



COMP.ACT ITALIA

**DEVELOPMENT OF ITALIAN
LEGISLATION ON COMPENSATION
State of art and strategies**

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COMP.ACT EUROPE

EUROPEAN ACTION FOR COMPENSATION FOR TRAFFICKED PERSONS

TABLE OF CONTENTS

Introduction.....	p. 3
1. Frame of reference.....	p. 5
2. Fund provided by law 228/2003 “Measures against trafficking in persons”	p. 5
3. Possibilities of compensation for victims.....	p. 6
3.1 Reparation protection in the penal proceedings.....	p. 6
3.2 Reparation protection in civil proceedings.....	p. 7
4. Assistance activities of “On the Road” legal office.....	p. 8
4.1 Documentation and study service.....	p. 10
5. Concrete results reached by legal office.....	p. 10
6. Conclusions and main findings: obstacles to the effective achievement of the compensation for the victim of trafficking and sexual and labour exploitation.....	p. 12

Introduction

The purpose of this report is to tell which is the compensation scheme in Italy and the experience of the legal office of On the road and to tell what we have done since the beginning of Compact project.

In Italy a specific fund financed by State for the compensation of victims of trafficking has not been put in place yet, whereas there is one for victims of usury and Mafia crimes.

Victims of trafficking have to bring civil action in the penal proceedings in order to get a compensation. For this reason the lawyers of the projects starting up social protection programs bring civil action during processes against the traffickers on behalf both of victims and of the associations defending them in order to achieve the compensation.

Currently, Italian State is still defaulting about the compensation of victims of trafficking even though there is the European directive 2004/80 which gives the right of compensation to the victims of violent and intentional crimes and the European directive 2011/36.

Although the first directive has been transposed in Italy by the legislative decree 204/2007, it does not consider expressly that victims of trafficking are like victims of violent and intentional crimes. This decree regulates only the ways of access to the fund and it refers to special laws for the identification of the categories of compensable victims. For victims of trafficking, a law providing a compensation does not still exist.

The European directive 2011/36, conversely, has not been transposed yet and for these reasons the victims of trafficking have to be refunded with trafficker's goods. On 25th April 2012, thanks to various battles of lawyers during processes, the Court of Appeal of L'Aquila gave goods to victims of trafficking by revoking the confiscation ordered during the first degree process.

Concerning the targets of the Compact project, we thought to work in two different ways.

First of all, we decided to make a research in order to understand if the compensation is a priority of the projects starting up social protection programs ex art. 18 of the legislative decree 286/98 and art. 13 of the law 228/2003. This research showed us that compensation is not a priority.

Secondly, we decided to create a network of lawyers, judges, politicians and journalists who work to draft a law proposal to ensure trafficked persons' access to compensation measures in accordance with the European Directive no. 2004/80 and the European Directive no. 2011/36. This law proposal aims at the creation of an *ad hoc* national fund for victims of trafficking (fed by seized and confiscated proceeds of crime) - developing its modes of operation - and at a government sensitization toward compensation theme through the press and other means of communication.

All members of the network were very interested to our proposals.

Moreover, we set up working groups broken down by different topics: compensation, vulnerability, labour exploitation and system action. The groups will draft and exchange their section to finalize the law proposal.

This work has been possible thanks to the cooperation of Hogan Lovells legal office in Rome which hosted our meetings and informed the press about our project.

Furthermore, an important national radio broadcasted one of our meetings thanks to the communication office of On The Road association

We thought to present our law proposal to Italian Government by next September.

Hereinafter, we explain which is the compensation scheme in Italy and which are the results achieved by the association considering that the obtained compensations came from trafficker's goods.

1. Frame of reference

In order to discuss about compensation for victims of trafficking for sexual or labour exploitation in Italian legislation, we must underline that this crime of trafficking is provided by article 600 of penal code as modified by the law 228/2003 “Measures against trafficking in person” which transposed the definition contained in Palermo Protocol. This crime is still little charged, whereas there are many legal proceedings for the “exploitation of prostitution of others” ex law 75/58 and “abetting of irregular migration and exploitation of undeclared work” ex article 22 of legislative decree 286/98, along with others crimes provided by special laws. The crime of trafficking is still difficult to charge due to the burden of proof required by the law, that is the “continuous subjection” of the victims by his/her exploiter and/or trafficker. However, according to the jurists, it is possible to talk about victims of trafficking for all above-mentioned crimes (“trafficking in persons”, “exploitation of prostitution of others” and “abetting of irregular migration and exploitation of undeclared work”), but the distinction is relevant when considering the possibility to access to the compensation scheme.

2. Fund provided by law 228/2003 “Measures against trafficking in persons”

When the crime of trafficking is charged to defendants, art. 12 of law 228/2003 provides a “Fund for anti-trafficking measures”. According to the law, this fund should be used to fund the social assistance and integration programs aimed at trafficked people and other purposes of social protection pursuant to art. 18 of the legislative decree 286/98 (that is the Immigration law).

In the fund there are amounts allocated by art. 18 of the Immigration law and revenues coming from the seizure ordered by a definitive verdict or by the penalty for crimes provided by article 416 (sixth paragraph), 600, 601 and 602 of penal code and article 12-sexies of the law decree 306/1992 modified by the law 356/1992 and following amendments.

3. Possibilities of compensation for victims

3.1 Reparation protection in the penal proceedings

The victims of trafficking can claim the damage compensation against their perpetrators in the penal process by bringing a civil action pursuant to articles 74 and 75 of the penal procedure code. In particular art. 74 gives the legitimation to person who suffered the damage to bring a civil action against the defendant and the civil responsible (according to civil law the person responsible of actions done by other persons) during the penal proceeding in order to obtain the damage compensation.

According to this article the subjects bringing a civil action can be both natural and legal.

People who didn't suffer directly the crime damage can bring civil action as stakeholders.

In the penal process the civil action is not possible against the underage defendant pursuant to art. 10 of the President of the Republic decree 448/98.

In the penal proceeding the conditions to bring the civil action are provided by articles 76-82 of the penal procedure code.

Civil action can be brought only by persons who have a full legal capacity and a free exercise of rights. Without these conditions, persons can bring the civil action only by licensed subjects according to the civil procedure code rules quoted in art. 77 of penal procedure code.

Victims of serious sexual and labour exploitation can act directly against the offender for crimes of exploitation of prostitution and for abetting of irregular migration and exploitation of undeclared work in the following way:

- if the penal judge sets the compensation amount to be awarded to the victim, she/he must wait until the sentence will be definitive to ask for the injunction to be paid by the offender (whereas the victims of trafficking can access the compensation fund);
- if the judge establishes that the victim has the right to the compensation without specifying the amount to be awarded, the victim must bring a civil action and quantify the suffered

damage (also through documents and appraisals). Otherwise, the civil judge will proceed to quantify the damage;

– if the judge establishes a “provisional” (that is an amount immediately payable without waiting that the sentence will be definitive), victim can act immediately in order to achieve the amount of the provisional without waiting the following degree of judgment and, later, she/he can act in the civil process to get the full damage compensation.

3.2 Reparation protection in civil court proceedings

We can have three different situations:

- The civil action can be undertaken autonomously when the victim decides not to bring civil action during the penal process. As it is a crime chargeable ex officio, the civil judge has to communicate it to the Public Prosecutor who will decide if bringing or not penal action.
- In case of victims of labour exploitation, the compensation can be claimed by appealing to a judge specialized in work-related matters or in front of the Direzione Provinciale del Lavoro (Provincial Labour Directorate). In this case, the victim is not considered as such but as a “worker”. Therefore, the compensation will refer to the dismissal of the worker and the related unpaid payroll costs; the payment of the full salary, the moral, patrimonial, biological and non-pecuniary damage, etc. These cases are likely to be successful and the compensation is awarded in extra judicial settings, during the so-called trade unions reconciliations or in front of the Direzione Provinciale del Lavoro (Provincial Labour Directorate).
- The civil action can be undertaken after the conclusion of the penal process for the quantification of the damage (in case the victim did bring civil action during the penal process and the judge ordered the payment of the damage in a different setting).

4. Assistance activities of “On the Road” legal office

On the road legal office consists of four lawyers. They belong to the équipe, participate to the monthly supervision and do legal advice and assistance in the association offices.

The équipe is composed of a coordinator who participates to the Coordination of Area, Services and Projects through which he cooperates with other field coordinators.

The legal office does its activity transversally to the different sectors of the association: Drop-in front-office, job placement, hospitality, anti-trafficking green number. The legal office provides legal assistance to the victims during the social programs ex art. 13 of the law 228/2003 and ex art. 18 of the legislative decree 286/98. In Drop-In front-offices in Porto S.Elpidio, Martinsicuro, Pescara (Abruzzo) e Campobasso (Molise), the legal counselor does interviews in order to check the conditions of access to the above-mentioned programs.

The victim is sent to the legal office for an interview by both Drop-in social assistant, after a first screening, and law enforcement agencies. Legal office target consists of: victims of trafficking and serious sexual and labour exploitation or Italian and foreign citizenship who need free legal advice.

Lawyer interview is performed with a social assistant and a mediator when it is necessary. The report is prepared by the social assistant in order to check the basic conditions. The purpose of the first talk is to inform the victim about his/her own rights and to make him/her aware of his/her condition as well as the possibilities Italy offers in order to make him/her turn away from his/her difficult situation.

During the meeting the victim talks about his/her life. The lawyers identify the existence of the conditions of access to the programs (ex art. 13 L. 228/2003 and/or art. 18 dlgs 286/1998): violence and serious exploitation, real and present danger to the person safeguard, existence of trafficking or of a condition of slavery ex art. 600, 601 of penal code.

At the end of the meeting, if there are the right conditions, the legal consultant makes the victim aware about the ways of access to the programs: the social way or the judicial way. Both of them need the collaboration between the Police and the victim: according to the judicial way the victim has to denounce her/his perpetrators to the police; whereas according to the social way the victim is not obliged to denounce. She/he tells his/her life story to the association which writes a report about it; the report is required to verify the access conditions to the social programs.

In both cases if there is a penal proceeding, the victim will appear as a witness.

The legal office will assist the victim during the program.

The legal office ordinary activity consists of administrative regularization of users (first instance, renewals, conversions of permits of stay, revocation of expulsion orders, requests for the clearance to Public Prosecutors in order to obtain the permit of stay).

The On the road legal office does the legal screening and evaluation together with the police and law enforcements. This collaboration is possible thanks to the protocols signed with the "Questura" of Teramo, Ascoli, Chieti and Pescara for the application of art. 18 dlgs 286/98, to the "Guidelines for the approach and identification of victims of severe exploitation and trafficking", spread to law enforcements and to the protocol signed with "Procura Generale" of Campobasso. These protocols are very important for the functioning of the social protection system on the area where the association works.

These protocols are the result of a sensitization carried out work by legal office. Today they give some success in contrasting the trafficking phenomenon and for the victim protection .

Legal office assists the victim to present the complaint and during the penal process if she/he is the defendant owing to an expulsion order or the declaration of a false identity or during processes concerning the forfeiture of parental rights.

4.1 Documentation and study service

The legal office offers a training service about the legislation to the various sectors of the association. It performs also a juridical activity consisting in the analysis of all the laws, decrees and measures having effect on the protection of the victim.

In 2008 the legal office wrote a document concerning the “Anti-prostitution regulations” which represented an absolute novelty about the new government politics to suppress the phenomenon of street prostitution in the whole territory.

Particularly, the advisors and the representatives of other associations dealing with trafficking and prostitution underlined the impact that the application of the anti-prostitution regulations could have on the identification and protection of victims.

Moreover, legal office was also involved in the study about the impact of the “security package” on the victims of trafficking and on the job of the street operators.

Legal office offers legal advice to street operators of associations dealing with prostitution and trafficking. It is working for a law proposal that will modify the law 228/2003 in order to create a fund for the victims of trafficking able to finance not only the assistance and social integration programs but also a compensation for victims.

5. Concrete results reached by legal office

Up to now, On the Road association has taken care of some penal proceedings and has brought civil action against the offenders next to the victims it assists. In some of them On the road obtained the damage compensation for victims of exploitation of prostitution and for two minors victims of trafficking, but the verdicts are not definitive yet and they have been appealed by the condemned offenders. For this reason, it has not been possible so far to bring civil action in order to obtain the compensation. We also obtained interim compensations of about 10.000 euros in favour of two Romanian citizens and interim compensations for about

the same amount for On the Road too due to its civil action. We also obtained the restitution of 3.000 euros in favour of a person formally acknowledged as a victim of a “fraud” but, in reality, he was a victim of labour exploitation. Furthermore, in an extrajudicial setting (that is the Provincial Labour Directorate), we obtained a compensation of 15.000 and 10.000 euros respectively in favour of Pakistani and Indian citizens who were victims of labour exploitation (for these cases, civil action has been brought in the penal proceedings).

Since 2007 to May 2010, On the Road took care of 15 penal proceedings in different cities: Pescara, Chieti, L’Aquila, Avezzano, Ancona, Firenze, Campobasso, Teramo e Venezia. Seven of them ended in the first degree with a severe conviction of the traffickers.

These verdicts have been appealed by the convicted offenders and the lawsuits are now pending at the Court of Appeal and at the Assise Court of Appeal.

For 5 proceedings the association requested and obtained the possibility to bring civil action as stakeholders of those interests injured by the sexual exploitation done by the offenders.

Victims of labour exploitation had legal assistance both in civil and penal processes (the target was composed of Pakistani, Indian, Egyptian, Chinese and Bulgarian citizens who had access to the program ex art. 13 of the law 228/2003 and art. 18 of Immigration law).

In two processes concluded in first degree, victims obtained interim compensations and the damage compensation: in some cases the judge sets the compensation amount to award to the victim, in other cases the judge orders the payment of the damage in a different setting.

Concerning victims of labour exploitation, we brought civil action in front of Labour Judge and we obtained the salary differences during the trade unions reconciliations in front of the Provincial Labour Directorate in Macerata.

Recently we obtained 2.000 Euro as provisional sum (another sum has to be quantify during the civil proceedings) for a Chinese woman who pead 7.000 EUR for moving to Italy (5.000 EUR for leaving China and the remaining amount once in Italy). She travelled via Poland,

where a man withheld her passport and hid her in a truck and then in a car to reach Venice. Once in Italy, she was handed over their exploiters (a Chinese woman and her Italian husband), who forced her to work as prostitute in different cities (in apartment). The provisional sum was immediately executive: 200 EUR per month paid by the offender through his job in a firm.

Most recently (2 June 2012) we obtained 50.000 EUR as injunctive interim payment for 17 Nigerian women. The seized goods should be given to the victims and to their supporting NGOs (On the Road Onlus and Coop Be Free) and NOT to the State.

6. Conclusions and main findings: obstacles to the effective achievement of the compensation for the victim of trafficking and sexual and labour exploitation

Few months ago, we organized a meeting with other lawyers working with other anti-trafficking NGOs in Italy. We discussed the main issues related to compensation for victims of trafficking and the problems we face in our everyday work.

These are the main obstacles we jointly identified during our exchanges:

- Difficulty to obtain legal aid (pursuant to President of the Republic decree 115/2002) because victims are foreigners (the courts often ask the embassies for the no income certification pursuant to art. 70 paragraph 2 of President of the Republic decree 115/2002).
- The legislation does not allow the local authorities and the NGOs to access the legal aid even though they could support the accusation and the victim during the hearing ex art. 74 of the penal code. The access to the legal aid is still a declaration of intent by the State and we cannot count on the effective payment. This has heavy repercussions on the defence that, for this kind of proceedings, is very demanding; moreover, the legal aid does not cover the travelling expenses.

- In the majority of the cases, the defendants are foreigners and, at least in Italy, without properties. In this regard, it is important to underline the serious lack of investigations on the defendants' properties in the origin countries by the judiciary and the lack of resources on the part of the lawyers to carry out such investigations autonomously).
- Difficulty to quantify the damage suffered by the victim (need to submit without delay the victim to a damage appraisal to facilitate the task of the penal judge during the liquidation phase. This is also due to the lack of the resources of the lawyers and the organizations aimed at the support and assistance of victims).
- The time span between the facts and the possible compensation is really long and, as a result, the victim becomes demotivated and discouraged to make all the possible actions.
- Legal fees are very expensive and the NGOs do not generally allocate an ad hoc budget to cover such fees.
- There is a lack of an organized system of legal assistance to the victims of trafficking. The NGOs engaged in the anti-trafficking field do not still consider compensation as a priority for victims of trafficking.
- There is indifference towards the request of the European Union about the fight against trafficking, still very few magistrates engage this type of investigation.