the goals reached and the second NAP has not been enacted yet.

#### 4.3.3. Protection

According to the 2014 OSCE Decision on Preventing and Combating Violence against Women, States are encouraged to ensure that victims of all forms of violence against women receive timely and adequate information on available legal measures and support services, such as sexual violence crisis centres, shelters or other relevant structures, as well as healthcare, and to ensure that they are easily accessible. Furthermore,

<sup>105</sup> Principles relating to the Status of National Institutions, GA Res. 48/134, A/RES/48/134 (20 December 1993).

<sup>106</sup> CEDAW Committee Concluding Observations (2017), para 24. See also CEDAW: Work in Progress (NGOs' Shadow Report) 2016/2017, p. 3.

<sup>107</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Italy, A/HRC/20/16/Add.2 (15 June 2012), para 94(b), p. 22.

<sup>108</sup> Introductory Statement, Address by Min. Plen. Fabrizio Petri, President of the Inter-ministerial Committee for Human Rights, On the Seventh Periodic Report of Italy Relating to the International Convention on the Elimination of All Forms of Discrimination against Women, Before UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), Geneva, 4 July 2017.

the OSCE commitments in this sphere also include the promotion of programmes and activities that empower and support women who have been victims of violence. Most of Italy's measures concerning victims' protection and support are primarily regulated through policy documents, in particular the extraordinary national action plan and the subsequent extraordinary national action strategy. Concrete measures available to victims of gender-based violence seeking immediate assistance and advice include, *inter alia*, the possibility to resort to a helpline, as set forth by the Istanbul Convention.<sup>109</sup>

Since 2006, the Department for Equal Opportunities has made available the helpline 1522 – currently managed by a voluntary national association called *Telefono Rosa* – as a public service, in order to provide exclusive listening and support to women victims of violence, including stalking. The number is available 24/7 and is accessible from the entire national territory free of charge. The languages spoken are Italian, English, French, Spanish and Arabic.<sup>110</sup> The telephone operators dedicated to the service provide an initial response to the needs of victims of gender-based violence and stalking, offering useful information and guidance towards the public and private social and health services available in Italy. In particular the helpline tries to offer operational support for measures taken by local anti-violence networks as well as ensuring that the necessary communication channels are established between the central judicial, social, health, safety and public order administrative bodies.<sup>111</sup> Data concerning the use of the helpline by victims of violence are available on the website of the Department for Equal Opportunities, which since 2016 issues detailed reports and identifies relevant trends.<sup>112</sup>

According to Article 23 of the Istanbul Convention States parties shall also provide easily accessible shelters in sufficient numbers to offer assistance and safe accommodation to victims, especially women and their children. The Explanatory Report to the Istanbul Convention recommends

<sup>109</sup> Art. 24 Istanbul Convention.

<sup>110</sup> Notably, other countries offer this service in a larger number of languages. In Germany, for instance, the State helpline is available in German, English, French, Spanish, Russian, Turkish and 11 other languages.

<sup>111</sup> Palmén et al. (2017), p. 51.

<sup>112</sup> According to the most recent report, covering the last three months of 2017, 3.848 calls have been made to the helpline, of which 1210 were explicit help requests from the victims. *Relazione Trimestrale Servizio 1522* (2017), p. 7.

that safe accommodation in specialized women's shelters should be made available in every region of each country, with one family place per 10.000 head of population.<sup>113</sup> In Italy, since the entry into force of Law 119/2013 and the beginning of the implementation of the first NAP, the number of shelters has significantly increased, although it is still far from the ideal number indicated in the Explanatory Report. In 2013 there were 188 anti-violence Centres and 163 safe houses, as of October 2017 the shelters are 554 in total, 296 anti-violence Centres and 258 safe houses.<sup>114</sup> In light of the deployment of further efforts and resources envisaged to support the new NAP, those numbers are likely to keep growing over the next three years, even though it is not yet clear how much funding will be specifically devoted to the shelters, nor how the Regions and the other local authorities involved intend to allocate them. Even though the minimum requirements to open and manage new shelters have been outlined by a legal instrument in 2014, there is a lack of a stricter regulatory framework and transparency,<sup>115</sup> which results in significant disparities across the Italian Regions.<sup>116</sup> Another relevant issue is represented by the fact that foreign women without a residence permit find obstacles even to access anti-violence Centres.<sup>117</sup> Since, according to Article 18-*bis* of the Consolidated Text on Immigration, the issuance of the residential permit is subject to the victim's willingness to lodge a formal complaint, those who do not report the violence suffered cannot, in principle, access the services made available by the anti-violence Centres.

Notably, the 2014 OSCE Decision on Preventing and Combating Violence against Women includes amongst the measures of protection and support also concerted actions to achieve victims' empowerment.<sup>118</sup> Such measures are mentioned in the second NAP, i.e. the extraordinary national

<sup>113</sup> Explanatory Report to the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, p. 25, para 135.

<sup>114</sup> ISTAT (2017), available at: <https://www.istat.it/it/violenza-sulle-donne/il-contesto/politiche>.

<sup>115</sup> CEDAW: Work in Progress (NGOs' Shadow Report) 2016/2017, p. 26.

<sup>116</sup> WeWorld (2015), pp. 43-57. The regional and local disparities in the availability and quality of assistance and protection services, including shelters, for women who are victims of violence has been underscored also by the CEDAW Committee. CEDAW Committee Concluding Observations (2017), p. 8, para 27(g).

<sup>117</sup> CEDAW: Work in Progress (NGOs' Shadow Report) 2016/2017, p. 24.

<sup>118</sup> OSCE Decision on Violence against Women (2014), p. 4, para 5.

strategy,<sup>119</sup> and the relevant institutional actors that should contribute to enhance victims' empowerment have been, by and large, identified and listed in the strategy.<sup>120</sup> Nonetheless, the strategy is very vague when it comes to explain what kind of actions are envisaged, what is the timeline and how and to what extent the different actors involved are expected to cooperate.

#### 4.3.4. Prosecution

One of the most important elements in combatting violence against women is the prosecution and punishment of perpetrators. The OSCE commitments highlight the importance of prosecution, in particular the 2014 OSCE Decision on Preventing and Combating Violence against Women encourages States to strengthen the efforts to investigate, prosecute and punish the perpetrators of all forms of violence against women, provide victims with protection and appropriate remedies, ensure the development and effective implementation of legislation that criminalizes violence against women and that provides for preventative and protective measures, such as emergency barring orders and protection orders, where they exist.<sup>121</sup> The same approach is reflected also in the obligations enshrined in the Istanbul Convention. As mentioned above, with the exception of forced marriage, Italy has already criminalized all the forms of violence against women identified by the Convention. Notably, in order to effectively enhance accountability, reinforcing and amending the criminal provisions is necessary, but not sufficient as the Istanbul Convention places on the States parties the duty to implement positive obligations, encompassing measures taken to exercise 'due diligence' to prevent, investigate, punish and provide reparation for any acts of violence perpetrated by non-State actors and covered by the Convention, as required by Article 5(2).

This is in line with the approach adopted over the years by the European Court of Human Rights (ECtHR), which has dealt with a number of cases concerning violence against women, and in particular domestic violence, stressing the existence and the relevance of State's positive obligations towards the victims.<sup>122</sup> Recently two important cases against Italy

<sup>119</sup> Extraordinary National Strategic Plan 2017-2020, p. 29.

<sup>120</sup> Ibid.

<sup>121</sup> OSCE Decision on Violence against Women (2014), p. 4, para 7.

<sup>122</sup> See for instance *Opuz v Turkey* Application No.33401/02, Judgment, 9 June 2009;



have been brought before the ECtHR, both of them addressing domestic violence crimes and issued respectively in 2014 and 2017. Without lingering on those cases, which have already been scrutinized and commented upon,<sup>123</sup> what is relevant to stress for the purpose of this analysis is that in the first case, *Rumor v Italy*<sup>124</sup> – based on the applicant’s complaint that the authorities had failed to support her following a serious incident of domestic violence against her or to protect her from further violence – the ECtHR weighed on the soundness of the Italian legal framework prior to the entry into force of the Istanbul Convention, concluding that:

[t]he authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework *was effective in punishing the perpetrator of the crime* of which the applicant was victim and *preventing the recurrence of violent attacks* against her physical integrity.<sup>125</sup>

The Court, therefore, held that there had been no violation of the European Convention on Human Rights (ECHR), in particular Article 3 (prohibition of inhuman or degrading treatment), either taken alone or in conjunction with Article 14 (prohibition of discrimination). In *Talpis v Italy* – issued after the entry into force of the Istanbul Convention, which was used by the Court as a key instrument to interpret positive legal obligations deriving from the rights enshrined in the ECHR – the Court reached a completely different conclusion.<sup>126</sup> In this specific case, Ms Talpis reported the violent behaviour of her husband to the police authorities, but they only responded seven months later and this delay resulted in the murder of the applicant’s son. Thus, the focus of the judgment on this occasion was not the Italian legal framework itself, but rather how the authorities intervened and conducted the criminal proceedings, which according to the Court pointed to a ‘judicial passivity’ incompatible with the positive obligations under Article 3 of the ECHR.<sup>127</sup> Moreover, the Court found that there had been a violation of Article 14 of the Convention (in conjunction with Articles 2 and 3), due to existing societal

*Ebcin v Turkey* Application No. 19506/05, Judgment, 1 February 2011; *Ranstsev v Cyprus and Russia* Application No. 25965/04, Judgment, 7 January 2010. See Grans (2018), pp. 141-143; De Vido (2017B).

<sup>123</sup> McQuigg (2016), pp. 1013-1014; Buscemi (2017); Casiraghi (2017); Mazzina (2017).

<sup>124</sup> *Rumor v Italy* Application No. 72964/10, Judgment, 27 May 2014.

<sup>125</sup> Ibid., para 76, (emphasis added). See McQuigg (2016), pp. 1013-1014.

<sup>126</sup> *Talpis v Italy* Application No. 41237/14, Judgment, 2 March 2017.

<sup>127</sup> Ibid., paras 130-132.

discrimination and high levels of domestic violence, *de facto* endorsed by the Italian authorities due to a discriminatory failing in the system.<sup>128</sup> Therefore, in addition to the criticalities underscored in the previous section with regard to the legal framework enacted so far, the findings of the ECtHR confirm that Italy, as a State party to the Istanbul Convention and the ECHR, in order to pursue its international commitments is called to implement positive obligations and ensure that the measures envisaged under its domestic laws and concerning the criminalization and prosecution of the relevant conducts as well as the right to a remedy and reparation for the victims, are not only in place, but also enforced in a prompt and effective way.

#### 4.3.5. Partnership

As already mentioned, the 2014 OSCE Decision on Preventing and Combating Violence against Women encourages Participating States to develop comprehensive and coordinated national policies to thwart all forms of violence against women. According to the OSCE commitments, such policies shall encompass all relevant actors, including law enforcement and the justice sector, parliaments, national human rights institutions, healthcare and social services as well as civil society organizations.<sup>129</sup> Besides the measures envisaged in the extraordinary national strategic plan in order to bolster the cooperation of all the actors involved in the anti-violence networks,<sup>130</sup> it is worth placing emphasis on the recent adoption of a much awaited set of guidelines, drafted by the National Observatory on violence,<sup>131</sup> that will inform and facilitate the work of all the health sector's stakeholders that play a role in supporting and assisting women victims of violence as well as their children.<sup>132</sup> The guidelines conceive training activities for all the health professionals who come into contact with the victims and aim to establish an

<sup>128</sup> Ibid., para 145. On this point see also the Partially Dissenting Opinion of Judge Spano, para 23, according to whom '...there is insufficient evidence of institutional discrimination in Italy to ground a finding of an Article 14 violation'.

<sup>129</sup> OSCE Decision on Violence against Women (2014), p. 4, para 8.

<sup>130</sup> Extraordinary National Strategic Plan 2017-2020, p. 14, 21, 39, 44 etc... See also Art. 1 (124) Law No. 107 of 13 July 2015 (G.U. No. 162 of 15 July 2015).

<sup>131</sup> See *infra* Sect. 3.2.2.

<sup>132</sup> D.P.C.M Decree of 27 November 2017 (G.U. No. 24 of 30 January 2018) (*Linee guida di indirizzo e orientamento per le Aziende sanitarie e ospedaliere in tema di soccorso e assistenza socio-sanitaria alle donne vittime di violenza e alle/ai loro eventuali figlie/i vittime di violenza assistita*).

integrated response by coordinating and channelling the interventions and the expertise of all the relevant actors, who need to improve the level and quality of interaction with the local anti-violence networks.<sup>133</sup>

#### 4.4. Key Findings of the Assessment

The analysis presented in the previous paragraphs shows that Italy has put in place a number of legislative and policy measures to enhance its level of compliance with the OSCE commitments related to violence against women. The key findings of the assessment carried out above can be summarised in relation to each of the five strands of action identified by the 2014 OSCE Decision on Preventing and Combating Violence against Women.

**Legal Framework's compliance with international standards:** Italy has ratified both the CEDAW and the Istanbul Convention and has adopted new laws to fulfil its international obligations. The legislative effort to transpose the Istanbul Convention's obligations into the Italian domestic framework through the adoption of Law No. 119/2013 has been praised by the CEDAW Committee in its Concluding Observations on the periodic report submitted by Italy.<sup>134</sup> Nonetheless, the current legislation is particularly concerned with the criminal repression of acts of violence against women, whereas other important aspects, such as prevention and protection, are not enshrined in the existing legal framework, but rather in policy documents.

Furthermore, whereas on the one hand Law No. 4/2018 dealing with orphans of domestic violence crimes can be described as rather advanced also in comparison with the domestic legislations of other States parties to the Istanbul Convention, Law No. 122 of 7 July 2016 dealing with the compensation of damages suffered by victims of gender based violence is not in line with the existing international standards.<sup>135</sup> Under the strand dealing with the domestic framework's compliance with international standards, the

<sup>133</sup> Ibid., according to the guidelines doctors, nurses etc... must resort to the 'Brief Risk Assessment for the Emergency Department - DA5' in order to assess the condition of the victim/patient and decide which steps implement and which actor alert.

<sup>134</sup> CEDAW Committee Concluding Observations (2017), p. 8, para 27.

<sup>135</sup> EP Report Violence against Women 2017, p. 60. For instance in Belgium financial assistance is granted to victims with serious physical and psychological injuries as a result of the violence, and this is not limited to certain crimes, like in the case of the Italian legislation, but it includes all forms of violence against women.

2014 OSCE Decision also requires States to intensify the efforts undertaken to collect, maintain and make publicly reliable, comparable, disaggregated, and comprehensive evidence based data and statistics regarding all forms of violence against women. Italy so far has implemented this commitment by establishing, as foreseen by the first NAP, a national database (*banca dati*), operated and managed by ISTAT. The database collects and analyses aggregated data provided by different stakeholders, including *Telefono Rosa* and the actors belonging to the local anti-violence networks. In addition to managing the national database, ISTAT is currently completing the third comprehensive study on ‘Violence against Women inside and outside the Family’, which, like the previous studies, will be made available on the ISTAT’s website.

Prevention: Preventative measures are primarily outlined in the two national plans adopted by Italy. As discussed above, both NAPs are widespread and far-reaching, encompassing measures aimed at raising public awareness, combating gender stereotypes, avoiding secondary victimization and further trauma, and developing programmes to work with the perpetrators of violence against women, in line with the OSCE commitments. Nonetheless, at the time of writing the extraordinary national strategic plan 2017-2020 has not been enacted yet and it is not clear how the funds, EUR 35,4 million, will be allocated, distributed and which key priorities will be identified and implemented under each pillar.<sup>136</sup> In addition to the lack of implementation, two aspects seem particularly underdeveloped in the plan, i.e. combating gender stereotypes and developing measures aimed at changing the perpetrators’ behaviour. With regard to the first aspect, the second NAP envisages detailed actions only in relation to the mass media,<sup>137</sup> whereas other areas of intervention, in particular within the education sector, are not adequately outlined. Moreover, with regard to the actions aimed at avoiding repetition of offences, it should be underscored that the extraordinary national strategic plan 2017-2020 does not foresee specific measures, but it delegates to the Ministry of Justice the tasks of cooperating with Universities and Research Centres to single out risk factors, identify best practices, and stipulating agreements with Regions and local authorities to implement actions targeting detainees.<sup>138</sup> It follows that this particular aspect, crucial

<sup>136</sup> Di Cristofaro (2018).

<sup>137</sup> Extraordinary National Strategic Plan 2017-2020, p. 23.

<sup>138</sup> Extraordinary National Strategic Plan 2017-2020, p. 33.

to strengthening prevention, is not fully in line with the obligation to establish preventative intervention and treatment programmes for perpetrators set forth also by Article 16 of the Istanbul Convention. Furthermore, as already stressed above, Italy has not yet set up a national human rights institution, to be established in compliance with the principles relating to the status of national institutions (the Paris Principles), mandated to protect and promote all human rights, including women's rights. As a transversal issue, the creation of a national human rights institution will have a positive impact on all the five strands of action identified by the OSCE, and in particular on measures of prevention and protection that are 'softer' as not enshrined in the Italian legal framework, but in policy documents.

**Protection:** As discussed above, measures of protection under the OSCE commitments encompass timely and adequate information on available legal measures and support services, adequate access to said services and the implementation of programmes and activities that empower women who have been victims of violence. Italy's approach with regard to this strand of action has been rather proactive over the past few years, since information concerning the use of the helpline are duly monitored and collected and the number of shelters has significantly increased – even though the current number does not comply yet with the indications of the Explanatory Report to the Istanbul Convention, i.e. one family place per 10.000 head of population. Two major concerns remain: first, as underlined also by the CEDAW Committee in its Concluding Observations on the periodic report submitted by Italy,<sup>139</sup> there are still significant regional and local disparities in the availability and quality of assistance and protection services, including shelters.<sup>140</sup> Second, Regions allocate the resources earmarked for shelters and other support services according to their own laws and regulations, thus meaning that the approach, besides not being homogenous, in some instances may lack transparency.

**Prosecution:** The OSCE commitments concerning the issue of prosecution explicitly refer to the development and 'effective implementation' of legislation that criminalizes violence against women and that provides for preventative and protective measures.<sup>141</sup> In other words, the OSCE commitments underscore that not only Participating States need to have in place

<sup>139</sup> CEDAW Committee Concluding Observations (2017), p. 8, para 27.

<sup>140</sup> WeWorld (2015), p. 65.

<sup>141</sup> OSCE Decision on Violence against Women (2014), p. 4, para 7.

an adequate legal framework, but they should also enact it in an effective way. Such approach, restated by the ECtHR in the *Talpis* case, recognizes clearly the role that legislative, administrative and policy frameworks can play in implicitly condoning domestic violence, and thus stresses the urge to focus on State's positive obligations in order to *proactively* prevent and respond to every possible form of violence against women. The standard of due diligence that Italy, notwithstanding the existence of an adequate legal framework, has failed to implement is not, hence, a matter of good will but rather a matter of international legal obligation and in this regard, Italy is falling short on compliance.<sup>142</sup>

Partnership: The national action plans adopted by Italy, as well as the guidelines that target all the professionals working in the health sector, revolve around the clear aim of strengthening cooperation amongst the actors involved in combating violence against women, in line with the 2014 OSCE Decision on Preventing and Combating Violence against Women.<sup>143</sup> Given the number of actors taking part in the various phases and efforts, it is obvious that excellent coordination and communication are needed in order to enact effective multi-agency interventions, sensibly manage the existing resources, and provide adequate and prompt assistance to the victims. As already stressed in relation to other strands of action, the main challenge is represented by the effective implementation of the envisaged measures to enhance cooperation. In fact, the new national strategic plan has been adopted, but not yet enacted, whereas the guidelines must be implemented within one year from their publication in the *Gazzetta Ufficiale*, i.e. by February 2019. At the time of writing it is, hence, impossible to provide a clear assessment of how the issue of partnership has been concretely put into effect.

#### 4.5. Recommendations and Measures to Be Taken by Italy to Be in Line with OSCE Standards and Commitments

Italy has made significant efforts to improve its institutional, legal and policy framework aimed at thwarting violence against women, which is a societal scourge fuelled by gender inequalities, sexism and the proliferation of gender stereotypes. Despite the growing awareness and responsiveness

<sup>142</sup> De Londras, Dzehtsiarou (2018), p. 145.

<sup>143</sup> OSCE Decision on Violence against Women (2014), p. 4, para 8.

towards this phenomenon, its causes and consequences, some issues require to be further addressed in order to strengthen Italy's compliance with the international commitments undertaken, in particular those singled out by the OSCE and shared also by the legal instruments in force at the universal and regional level. The main recommendations, directed to the relevant institutional actors, tackle the five strands of action identified by the 2014 OSCE Decision on Preventing and Combating Violence against Women:

Legal Framework's compliance with international standards:

- Ensure full compliance with the Istanbul Convention, by, *inter alia*, expediting the criminalization of child marriages and forced marriages; making investigations into or prosecution of the offences listed under the Convention not wholly dependent upon a report or complaint filed by a victim; duly implementing the provisions of Chapter VII on Migrants and Asylum Seekers; and guaranteeing adequate and prompt State's compensation to victims of violence against women;
- Consider developing, as recommended by the EU Victims' Rights Directive, 'sole points of access' or 'one-stop shops' to address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.

Prevention:

- Design a comprehensive strategy with proactive and sustained measures to eliminate and modify patriarchal attitudes and gender stereotypes;<sup>144</sup>
- Develop and implement preventative intervention and treatment programmes for perpetrators, both during and after their sentence;
- Adopt stronger and more effective mechanisms to monitor, coordinate and assess the actions taken and those that will be envisaged in the future. At the institutional level such recommendation can be implemented by re-establishing a Ministry for Equal Opportunities, in lieu of the existing Department, and by setting up an independent national human rights body;
- Expedite the implementation, without further delay, of the 2017-2020 extraordinary national strategic plan and mobilize the financial resources to enforce it;
- Establish mechanisms, including an independent, non-governmental monitoring body,<sup>145</sup> to evaluate the NAP and understand the impact and

<sup>144</sup> CEDAW Committee Concluding Observations (2017), p. 7, para 26.

<sup>145</sup> CEDAW: Work in Progress (Shadow Report) (2016/2017), p. 12.

effectiveness of the policies and the degree of progress achieved;

- Issue and disseminate every year, to the widest extent possible, an evaluation/implementation report to allow the general public to receive updates concerning the NAP;<sup>146</sup>

- Promptly complete and submit the GREVIO questionnaire, involving in the process women's organizations and the relevant actors belonging to the local anti-violence networks.

#### Protection:

- Eliminate existing regional disparities in terms of access and quality of services, including shelters, and adopt stricter regulations to ensure that the distribution of resources to the relevant local actors is carried out in a transparent way in each Region; in compliance with the Government's primary responsibility to oversee and guarantee the full implementation of the international commitments undertaken throughout its territory. Even though the relevant definitions and the minimum requirements to establish anti-violence Centres and safe houses have been outlined in a national legal instrument in 2014,<sup>147</sup> all the other aspects – including the allocation of funding at the local level – are regulated by Regional laws. In order to overcome the lack of homogeneity and enhance the uniform implementation on the whole Italian territory of the international obligations under the Istanbul Convention, a national legal instrument should be adopted to inform and guide the decentralised management of protective measures and support services.<sup>148</sup>

#### Prosecution:

- While filling in the GREVIO questionnaire, give due importance to the requirement that reports submitted by States parties should contain all relevant information on both negative and positive obligations implemented at the domestic level to comply with the Istanbul Convention.

#### Partnership:

- Start as soon as possible the implementation of the guidelines dedicated to professionals working in the health sector (*Linee guida di indirizzo e orientamento per le Aziende sanitarie e ospedaliere in tema di soccorso e*

<sup>146</sup> This measure has been successfully implemented in other European countries, like Estonia, Spain and Romania. See EP Report Violence against Women (2017), p. 26.

<sup>147</sup> See *infra* note 89.

<sup>148</sup> WeWorld (2015), p. 65.



*assistenza socio-sanitaria alle donne vittime di violenza e alle/ai loro eventuali figlie/i vittime di violenza assistita*) and establish effective mechanisms to monitor and ensure their correct implementation throughout the whole Italian territory.

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## Chapter 5

# The implementation of the OSCE Commitments in Italy in Contrast to Racism, Xenophobia and anti-Semitism

by Giovanni Carlo Bruno\*

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## Introduction

Recognising, combating and preventing racism, neo-racism, xenophobia and anti-Semitism are key topics for the development of contemporary societies based on equality and the respect of fundamental human rights.

Italy offers an adequate normative framework to counter discriminatory episodes based on racial and ethnic hatred, but official and unofficial sources frequently report episodes of racism and xenophobia.

The National Office against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR) receives information and reports through its Contact Center. According to the first available data for 2017, almost 4000 episodes have been registered by UNAR, and 91 % of them have been considered as grounded as cases of racial discrimination and/or xenophobia: 73 % classified as ethnic and/or racial discrimination (including 16 % of cases of discrimination against Roma, Sinti and Caminanti), 9,9 % as discrimination based on religious or personal convictions, 9,1 % as discrimination based on sexual orientation and/or gender identity, 4,4 % as discrimination based on disability, 2,4 % as discrimination based on age, 1,2 % as multiple discrimination.<sup>1</sup> Statistical data show an increase of more than 30 % on the information received by the UNAR Contact Center.

Independent observers, while noting that the number of racist and xenophobic episodes is steadily increasing, show their concern and call for a renewed effort to take effective measures for contrasting this trend.

Meanwhile, the phenomenon is amplified by social media: more than two million webpages contain messages potentially discriminatory, and the number is growing.<sup>2</sup> The *Jo Cox* Commission on Intolerance, Xenophobia, Racism and Hatred, established by the *Camera dei Deputati* in 2016, thoroughly investigated this issue.<sup>3</sup> Its final report, *‘La piramide dell’odio in Italia’* of 6 July 2017, analyses the ‘pyramidal structure’ of hate speech and hate crimes in Italy, using stereotypes, false information, and misrepresentations to build up hatred discrimination.

<sup>1</sup> Dati UNAR Contact Center (ed.) updated on 22 June 2018.

<sup>2</sup> See “Il razzismo corre sul web. Unar rileva più di 2 milioni di potenziali contenuti discriminatori”, available at: [http://www.adnkronos.com/fatti/cronaca/2017/07/04/razzismo-corre-sul-web-unar-rileva-piu-milioni-potenziali-contenuti-discriminatori\\_O12kFF9CaSM-NuKdRxreUZI.html](http://www.adnkronos.com/fatti/cronaca/2017/07/04/razzismo-corre-sul-web-unar-rileva-piu-milioni-potenziali-contenuti-discriminatori_O12kFF9CaSM-NuKdRxreUZI.html).

<sup>3</sup> See *infra*, Sect. 5.2.4.

## 5.1. OSCE Commitments and Relevant International Framework

### 5.1.1. OSCE Commitments on Racism and Xenophobia

In the landmark Copenhagen Concluding Document of the 1990 meeting on the “Human Dimension”, the participating States to the Conference on Security and Cooperation in Europe condemned, clearly and unequivocally, “totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds”. Among the many commitments adopted, they agreed to “take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism”.

The 1990 Charter of Paris for a New Europe contained an express reference to the determination “to combat all forms of racial and ethnic hatred, antisemitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds”.

Thereafter, the OSCE commitments to tolerance and non-discrimination, as well as to the fight against racism and xenophobia, have been reiterated in several decisions of the Permanent Council and declarations, calling for specific duties for the States, which are entrusted with a primary responsibility in adopting effective measures on the field.

Measures include the collection and the maintaining of data – reliable information and statistics – to be reported periodically to the OSCE Office for Democratic Institutions and Human Rights (ODIHR).<sup>4</sup> Moreover, States are called to adopt tools for balancing the rights to the freedoms of opinion and expression – which include the freedom to seek, receive and impart information – on the Internet, and regulating Internet content to combat hate crimes, which can be fuelled by racist, xenophobic and

<sup>4</sup> See, in particular, the Declaration made by the OSCE Chairman-in-Office at the OSCE Conference on Anti-Semitism held in Berlin on 28 and 29 April 2004 – *Berlin Declaration*, and the Declaration made by the OSCE Chairman-in-Office at the OSCE Conference on Tolerance and the Fight Against Racism, Xenophobia and Discrimination held in Brussels on 13 and 14 September 2004 – *Brussels Declaration*.

anti-Semitic propaganda.<sup>5</sup> Education and awareness-raising activities are identified as other key areas for fighting racism effectively.

The Chairperson-in-Office in 2006 appointed three Personal Representatives, to raise awareness about manifestations of intolerance at the highest political level and to promote the exchange of good practices: a Personal Representative on Combating Intolerance and Discrimination against Muslims; a Personal Representative on Combating Anti-Semitism; and a Personal Representative on Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of Other Religions.

Co-operation between the Council of Europe (CoE), the European Union's Agency for Fundamental Rights (FRA) and ODIHR has complemented the overall OSCE activities on racism and xenophobia.

#### 5.1.1.1. Specific Commitments on Roma and Sinti issues

Particular attention toward Roma and Sinti (Gypsies) Communities was raised already in 1990, in the Copenhagen Concluding Document. In 1994, a contact point for Roma and Sinti (Gypsies) Communities issues had been appointed within the ODIHR, with the task of collecting information, develop and facilitate contacts between participating States, international organizations and institutions, NGOs, and one of the most marginalised and vulnerable groups within the OSCE region.

The enhancement of OSCE's operational capabilities on this issue led to the approval, in 2003, of an 'Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area', for combating racism and discrimination, addressing socio-economic issues, improving access to education, enhancing participation to public and political life.<sup>6</sup> In 2013, the efforts to implement the Action plan focused on Roma and Sinti Women, Youth and Children.<sup>7</sup>

<sup>5</sup> See, MC.DEC/12/04 of 7 December 2004 on Tolerance and Non-discrimination; Permanent Council Decision No. 633: Promoting Tolerance and Media Freedom on the Internet.

<sup>6</sup> See, MC.DEC/3/03 of 3 December 2003, Annex.

<sup>7</sup> MC.DEC/4/13 of 6 December 2013 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children.

#### 5.1.1.2. Addressing new forms of anti-Semitism

Anti-Semitism has existed in the OSCE region States for many centuries. It is still one of the major threats to freedom of expression. In April 2004, the ‘Berlin Declaration’ stressed that anti-Semitism has assumed new forms since the Holocaust, and that it poses a threat to security and stability in the OSCE region. Building on initiatives by ODIHR and the Swiss chairmanship, a Ministerial Council Declaration on ‘Enhancing Efforts to Combat Anti-Semitism’ was adopted in 2014, to “increase efforts to implement existing OSCE commitments related to monitoring hate crimes and collecting relevant data, including motivated by anti-Semitism”; and to call on ODIHR for facilitating co-operation among OSCE participating States and civil society “on issues related to anti-Semitism, including hate crime”.<sup>8</sup>

#### 5.1.2. Relevant International Framework

Provisions against racial discrimination of customary international law, as well as treaty provisions of all the conventions to which Italy is a party, are applicable.

Norms of customary international law are automatically incorporated into Italian law through Article 10 of the Italian Constitution, whose para 1 states that “[t]he Italian legal system conforms to the generally recognised rules of international law”. It implies that customary international law is not subject to derogation by ordinary legislation due to the nature of its object.

As for treaty rules, Italy ratified all the principal UN Conventions containing provisions on the prohibition of racism, xenophobia and anti-Semitism: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination;<sup>9</sup> the 1966 International Covenant on Civil and Political Rights and its Optional Protocol;<sup>10</sup> the 1966 International Covenant on Economic, Social and Cultural Rights,<sup>11</sup> and its 2009 Optional

<sup>8</sup> MC.Doc. 8/14 of 5 December 2014. See, also, the conclusions of the Expert Conference on Addressing the Security Needs of Jewish Communities in the OSCE Region: Challenges and Good Practices, 13 June 2013. The Summary Report is available at: <https://www.osce.org/odihr/105253>; the Swiss OSCE Chairman conclusions on the 10<sup>th</sup> Anniversary of the OSCE’s Berlin Conference on Anti-Semitism High-Level Commemorative Event, available at: <https://www.osce.org/odihr/126710>.

<sup>9</sup> Ratified on 5 January 1976, Law No. 654 of 13 October 1975.

<sup>10</sup> Ratified on 15 September 1978, Law No. 881 of 25 October 1977.

<sup>11</sup> Ibid.



Protocol;<sup>12</sup> the 1978 Convention on the Elimination of All Forms of Discrimination against Women,<sup>13</sup> and its 1999 Optional Protocol;<sup>14</sup> the 1989 Convention on the Rights of the Child,<sup>15</sup> and its Optional Protocol on a communication procedure;<sup>16</sup> the 2006 International Convention on the Rights of Persons with Disabilities.<sup>17</sup> Consequently, their substantive norms, together with monitoring and reporting procedures, are applicable in Italy.

In 1997, Italy ratified the 1994 CoE Framework Convention for the Protection of National Minorities.<sup>18</sup> Its Advisory Committee monitors the application of the Convention.

As State Party to the 1950 European Convention on Human Rights (ECHR),<sup>19</sup> Italy is under the jurisdiction of the European Court of Human Rights, which has followed two approaches in its case-law on cases concerning incitement to hatred and freedom of expression: the application of Article 17 (prohibition of abuse of rights), for cases of hate speech denying the fundamental values of the Convention; and the application of Article 10, para 2 (restriction to the freedom of expression), for those cases in which hate speech is not apt to destroy ECHR fundamental values.

The European Commission against Racism and Intolerance (ECRI) has become the principal CoE body “entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law.”<sup>20</sup> Its work is carried out in close cooperation with OSCE and ODIHR. The 5<sup>th</sup> report on Italy was adopted in 2016.

A broad set of rules exists at the EU level, and is applied in Italy, on the fight against forms and manifestations of racism and intolerance: e.g., the

<sup>12</sup> Ratified on 20 February 2015, Law No. 152 of 3 October 2014.

<sup>13</sup> Ratified on 10 June 1985, Law No. 132 of 14 March 1985.

<sup>14</sup> Ratified on 22 September 2000.

<sup>15</sup> Ratified on 5 September 1991, Law No. 176 of 27 May 1991.

<sup>16</sup> Ratified on 4 February 2016, Law No. 199 of 16 November 2015.

<sup>17</sup> Ratified on 15 May 2009, Law No. 18 of 3 March 2009.

<sup>18</sup> Ratified on 3 November 1997, Law No. 302 of 28 August 1997.

<sup>19</sup> Ratified on 26 October 1955, Law No. 848 of 4 August 1955. Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), containing a general prohibition of discrimination, was signed by Italy in 2000, but it has not been ratified yet.

<sup>20</sup> See Resolution CM/Res (2002) 8 on the statute of the European Commission against Racism and Intolerance, of 13 June 2002, amended by Resolutions CM/Res (2013)12 and CM/Res (2014) 2 adopted, respectively, on 9 October 2013 and 19 February 2014, *Appendix*.

‘Race Equality Directive’,<sup>21</sup> on direct and indirect discrimination on the grounds of racial or ethnic origin; the ‘Employment Equality Directive’,<sup>22</sup> which prohibits discriminations on various grounds as regards employment and occupation; the ‘Audio-visual Media Services Directive’,<sup>23</sup> allowing restriction to media services to fight incitement to hatred on grounds of race, sex, religion or nationality; the ‘Victim’s Rights Directive’<sup>24</sup>, which takes into account the case of victims who have suffered a crime committed with a bias or discriminatory motive (including hate crimes); the ‘Framework Decision on combating certain forms of expressions of racism and xenophobia by means of criminal law’.<sup>25</sup>

## 5.2. Legal and Institutional Framework in Italy

### 5.2.1. Primary Legislation on Racism, Xenophobia and anti-Semitism

The Italian Constitution (1948) includes all basic and fundamental rights. In particular, Article 3, which is among the so-called ‘supreme principles’ of the Constitution, envisages the principle of formal and substantial equality. It stipulates, at its paragraph 1, as follows: “All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.”<sup>26</sup> Article 6 provides for the protection of linguistic minorities.

<sup>21</sup> Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22. The Directive has been implemented in Italy by the Legislative Decree No. 215 of 9 July 2003.

<sup>22</sup> Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation OJ L 303/16. The Directive has been implemented in Italy by the Legislative Decree No. 216 of 9 July 2003.

<sup>23</sup> Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive) OJ L 95/1. The Directive substitutes the Directive 89/552/CEE, which had been implemented in Italy by the Legislative Decree No. 44 of 15 March 2010, and has not needed any specific law for its implementation.

<sup>24</sup> Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA OJ L 315/57. The Directive has been implemented in Italy by the Legislative Decree No. 212 of 15 December 2015.

<sup>25</sup> EU Council Framework Decision 2008/913/JHA OJ L 328/55.

<sup>26</sup> The Italian text is: “*Tutti i cittadini hanno pari dignità sociale e sono eguali davanti alla legge, senza distinzione di sesso, di razza, di lingua, di religione, di opinioni politiche, di*

Article 8 states the principle of equality of religious beliefs before the law, and of their autonomy from the State, while Art. 19 guarantees freedom of religion, both for individuals and for groups. Article 10 provides for the principle of respect for non-citizens, asylum-seekers, and generally, for foreigners.

All the basic rights protected by the Constitution, which are binding on the Legislative, the Executive and the Judiciary, have been enhanced and/or developed through new legislation, as well as the decisions made by the independent domestic courts, especially by the Italian Constitutional Court. Acts, Courts and Authorities must comply with fundamental rights, whose respect is thus at the core not only of the written Constitution, but also of State's activity in practice.

The Italian legal system also includes specific provisions to combat racism, racist and xenophobic speech, and all actions directed to spread ideas founded on racial or ethnic hatred and the incitement to commit acts of violence on racial, ethnic or religious grounds. The legislation in force also punishes the establishment of organizations, associations, movements and groups that have, among their purposes, the incitement to discrimination or to violence motivated by racial, ethnic or religious motivation. It also provides for a special aggravating circumstance for all crimes committed on the ground of discrimination or racial hatred.

Law No. 654/1975 (also known as the *Reale Law*), as amended by subsequent Laws,<sup>27</sup> criminalises: a) incitement to racial discrimination, b) racial discrimination, c) incitement to racial violence, d) racial violence, e) the promotion of ideas based on racial superiority or ethnic or racist hatred, and f) the setting up or running of, participation in or support to any organisation, association, movement or group whose purpose is the instigation of racial discrimination or violence.<sup>28</sup> Law No. 205 of 25 June 1993 (also known as the *Mancino Law*) also prohibits the public display of symbols and emblems of such organisations and makes racist bias an aggravating circumstance in connection to any offence.<sup>29</sup>

*condizioni personali e sociali.*" English translation in *Common Core document forming part of the reports of States parties. Italy*, UN Doc. HRI/CORE/ITA/2016 of 25 July 2016, para 67.

<sup>27</sup> Law No. 654 of 13 October 1975 (Law on Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination), amended by Law No. 205 of 25 June 1993, Law No. 85 of 24 February 2006, and Law No. 167 of 20 November 2017.

<sup>28</sup> Art. 3.1 (a) and (b) and Art. 3.3 of the *Reale Law*, respectively.

<sup>29</sup> Art. 2.1 and Art. 3 of the *Reale Law*, respectively.

Law No. 101 of 8 March 1989 extends the application of Article 3 of the *Reale Law* to the setting up and participation to events on religious intolerance and prejudice.<sup>30</sup> The same provisions of Article 3 of the *Reale Law* apply for the protection of linguistic minorities from acts of intolerance and violence.<sup>31</sup>

In 2016, a new paragraph 3 *bis* was added to Article 3 of the *Reale Law* and introduced various relevant offences, including incitement to hatred in the Italian domestic legal system. Act No 167 of 20 November 2017 qualifies racist propaganda and dissemination of racist and supremacist ideas, racially-motivated violence and its support, by individuals and/or by organizations, the publicly condoning, the denying or the grossly trivializing crimes of genocide, crimes against humanity and war crimes, as aggravating circumstances, for identifying racist and xenophobic forms and expressions.<sup>32</sup>

With regard to racism and intolerance during sport events, Italian legislation has been progressively strengthened by the introduction of criminal and administrative sanctions for those responsible of incitement to hatred. The legislation in force for discriminatory conducts perpetrated during sport events and sport competitions<sup>33</sup> has been completed by the provisions of Decree-Law No. 119/2014<sup>34</sup>, on “Urgent action to fight unlawful and violent phenomena during sport events”, envisaging the extension of the applicability of the ban to access to sporting venues (Stadium Ban, *Divieto di accedere alle manifestazioni sportive*, DASPO).

<sup>30</sup> Art. 2.5 of the Law No. 101 of 8 March 1989 transposing the agreement between the State and Jewish communities in Italy.

<sup>31</sup> Art. 18*bis* of the Law No. 482 of 15 December 1999 (Provisions on the protection of the historical linguistic minorities). In Italy, on the base of the criteria determined by the law (ethnic, linguistic, historical criteria and the settlement in a defined territory) twelve minorities have been identified: Albanians, Catalans, Croatian, French and Provençal-speakers, Friulians, Germanic, Greek-speakers, Ladins, Occitans, Sardinians, Slovenes and South Tyrolese German-speakers. RSC communities have been excluded from being recognized the status of linguistic minority.

<sup>32</sup> Article 5 of the Law on Provisions for the Fulfilment of obligations deriving from EU Membership, also known as *Legge europea*. The new para 3 *bis* of the *Reale Law* is part of the transposition into Italian legislation of the ‘Framework Decision on combating certain forms of expressions of racism and xenophobia by means of criminal law’, *supra*, Sect. 5.1.2.

<sup>33</sup> Reference is made to the *Mancino Law*, together with the Sport Justice Code, which states that any discriminatory behavior must be punished when it is recognized as direct or indirect offence, denigration or insult motivated by race, color, religion, language, sex, nationality, territorial or ethnic origin, or when it constitutes a means of ideological propaganda prohibited by law or supports discriminatory behaviors.

<sup>34</sup> This Decree-Law was converted, with amendments, into the Law 146 of 17 October 2014.

### 5.2.2. The Role of domestic Courts and Tribunals

In the last years, an increasing number of incidents of hate speech has given rise to legal proceedings against the authors.<sup>35</sup> However, decisions on racist offences and convictions for promoting ideas based on racial superiority or hatred, or for inciting racial discrimination, are not so frequent. One of the reasons for this phenomenon is the under-reporting, by the victims to the police officers, of aggravating circumstances linked to racism when violent acts are committed. In addition, there is still a ‘grey area’ for identifying and fighting racist behaviours and attitudes, e.g. in the media and on the Internet. With reference to racism in political discourse, the Constitutional Court decided very recently in favour of a Tribunal (of Bergamo), that had challenged the decision of the Senate to classify and cover by absolute immunity (Art. 68 of the Constitution) the offensive comments against the then Minister of Integration of Congolese origin, pronounced by a Member of the Parliament during a public rally.<sup>36</sup>

### 5.2.3. Governmental Bodies

In the Concluding Document of the 1990 meeting on the “Human Dimension”, participating States committed themselves to “take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information”.<sup>37</sup> Moreover, in the 2003 Decision on Tolerance and Non-Discrimination, the Permanent Council encouraged “all participating States to collect and keep records on reliable information and statistics on hate crimes, including on forms of violent manifestations of racism, xenophobia, discrimination, and anti-Semitism”.<sup>38</sup> Thus, it may be useful to recall those actions carried out by governmental bodies with a view to implement OSCE commitments.

From 2011, governmental action to prevent and remove religious, ra-

<sup>35</sup> A collection of judgments on hate speech and hate crimes has been made by Ciervo (2017), pp. 15-28.

<sup>36</sup> Constitutional Court, Judgment of 28 March 2018, No. 59. The Court, applying its own consolidated jurisprudence and the case law of the European Court of Human Rights, has stressed the difference between the importance to protect free speech of the Members of the Parliament, and the need to guarantee access to courts for an alleged victim, for political discourses outside their official duties and functions.

<sup>37</sup> See para 40 of the Concluding Document.

<sup>38</sup> See MC.DEC/4/03 of 3 December 2003, para 6.

cial and ethnic discrimination has been conferred to a single official, at Ministerial level. In the period 2011-2013, a Minister for Integration was appointed by the President of the Republic, following the proposal of the President of the Council of Ministers; from 2013 to 2017, the Minister of Labour has acted to promote initiatives for integration. In addition, from 2017, the State Under-Secretary at the Presidency of the Council of Ministers acts for the promotion of human rights, equal opportunities, prevention and removal of all forms of discrimination.<sup>39</sup>

In Italy, an independent national commission for the promotion and the protection of human rights has not yet been established, but its setting up has been under discussion before the Senate Commission on Constitutional Affairs until July 2017. Several international monitoring bodies have underlined the need for the setting up of this body.<sup>40</sup>

At the Presidency of the Council of Ministers, within the Department for Equal Opportunities, the National Office against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR) is entrusted with the promotion of equality and the removal of all forms of discrimination, including homophobia and transphobia, with particular attention to multiple and intersecting forms of discriminations in both private and public sectors.

UNAR's mandate, at the time of its establishment (2003) limited to the fight against discrimination based on race and ethnic origin, has been expanded over the years, following Ministerial Directives dated 2012 and 2013. The National Office is specifically engaged in combating racism, promoting the integration of RSC communities, and of the most vulnerable groups (such as LGBTI people, the elderly and the persons with disabilities).

Although UNAR is not authorized to take legal actions, it provides legal support to NGOs with *locus standi* and admitted to cooperate with the Office. Its Contact Center receives reports and information on racist acts, offering to victims assistance and support, psychological and legal, for their redress. Moreover, UNAR works with various stakeholders, mainly from civil society, to raise awareness on discrimination. Lastly, it promotes the establishment of territorial networks among local Authorities for combating

<sup>39</sup> See, Camera dei Deputati, *Documentazione per la Commissione 'Jo Cox' sull'intolleranza, la xenofobia, il razzismo e i fenomeni di odio*, 3rd ed., 10 July 2017, pp. 4-5.

<sup>40</sup> According to the Principles relating to the Status of National Institutions (The Paris Principles), adopted by the UN General Assembly, with GA Res. 48/134, A/RES/48/134 (20 December 1993), a national institution should be established in all countries, on the basis of a constitutional or a legislative text, with competence to promote and protect human rights.

racism and xenophobia. This activity has been supplemented by appropriate agreements with regions, provinces and municipalities, to allow the uniform collection of information.

Some of the tasks concerning the observance of fundamental human rights internationally recognized are performed by the Inter-ministerial Committee for Human Rights (*Comitato interministeriale per i diritti umani*, CIDU), which has been established in 1978, at the Ministry of Foreign Affairs and International Cooperation (MFAIC). Each Ministry appoints a specific human rights focal point to participate in CIDU's work, together with representatives from other Authorities, and from the civil society. CIDU implements *inter alia* activities of reviews of laws, regulations and administrative acts adopted at the national and local level concerning pledges taken at the international level in the area of human rights; and performs an advisory activity on the adoption of provisions in line with relevant international obligations.

The Observatory for Security against Acts of Discrimination (OSCAD) was established in 2010, and set up at the Ministry of Interior within the Public Security Department – Central Directorate, to prevent and repress hate crimes. OSCAD is entrusted with: overcoming under-reporting and encouraging the emergence of discriminatory offences; activating Police and *Carabinieri* operations in the field; intensifying exchanges of investigative information; training and exchanging of best practices, also through INTERPOL.

In 2011, a Memorandum of Understanding was signed OSCAD and UNAR for the exchange of information about hate crimes. In particular, UNAR informs OSCAD about criminal discrimination cases reported to its Contact Center. Besides, UNAR cooperates with OSCAD in training activities for police forces.

#### 5.2.4. Parliamentary Activities

The important role which parliamentarians could play in the OSCE had been recognized since the drafting of the 1990 Paris Charter for a New Europe. A Parliamentary Assembly was then established on 2-3 April 1991 by the delegations of the Parliaments of countries participating in the Madrid Meeting of the Conference on Security and Cooperation in Europe.<sup>41</sup>

<sup>41</sup> See Final Resolution concerning the Establishment of the CSCE Parliamentary Assembly, 2-3 April 1991.

Its primary task is to facilitate inter-parliamentary dialogue. With their expertise, national delegations of parliamentarians strengthen cooperation for the achievement of the aims of the OSCE on political, security, economic, environmental and human rights issues.

Italian Parliament established several committees and commissions on issues relating to racism, xenophobia and anti-Semitism. They have either been set up within Standing Commissions of the Senate or of the Chamber of Deputies, or created as special and independent Commissions. An example of the first category may be found in the Chamber of Deputies' Committee charged by two of the Standing Commissions in 2009-2011 to carry out a survey on anti-Semitism, whose findings showed the link and interconnection between religious fundamentalism, anti-Zionism and the denial of the Holocaust. The concluding document of the Standing Commission contained practical proposals for combating this phenomenon.<sup>42</sup>

The extraordinary Commission for the protection and the promotion of human rights, established from 2001, is, on the other hand, an example of Special Commission. It monitors, through surveys and in close contact with civil society, the implementation of human rights in Italy and adopts reports and resolutions on various issues.<sup>43</sup>

On the issues dealt with in this Section, the *Jo Cox* Commission on Intolerance, Xenophobia, Racism and Hatred has to be mentioned.<sup>44</sup> The establishment of the Commission in 2016 is rooted in the *No Hate Parliamentary Alliance*, an initiative promoted by the CoE Parliamentary Assembly.<sup>45</sup> The *Jo Cox* Commission included parliamentarians, experts, rep-

<sup>42</sup> Camera dei Deputati, *Documento approvato dalle Commissioni riunite I (Affari costituzionali, della Presidenza del Consiglio ed Interni) e III (Affari esteri e comunitari) nella seduta del 6 ottobre 2011 a conclusione dell'indagine conoscitiva deliberata nella seduta del 28 ottobre 2009 sull'antisemitismo*, Doc. XVII n. 15, available at: [http://leg16.camera.it/544?stenog=/\\_dati/leg16/lavori/documentiparlamentari/indiceetesti/017/015&pagina=frontesp](http://leg16.camera.it/544?stenog=/_dati/leg16/lavori/documentiparlamentari/indiceetesti/017/015&pagina=frontesp).

<sup>43</sup> See the resolution on the implementation of the strategy for the inclusion of Roma, Sinti and Caminanti in Italy, and for the overcoming of Roma camps as a solution for their housing, adopted on 10 March 2015, available at: <http://www.senato.it/leg/17/BGT/Schede/docnonleg/30349.htm>.

<sup>44</sup> At the very beginning of its work, the Commission decided to add in its own denomination a reference to Jo Cox, the British Member of Parliament shot on 16 June 2016 while going to a constituency surgery in Bristall, West Yorkshire (UK) by a man associated to far-right organisations.

<sup>45</sup> The *No Hate Parliamentary Alliance* is based on the Charter of commitments for membership of the No Hate Parliamentary Alliance adopted by the CoE Parliamentary Assembly on 29 January 2015; by signing the Charter, the parliamentarians commit to taking open, firm and pro-active stands against racism, hatred and intolerance on whatever grounds



representatives from ISTAT (National Institute for Statistics), CoE, research bodies and NGOs. The final report of the Commission was approved on 6 July 2017. It examines causes and forms of hate speeches and hate crimes at length, to develop recommendations for preventing and tackling hate speech through: a) horizontal actions; b) better data collection and knowledge of the issue; c) legal actions; d) political and institutional actions; e) cultural and educational actions; f) media actions.<sup>46</sup>

### 5.3. Assessment on the Implementation of the OSCE Standards and Commitments

#### 5.3.1. The Development of National Plans for Tackling Racism and Related Intolerance

The Decision on “The Human Dimension”, adopted at the 1992 Helsinki Summit, contained a ‘Framework for monitoring compliance with CSCE commitments and for promoting co-operation in the human dimension’, dealing, *inter alia*, with ‘Tolerance and non-discrimination’.<sup>47</sup> Participating States considered the development of “programmes to create the conditions for promoting non-discrimination and cross-cultural understanding which will focus on human rights education, grass-roots action, cross-cultural training and research”.<sup>48</sup>

The progressive strengthening of the OSCE Human Dimension was a shared view of all participating States, but it has known obstacles in the absence of a compulsory assessment of OSCE commitments. Therefore, the idea of adopting national plans for planning different activities under a general set of objectives has been developed gradually among Italian Institutions. The definition and implementation of long-term strategic programmes requires the starting of processes for the coordination of all governance structures, including institutions at central, regional and local level, civil

and however they manifest themselves.

<sup>46</sup> Camera dei Deputati (2017).

<sup>47</sup> Decision VI : The Human Dimension, adopted on 10 July 1992.

<sup>48</sup> See para 34 of the Decision. At its para 35, the Decision called for “the need to develop appropriate programmes addressing problems of their respective nationals belonging to Roma and other groups traditionally identified as Gypsies and to create conditions for them to have equal opportunities to participate fully in the life of society, and will consider how to co-operate to this end”.

society, the social partners and all other subjects involved and having competence, in various capacities, on the subject under exam. UNAR has assumed, in these processes, a central role as a national Focal Point, by ensuring that the roles, functions and different competences of the stakeholders compete in a coordinated way to achieve the objectives of the programmes.<sup>49</sup> Even though in the documents that follows the development of general strategies for overcoming discrimination and racism is placed among the measures provided by for the implementation of the EU ‘Equality Directives’, it can be maintained that they also can be considered as relevant practice for the implementation of the mentioned OSCE principles.

#### 5.3.1.1. The National Plan of Action against Racism, Xenophobia and Related Intolerance

The National Plan of Action against Racism, Xenophobia and Related Intolerance 2013-2015 may be considered as a common – and dynamic – tool, prepared jointly by institution and civil society, under the coordination of UNAR. Its goal was to support national and local policies for preventing and fighting racism, xenophobia and intolerance.

The second National Plan for 2015-2017 is an example, at national level, of a multidisciplinary multiannual programme of interventions, involving public administrations and civil society, to make effective the principle of equal treatment and non-discrimination among people.

The main objective of the plan is to identify the priority areas on which to focus the attention to promote, in the following three years, specific actions to prevent and / or remove discrimination. It is applicable to foreign citizens living in Italy and to Italian citizens of foreign origins, including those belonging to religious and ethnic and linguistic minorities. From a substantial standpoint, it includes eighth thematic areas: Work and employment; Housing; Education; Health; Contacts with Public Administration; Law enforcement; Sport; Media and Communication.

<sup>49</sup> Senato della Repubblica, *Relazione sull'effettiva applicazione del principio di parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica e sull'efficacia dei meccanismi di tutela (Anno 2014)*, Doc. CXXX n. 3, 16 May 2016, p. 5. In addition to the plans described in this Section, Italy also adopted, in 2013, the First National Strategy on prevention and contrast of discrimination based on sexual orientation or gender identity (2013-2015), based on the Recommendation of the CoE Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Rec(2010)5 of 31 March 2010, available at: <http://www.unar.it/unar/portal/?p=1921>.

As for the ‘Work and Employment’ priority area, the Plan, under the responsibility of the Ministry of Labour and Social Policy, aims at a) collecting data for the monitoring of discrimination in the workplace; b) encouraging the adoption of policies for diversity management and the fight against discrimination by public and private companies; c) promoting the elimination of barriers to access to employment for people at risk of discrimination, d) promoting awareness of settlement mechanisms with a view of improving access to justice for victims of discrimination; e) carrying out statistical surveys on access to employment and working conditions of people at risk of discrimination; f) promoting the principles of equality at work; g) promoting the professional training of people at risk of discrimination to facilitate their re-employment; h) promoting the establishment of start-up companies, including cooperative companies, by people at risk of discrimination; i) promoting the active role of the employment centres in the fight against discrimination; j) promoting the use of inter-professional funds for anti-discrimination initiatives; k) monitoring the effects of major legislative changes concerning labour market (the so-called Jobs Act, adopted in 2015) on discrimination; l) promoting the role of internal supervisory bodies for equal opportunities and on anti-discrimination (*Comitato Unico di Garanzia per le pari opportunità, la valorizzazione del benessere di chi lavora e contro le discriminazioni*) in the public administration.

It is difficult to praise the actual value of the National Plan of Action against Racism, Xenophobia and Related Intolerance, because few information on its implementation may be found, in public sources and on the media.

Co-operation among public institutions and between public institutions and civil society is called for in OSCE commitments, since it has a strong cultural value of legitimization of marginalised and stigmatised persons and groups. In the 2007 Madrid Decision on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding, States are encouraged to develop and implement national strategies to combat intolerance and discrimination.<sup>50</sup>

A remark concerns the methodology followed for the preparation of the Plan. Its first draft was prepared in late 2012, and then discussed with institutions and NGOs. This participatory approach has to be praised, also in the light of the OSCE principle.

<sup>50</sup> MC.DEC/10/07 of 30 November 2007, para 10.

Communication and awareness-raising initiatives are vital to disseminate the knowledge of the existence of the National Plan of Action and of its implementation. The specific actions included in the eight thematic areas covered short-, medium-, and long term objectives, which are impossible to assess without a comprehensive report from Italian institutions.

#### 5.3.1.2. The National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities

It is estimated that the number of people of Roma, Sinti and Caminanti communities (RSC communities) in Italy is approximately of 140.000 persons (i.e. 0,23 % of the population).<sup>51</sup> The stigmatization of certain ethnic or social groups remains a matter of serious concern for the central Government and local authorities and the country is strongly committed to eradicating racist and xenophobic attitudes toward them within society. On the other hand, anti-Gypsism and lack of trust between RSC communities and mainstream society is deeply rooted in history.

In its 2008 Decision on ‘Enhancing OSCE Efforts to Ensure Roma and Sinti Sustainable Integration, the Ministerial Council recognized “the particular difficulties faced by Roma and Sinti and the need to take effective measures in order to eradicate discrimination against them and ensure their sustainable integration consistent with OSCE commitments”.<sup>52</sup> The Decision called upon participating States to enhance their efforts to implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, adopted in 2003. It reiterated the need for stepping up their efforts in promoting tolerance and combating prejudices against Roma and Sinti people in order to prevent their further marginalization and exclusion and to address the rise of violent manifestations of intolerance against Roma and Sinti as well as to unequivocally and publicly condemn any violence targeting Roma and Sinti. Moreover, it asked participating States to take all necessary measures to ensure access to effective remedies, in accordance with national judicial, administrative, mediation and conciliation procedures, as well as to secure co-ordination between

<sup>51</sup> *Presidenza del Consiglio dei Ministri*, National Office on Anti-Racial Discrimination National Focal Point, National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities – European Commission Communication No.173/2011, 28 February 2012, p. 12. See also Giovannetti et al (2016), p. 19.

<sup>52</sup> MC.DEC/8/09 of 2 December 2009, *considerandum*.

responsible authorities at all levels in this regard. Other measures – such as participation of RSC to the design, implementation and evaluation of the policies that affect them; ensuring equal access to education – were called upon.<sup>53</sup>

On 28 February 2012, the Italian government adopted its National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities (NSRI), to overcome definitively the emergency phase pursued by several governments from 2008 to 2011,<sup>54</sup> especially when working on the relevant situation in large urban areas. The NSRI defined a roadmap for public policies between 2012-2020, focused on the gradual elimination of poverty and social exclusion amongst marginalized RSC communities in four main areas: healthcare, education, employment and housing. Moreover, Italy decided to add gender perspective,<sup>55</sup> non-discrimination and a human rights-based approach as crosscutting principles for the implementation of the Strategy.

With a view of achieving the objectives identified, a political control room (*Cabina di regia / tavolo politico inter-ministeriale*) chaired by UNAR Director has been established, with the participation of representatives of the Ministers involved (the Minister of Labour and Social Affairs, the Minister of Interior, the Minister on Health, the Minister on Education, University and Research, the Minister of Justice), representatives of regional

<sup>53</sup> The OSCE approach is similar to the one followed in the EU Framework for National Roma Integration Strategies by 2020, linking closely the fight against discrimination and the promotion of social and economic inclusion of RSC communities. See EC Communication on an EU Framework for National Roma Integration Strategies by 2020, COM (2011), p. 173, available at: [https://ec.europa.eu/info/files/italy-national-strategy-roma-inclusion\\_en](https://ec.europa.eu/info/files/italy-national-strategy-roma-inclusion_en).

<sup>54</sup> With the adoption of a state of emergency decree on 21 May 2008, special state authorities had been given extraordinary powers to overtake the situation of Roma, Sinti and Caminanti communities defined as an emergency for public order in the regions of Campania, Lazio and Lombardy (*Decreto del Presidente del Consiglio dei Ministri, 21 Maggio 2008, Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni, Campania, Lazio e Lombardia*). Later, the state of emergency had been extended to regions of Piedmont and Veneto (*Decreto del Presidente del Consiglio dei Ministri, 28 maggio 2009, Proroga dello stato di emergenza per la prosecuzione delle iniziative inerenti agli insediamenti di comunità nomadi nel territorio delle regioni, Campania, Lazio e Lombardia ed estensione della predetta situazione di emergenza anche al territorio delle regioni Piemonte e Veneto*). On 16 November 2011, the Italian Council of State ruled that the state of emergency Decree was unlawful (Council of State, 4<sup>th</sup> Section, judgment No. 6050). Consequently, all the subsequent acts were invalid. Finally, the Court of Cassation upheld the judgment of the Council of State, rejecting the government's appeal against it (Court of Cassation, *Sezioni Unite Civili*, Judgment of 26 March / 22 April 2013, No. 9687).

<sup>55</sup> Since its adoption, increasing attention has been paid to Roma women and girls as 'agents for change'.

and local Authorities, including mayors of large urban areas, as well as representatives of RSC communities living in Italy.

UNAR, which has been identified as the National Focal Point for the NSRI, is playing a pivotal role for collecting information on past initiatives, so as to allow effective monitoring of the relevant phenomena, particularly in those field identified as a priority: housing, cultural mediation and school dropping-out.

With a view of establishing a single database on RSC issues, UNAR signed agreements with the Ministry of Interior, for the cooperation with OSCAD, and with the Office of the National Equality Councilor, at the Ministry of Labour and Social Policies, for collecting relevant data.<sup>56</sup> The establishment, in 2017, of a National Platform of Roma, Sinti and Caminanti, guarantees dialogue and consultation, with RSC communities and associations, concerning the NSRI, its implementation, periodic review and evaluation.

The need for significant resources to implement the actions of the NSRI is underlined. The government is coordinating the use of national and EU funds, while regional multi-sector operational programmes are managed directly by regional administrations. Every two years, while confirming the pursuance of all systemic actions, the Government assesses the implementation of the Strategy and indicates priority commitments.

An assessment of the Strategy has been made by the European Commission (EC), in the exercise of its competence over the EU Framework for National Roma Integration Strategies up to 2020.<sup>57</sup> According to the EC, the goals of the Strategy are ambitious and realistic; but “the proposed measures should be reinforced with precise quantitative targets and

<sup>56</sup> *Presidenza del Consiglio dei Ministri*, National Office on Anti-Racial Discrimination National Focal Point, National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities – European Commission Communication No.173/2011, 28 February 2012, pp. 27-28.

<sup>57</sup> EU monitoring served as a basis for identifying funding priorities for planned countries’ projects. See, also, EC Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Report on the implementation of the EU Framework for National Roma Integration Strategies, 17.6.2015, COM(2015) 299 final, p. 3. The evaluation of the assessment of the implementation status and the achievement of the EU Framework is ongoing, and should be completed by the second quarter of 2018. See, EC, Evaluation and Fitness Check (FC) Roadmap, Ref. Ares(2017)1716166, 30.3.2017, available at: [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-italy\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-italy_en).

identification of the necessary resources”. EC has underlined the need for adequate funding and efficient coordination among the relevant actors of the process of NSRI implementation.

A rather critical evaluation of the situation after the adoption of the Strategy can be found in the 2016 ECRI report on Italy. In particular, ECRI underlined the delay of some of the measures provided for in the Strategy, and, most important, the fact that most RSC communities faced, especially in large cities, conditions of acute marginalisation and discrimination, in terms of access to housing and other social rights.<sup>58</sup> In their comments on ECRI draft report, Italian authorities listed in detail all the measures that had started and how adequate funding had been secured.<sup>59</sup>

Serious issues concerning RSC communities in Italy and the implementation of NSRI have been relaunched by several stakeholders. Residential segregation is still maintained, with a strong geographical disparity, and mostly concentrated in large metropolitan areas, whereas local authorities are still using evictions and segregation as a ‘political tool’, in breach of international and regional human rights standards. According to data collected by NGOs, almost 26000 RSC persons live in segregated camps.<sup>60</sup> Concern over this practice has been expressed by some international monitoring bodies.<sup>61</sup>

RSC children are still facing obstacles for the access to school education, an issue that is strictly connected with the continued practice of eviction, since children cannot remain at school. The high school dropout rate among students calls for a prompt change in current policies.

Moreover, episodes of hate speech, by politicians too, and violence against RSC communities have been registered and reported several times, sometimes without a public condemnation and the starting of judicial proceedings to prosecute the authors of those episodes.<sup>62</sup>

In conclusion, the attention of Italy toward the integration of RSC com-

<sup>58</sup> European Commission against Racism and Intolerance, *ECRI Report on Italy (fifth monitoring cycle)*. Adopted on 18 March 2016, Doc. CRI(2016)19 of 7 June 2016, pp. 27-28.

<sup>59</sup> Ibid., pp. 56-58.

<sup>60</sup> “Rom: in Italia è emergenza abitativa per 26 mila persone”, 6 April 2018, available at: <https://www.osservatoriodiritti.it/2018/04/06/rom-in-italia/>.

<sup>61</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined nineteenth and twentieth periodic reports of Italy*, UN Doc. CERD/C/ITA/CO/19-20 of 17 February 2017, para 21.

<sup>62</sup> European Roma Rights Centre 2016, Amnesty International 2016, European Roma Rights Centre 2017, Associazione 21 luglio Onlus 2018.

munities, to overcome stereotypes and to reduce racist and intolerant attitudes toward these communities, is remarkable. The adoption of the NSRI is a concrete act, in line with most recent OSCE commitments. But, it seems that the comprehensive approach followed by the Strategy is lacking when concrete measures are put into action.

To show a concrete willingness for RSC communities' integration policies Italy, as indicated in the NSRI; should at least halt the eviction process and ensure that rehousing plans do not result in new segregated camps; review national, regional and municipal housing legislation, policies and practices to ensure that they do not discriminate against RSC persons; prioritize efforts for ensuring access quality education for RSC children.

To reverse this trend, a strong political commitment is necessary, followed by adequate funding for each NSRI action.

### 5.3.2. Hate Speech and Hate Crimes

From 2003 on, the Ministerial Council recognized “the need to combat hate crimes, which can be fuelled by racist, xenophobic, and anti-Semitic propaganda on the Internet”.<sup>63</sup>

Considering hate crimes as crimes based on a bias motive, OSCE participant States are encouraged to multiply efforts for awareness-raising campaigns, professional training and capacity-building activities to combat hate crimes.

Actions against hate speech are then crucial for combating hate crimes. The term ‘hate speech’ covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, discrimination and hostility against minorities, migrants and people of immigrant origin, and on grounds of sexual orientation and gender identity.<sup>64</sup>

Reports and media register a worrying increase of hate speech episodes.<sup>65</sup> The *Jo Cox* Commission on Intolerance, Xenophobia, Racism

<sup>63</sup> See, MC.DEC/04/03 of 2 December 2003; MC.DEC/10/07 of 30 November 2007; MC.DEC/9/09 of 4 December 2009.

<sup>64</sup> A definition can be found in the Recommendation No. R (97) 20 of the CoE Committee of Ministers to member states on “hate speech” adopted on 30 October 1997, Appendix, available at: [https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset\\_publisher/aDXmrol0vvsU/content/recommendation-no-r-97-20-of-the-committee-of-ministers-to-member-states-on-hate-speech-?inheritRedirect=false](https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-no-r-97-20-of-the-committee-of-ministers-to-member-states-on-hate-speech-?inheritRedirect=false).

<sup>65</sup> Bortone, Cerquozzi (2017), pp. 822-823.



and Hatred offered an in-depth analysis of this situation, confronting data gathered by different stakeholders, and suggesting multiple actions for strengthening the contrast against the phenomenon.<sup>66</sup> Since 2015, the trend of xenophobic thinking among Italians reached more than half of the population of the country.<sup>67</sup> Episodes of segregation and ‘racial’ and/or ‘cultural’ conflicts are reported, often echoed and broadened by fake news, on social media.<sup>68</sup> Migrants, women, RSC communities, religious believers (Muslims, followed by the Jews), LGBTI people, persons with disabilities the groups most targeted by hate speech.<sup>69</sup>

Official data collection on incidents of hate speech or other hate-motivated offences has been re-organized in its working modalities, for a better assessment of the phenomenon. UNAR, the Ministry of Justice, and OSCAD are enhancing their capacities with a view of developing an ‘early warning mechanism’, for detecting the potential hate speech cases, to include those episodes that cannot be registered as crimes with bias motivation in the Investigation Crime Database (*Sistema d’indagine SDI*) of the Ministry of Interior.<sup>70</sup> In addition, the Contact Center of UNAR examines reports of hate speech, searching for all the information useful for suggesting and encouraging further action.

The online newspaper forums, the Facebook pages of national and local newspapers are now becoming the virtual communities where hate speeches are spreading. In January 2016, UNAR launched the Observatory against Discrimination on the Media and the Internet, to monitor comprehensively cases of hate speech, including online. The methodological approach followed by the Observatory aims at raising awareness on the phenomenon to develop tools and mechanisms to combat online discrimination and violence.

Furthermore, two good practices can be pointed out: the 2015 Italian Internet Bill of Rights, which tries to balance the protection of the freedom of opinion and expression and the need to contrast abuses aiming at

<sup>66</sup> See *supra*, Sect. 2.4. Chapter V of the Final Report of the *Jo Cox* Commission is particularly relevant, Camera dei Deputati (2017), pp. 75-95.

<sup>67</sup> *Ibid.* p. 75.

<sup>68</sup> See the Report of the project *B.R.I.C.K.S. Building Respect on the Internet by Combating Hate Speech*, *L’odio non è un’opinione. Ricerca su hate speech, giornalismo e migrazioni*, Florence, 2016, available at: <https://www.cospe.org/progetti/bricks-stop-al-razzismo-online/>.

<sup>69</sup> Camera dei Deputati (2017) pp. 17-21.

<sup>70</sup> European Commission against Racism and Intolerance, *ECRI Report on Italy (fifth monitoring cycle)*. Adopted on 18 March 2016, Doc. CRI(2016)19 of 7 June 2016, pp. 71-72.

hatred speech; and the 2017 Anti-Cyberbullying Law, with specific provisions for the protection of minors and for the involvement of institutions, families and schools against hate speech online.<sup>71</sup> To curb the phenomenon, it would be important to ratify the 2003 CoE Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.<sup>72</sup> In addition, ‘counter-speech’, for media professionals too, to describe current situation on hate speech can be a successful tool.<sup>73</sup>

The rate of hate crimes is increasing too.<sup>74</sup> The Italian jurisprudence in the matter of hate speech is consistent and a favourable trend of the courts to incrimination by incitement to hatred can be registered. However, the Minister of Justice started in 2017 a survey (census) – within the Italian Courts of Appeal – for data on ongoing legal proceedings for hate crimes. The preliminary findings of this survey are alarming: in the last three years (2015-2017) there were more than 800 legal proceedings.<sup>75</sup> This number – “*numericamente significativo*”<sup>76</sup> (numerically meaningful) according to the Minister of Justice – is even more dramatic if we add episodes that are not reported to the police, because the victim/the testimony is scared, or for conspiracy of silence.

In 2009, OSCE Ministerial Council reiterated its call to “collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance, including the numbers of cases reported to law enforcement, the numbers prosecuted and the sentences imposed”.<sup>77</sup>

While Italy regularly reports hate crimes data to ODIHR, it would be important to assess the effectiveness of the provisions for combating the dissemination of racist ideas as well as incitement to commit hate crimes.

<sup>71</sup> See the *Carta italiana dei diritti in Internet*, approved on 3rd November 2015, and the Law No. 71/2017, *Disposizioni a tutela dei minori per la prevenzione ed il contrasto del fenomeno del cyberbullismo*, of 29 May 2017.

<sup>72</sup> See Andrisani (2017), p. 65.

<sup>73</sup> Ibid. 73. See also the project *Media Against Hate*, available at: <https://www.cospe.org/progetti/media-against-hate/>.

<sup>74</sup> The same is true in other countries too. For an analysis of the situation in the 28 EU Member States, see FRA (2017), pp. 56-68.

<sup>75</sup> See Berizzi (2018).

<sup>76</sup> Ibid.

<sup>77</sup> 9/09 Athens.

### 5.3.2.1. Political Discourse

A significant number of incidents of hate speech by politicians targeting vulnerable groups have been registered in Italy, by NGOs and media.<sup>78</sup>

The starting of judicial proceedings against those responsible for some of the incidents<sup>79</sup> did not prevent the use of offensive language, leading to hate speech, in political debate on radio and television, against vulnerable groups. Internet and social media are then becoming the arena used by political representatives for disseminating unacceptable racist messages, based on lies.<sup>80</sup>

Within its activities, UNAR has been issuing systematically opinions also on this matter. Moreover, it keeps working with various stakeholders, which are reporting and updating their views.<sup>81</sup>

The unequivocal and public condemning of any violence, the instrumental role of political representatives for combating intolerance and discrimination, the encouragement of political leaders and public figures to speak out strongly and promptly when racist, xenophobic and anti-Semitic incidents occur, are all commitments reiterated in several OSCE Ministerial documents.<sup>82</sup>

### 5.3.3. Awareness-Raising as a Tool against Racism, Xenophobia and anti-Semitism

On many occasions, international organizations have emphasized the need to make a cultural leap to prevent and fight a widespread and pervasive phenomenon such as racism. Legal provisions and initiatives of penal repression cannot alone succeed in eradicating the ‘racist thought’, the basis of many behaviours that, however, do not lead to violations of rights. As early as 1990. The Copenhagen Document noted that the participat-

<sup>78</sup> See, the section *Migranti e Media*, in *Cronache di ordinario razzismo* 2017, pp. 85 ff.; Amnesty International Italia, *Conta fino a 10. Barometro dell'odio in campagna elettorale*, Rome 2018, available at: <https://d21zrvtkxt6ae.cloudfront.net/public/uploads/2018/02/16105254/report-barometro-odio.pdf>. The report registered almost 800 cases of hate speech episodes during the last electoral campaign for the General Elections of 4 March 2018.

<sup>79</sup> See, e.g., *supra* Sect. 5.2.2.; *Unione forense per i diritti umani*, Observations on the nineteenth to twelfth periodic reports of Italy to the Committee on the elimination of racial discrimination, para 15.

<sup>80</sup> See Pitruzzella et al. (2017).

<sup>81</sup> European Commission against Racism and Intolerance, *ECRI Report on Italy (fifth monitoring cycle)*. Adopted on 18 March 2016, Doc. CRI (2016) 19 of 7 June 2016, p. 52.

<sup>82</sup> MC.DEC/13/06 OF 5 December 2006, para 8; MC.DOC/8/14 of 5 December 2014.

ing States will “take effective measures [...] to promote understanding and tolerance, particularly in the fields of education, culture and information”. Subsequent OSCE Ministerial Council Decisions adopted at Porto (2002), Maastricht (2003), Sofia (2004), Ljubljana (2005), Brussels (2006) reiterated the importance of the promotion of tolerance to counter prejudices.

In this respect, awareness-raising actions, training courses, communication and dissemination initiatives, at any level – schools, professionals, general audience – are particularly important.

Italy participates to many international campaigns for contrasting racist and xenophobic attitudes. For example, since 2013, it is a member of the No Hate Speech Movement Youth Campaign of the CoE.<sup>83</sup> For this campaign the Department of Youth and National Civil Service at the Presidency of the Council of Ministers has created a website, and a Facebook page has been created by the National Youth Agency for the exchange of content produced directly by young people. A competition was held between upper secondary schools for the creation of multimedia contents on the contrast violent and discriminatory messages on the Internet, in collaboration with the Ministry of Education, University and Research. In collaboration with the Department for Information and Publishing, commercials for television and radio were produced and broadcasted by public and private networks.<sup>84</sup> Another good practice may be quoted: Italy is implementing ODIHR’s Training against Hate Crimes for Law Enforcement (TAHCLE) programme, which is designed to improve police skills in recognizing, understanding and investigating hate crimes.<sup>85</sup>

In addition, governmental bodies support several awareness-raising actions for contrasting racism. Every year on the occasion of the worldwide celebration of the Day for the Elimination of Racial Discrimination, set for March 21<sup>st</sup>, UNAR co-ordinates ‘The Week of Action against Racism’, an event aimed at a large audience, with information, awareness and territorial animation initiatives promoted throughout Italy by schools, universities, sport organizations, associations.<sup>86</sup>

UNAR offers free consultancy, training and technical assistance to associations and bodies and to the territorial networks. It also participates

<sup>83</sup> <https://www.nohatespeechmovement.org/>.

<sup>84</sup> <http://www.nohatespeech.it/>.

<sup>85</sup> <http://www.poliziadistato.it/articolo/32040>.

<sup>86</sup> <http://www.unar.it/eventi/settimana-dazione-razzismo/>.

to external projects, partially funded by the EC, for raising awareness on this issue. The *P.R.I.S.M. Project* (Preventing, Redressing, & Inhibiting Hate Speech in the New Media) is a good practice in this sense, since it has gathered different stakeholders on information, research and training activities.<sup>87</sup>

Civil society and NGOs are very active on raising-awareness initiatives, offering a qualified service encouraged by national and local authorities.<sup>88</sup> The Ministerial Decision adopted at Brussels in 2006 underlines that participating States “should engage more actively in encouraging civil society’s activities through effective partnership and strengthened dialogue and co-operation between civil society and State authorities in the sphere of promoting mutual respect and understanding, equal opportunities and inclusion of all within society and combating intolerance”.<sup>89</sup>

#### 5.3.4. Specific Actions on anti-Semitism

Earlier in this Section, OSCE commitments for combating anti-Semitism and its new forms were recalled.

Anti-Semitism in Italy, as a particular form of hatred, is a phenomenon that changes according to historical, political and social circumstances. In the last years, independent reports show that, although the racist violence is smaller in numbers, an increase of anti-Semitic expressions (also in the web) have been registered (from 53 episodes in 2010, to 90 in 2015, and 130 in 2017): reference is made to verbal offenses, insults, threats, vandalism, defamation, graffiti. It is relevant that, apart from anti-Semite events organized by right-extremists groups – sometimes in concomitance with the anniversary of historical events, such as the Holocaust Memorial Day, or the day of the Jewish culture, a number of expression of verbal hostility, ideological and political injury towards the Jews or towards Israel can be registered in public events and/or on the Internet.

FRA collects official data on anti-Semitism for all EU Member States, and, in the case of Italy there is a substantial difference between official

<sup>87</sup> <http://www.prismproject.eu/>.

<sup>88</sup> Some associations and projects may be quoted: *Il razzismo è una brutta storia*, a cultural association promoted by Feltrinelli Group, available at: <http://www.razzismobruttaistoria.net/>, *Lunaria*, an association for social promotion, available at: <http://www.lunaria.org/>, the legal assistance desk of the *Associazione di studi giuridici sull’immigrazione*, available at: <http://www.asgi.it/servizio-antidiscriminazione/>.

<sup>89</sup> MC.DEC/13/06 of 5 December 2006, para 12.

and independent data concerning.<sup>90</sup> As observed for OSCE commitments related to monitoring hate crimes and collecting relevant data, Italy should increase efforts to implement the said commitments for crimes motivated by anti-Semitism.

It has to be pointed out that the Governments' commitments to counter-ing racism on religion grounds and anti-Semitism have been reiterated on several occasions, with special reference to the need for inter-religious dialogue to overcome prejudices and stereotypes. This practice is in line with the OSCE principles on the matter, calling for the promotion and facilitation of an open and transparent intercultural, interfaith and interreligious dialogue and partnership.

However, as laid down in the Ministerial Decision adopted at Basel in 2014, political leaders and public figures should speak out "strongly and promptly when anti-Semitic incidents occur".<sup>91</sup>

## 5.4. Key Findings of the Assessment

The assessment of overall activities of Italy for the implementation of OSCE standards and commitments must take into account several factors, as: ongoing actions, results achieved and problematic areas. In addition, attention has to be paid to the fact that complex phenomena, as racism, xenophobia, anti-Semitism and related intolerance need international co-operation, since some of the activities related to them are online, in areas outside the jurisdiction of the State.

In general, Italian legislative and institutional framework is fully in line with the OSCE standards and commitments, laid down in the 1990 Copenhagen Document and reiterated afterwards: the unequivocal condemnation of totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds; the adoption, in conformity with its constitutional system and its international obligations, of such laws necessary to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism, and for the protection of persons

<sup>90</sup> FRA (2017) pp. 47-49.

<sup>91</sup> MC.DOC/8/14 of 5 December 2014.

or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity; the recognition of the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts; the adhesion to international instruments which address the problem of discrimination, and the acceptance of those international mechanisms of monitoring State compliance, also by allowing States and individuals to bring communications relating to discrimination before international bodies.

On the need of independent national body for collecting reliable data on episodes of intolerance, xenophobia and anti-Semitism, for building on previous experiences to encourage the promotion of educational, awareness-raising, and training activities of tolerance and mutual understanding, as stated in some OSCE Ministerial Decisions,<sup>92</sup> one point has to be raised. Analysing its activities, UNAR appears to be a ‘hybrid’, since it lacks independence from the Government. A relaunch of the Office and its activities is sought, by strengthening its role and by reinforcing its mandate. At present, it can be maintained that Italy is partially in line with OSCE commitments.

The adoption of the National Plan on Action against Racism, Xenophobia and Related Intolerance (2013 and 2015) has to be praised. The demand for global and comprehensive answers to the issues dealt with can be satisfied only through the identification of all areas of concern. But, as stated, in the OSCE Ministerial Decision adopted at Madrid (2007), the said plans have to be implemented, maximising the efforts to disseminate their results, to raise awareness of the cross-cutting initiatives adopted. Therefore, Italy is partially in line with OSCE commitments on this point.

However, and more generally, awareness-raising initiatives and other actions to prevent racism, xenophobia and intolerance put in place by Italy to complement direct action, by encouraging projects of the civil society are good practice, fully in line with OSCE commitments.

On RSC communities’ integration and on the NSRI (2012-2020), some remarks have to be made. OSCE decisions on the matter underline the particular difficulties faced by RSC communities and the need to take effective measures, possibly designed, implemented and evaluated by the

<sup>92</sup> MC.DEC/12/04 of 7 December 2004; MC.DEC/13/06 of 5 December 2006, para 10.

same communities.<sup>93</sup> The shortcomings evidenced by international monitoring bodies (whether IGOs or NGOs) call for urgent measures: major changes in the attitude of public authorities when implementing measures for guaranteeing equal access of RSC communities to housing, health and education services; the need for verifiable indicators to assess the effectiveness of the implementation of the plan, and the investment of sufficient financial resources for achieving its objectives. In addition, it is particularly necessary to step up efforts to combat ‘Romaphobia’, which is more and more presented, and perceived as an ‘acceptable racism’. To conclude, OSCE commitments call for special measures aimed at ensuring the RSC communities are able to play a full and equal part in our societies, and at eradicating discrimination against them. From the analysis carried out in this Section, it cannot be maintained that Italy is in line with the said commitments.

On hate speech, the attention of the institutions to this practice, which undermines, *inter alia*, the freedom of expression and information, is comforting. Prosecution of hate crimes is a priority, and is accompanied by several intervention involving civil society too. The recommendation contained in the final report of the ‘Jo Cox’ Commission are useful guidelines for contrasting this trend effectively. OSCE commitments foster multi-action measures, including tailored legislation to combat hate crimes, and complementary measures. However, as pointed out the 2009 Decision on Combating Hate Crimes, States are called to “[c]ollect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance, including the numbers of cases reported to law enforcement, the numbers prosecuted and the sentences imposed”.<sup>94</sup> Obstacles for obtaining reliable official data on hate crimes should be overcome, in order to be fully in line with OSCE commitments. Moreover, it

<sup>93</sup> See the Decision No. 3/03; Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, MC.DEC/3/03 of 1-2 December 2003; Decision No. 6/08 on Enhancing OSCE Efforts to Implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, MC.DEC/6/08 of 5 December 2008; and Decision No. 4/13 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children, MC.DEC/4/13 of 6 December 2013. Decision No. 8/09 on Enhancing OSCE Efforts to ensure Roma and Sinti Sustainable Integration, MC.DEC/8/09 of 2 December 2009, para 4, calls upon States “to enhance, in an appropriate way, the participation of Roma and Sinti in the design, implementation and evaluation of the policies that affect them”.

<sup>94</sup> MC.DEC/9/09 of 2 December 2009, para 1.



has to be reminded that, according to the same Decision, political representatives are key players “in taking the lead in combating intolerance and discrimination and promoting mutual respect and understanding”.<sup>95</sup>

The fight against anti-Semitism, and its ‘new’ forms, is considered a priority by Italy, even when it is difficult to prosecute responsible of anti-Semitic acts, in particular for online threats and offences. Italian practice appears to be in line with Decision on Combating anti-Semitism,<sup>96</sup> and with the 2014 Declaration on Enhancing Efforts to Combat Anti-Semitism, although further efforts should be made to implement the said Declaration for the part in which it asks for the participating States to “[e]ncourage political leaders and public figures to speak out strongly and promptly when anti-Semitic incidents occur”.

## 5.5. Recommendations and Measures to Be Taken by Italy to Be in Line with OSCE Standards and Commitments

While confirming the positive view on overall activities of Italy on racism, xenophobia and anti-Semitism, some recommendations may be useful for a better implementation of OSCE standards and commitments:

For combating any forms of racism, intolerance and discrimination, and for promoting mutual respect and understanding, Italy should:

- continue focus efforts by all institutions, national and local, to address racism, xenophobia and anti-Semitism;
- speak out on and condemn all statements of a racist nature;
- encourage all programmes of education (including training of public officials and police officers) and awareness-raising against racism and xenophobia;
- scale up co-operation with civil society in the implementation of all programmes of education and awareness-raising;
- strengthen the mandate of UNAR, as an independent body for promoting the initiatives against racism, xenophobia and anti-Semitism;
- improve official data collection, aiming at regular publication and

<sup>95</sup> Ibid., *considerandum*.

<sup>96</sup> MC.DEC/12/04 of 7 December 2004, Annex.

availability for media and large audience;

- enhance the implementation of the National Plan on Action against Racism, Xenophobia and Related Intolerance.

For ensuring RSC communities sustainable Integration, Italy should:

- remove obstacles to major problems encountered by RSC communities;

- implement relevant OSCE commitments, with particular attention to equal access to housing, health and education services;

- increase efforts, financial too, for implementing NSRI in the short and medium term, with actions possibly designed, implemented and evaluated by the same communities;

- adopt verifiable indicators for assessing effective implementation of NSRI;

- contrast ‘Romaphobia’ by concrete measures in promoting tolerance and combating prejudices, also in political discourse;

- consider the adoption of specific legislative provisions for the protection of RSC communities.

For combating hate speech, also on the Internet, and hate crimes, Italy should:

- multiply efforts to de-escalate hate speech, for its potential threat to the freedom of expression and information;

- condemn all episodes of hate speech;

- speak out against the use of hate speech in political discourse;

- continue the prosecution of ‘hate crimes’ as a priority;

- improve the collection of reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance;

- encourage and support activities aimed at countering hate speech – including racist, xenophobic and anti-Semitic propaganda – on the Internet.

For enhancing efforts to combat anti-Semitism,

- step up awareness-raising initiatives to combat stereotypes and prejudices;

- increase efforts related to monitoring hate crimes with specific reference to anti-Semite motivations.

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## Conclusions

The aim of this report is to evaluate, on the occasion of the Italian OSCE Chairmanship of 2018, how the political OSCE commitments in the area of the “human dimension” are being implemented by Italy. The report, prepared by Sant’Anna School of Advanced Studies, Pisa, Italy focuses on the evolution of the Italian legislation, facts and figures related to selected relevant issues, such as the migration, refugees and asylum seekers, trafficking in human beings, xenophobia and anti-Semitism, violence against women and the role of women in peace and security.

Throughout such review it has been possible to identify commitments that have been fully implemented by Italy but also those that have been only partially met. At the end of each section, the report contains several recommendations aiming at reducing the gaps in the Italian legal and policy framework.

During the drafting phase, the contribution of relevant stakeholders such as governmental institutions and Italian NGOs working on human rights issues added a significant value to the research and helped tailoring it and widening the perspective adopted by the experts who authored the various sections. As a matter of fact, the participatory process that led to the selection of the five topics and subsequently the comments to the draft report stemming from relevant stakeholders, represented a unique opportunity to engage in a constructive dialogue with Italian civil society organizations and in particular with actors operating in the field of human rights. We believe that the approach used may set the precedent for further initiatives aiming at strengthening Italy’s engagement and dialogue with civil society actors and we are extremely grateful to all those who provided inputs and comments to the draft report.

Overall, what emerges from the report is a satisfactory level of conformity of legislations currently in force in Italy with the OSCE commitments and

the main international norms, customary and treaty based, on the above-mentioned themes; on the other hand, what is lacking is the full implementation of these laws at the local and national level.

In the field of migration Italy does not have a National Plan on Migration, which must be adopted every three years. Generally speaking, Italy does not have a systematic long-term approach to migration, resulting in measures adopted to solve specific and actual issues that fall short of addressing further criticalities in the foreseeable future. To mention a few criticalities, there is an urgent need of simplification of administrative procedures to manage the exit and entry of migrants in Italy and to facilitate labour mobility. The implementation of the OSCE commitment to protect asylum seekers is undoubtedly linked to the European context and, at the time of writing this report, European Member States are reviewing their approach to the Dublin Regulation No. 604/2013 on asylum seekers. From a legal point of view, Italy is in line with the OSCE commitments: it has ratified the 1951 Geneva Convention and the legislative framework is now well structured with different forms of protections, however on the implementation there is still room for improvement. Looking at the Italian legislation, one of the most critical point is the reception system, where an emergency approach still prevails and there is a lack of clear and effective pathways to integration of asylum seekers.

Concerning Italy's efforts to implement the OSCE commitments on women, peace and security, it is worth stressing that important results have been achieved in the areas of participation, protection, relief and recovery. The number of female personnel in national police, armed forces and peace operations has increased throughout the recent years, and more than before women hold key positions in decision-making bodies of peace operations. Since early 2000 more than 12.000 women have joined the Italian Army and Carabinieri, with no restriction with regards to recruitment, roles and responsibilities as compared to their male colleagues. However, the number of female uniformed personnel remains critically low, and particularly so in senior management position.

With regard to human trafficking, Italy has a legislative and institutional framework in place that fully meets the requirements included in the selected OSCE commitments relevant to this field, even if some shortcomings remain in its implementation. The Italian Criminal Code has been updated throughout the years to prevent and fight against criminal activities related

to trafficking and to protect the victims. Moreover, Italian civil society organizations are very committed and have a strong expertise in providing support and assistance to victims. However, a more holistic approach to the issue is recommended for instance when it comes to facilitating the access of the staff of non-governmental organizations to reception centres for irregular migrants, identification and expulsion centres, prisons and other detention centres. Another recommendation is to enhance the investigative tools to intercept the cash flow of international criminal organizations or to strengthen the already existing networks that uphold the respect of labour laws and human rights in agricultural labour contexts.

When it comes to violence against women, Italy has ratified both the CEDAW and the Istanbul Conventions and updated its legislation to comply with the existing international obligations. Indeed the Italian Laws No. 119/2013 on combating gender-based violence, and No. 4/2018 dealing with orphans of domestic violence represent unique and rather advanced tools compared to domestic legislations of other States Parties to the Istanbul Convention. However, it is observed that the current legislation is particularly concerned with the criminal repression of acts of violence against women, whereas other important aspects, such as prevention and protection, are not enshrined in the existing legal framework, but rather in policy documents. Even though Italy has made significant efforts to improve its legal framework to fight violence against women and despite the growing awareness and responsiveness towards this phenomenon, its causes and consequences, some issues require to be further addressed in order to strengthen Italy's compliance with the international OSCE commitments undertaken. Italy would greatly benefit from a comprehensive strategy with proactive measures to eliminate and modify gender stereotypes within its society; moreover, at the moment there is a lack of adequate focus on preventative measures, in particular intervention and treatment programmes to rehabilitate the perpetrators, both during and after their sentence; as well as on measures aimed at empowering victims in order to bolster their reintegration in the society.

The inquiry concerning the issues connected to xenophobia and anti-Semitism has showed that the Italian legislative framework is fully in line with the OSCE standards and commitments, laid down in the 1990 Copenhagen Document and reiterated afterwards, that entail the unequivocal condemnation of totalitarianism, racial and ethnic hatred, anti-Semitism,

xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. These principles are enshrined in the Italian Constitution as well as in the international conventions ratified by Italy. Consistently with the obligations stemming from the international legal framework, the adoption of the National Plan on Action against Racism, Xenophobia and Related Intolerance (2013 and 2015) has to be commended. However, as stated, in the OSCE Ministerial Decision adopted at Madrid (2007), said plans still have to be implemented, maximising the efforts to disseminate their results, in order to raise awareness of the cross-cutting initiatives adopted. Therefore, Italy is only partially in line with the OSCE commitments on this point. Nonetheless, in recent years Italy promoted various initiatives involving civil society organizations with the aim of raising awareness and prevent racism, xenophobia and intolerance, in line with the OSCE commitments. Probably the most timely and urgent issue is the fight against hate speech and hate crimes, also on the internet, in which Italy as other OSCE Participating States, should multiply the efforts to de-escalate hate speech for its potential threat to the freedom of expression and information on the long run; Italy should also improve the collection of reliable data and statistics on hate crimes and violent manifestations of intolerance.

In conclusion, the assessment carried out has highlighted some shortcomings in the Italian system that can be overcome with a more holistic approach that implies a long-term plan on several issues and the correct implementation of what is already embedded in the Italian legislative and institutional system. The present report has taken into account the lessons learned from previous independent assessment reports developed by past OSCE Chairmanships and it has to be seen as a tool to further strengthen the capacity of Italy to further improve the implementation of the OSCE commitments in the near future. The practice of independent evaluation proves to be of great importance as it contributes to a broader discussion at the national and international level, involving relevant national stakeholders and the civil society and stimulating a more accurate implementation of the OSCE principles and commitments.





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