



FRA  
Thematic Study on Child Trafficking

Italy

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# Executive Summary

## General anti-child trafficking framework

- [1]. All forms of trafficking in human beings – including children – on Italian territory are covered by Articles 600-602 of the Italian *Codice penale* [Penal Code], as amended by Law n. 228/2003.<sup>1</sup> Article 600 of the Penal Code criminalises the fact of a) bringing a person *for the first time* into a state of ‘slavery’ or ‘servitude’ (by means other than those described by Article 601), and b) keeping a person in such a state. Article 600 criminalises therefore the *result* of the trafficking on the victim, rather than the *acts* of trafficking in themselves, to which international obligations refer. Such acts are, however, taken into consideration by the following Articles 601 and 602. Article 601 of the Penal Code criminalises, in fact, a) any act of trafficking of a person who is *already* in a state of ‘slavery’ or ‘servitude’, and b) the compulsion or induction of a person, who had not been previously in such a state, i) to enter, or to remain in, or to leave Italian territory, or to move within its boundaries, ii) by means of force, threat, deceit or fraud, or by abuse of authority or a position of vulnerability arising from mental disability or a situation of necessity, or by promising or giving payments or benefits to obtain the consent of a person who has control over the victim, iii) with the aim of bringing the victim into a state of ‘slavery’ or ‘servitude’. On the other hand, Article 602 criminalises *single acts of buying and selling* a person *already* in a state of ‘slavery’ or ‘servitude’, when these acts do not amount to ‘trafficking’ (which apparently can only be committed, in the legislator’s opinion, in the framework of a large-scale criminal organisation for purely ‘commercial’ purposes).
- [2]. The penalty for these three different provisions is the same, i.e. imprisonment from eight to 20 years (but the sentence can be more lenient if some mitigating circumstance should occur). All these crimes are aggravated – with the effect that the penalty can be increased to up to 30 years’ imprisonment – if the victim is a minor (under the age of 18), *or* when the acts are committed for the purpose of the victim’s exploitation or prostitution or the removal of organs. Moreover, Article 416, par. 6, of the Penal Code criminalises organised criminal groups acting with the aim of committing the

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<sup>1</sup> Italy/legge n. 228/03 (11.08.2003), available at <http://www.parlamento.it/parlam/leggi/eletenum.htm> (02.07.2008).

crimes set out by Articles 600-602. The only aspect which does not seem to be in line with international standards is the requirement for special means of commission (force, threat, deceit, etc.), to have been used, which according to international standards should not be necessary in relation to minors.

- [3]. The 1948 Constitution of the Republic of Italy<sup>2</sup> does not include an express formulation of the principle of the best interests of the child, but it has largely been established and supported by Corte costituzionale [Constitutional Court] case law since the beginning of the 1980s.<sup>3</sup>

## Prevention of child trafficking

- [4]. In the last decade, several awareness-raising campaigns have been run by the *Direzione Generale della Cooperazione italiana allo sviluppo* [General Directorate for Italian Cooperation for Progress] of the Ministry of Foreign Affairs together with the *Dipartimento per i Diritti e le Pari Opportunità* [Department of Rights and Equal Opportunities] of the *Presidenza del Consiglio dei Ministri* [Prime Minister's Office], and by some of the most relevant Italian NGOs. Moreover, the Italian public authorities have worked with NGOs to elaborate several important policies in order to prevent children from becoming victims of trafficking.

## Appointment of legal guardian

- [5]. The Italian legal system provides that a legal guardian should be appointed for every unaccompanied foreign child under 18 years of age; and so this happens whenever an unaccompanied child is identified as a victim of trafficking. A procedure has been set out to assess the unaccompanied child's age, and if that procedure fails to assess his/her age, the child is presumed to be a minor.<sup>4</sup>

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<sup>2</sup> Italy/Corte costituzione available at [http://www.cortecostituzionale.it/istituzione/lacorte/fontinormative/lacostituzione/costituzione\\_parte\\_i.asp](http://www.cortecostituzionale.it/istituzione/lacorte/fontinormative/lacostituzione/costituzione_parte_i.asp) (02.07.2008).

<sup>3</sup> See Italy/Corte costituzionale, n. 11/1981 (29.01.1981); nn. 19/1986 and 199/1986 (01.07.1986); n. 182/1988 (18.02.1988); n. 27/1991 (24.01.1991).

<sup>4</sup> Article 9 of Italy/Decreto del Presidente della Repubblica n. 448/1988 *Disposizioni per il processo penale a carico di imputati minorenni* (22.9.1988), available at [http://www.giustizia.it/cassazione/leggi/dpr448\\_88.html#TESTO](http://www.giustizia.it/cassazione/leggi/dpr448_88.html#TESTO) (02.07.2008).

## Coordination and cooperation

- [6]. Italy has both a formalised task force for investigating human trafficking and a coordination body for the social protection of trafficked victims. But each of them deals with trafficked children and adults together, and not only children. As far as investigating human trafficking is concerned, the Italian legal system espouses the same line of action as it uses to fight the mafia and organised crime in general. Law n. 228/2003,<sup>5</sup> referred to above, provides that investigations into the facts criminalised by Articles 600, 601 and 602 and 416, par. 6, of the Penal Code are under the competence of the *Procure distrettuali* [Public Prosecutor's District Offices]. Each of these 26 District Offices has a pool of prosecutors who are experts in organised crime, and all of them cooperate with each other, under the supervision and coordination of the *Procuratore nazionale antimafia* [National Anti-mafia Public Prosecutor], who is able to use the investigative resources of the *Direzione Investigativa Antimafia* [Anti-Mafia Investigation Bureau], a special investigative body made up of various police forces with jurisdiction throughout the country.
- [7]. As far as the social protection of trafficked victims is concerned, the coordination body is the *Segreteria tecnica della Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento* [Interministerial Commission for support to victims of trafficking and exploitation] established under the Department of Rights and Equal Opportunities of the Prime Minister's Office.

## Care and protection

- [8]. Article 18 of 1998 Italian Law on Immigration<sup>6</sup>, *Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, grants a special residence permit to foreign nationals, whatever their age, who are presumed to have been victims of violence or severe exploitation, and are still in danger of their lives as a result of their desire either to escape from the control of criminal organisations or to cooperate with police and prosecutors. A residence permit may be granted without the victim reporting the trafficker, because exploitation and the associated danger for the victim are a sufficient condition for it to be obtained. Child victims of trafficking therefore fall under this provision irrespective of their actual cooperation with the police and prosecutors. The permit expires after

<sup>5</sup> Italy/legge n. 228/03 (11.08.2003), available at <http://www.parlamento.it/parlam/leggi/elelenum.htm> (02.07.2008).

<sup>6</sup> Italy/Decreto Legislativo n. 286/98 (26.07.1998).

six months, but can be renewed for one year, or for the time required by judicial authorities; indeed, the law does not specify how often a permit can be renewed, and so it can be renewed until the child has reached the age of 18. At any time the permit can be revoked on the grounds of the foreign national's conduct or in the absence of the conditions specified by law for permit to be granted.

- [9]. The temporary residence permit provided by Article 18 quoted above 'allows the holder to benefit from social services, educational provision and labour exchange lists in order to find a permanent job', offered by the assistance and social integration programmes provided by the same Article. Children on these programmes have the right to obtain a permanent residence permit when they reach the age of the majority.
- [10]. Moreover, Article 13 of Law n. 228/2003 establishes 'a special aid programme granting on a temporary basis suitable accommodation, food and healthcare' to the trafficked victims, financed by a special fund. This protection programme grants victims of trafficking appropriate accommodation in locations that are kept secret, in order to protect them from threats by criminal organisations.
- [11]. Under Article 18 of the 1998 Italian Law on Immigration and the special programme for trafficked victims provided by Article 13 of Law n. 228/2003, the Interministerial Commission for Support to Victims of Trafficking and Exploitation established under the Department of Rights and Equal Opportunities of the Prime Minister's Office is the body entrusted with the supervision, control and resource management of both assistance and social integration programmes. The Interministerial Commission announces a sort of call for tender in order to choose the NGOs and the local government bodies to be charged with the implementation of the two kinds of programmes provided by the Italian legal system; it evaluates and selects their proposals, then evaluates their implementation and effectiveness.
- [12]. The Italian legal system does not allow the deportation of foreign children below the age of 18, unless the minor constitutes a danger for public or State security.<sup>7</sup> A similar provision has been recently enacted for unaccompanied minors who are EU citizens; they may be subject to an expulsion decision only on grounds of public security of the State. On the other hand, minors always have the right to follow their deported or expelled parents. In the very limited number of cases where such procedures are allowed with respect to a minor, detention of the minor is explicitly prohibited pending his/her deportation or expulsion; unaccompanied minors who must leave Italian territory are

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<sup>7</sup> Article 19, par. 2, of Italy/Decreto legislativo n. 286/1998 (25.7.1998) available at [http://www.giustizia.it/cassazione/leggi/dlgs286\\_98.html](http://www.giustizia.it/cassazione/leggi/dlgs286_98.html) (02.07.2008).

instead placed temporarily under the care and protection of the social services, under the general supervision of the *Comitato per i minori stranieri* [Committee for Foreign Minors] under the *Presidenza del Consiglio dei Ministri* [Prime Minister 's Office] and are meanwhile granted healthcare and educational/social services. In addition, the *Dipartimento per le libertà civili e l'immigrazione* [Department for Civil Liberty and Immigration] of the *Ministero dell'Interno* [Ministry of Internal Affairs] has signed a cooperation agreement with the IOM (International Organization for Migration) on a national project to encourage the *voluntary* assisted return of trafficked victims to their native countries and their subsequent reintegration. This also applies to children.

## Best interests determination and durable solutions, including social inclusion/return

- [13]. The local government bodies and the NGOs delivering the aid and social integration programmes established by Article 18 of the 1998 Italian Law on Immigration and the special programmes established by Article 13 of Law n. 228/2003 have to adapt their interventions to the specific needs of the trafficked victims, irrespective of their age. In the event that the minor is considered a 'refugee' under the Geneva Convention of 1951, he/she will be entitled to seek asylum according to existing legislation. In this case, he/she will be given the same treatment as an unaccompanied minor.

## Prosecution

- [14]. Italian law does provide special safeguards for criminal proceedings involving a minor who has been the victim of serious crimes, such as enslavement, juvenile prostitution and pornography, child trafficking and sexual assault.

## Miscellaneous

- [15]. In the public debate promoted by NGOs, there are concerns about the uniform and effective application of Article 18 of the 1998 Italian Law on Immigration, and there are discussions about mechanism to facilitate coordination with the national and local authorities of foreign countries.

## Good practice

- [16]. The Italian legal system does provide many good solutions to prevent and fight human trafficking in general, and child trafficking in particular. Moreover, the Italian public authorities, both at central level and at regional and local level, work together with civil society organisations to provide full social protection to the victims.



## A. General anti-child trafficking framework

- [17]. The UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) was ratified on 2 August 2006, under authorisation by Law n. 146/2006, which also implemented it.<sup>8</sup> The UN Convention against Transnational Organized Crime (Palermo Convention) to prevent, suppress and punish trafficking in persons (2000) was ratified on the same day (2 August 2006), under authorisation by the same law Law n. 146/2006, which also implemented it.<sup>9</sup> The ILO (International Labour Organisation) Convention Nr. 182 on the Worst Forms of Child Labour (1999) was ratified on 7 June 2000, under authorisation by Law n. 148/2000.<sup>10</sup>
- [18]. The Council of Europe Convention on Action against Trafficking in Human Beings (2005) was signed by the Italian government on 8 June 2005. It has not been ratified so far, but on 12 May 2008 the draft law on the Convention's ratification was submitted to the Italian Senate.<sup>11</sup> The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) has been signed by Italian government, but has not been ratified so far.

### A.1. The Italian criminal law framework.

- [19]. Italian criminal law does not provide any special legislation on child trafficking. However, Law n. 228/2003<sup>12</sup> profoundly amended three old provisions of the Italian 1930 *Codice penale* [Penal Code] on 'slavery' and 'similar conditions' (Articles 600-602) – which had indeed been applied by case law on trafficking and exploitation of

<sup>8</sup> Italy/legge n. 146/2006 (16.03.2006), available at <http://www.parlamento.it/leggi/e/el1.htm> (02.07.2008).

<sup>9</sup> Italy/legge n. 146/2006 (16.03.2006), available at <http://www.parlamento.it/leggi/e/el1.htm> (02.07.2008).

<sup>10</sup> Italy/legge n. 146/2006 (16.03.2006), available at <http://www.parlamento.it/leggi/e/el1.htm> (02.07.2008).

<sup>11</sup> See AS 476, available at <http://www.senato.it/ricerche/sDDL/risultati.ricerca;jsessionid=E081ECA4DE658AF39C36E58BF4DA2977> (04.08.2008)

<sup>12</sup> Italy/legge n. 228/03 (11. 8. 2003), available at <http://www.parlamento.it/parlam/leggi/e/elenum.htm> (02.07.2008).

children<sup>13</sup> – in order to bring Italian criminal law more in line with international standards on trafficking in human beings, and in particular with the obligations arising from the EU framework decision n. 2002/629/JHA. The new text of Articles 600-602 of the Penal Code is centred on the key concepts of ‘slavery’ and ‘servitude’, as defined by Article 600, which punishes them with the same penalty. Accordingly, ‘slavery’ means – in keeping with the traditional definition of the 1926 Geneva Convention – the condition of a person over whom the powers attached to the right of ownership are exercised. On the other hand, ‘servitude’ refers to i) the lasting subjection of a person to another, where ii) the victim is compelled to work, to perform sexual acts, to beg or is otherwise exploited, iii) by means of force, threat, deceit or fraud, or by abuse of authority or a position of vulnerability arising from mental disability or a situation of necessity, or by promising or giving payments or benefits to obtain the consent of a person who has control over the victim.

- [20]. Article 600 of the Penal Code criminalises the fact of a) bringing a person for the first time into a state of ‘slavery’ or ‘servitude’ (by means other than those described by Article 601), and b) keeping a person in such a state. Article 600 criminalises therefore the result of the trafficking on the victim, rather than acts of trafficking in themselves, to which the international obligations refer. Such acts are, however, taken into consideration by the following Articles 601 and 602.
- [21]. Article 601 of the Penal Code criminalises, in fact, a) any act of trafficking of a person *already* in a state of ‘slavery’ or ‘servitude’, and b) the compulsion or induction of a person, who had not been previously in such a state, i) to enter, or to remain in, or to leave Italian territory, or to move within Italian territory ii) by means of force, threat, deceit or fraud, or by the abuse of authority or a position of vulnerability arising from mental disability or a situation of necessity, or by promising or giving payments or benefits to obtain the consent of a person who has control over the victim, iii) with the aim to bring the victim into a state of ‘slavery’ or ‘servitude’.
- [22]. On the other hand, Article 602 criminalises *single acts of buying and selling* a person *already* in a state of ‘slavery’ or ‘servitude’, when these acts do not amount to ‘trafficking’ (which apparently can only be committed, in the legislator’s opinion, in the framework of a large scale criminal organisation for purely ‘commercial’ purposes).

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<sup>13</sup> See for example Italy/Corte di Cassazione (7.12.1989) and Italy/Corte di Cassazione (24.10.1995).

- [23]. The result of the reform is admittedly over-complicated, since it is not clear why these acts have been distinguished in three different provisions, the penalty for which remains the same – imprisonment from eight to 20 years. All these crimes are aggravated if the victim is a minor (under the age of 18), or when the acts are committed for the purpose of prostitution of the victim or the removal of organs, with the effect that the penalty can be increased to up to 30 years imprisonment.<sup>14</sup> No explicit mention is made by these provisions of the exploitation of minors for sexual purposes other than prostitution, nor for purposes of illicit activities (such as drug dealing), adoption or forced marriages. However, all these purposes are implied in the wide-ranging definition of ‘servitude’ in Article 600. Exploitation of children — whether or not victims of trafficking — for the purposes of prostitution and pornography is any case criminalised by the separate provisions of Article 600*bis* (child prostitution), 600*ter* (child pornography) and 600*quater* of the Penal Code (acquisition and possession of child pornographic material), which were added to the Penal Code by Law n. 269/1998<sup>15</sup> and later amended by Law n. 38/2006<sup>16</sup> implementing the EU framework decision 2004/68/JHA on combating the sexual exploitation of children and child pornography. Moreover, Article 416, par. 6, of the Penal Code criminalises organised criminal groups acting with the aim of committing the crimes provided by Articles 600-602.
- [24]. All forms of trafficking in human beings – including children – in the Italian jurisdiction are covered by Articles 600-602 of the Italian Penal Code, as described above (see points 19-24 above). Considered as a whole, Italian criminal law on trafficking in human beings seems to be in line with international obligations. The only aspect which does not seem to be in line with international standards is the previously mentioned requirement for special means of commission (force, threat, deceit, etc.) to have been used, which according to international standards should not be necessary in relation to minors.<sup>17</sup>
- [25]. With the exception of EU law, there are no rules in the Italian legal system allowing national courts to directly enforce the provisions of an international treaty or agreement without an internal implementation law. Criminal responsibility of an individual directly based on a provision of an international treaty, without the mediation of an internal criminal provision, would therefore be inconceivable in

<sup>14</sup> See Italy/Corte di Cassazione n. 81/2004 (23.11.2004).

<sup>15</sup> Italy/legge n. 269/1998 (3.8.98) available at <http://www.parlamento.it/leggi/e/elenum.htm> (02.07.2008).

<sup>16</sup> Italy/legge n. 269/1998 (3.8.98) available at <http://www.parlamento.it/leggi/e/elenum.htm> (02.07.2008).

<sup>17</sup> See for instance Article 1, par. 3, of the EU framework decision 2002/629/JHA. This aspect is pointed out in the Italian literature by F. Viganò (2006), ‘Art. 600’, in: IPSOA (ed) *Codice penale commentato*, Milano, pp. 4134 and 4135.

the Italian legal system. On the other hand, it is generally recognised that Italian courts are to interpret internal laws – even criminal laws – according to Italy’s international obligations. However, no judicial decision on child trafficking has been directly inspired by an international instrument. However, this can hardly be regarded as a problem, in view of the high level of implementation of international instruments on child trafficking in Italian law (see points 17-18 above).

## A.2 The principle of the best interests of the child in the Italian legal system

- [26]. The Constitution of the Republic of Italy<sup>18</sup> includes a set of fundamental rights, but not an express formulation of the principle of the best interests of the child. However, such a principle has been widely established and supported by *Corte costituzionale* [Constitutional Court] case law since the 1980s. Most of this case law refers to civil law, and particularly to the adoption of children. In order to establish the principle of the best interests of the child, the Constitutional Court has combined an interpretation of Article 2 of the Italian Constitution (according to which ‘the Italian Republic recognises and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed’) with Article 30 (which states that ‘it is the duty and right of parents to support, raise and educate their children, even if born out of wedlock’, par. 1, and that ‘in the case of the incapacity of the parents, the law provides for the fulfilment of their duties’, par. 2) and Article 31 (according to which ‘the Republic protects children and the young by adopting the necessary provisions’).
- [27]. The first chance for the Court to express this view was in a 1981 case, concerning the 1967 law on children’s ‘special’ adoption (repealed in 1983); here the Constitutional Court moved the adoption’s “centre of gravity” from the adopting parents to the adopted child, by stating that such a change in perspective had been implied by the above-mentioned Constitutional provisions. In the Court’s view, these provisions provide a preferential position to the child by stating the purely functional nature of natural parents, as the public authorities can replace them with adoptive parents if they are clearly not in a

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<sup>18</sup> Italy/Corte costituzionale available at [http://www.cortecostituzionale.it/istituzione/lacorte/fontinormative/lacostituzione/costituzione\\_parte\\_i.asp](http://www.cortecostituzionale.it/istituzione/lacorte/fontinormative/lacostituzione/costituzione_parte_i.asp) (02.07.2008).

position to fulfil their parental tasks and responsibilities.<sup>19</sup> In consequence, the rights of the adopting and natural parents are to be considered subordinate to the child's.<sup>20</sup>

- [28]. During the 1990s, further applications of this principle can be found in other decisions by the Constitutional Court granting judges the general prerogative to ensure the interests of the young person involved. In these cases the Constitutional Court saw the *actual* interests of the minors and children involved as the primary concern, and consequently it tended to give judges discretionary power, so as to effectively respond to the child's interest in the case at issue.<sup>21</sup>
- [29]. On other occasions the Constitutional Court stated that the provisions of the *Codice civile* [Civil Code] concerning children's rights in the case of the separation of married parents must be extended to natural children on the basis of a systematic and constitutionally-oriented interpretation, and stated that the regulations provided by the Civil Code must be 'read in the light of the principles of parental responsibility written in Article 30 of the Constitution and in the light of the overriding interest of the child to continue to live in the family home.'<sup>22</sup> Again, in a decision concerning the right to family reunion of the immigrant and his/her natural child, the Constitutional Court declared the unconstitutionality of the Italian law which required the parents to be married in order to allow reunion with the other parent, insisting on the need to consider the "situation of those who, while not married, bear the right/duty arising from their condition as parents: a situation that concerns the relationship between a parent and a minor, in order to ensure the constitutional protection of the latter"<sup>23</sup>

### A.3 The anti-trafficking administrative actions in the Italian legal system

- [30]. In March 2008 the *Comitato di Coordinamento delle azioni di Governo contro la tratta* [Coordination Committee for Governmental

<sup>19</sup> See Italy/Corte costituzionale, n. 11/1981 (29.01.1981); nn. 19/1986 and 199/1986 (01.07.1986); n. 182/1988 (18.02.1988); n. 27/1991 (24.01.1991).

<sup>20</sup> See Italy/Corte costituzionale, n. 197/1986 (01.07.1986) and n. 171/1994 (05.05.1994).

<sup>21</sup> See Italy/Corte costituzionale, n. 183/1988 (18.02.1988); n. 44/1990 (02.02.1990); n. 148/1992 (01.04.1992); n. 303/1996 (24.07.1996); n. 349/1998 (09.10.1998).

<sup>22</sup> See Italy/Corte costituzionale, n. 166/1998 (13.05.1998) and n. 394/2005 (21.10.2005).

<sup>23</sup> See Italy/Corte costituzionale, n. 203/1997 (26.06.1997) and n. 28/1995 (19.01.1995).

Action against Trafficking], instituted in 2007<sup>24</sup> under the *Dipartimento per i Diritti e le Pari Opportunità* [Department of Rights and Equal Opportunities] of the *Presidenza del Consiglio dei Ministri* [Prime Minister's Office], published an in-depth report entitled *Verso la costruzione di un piano nazionale anti-tratta* [Towards the establishment of a National Anti-trafficking Plan].<sup>25</sup> However, this is only a proposed plan made by the former government, and it is uncertain whether it will be adopted by the new government (there was a general election in Italy in April 2008, and the new composition of the Coordination Committee has not yet been decided).

- [31]. As the National Anti-trafficking Plan is only a proposal (see point 30 above), it has not produced any changes yet.

### A.3.1 The Human Trafficking Observatory

- [32]. At the end of 2007 the Department of Rights and Equal Opportunities of the Prime Minister's Office established a permanent *Osservatorio sul fenomeno della Tratta degli esseri Umani* [Human Trafficking Observatory].<sup>26</sup> The Observatory's activities are coordinated by the Chief Officer of the Department of Rights and Equal Opportunities, supported by Department staff and if necessary, by unpaid experts from other Ministries or civil society. The Observatory is responsible for collecting and compiling national data on the issue. No data is currently available.

### A.3.2 The funding of the administrative actions

- [33]. According to a 1999 government Regulation,<sup>27</sup> the aid and social integration programmes established by Article 18, par. 3, of the 1998

<sup>24</sup> By Italy/Decreto (21.03.2007) available at [http://www.dirittiepariopportunita.it/Pari\\_Opportunita/UserFiles/Il\\_Dipartimento/Comitati\\_PO/Comitato\\_azioni\\_gov.pdf](http://www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/Il_Dipartimento/Comitati_PO/Comitato_azioni_gov.pdf) (1.08.08)

<sup>25</sup>The report *Verso la costruzione di un piano nazionale anti-tratta* is available at [http://www.progettoroxana.it/roxana/components/com\\_docman/dl2.php?archive=0&file=cmFwcG9ydG9fY29taXRhdG8ucGRm](http://www.progettoroxana.it/roxana/components/com_docman/dl2.php?archive=0&file=cmFwcG9ydG9fY29taXRhdG8ucGRm) (02.07.2008).

<sup>26</sup> Italy/Decreto (03.12.2007), available at [http://www.dirittiepariopportunita.it/Pari\\_Opportunita/UserFiles/Il\\_Dipartimento/Comitati\\_PO/Oss\\_ tratta.pdf](http://www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/Il_Dipartimento/Comitati_PO/Oss_ tratta.pdf).

<sup>27</sup> Article 25, par. 1, of Italy/Decreto del Presidente della Repubblica 394/1999 (31.08.1999), *Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del Decreto legislativo 25 luglio 1998, n. 286* [Government Regulation implementing the Law on Immigration 286/1998], available at [http://www.giustizia.it/cassazione/leggi/dpr394\\_99.html](http://www.giustizia.it/cassazione/leggi/dpr394_99.html) (02.07.2008).

Italian Law on Immigration<sup>28</sup> carried out by NGOs and local government bodies (see point 82 below) are 70% supported by State funding, through the Department of Rights and Equal Opportunities, while the remaining 30% is provided by the local government body involved, by means of assistance-related funding.

- [34]. According to another government Regulation,<sup>29</sup> the special programmes established by Article 13 of the 2003 Italian Law against human trafficking<sup>30</sup> carried out by NGOs and local government bodies (see point 82 below) are 80% supported by State funding from the Department of Rights and Equal Opportunities, while the remaining 20% is provided by the local government body involved, by means of assistance-related funding.
- [35]. The Department of Rights and Equal Opportunities has an annual budget of about 7 million euros to co-fund both types of programme (see points 33 and 34 above). In addition, it funds the *Numero Verde* [a national free phone number] for victims of trafficking (see points 95-96 below) with a designated budget of 2.5 million euros every eighteen months.
- [36]. No specific budget to support research on child trafficking is stipulated by law.

### A.3.3 Other independent monitoring systems

- [37]. As highlighted in point 32 above, on December 2007 the Department of Rights and Equal Opportunities established a permanent Human Trafficking Observatory, whose principal purpose is to collect data on trafficking. There is also the *Gruppo CRC* [CRC Group - Convention on the Rights of the Child Group], set up by a network of 73 Italian NGOs and voluntary associations. This is a national independent monitoring system that ensures compliance with the Convention on the Rights of the Child, and also covers child trafficking. The CRC

<sup>28</sup> Italy/Decreto Legislativo n. 286/98 (26.07.1998).

<sup>29</sup> Italy/Decreto del Presidente della Repubblica 237/2005 (19.9.2005), available at [http://www.retepariopportunita.it/Rete\\_Pari\\_Opportunita/UserFiles/Normativa/Nazionale/Sfruttamento\\_e\\_tratta/DPR\\_num237\\_19\\_09\\_05.pdf](http://www.retepariopportunita.it/Rete_Pari_Opportunita/UserFiles/Normativa/Nazionale/Sfruttamento_e_tratta/DPR_num237_19_09_05.pdf) (04.08.2008).

<sup>30</sup> Article 13, par. 3, of Italy/Legge n. 228/2003 (11.08.2003).

was established in December 2000 and is coordinated by the NGO Save the Children Italy.<sup>31</sup>

- [38]. As far as the existence of a national referral mechanism is concerned, see point 32 above.

### A.3.4 Training strategy for professional actors

- [39]. There is no national training strategy for all professionals involved in the identification, care and protection of trafficked children. NGOs and the local government bodies which run the programmes funded by the Department of Rights and Equal Opportunities (see points 33-34 above and points 83-84 below) have to provide suitable training for their personnel to enable them to deal with the situations arising during the course of their work as requested in the Department's calls for tender.

## A.4 Non-criminalisation of children victims of trafficking

- [40]. As a matter of principle (see Article 112 of the Italian Constitution), the prosecution service in Italy is bound to investigate anyone under suspicion of having committed a crime and has no discretion about whether to indict him/her if sufficient evidence is gathered showing that he/she was indeed the perpetrator; nor is there special immunity from prosecution for victims of child trafficking. However, it is in practice very unlikely that such a minor could ever be indicted for a crime. In fact, even if he/she has committed a crime (for example, theft or drug dealing), he/she will probably be deemed to have acted under compulsion. He/she will therefore be excused according to Article 54 of the Italian *Codice penale* [Penal Code], whilst his/her exploiter will be convicted for his/her crime. Victims of sexual exploitation for the purposes of prostitution, may not be prosecuted in principle, since prostitution does not constitute *per se* a crime in Italy, whatever the prostitute's age (only exploitation by someone else is illegal).

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<sup>31</sup> The latest report covers the period 2006-2007 and it is available at [http://www.savethechildren.it/2003/download/Pubblicazioni/imp\\_Rapporto\\_CRC.pdf](http://www.savethechildren.it/2003/download/Pubblicazioni/imp_Rapporto_CRC.pdf) (04.08.2008). For the child trafficking situation see in particular pp. 141-144.



## B. Prevention of child trafficking

- [41]. In the last decade, several awareness-raising campaigns have been run in collaboration with the *Direzione Generale della Cooperazione italiana allo sviluppo* [General Directorate of the Italian Cooperation for Progress] of the *Ministero degli Esteri* [Ministry of Foreign Affairs], together with the Department of Rights and Equal Opportunities and with some of the most relevant Italian NGOs, such as Terre des Hommes, UNICEF, ECPAT [End Child Prostitution, Pornography and Trafficking], Telefono Azzurro and Gruppo Abele.
- [42]. It is particularly worth mentioning *Equal Tratta NO!*, a campaign to inform the public of trafficking, organised by the Department of Rights and Equal Opportunities and the *Associazione Italiana del Consiglio dei Comuni e delle Regioni d'Europa* (AICREE) [Italian Association of Council of European Municipalities and Regions (IACEMR)]. The project was launched in 2005 and ended in October 2007. A website was constructed containing all the information about this campaign.<sup>32</sup> The principal outcomes of it were radio and TV public information broadcasts in Italian and English, plus leaflets and brochures in 7 languages (Italian, French, English, Russian, Arabic, Chinese and Romanian).
- [43]. Another important campaign was launched by the General Directorate of Italian Cooperation for Progress in partnership with the NGO Terre des Hommes, named *Stop child trafficking*. It started in October 2001 and is still running. Its principal purpose is to inform citizens about how children are trafficked, in order to ensure a better standard of child protection. This project consists of two specific prevention programmes in two countries (Albania and Romania) that received funding from the General Directorate of 57.782,75 euros.<sup>33</sup>
- [44]. A campaign to inform children directly about trafficking is being run by the Italian network of MTV. The project is named *EXIT-MTV End Exploitation and Trafficking*, and its website provides information about events and free downloadable wallpaper, screensavers, and posters.<sup>34</sup>

<sup>32</sup> All the broadcasts can be found on the website [http://www.trattano.it/\(02.07.2008\)](http://www.trattano.it/(02.07.2008)).

<sup>33</sup> All the information is available on the website <http://www.stopchildtrafficking.org/site/index.php?id=367> (02.07.2008).

<sup>34</sup> See <http://217.69.40.171/italian/traffic/> (02.07.2008).

- [45]. The direct participation of children in awareness-raising efforts is considered particularly relevant by the government, civil society and NGOs fighting child trafficking. According to the latest report of *Save the Children Italy*, their direct participation could play a key strategic role in tackling this phenomenon.<sup>35</sup> Generally this goal is achieved with the collaboration of the NGOs; however, the public authorities are not running any specific projects to improve the direct participation.
- [46]. The Italian NGO ECPAT has been running the *Progetto Amore* [Love Project] in Cambodia since January 2008. The project is organised in collaboration with the local Cambodian NGO Children's Rights Foundation and is financed by private donations from Italy. It directly involves 350 teachers, and 10,000 children and their parents from four schools in high-risk zones. In particular, these NGOs try to involve children with games and posters to teach them what trafficking is, and have created the slogan *Learn to say NO*.<sup>36</sup>
- [47]. The Amici dei Bambini [Children's Friends] Association is particularly involved in peer education in Albania. According to the UNESCO definition, peer education means employing people from a certain group (social, ethnic, gender) to facilitate cultural changes in people who belong to the same group. In relation to trafficking, peer education means training children to introduce the issue to other children. In 2005, the Amici dei Bambini Association carried out a peer education project in two Albanian towns, Levan and Fier, involving 39 teenagers who informed and trained other teenagers.<sup>37</sup>
- [48]. Several examples can be given of NGO involvement in awareness raising. All the non-profit associations fighting child trafficking are involved in prevention campaigns. ECPAT is now endorsing a prevention plan in Romania with the collaboration of the Romanian Ministry of Administration and the Interior, the Romanian Ministry of Education and local municipal councils, and other international NGOs.<sup>38</sup>

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<sup>35</sup> See [http://www.savethechildren.it/2003/download/Pubblicazioni/imp\\_Rapporto\\_CRC.pdf](http://www.savethechildren.it/2003/download/Pubblicazioni/imp_Rapporto_CRC.pdf), pp. 37-44.

<sup>36</sup> Information about the Love Project is available on the website: <http://www.ecpat.it/cosafacciamo/amore.html> (02.07.2008).

<sup>37</sup> Specific information about the project is available on the website: [http://www.amicideibambini.it/progetti/\\_albania.asp](http://www.amicideibambini.it/progetti/_albania.asp) (02.07.2008).

<sup>38</sup> Information is available on the website [http://www.savethechildren.it/2003/download/Pubblicazioni/traffickingRomania/Romania\\_Desk\\_Review.pdf](http://www.savethechildren.it/2003/download/Pubblicazioni/traffickingRomania/Romania_Desk_Review.pdf) (04.08.2008)

- [49]. There is no evidence of the direct participation of minority groups in preventive efforts against child trafficking. However, the involvement of local government bodies is high,<sup>39</sup> particularly as regards the implementation of Article 18 of the 1998 Law on Immigration and of Article 13 of Law n. 228/2003 (see points 82-83 below). In the campaign *Equal Tratta No!*, the *Associazione Italiana del Consiglio dei Comuni e delle Regioni d'Europa* (AICREE) [Italian Association of Council of European Municipalities and Regions (IACEMR)]. appealed to local authorities to prevent and combat trafficking in human beings and organised meetings, seminars and consultations for them on this theme, with the support of a downloadable video and literature in English. In March 2008 the *Consiglio regionale del Lazio* [Lazio Regional Council] replied promptly to the appeal and announced its support.<sup>40</sup>
- [50]. *The Assessorato alle politiche sociali della Provincia di Foggia* [Province of Foggia Department for Social Policy] has been running the *Progetto Roxana* [Rpxana Project] on human trafficking in general since April 2000. The project is now in its ninth year and one of its most important initiatives is involving children through classes in schools (*Progetto Roxana* 5-6-7).<sup>41</sup>
- [51]. The Italian public authorities have worked with NGOs to design several important projects in order to prevent children from becoming victims of trafficking. In 2003 the *Ministero dell'Interno* [Ministry of Internal Affairs] with the collaboration of IOM (International Organization for Migration) and Italian Caritas launched the *Progetto Prevenzione Tratta* [Trafficking Prevention Project] which consists of running an information campaign in four countries, Albania, Moldova, Romania and Ukraine. The project aimed to foster collaboration with local authorities by creating local groups to monitor the phenomenon and help the information campaign. So far only the outcomes of work in Moldova have been published. According to the final report of November 2003, an information campaign was carried out through direct dialogue with orphan homeless children, and with specific informative tools, as the creation of a slogan.<sup>42</sup> In addition, an *Agenzia di sviluppo locale* [Local Progress Agency] has been set up to study the impact of economic investment on improving the condition of the

<sup>39</sup> See F. Prina, *La tratta di persone in Italia*, FrancoAngeli, Milano, 2007, 3, pp. 26-27.

<sup>40</sup> See the press release on the web site <http://www.euoparegioni.it/> (02.07.2008).

<sup>41</sup> Available at <http://www.progettoroxana.it/roxana/content/view/12/31/> (02.07.2008).

<sup>42</sup> See the final report, available at

<http://www.reginapacis.org/doc/APPROFONDIMENTI/08%20-%20Prevenzione%20tratta.doc> (04.08.2008).

children in the country.<sup>43</sup>

- [52]. The *Direzione Generale della Cooperazione italiana allo sviluppo* (DGCS) [General Directorate for Italian Cooperation for Progress] of the *Ministero degli Esteri* [Ministry of Foreign Affairs] is currently supporting various projects to alert the population of poorer countries to this issue.<sup>44</sup> So far the Directorate has provided 5,165,000 euros to the UNICEF Regional Child Programme for Cambodia, Vietnam, Laos, Indonesia, and the Philippines; 776,000 USD to a multilateral programme in Niger; and 2,500,000 USD to a programme for combating child abuse, exploitation and trafficking in El Salvador, Guatemala, Honduras and Nicaragua. No data on the outcomes of these projects is currently available.

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<sup>43</sup> See the final report at <http://www.reginapacis.org/doc/APPROFONDIMENTI/08%20-%20Prevenzione%20tratta.doc> (04.08.2008) .

<sup>44</sup> All the information is available at <http://www.cooperazioneallosviluppo.esteri.it/pdgcs/italiano/pubblicazioni/intro.html> (02.07.2008).

## C. Appointment of legal guardian

- [53]. The Italian legal system provides that a legal guardian must be appointed for every unaccompanied foreign child; and so this happens in cases where an unaccompanied child is identified as a victim of trafficking. In particular, the presence of any foreign unaccompanied child is communicated both to the *Giudice tutelare* [judge supervising guardianship] and to the *Procura presso il Tribunale per i Minorenni* [Public Prosecutor of the Juvenile Court] and to the *Comitato per i minori stranieri* [Committee for Foreign Minors, see point 76 below]. The judge supervising guardianship then appoints a legal guardian. This procedure is set out in Article 343 (and the following Articles) of the Italian *Codice civile* [Civil Code] and by Prime Minister Decree n. 535/1999.<sup>45</sup> There are also some special provisions which apply to unaccompanied foreign children requiring asylum set forth by a 2006 Directive issued by the Minister of Internal Affairs and the Minister of Justice.<sup>46</sup>
- [54]. In the Italian legal system, the age limit for qualifying for legal representation is the same of age of majority (18).

### C.1. Policy on age assessment and benefit of a doubt

- [55]. According to Article 5, par. 3, of Prime Minister Decree n. 535/1999,<sup>47</sup> a minor's identity and age are assessed by the police officers in cooperation with the diplomatic authorities of the minor's country of origin. According to the 2003 *Linee guida* [Guidelines] issued by the Committee for Foreign Minors (see point 76 below),<sup>48</sup> if the minor has a valid identity document (i.e. passport), indicating only the year of birth, it is common practice to assume the birth date as 31 December of the indicated year. However, if the minor has no valid

<sup>45</sup> Italy/Decreto del Presidente del Consiglio dei Ministri n. 535/1999 (9.12.1999), available at [http://www.giustizia.it/cassazione/leggi/dpcm535\\_99.html](http://www.giustizia.it/cassazione/leggi/dpcm535_99.html) (02.07.2008).

<sup>46</sup> Italy/Direttiva Ministeriale (12.12.2006), available at [http://www.interno.it/mininterno/export/sites/default/it/assets/files/13/direttiva\\_minori\\_stranieri\\_a\\_ccompagnati\\_richiedenti\\_asilo.pdf](http://www.interno.it/mininterno/export/sites/default/it/assets/files/13/direttiva_minori_stranieri_a_ccompagnati_richiedenti_asilo.pdf).

<sup>47</sup> Italy/Decreto del Presidente del Consiglio dei Ministri n. 535/1999 (9.12.1999), available at [http://www.giustizia.it/cassazione/leggi/dpcm535\\_99.html](http://www.giustizia.it/cassazione/leggi/dpcm535_99.html) (02.07.2008).

<sup>48</sup> Available at [http://www.solidarietasociale.gov.it/SolidarietaSociale/tematiche/Immigrazione/minori\\_stranieri/lineeguida2003.htm](http://www.solidarietasociale.gov.it/SolidarietaSociale/tematiche/Immigrazione/minori_stranieri/lineeguida2003.htm) (02.07.2008).

documents or it is not possible to ascertain his/her age, an age assessment is carried out by independent professionals (usually doctors) on the basis of the child's physical and psychological development as well as cultural factors, taking into consideration his/her ethnic and geographical origin; and if this procedure fails to establish the child's age, the child is presumed to be a minor.<sup>49</sup> In any case the child is treated (and given protection) as a minor until his/her age is proven.

## C.2 Specialised training for legal guardians

- [56]. Specialised training for legal guardians employed to represent unaccompanied foreign children (in general, and not only trafficked children) is provided at a regional level only. Most regional laws have established authorities responsible for children named *Tutore Pubblico per i Minorenni* or *Garante per i Minori* [Minors Public Guardian or Minors Guarantor]), empowered to organise training intended to give specific care and protection skills both to social service providers and to legal guardians.<sup>50</sup>
- [57]. There is no evidence of appropriate time for preparation of cases for the legal guardian.

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<sup>49</sup> Article 9 of Italy/Decreto del Presidente della Repubblica n. 448/1988 *Disposizioni per il processo penale a carico di imputati minorenni* (22.9.1988), available at [http://www.giustizia.it/cassazione/leggi/dpr448\\_88.html#TESTO](http://www.giustizia.it/cassazione/leggi/dpr448_88.html#TESTO) (02.07.2008).

<sup>50</sup> For further reference see, among others: Friuli - Venezia Giulia [www.regione.fvg.it/tutoreminori/welcome.asp](http://www.regione.fvg.it/tutoreminori/welcome.asp); Marche, <http://garanteminori.regione.marche.it> (02.07.2008); Veneto, <http://tutoreminori.regione.veneto.it/home/home.asp> (02.07.2008).

## D. Coordination and cooperation

### D.1 Coordination bodies for investigating human trafficking and for the social protection of the victims

- [58]. Italy has both a formalised task force for investigating human trafficking and a coordination body for the social protection of trafficked victims. But each of them deals with trafficked children and adults as one group, and not only children.
- [59]. As far as investigation is concerned, Article 51, par. 3-bis, of the Italian *Codice di procedura penale* [Code of Criminal Procedure], as modified by Law n. 228/2003<sup>51</sup> (for the substantial criminal provisions against human being trafficking introduced by this law see points 19-24 above) provides that investigations into the acts criminalised by Articles 600, 601 and 602 (see again points 19-24 above) and Article 416, par. 6, of the Penal Code (which criminalises organised criminal groups acting with the aim of committing the crimes provided by Articles 600-602) are under the competence of the *Procure distrettuali* [Public Prosecutor's District Offices]. In Italy there are 26 of these District Offices; each of them has a pool of prosecutors expert in organised crime, called the *Direzioni distrettuali antimafia* [Anti-mafia District Office], and all of them cooperate under the control and coordination of the *Procuratore nazionale antimafia* [National Anti-mafia Public Prosecutor], as provided by Article 371-bis of the Italian Code of Criminal Procedure. The National Anti-mafia Public Prosecutor is appointed directly by the *Consiglio Superiore della Magistratura* [Superior Council of the Judiciary], and has the duty of co-ordinating investigations relating to organised crime at a national level. The National Anti-mafia Public Prosecutor's assistants are magistrates with expertise in dealing with proceedings involving organized crime. The National Anti-mafia Public Prosecutor heads the *Direzione Investigativa Antimafia* [National Anti-mafia Investigation Bureau], which was set up in 1992<sup>52</sup> under the aegis of the General Public Prosecutor's Office based at the *Corte di Cassazione* [Court of Cassation]. The National Anti-

<sup>51</sup> Italy/legge n. 228/03 (11. 8. 2003), available at <http://www.parlamento.it/parlam/leggi/e/elenum.htm> (02.07.2008).

<sup>52</sup> Italy/Legge n. 8/1992 (20.01.1992), available at [http://www.italgiure.giustizia.it/nir/lexs/1992/lexs\\_316369.html](http://www.italgiure.giustizia.it/nir/lexs/1992/lexs_316369.html) (02.07.2008).

Mafia Investigation Bureau is a specialist investigative body made up of various forces<sup>53</sup> with jurisdiction throughout the country. It ensures that preventive investigative activities pertaining to organised crime in all its forms and guises are carried out, as well as carrying out judicial police investigations into mafia-associated crimes or the like (in which Law n. 228/2003 also includes human trafficking).

- [60]. However, Anti-mafia District Offices have no specific competence for people smuggling, covered by Article 12 of the 1998 Italian Law on Immigration,<sup>54</sup> which is prosecuted by the *Procure ordinarie* [ordinary Public Prosecutor's Offices]. This causes coordination problems during investigations, since investigations are often opened for the same acts both in an ordinary prosecutor's office and in a district prosecutor's office in different towns (because there are far more ordinary prosecutors than district prosecutors), as neither office is aware of the other's investigations. In order to coordinate investigations of people smuggling by the ordinary prosecutors' offices and of human trafficking by the district prosecutors' offices, the National Anti-mafia Prosecutor issued a note on 10 January 2005 (PROT. N. 609/G/2005) identifying uniform investigative procedures and inviting all prosecutors to exchange appropriate information immediately at the beginning of each investigation. This note has had a positive impact.
- [61]. As far as the social protection of trafficked victims is concerned, the coordination body is the *Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento* [Interministerial Commission for support to victims of trafficking and exploitation],<sup>55</sup> established under the *Dipartimento per i Diritti e le Pari Opportunità* [Department of Rights and Equal Opportunities] of the *Presidenza del Consiglio dei Ministri* [Prime Minister's Office].

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<sup>53</sup> It comprises the *Polizia* [State Police Force] with the *Direzione centrale anticrimine del Dipartimento di Pubblica Sicurezza* [Central Administration of the Department of Public Security], the *Carabinieri* with *Raggruppamento Operativo Speciale* (ROS) [Special Operative Group] and the *Corpo della Guardia di Finanza* [Finance Police].

<sup>54</sup> Italy/Decreto Legislativo n.286/98 (26.07.1998).

<sup>55</sup> Established by Article 25, para. 2 and 3, of Italy/Decreto del Presidente della Repubblica n. 394/1999 (31.08.1999), *Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del Decreto legislative 25 luglio 1998, n. 286* [Government Regulation on the implementation of the Law on Immigration n. 286/1998], available at [http://www.giustizia.it/cassazione/leggi/dpr394\\_99.html](http://www.giustizia.it/cassazione/leggi/dpr394_99.html) (02.07.2008), and re-arranged by Italy/Decreto del Presidente della Repubblica n. 102/2007 (14.05.2007), available at [http://www.dirittiepariopportunita.it/Pari\\_Opportunita/UserFiles/Il\\_Dipartimento/documenti/commissione\\_art18.pdf](http://www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/Il_Dipartimento/documenti/commissione_art18.pdf) (04.08.2008)



- [62]. As far as the existence of cooperation agreements concerning child trafficking between relevant Ministries is concerned, see points 59 and 61 above.
- [63]. As far as the existence of cooperation agreements concerning child trafficking between state agencies and non-governmental actors is concerned, the whole Italian system of social protection for trafficked victims is founded on cooperation agreements between the Interministerial Commission for Support to Victims of Trafficking and Exploitation of the Prime Minister's Office (mentioned in point 61 above and 82 below) and NGOs, in connection with municipalities and local government bodies (see point 83 below).
- [64]. There are no guidelines aimed at protecting the personal data of trafficked children, nor of trafficked persons in general.

## D.2 Cooperation

- [65]. According to Article 14 of Law n. 228/2003<sup>56</sup> (for the criminal provisions against human trafficking introduced by this law see points 19-24 above), 'in order to reinforce preventive actions aimed at reducing trafficking crimes, the Ministry of Foreign Affairs shall determine cooperation policies with the countries involved, taking into account their collaboration and their interest in the protection of human rights; along with the Ministry of Equal Opportunities [now Department of Rights and Equal Opportunities] it shall also organise international meetings and information campaigns in the above-mentioned countries. For the same reasons the Ministry of Internal Affairs, the Ministry of Equal Opportunities [now Department of Rights and Equal Opportunities], the Ministry of Justice, the Ministry of Labour and Social Policy shall also organise personnel training courses and other appropriate activities. No financial burdens for the State budget can arise from the enforcement of this Article.'
- [66]. For information on the support programmes that are part of Member States' international development assistance in countries of origin or within the EU-area see points 45-48, 51 and 65 above.

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<sup>56</sup> Italy/Legge n. 228/2003 (11.08.2003).

## E. Care and protection

- [67]. No special provision exists in the Italian legal system on a reflection period insofar as our legislation considers the possibility of granting a residence permit for reasons of social protection (see point 68 below).

### E.1. The special residence permit

- [68]. Article 18 of the 1998 Italian Law on Immigration<sup>57</sup> grants a special residence permit (allowing access to social and educational services and to the labour market) to foreign nationals, whatever their age, who are presumed to have been victims of violence or severe exploitation, and are still in danger in connection with their desire either to escape from the control of criminal organisations or to cooperate with the police and prosecutors. In this case, evidence of the seriousness of the danger or information on the relevant cooperation with the police and prosecutor must be indicated in the permit's application. As this provision leaves administrative authorities a great deal of discretionary power in evaluating the existence of the conditions for giving the residence permit,<sup>58</sup> in January 2006 and May 2007 the Ministry of Internal Affairs sent two notes in order to ensure its uniform application.<sup>59</sup>
- [69]. In any case, it is very important to note that it is possible for a residence permit to be granted even if the victim does not report the trafficker, because a sufficient condition for obtaining the permit is the situation of exploitation and the associated danger for the victim.<sup>60</sup> Therefore, children who are victims of trafficking *and are actually in danger* are covered by this provision, irrespective of their actual cooperation with the police and prosecutors.
- [70]. This measure is particularly innovative as provides two possible routes for a victim of trafficking, one social and one judicial, with no risk that one will be influenced by the other. The fact that a residence permit may be granted even without the victim reporting the trafficking provides the victim with the possibility of social and psychological recovery, which in turn establishes the basis for a

<sup>57</sup> Italy/Decreto Legislativo n. 286/98 (26.07.1998)

<sup>58</sup> See S. Facile – F. Nicodemi – M. Conti Nibali – G. Altieri, *La tratta di persone in Italia*, FrancoAngeli, Milano, 2007, 2, pp. 121.

<sup>59</sup> Italy/Circolare ministeriale n. 1026/2006 (02.02.2006) and n. 11050/2007 (28.05.2007), not available online.

<sup>60</sup> See, again, Italy/Circolare ministeriale n. 1026/2006 (02.02.2006) and n. 11050/2007 (28.05.2007), quoted above.

relationship of trust, a fundamental premise for his/her subsequent judicial cooperation. This provision is very innovative for its two aspects: firstly, it allows immediate protection be extended to all victims of trafficking; and secondly, it represents an incentive for their subsequent cooperation with investigations since victims can more effectively cooperate when they are in a position of security and aware of the rights that they possess.

- [71]. According to the same Article 18, the permit expires after six months but can be renewed for one year, or for the time required by judicial authorities; indeed, the law does not specify how often a permit can be renewed, and so it can be renewed until the child has reached the age of 18. At any time the permit can be revoked because of the victim's conduct or the absence of the conditions specified by law for the permit to be granted. Article 27 of Presidential Decree n. 394/1999<sup>61</sup> provides some more detailed provisions about this special permit, stating *inter alia* that the relevant procedure can be initiated both by social services and Prosecutors. It should be added that, according to a recent directive of the Minister of Internal Affairs, children who participate in the programmes provided by Article 18 have the right to obtain a permanent residence permit when they reach the age of the majority.<sup>62</sup>
- [72]. In 2001 the number of permits allowing temporary residence provided by Article 18 requested by adults and children was 1.148, and 833 of them were granted; in 2002 1.386 permits were requested and 1.062 granted; in 2003 1.082 permits were requested and 962 granted; in 2004 1.081 permits were requested and 927 granted; in 2005 1.217 permits were requested and 942 granted; in 2006 1.234 permits were requested and 927 granted; in 2007 1.158 permits were requested and 1.009 granted (data provided by the report compiled in March 2008 by the technical office of the Interministerial Commission for support to victims of trafficking and exploitation, entitled *Dati e riflessioni sui progetti di protezione sociale ex art. 18 D.lgs 286/98 ed art. 13 Legge 228/2003 - Dal 2000 al 2007* [Data and observations on social protection programmes between 2000 and 2007]).<sup>63</sup> Data related only to children is not available.

<sup>61</sup> Italy/Decreto del Presidente della Repubblica n. 394/1999 (31.8.1999) available at [http://www.giustizia.it/cassazione/leggi/dpr394\\_99.html](http://www.giustizia.it/cassazione/leggi/dpr394_99.html) (02.07.2008).

<sup>62</sup> Italy/Direttiva del Ministro dell'Interno n. 17272/7 (28.03.2008) Available at <http://www.meltingpot.org/articolo12451.html> (02.07.2008). See, [http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/notizie/immigrazione/0822\\_2008\\_04\\_04\\_direttiva\\_Amato\\_sui\\_minori\\_stranieri.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/0822_2008_04_04_direttiva_Amato_sui_minori_stranieri.html) (02.07.2008).

<sup>63</sup> Italy/ Segreteria tecnica della Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento, *Dati e riflessioni sui progetti di protezione sociale ex art. 18 D.lgs 286/98 ed art. 13 Legge 228/2003 - Dal 2000 al 2007* [Data and observations on social protection programmes between 2000 and 2007] available at

## E.2. The prohibition of deportation of children

- [73]. As a general rule, the Italian legal system does not allow the deportation of foreign children below the age of 18,<sup>64</sup> unless the minor constitutes a danger for public safety or State security, in which case he/she may be deported for this special reason.<sup>65</sup>
- [74]. A similar provision has been recently enacted for EU citizens who are unaccompanied minors. They may be subject to an expulsion decision only on the grounds of State security or on imperative grounds of public safety, according to Article 20, par. 7, of Legislative Decree n. 30/2007,<sup>66</sup> as modified by Article 1 of Legislative Decree n. 32/2008.<sup>67</sup>
- [75]. On the other hand, minors always have the right to follow their deported or expelled parents.<sup>68</sup> Pending a deportation/expulsion procedure, in the very limited cases where these measures are allowed with respect to a minor, the minor's detention is explicitly prohibited by Article 26, par. 6, of Legislative Decree n. 25/2008.<sup>69</sup> Unaccompanied minors who must leave Italian territory are instead placed temporarily under the care and protection of the social services, under the general supervision of the *Comitato per i minori stranieri* [Committee for Foreign Minors], and are meanwhile granted healthcare and educational/social services according to Articles 5-7 of Prime Minister Decree n.535/1999.<sup>70</sup>
- [76]. The Committee for Foreign Minors is an interministerial body established by Article 33 of the 1998 Italian Law on Immigration<sup>71</sup> under the Prime Minister's Office. As provided by Prime Minister Decree n. 535/1999, quoted above,<sup>72</sup> the Committee supervises the stay of foreign minors in Italy and co-ordinates the activities of the

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[http://www.dirittieparioportunita.it/Pari\\_Oportunita/UserFiles/Il\\_Dipartimento/Relazione\\_ex\\_Art18.pdf](http://www.dirittieparioportunita.it/Pari_Oportunita/UserFiles/Il_Dipartimento/Relazione_ex_Art18.pdf) (3.08.2008)

<sup>64</sup> Article 19, par. 2, of Italy/Decreto legislativo n. 286/1998 (25.7.1998) available at

[http://www.giustizia.it/cassazione/leggi/dlgs286\\_98.html](http://www.giustizia.it/cassazione/leggi/dlgs286_98.html) (02.07.2008).

<sup>65</sup> Article 13, par. 1, of the same Italy/Decreto legislativo n. 286/1998 (25.7.1998).

<sup>66</sup> Italy/Decreto legislativo n. 30/2007 (6.2.2007) available at

<http://www.parlamento.it/parlam/leggi/deleghe/07030dl.htm> (02.07.2008).

<sup>67</sup> Italy/Decreto Legislativo n. 32/2008 (28.2.2008) available at

<http://www.parlamento.it/leggi/deleghe/08032dl.htm> (02.07.2008).

<sup>68</sup> Article 19, par. 2, of Italy/Decreto legislativo n. 286/1998 (25.7.1998).

<sup>69</sup> Italy/Decreto legislativo n. 25/2008 (28.1.2008) available at

<http://www.parlamento.it/leggi/deleghe/08025dl.htm> (02.07.2008).

<sup>70</sup> Italy/Decreto del Presidente del Consiglio dei Ministri n. 535/1999 (9.12.1999), available at

[http://www.giustizia.it/cassazione/leggi/dpcm535\\_99.html](http://www.giustizia.it/cassazione/leggi/dpcm535_99.html) (02.07.2008).

<sup>71</sup> Italy/Decreto Legislativo 286/98 (26.07.1998).

<sup>72</sup> Italy/Decreto del Presidente del Consiglio dei Ministri n. 535/1999 (9.12.1999), available at

[http://www.giustizia.it/cassazione/leggi/dpcm535\\_99.html](http://www.giustizia.it/cassazione/leggi/dpcm535_99.html) (02.07.2008).

ministerial offices involved. The Committee has two main aims: first of all, it takes care of foreign minors who have legally entered Italy in accordance with hospitality programmes promoted by agencies, associations, or Italian families; secondly, it takes care of unaccompanied foreign minors present on Italian territory, supporting the activities of the social services'. In relation to this second aim, the Committee: i) supervises the minor's stay in Italy; ii) collaborates with the competent public offices; iii) establishes the unaccompanied foreign minor's status; iv) acts in order to find out who the minor's parents are; v) takes measures to repatriate minors; vi) takes a census of unaccompanied foreign minors in Italy.

- [77]. The Italian legal system does not provide any special safeguards for children who are detained (see point 75 above).

### E.3. The assisted return

- [78]. The *Dipartimento per le libertà civili e l'immigrazione* [Department for Civil Liberty and Immigration] of the *Ministero dell'Interno* [Ministry of Internal Affairs] signed a cooperation agreement with the IOM – International Organization for Migration<sup>73</sup> on a national programme to encourage the voluntary assisted return of trafficked victims and their reintegration into their native countries.
- [79]. The programme started in 2001 when the Minister of Internal Affairs submitted to the Interministerial Commission for Support to Victims of Trafficking and Exploitation (see point 82 below) a proposal enforcing Article 8 of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children supplementing the UN Convention against Transnational Organized Crime, which requires States to offer effective assistance to ensure the safe return of trafficked victims. This programme offers psychological, medical and legal assistance to trafficked victims, as well as effective support in returning to their native countries, where a dedicated Focal Point provides the necessary assistance to assist reintegration into the family, society and working life. For a victim to be repatriated, he/she must have expressed a clear desire – verified by psychological screening – and there must be suitable conditions for his/her return. According to the procedure stipulated by the programme, local services (the police, local government bodies, NGOs) indicate to the IOM which victims have expressed the intention to return. Once the required conditions are verified, the IOM submits a 'return programme proposal' to the Minister of Internal Affairs to obtain

<sup>73</sup> See <http://www.iom.int/jahia/jsp/index.jsp> (02.07.2008).

permission. The IOM then makes the travel arrangements and prepares all the documentation and funding necessary for the return. The victim also receives a sum of 550 euros as an ‘initial accommodation grant’. Once the foreign national has returned to the country of origin, the reintegration programme begins, and the IOM provides two grants of 550 euros. The IOM supports the victim for at least 6 months, and it keeps the Minister for Internal Affairs up to date. Among the trafficked persons who have been helped since 2002, only 29 were minors: 9 in 2002/2003; 10 in 2003/2004; 9 in 2004/2005; 5 in 2005/2006; 10 in 2007/2008.

## E.4. The shelters

- [80]. Many shelters for trafficked children exist in Italy. The total number is currently not available because such facilities are directly managed by local authorities and NGOs, with only an indirect connection to the Department of Rights and Equal Opportunities.
- [81]. Statistics of children who leave shelters with an unknown destination are currently not available.

## E.5. The social programmes

- [82]. According to Article 18, par. 5, 1st sentence, of the 1998 Italian Law on Immigration,<sup>74</sup> the temporary residence permit provided by the same Article (see point 68 above) ‘allows [trafficked children] to benefit from social services, educational provision and labour exchange lists, in order to find a permanent job’, while Article 13 of Law n. 228/2003<sup>75</sup> (for the criminal provisions against human trafficking introduced by this law see points 19-24 above) establishes ‘a special aid programme granting on a temporary basis suitable accommodation and food and healthcare’ to the trafficked victims, financed by a special fund (see point 34 above). Presidential Decree n. 237/2005<sup>76</sup> implemented the latter programme, which explicitly aims to: i) give victims accommodation and shelter in secret locations; ii) grant them free access to healthcare; iii) cooperate with NGOs and local council social services either in the social integration of the victims or in their assisted return to the countries of which they are a national. In brief, this special protection grants victims of trafficking

<sup>74</sup> Italy/Decreto Legislativo n. 286/98 (26.07.1998).

<sup>75</sup> Italy/Legge n. 228/2003 (11.08.2003).

<sup>76</sup> Italy/Decreto del Presidente della Repubblica 237/2005 (19.9.2005), available at [http://www.retepariopportunita.it/Rete\\_Pari\\_Opportunita/UserFiles/Normativa/Nazionale/Sfruttamento\\_e\\_tratta/DPR\\_num237\\_19\\_09\\_05.pdf](http://www.retepariopportunita.it/Rete_Pari_Opportunita/UserFiles/Normativa/Nazionale/Sfruttamento_e_tratta/DPR_num237_19_09_05.pdf) (04.08.2008)

appropriate accommodation in locations that are kept secret, in order to protect them from threats by criminal organisations.

- [83]. The Interministerial Commission for Support to Victims of Trafficking and Exploitation established under the Department of Rights and Equal Opportunities of the Prime Minister's Office (mentioned in point 61 above) is responsible for monitoring, evaluating and managing resources for both the assistance and social integration programmes provided by Article 18 of the 1998 Italian Law on Immigration<sup>77</sup> and the special programme for the victims of trafficking provided by Article 13 of Law 228/2003.<sup>78</sup> The Interministerial Commission announces a sort of call for tender in order to choose the NGOs and the local government bodies which will implement the two kinds of programmes provided by the Italian legal system; it evaluates and selects proposals and then assesses their implementation and results.
- [84]. In particular, in its calls for tender, the Interministerial Commission always requires that the NGOs and the local government bodies which will be in responsible for running these programmes ensure every kind of protection and aid to the victims of trafficking (including accommodation, full healthcare, and psychological support).<sup>79</sup>
- [85]. According to the Interministerial Commission's statistics, in 2001 the number of trafficked children receiving full healthcare was 75; in 2002 it was 80; in 2003 it was 70; in 2004 it was 118; in 2005 it was 139; in 2006 it was 266.
- [86]. Regarding the implementation of Article 18 of the 1998 Italian Law on Immigration, between 2000 and 2008 the Department of Rights and Equal Opportunities announced nine calls for tender for social protection projects, and 490 submissions received co-financing. Between March 2000 and May 2007, 54.559 persons (adults and children) came into contact with the projects, receiving basic assistance (reception and rehabilitation in designated shelters, legal assistance, psychological help, and medical support), whilst 13.517 persons actually joined the projects (938 under 18). The interventions carried out have been extremely problematic, mostly because of the victims' psychological condition (in the majority of cases, the victims

<sup>77</sup> Italy/Decreto Legislativo n. 286/98 (26.07.1998).

<sup>78</sup> Italy/Legge n. 228/2003 (11.08.2003).

<sup>79</sup> See for example the latest call for tenders, Avviso n. 9, available at <http://www.pariopportunita.gov.it/DefaultDesktop.aspx?doc=1743> (02.07.2008).

were women forced into prostitution). Interventions last for an average of one year, during which the victim is supported to recover as fully as possible (both on a physical and psychological level) in order to enjoy a full life with every kind of relationships and have access to job opportunities. In many cases, the victims simply ask for a ‘mentor’ to act as an intermediary with social services and who is able to establish a relationship of mutual trust with the victim.

- [87]. As regards the implementation of Article 13 of Law 228/2003, the Department of Rights and Equal Opportunities in August 2006 and August 2007 announced two public calls for tender to implement 49 programmes to providing assistance to victims of trafficking.<sup>80</sup>
- [88]. Access to education and vocational training for victims of trafficking, whatever their age, is granted by the legal provisions quoted above in point 82. From 2000 to 2007, 9.663 persons (adults and children) joined training courses and received scholarships and grants; 6.435 persons (adults and children) eventually found a job. Data about minors are is not available. Furthermore, the Interministerial Commission<sup>81</sup> always requires in its tenders that the NGOs and the local government bodies which will implement these programmes ensure that victims of trafficking receive opportunities to improve their computer and linguistic literacy and access to education, training courses and grants.

## E.6 The right to access to a court

- [89]. In Italy, everyone – whether adult or minor, of Italian or foreign nationality – has the right to access to a court to exercise his/her rights or to defend him/herself from a charge (Article 24 of the Italian Constitution<sup>82</sup>). Article 90 of Presidential Decree n. 115/2002<sup>83</sup>

<sup>80</sup> Data provided by the report quoted above at point 47 compiled in March 2008 by the Technical Office of the Interministerial Commission for support to victims of trafficking and exploitation. Italy/ Segreteria tecnica della Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento *Dati e riflessioni sui progetti di protezione sociale ex art. 18 D.lgs 286/98 ed art. 13 Legge 228/2003 - Dal 2000 al 2007* [Data and observations on social protection programmes between 2000 and 2007] available at [http://www.dirittiepariopportunita.it/Pari\\_Opportunita/UserFiles/Il\\_Dipartimento/Relazione\\_ex\\_Art18.pdf](http://www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/Il_Dipartimento/Relazione_ex_Art18.pdf) (3.08.2008)

<sup>81</sup> See for example the latest call for tenders, Avviso n. 9, available at <http://www.pariopportunita.gov.it/DefaultDesktop.aspx?doc=1743> (02.07.2008).

<sup>82</sup> Italy/Costituzione available at [http://www.cortecostituzionale.it/istituzione/lacorte/fontinormative/lacostituzione/costituzione\\_parte\\_i.asp](http://www.cortecostituzionale.it/istituzione/lacorte/fontinormative/lacostituzione/costituzione_parte_i.asp) (02.07.2008).

<sup>83</sup> Italy/Decreto del Presidente della Repubblica n. 115/2002 (30.5.2002), available at [http://www.giustizia.it/cassazione/leggi/dpr115\\_02.html](http://www.giustizia.it/cassazione/leggi/dpr115_02.html) (02.07.2008).



provides that victims of a crime are entitled to claim damages from the offender by filing a civil suit in the criminal trial itself; in the case of a conviction, the criminal court can also grant damages to the victim.

- [90]. If the victim cannot pay the costs of the suit, he/she has the right to obtain free legal aid according to Article 74 and in line with Presidential Decree n. 115/2002 cited above. This right is also granted to foreign nationals and stateless persons by Article 90 in connection with Article 74, par. 1, of the same Presidential Decree n. 115/2002. Specific data concerning the numbers of children victims of trafficking who have been granted free legal aid are not available.
- [91]. Italian law does not provide so far any form of compensation by public funds for victims of trafficking. In this respect the Italian legal system is not in line with the obligation arising from Article 15, par. 4, of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (which has not been ratified yet; see point 18 above).
- [92]. In Italy, every party in a criminal trial – including the victim – has the right to be assisted by an interpreter, at no cost for the party if he/she is entitled to free legal aid.<sup>84</sup>
- [93]. The social integration and protection programmes provided by Article 18 of the 1998 Italian Law on Immigration<sup>85</sup> and the special programme provided by Article 13 of Law n. 228/2003<sup>86</sup> (see point 82 above) also include legal assistance. Furthermore, in its public call for tenders, the Interministerial Commission always requires that the NGOs and the local government bodies which implement these programmes ensure that victims of trafficking receive every kind of legal assistance, including legal assistance for obtaining the special residence permit provided by Article 18 of the Italian Law on Immigration (see point 68 above).<sup>87</sup>
- [94]. There is no particular evidence that the special needs of children who come from different ethnic backgrounds or who have disabilities are

<sup>84</sup> See Italy/Corte costituzionale/254/2007 (20.06.07) available at <http://www.cortecostituzionale.it/giurisprudenza/pronunce/schedaDec.asp?Comando=RIC&bVar=true&TrmD=&TrmDF=&TrmDD=&TrmM=&iPagEl=1&iPag=1> (19.6.2008), stating this principle with regard to the defendant.

<sup>85</sup> Italy/Decreto Legislativo n.286/98 (26.07.1998).

<sup>86</sup> Italy/Legge n. 228/2003 (11.08.2003).

<sup>87</sup> See for example the latest call for tenders, Avviso n. 9, available at <http://www.pariopportunita.gov.it/DefaultDesktop.aspx?doc=1743> (02.07.2008).

taken into consideration in all relevant contexts and legal procedures. Nevertheless, in its public call for tenders, the Interministerial Commission always requires that the NGOs and the local government bodies which implement these programmes have on their staff a wide diversity of staff, including *inter alia*, staff of foreign origin, transsexual people, and cultural and social mediators.<sup>88</sup>

## E. 7 The Free Number

- [95]. Italy has not expressly applied the Commission Decision of 15 February 2007, concerning the existence of a hotline to report missing and sexually exploited children. Nevertheless, according to the report provided in March 2008 by the technical office of the Interministerial Commission for the support to victims of trafficking and exploitation,<sup>89</sup> an instrument similar to the one provided by the Commission Decision of 15 February 2007 is the *Numero Verde* ['green' (free) number] 800.290.290, active since July 2000. This free service is provided by a central office supported by 14 local offices, distributed regionally. This service aims to: 1) inform victims of opportunities offered by the Italian legal system to escape from exploitation; 2) compare possible strategies against trafficking and provide emergency intervention so as to create a specialist national network, able to respond to help and the need for assistance; 3) provide regional offices with assistance, and cultural and linguistic support; 4) create a monitoring system among its local offices.
- [96]. According to the new *Numero Verde* Agreement (2007/2008), this free service has even a 'pro-active' function in regard to women working in brothels: call-operators actively call the phone numbers that appear in newspaper advertisements, and inform the women of the services that could help them escape from the exploitation. In the period between August 2000 and June 2006 494.474 phone calls were answered; between January and November 2007 14.560 calls were received.

<sup>88</sup> See for example the latest call for tenders, Avviso n. 9, available at <http://www.pariopportunita.gov.it/DefaultDesktop.aspx?doc=1743> (02.07.2008).

<sup>89</sup> Italy/ Segreteria tecnica della Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento, *Dati e riflessioni sui progetti di protezione sociale ex art. 18 D.lgs 286/98 ed art. 13 Legge 228/2003 - Dal 2000 al 2007* [Data and observations on social protection programmes between 2000 and 2007] available at [http://www.dirittiepariopportunita.it/Pari\\_Opportunita/UserFiles/Il\\_Dipartimento/Relazione\\_ex\\_Art18.pdf](http://www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/Il_Dipartimento/Relazione_ex_Art18.pdf) (3.08.2008)

## F. Best interests determination and durable solutions, including social inclusion/return

- [97]. Evidence for formalized process for identification of durable solution based on the child's best interest determination, including risk and security assessment prior to possible return of the child is not available because no central public authority collects it. However, the NGOs and the local government bodies in charge of running both the aid and social integration programmes established by Article 18 of the 1998 Italian Law on Immigration<sup>90</sup> and the special programme established by Article 13 of the 2003 Italian law against human trafficking<sup>91</sup> (see point 83 above) must base their interventions on the specific needs of the trafficked victims, irrespective of their age.
- [98]. Italian law does provide subsidiary protection for children who are victims of trafficking (on the availability of special residence permits which entitle them to access to social/educational services and to the labour market, see points 68 and 82 above). In the very specific event that a minor is to be considered a 'refugee' under the Geneva Convention of 1951, he/she will be entitled to seek asylum according to the existing legislation (see in particular Legislative Decree n. 140/2005<sup>92</sup> which implements EU Directive 2003/9/EC). In this case Articles 8 and 10 of this Legislative Decree stipulate that local government is responsible for the minor. Article 8 of Legislative Decree 140/05<sup>93</sup> provides for psychological support to be given to a minor who requires asylum and Article 10 of the same law gives minors the right to healthcare and compulsory education during the asylum procedure.
- [99]. Evidence regarding children's participation in decision-making processes or obligatory hearing in legal procedures is not available because no public office collects it. However, artt. 6 and 7 of Italy/dpcm 9/12/99 n. 535<sup>94</sup> provide that the unaccompanied foreign

<sup>90</sup> Article 18, par. 3, of Italy/Decreto Legislativo n. 286/98 (26.07.1998).

<sup>91</sup> Article 13, par. 3, of Italy/Legge n. 228/2003 (11.08.2003).

<sup>92</sup> Italy/Decreto legislativo n. 140/2005 (30.5.05), available at <http://www.parlamento.it/parlam/leggi/deleghe/05140dl.htm>(02.07.2008).

<sup>93</sup> Italy/Decreto legislativo n. 140/2005 (30.5.05), available at <http://www.parlamento.it/parlam/leggi/deleghe/05140dl.htm>(02.07.2008).

<sup>94</sup> Italy/Decreto del Presidente del Consiglio dei Ministri n. 535/1999 (9.12.1999), available at [http://www.giustizia.it/cassazione/leggi/dpcm535\\_99.html](http://www.giustizia.it/cassazione/leggi/dpcm535_99.html) (02.07.2008).

child under 18 years of age has the right to be heard, either if he will stay in Italy with residence permit, either if, according to his best interest, he will return to his own country. Committee for Foreign Minors (see point 76) has the duty to control the respect of this right. Similarly, the law on asylum procedure provides the hearing of the person requiring asylum by National Commission or Local Commission (art. 12 Italy/decreto legislativo n. 25/2008 (28.01.2008)<sup>95</sup>). If the asylum seeker is a minor, the parents (or the guardian, if the minor is unaccompanied) have to be present during the hearing (art. 13 Italy/decreto legislativo 25/08 (28.01.2008)).

- [100]. As for evidence of access to integration programmes, see points 85-88 above.
- [101]. As far as the establishment of special programmes for trafficked children is concerned, see points 83 and 85 above.
- [102]. For evidence that the particular needs of children who come from different ethnic backgrounds or who have disabilities are taken into consideration in all relevant contexts and legal procedures, see point 94 above.

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<sup>95</sup> Italy/Decreto legislativo n. 25/2008 (28.01.2008), available at <http://www.parlamento.it/leggi/deleghe/08025dl.htm> (25.09.2008)

## G. Prosecution

- [103]. Italian law provides special safeguards for criminal proceedings involving a minor who is victim of serious crimes, such as enslavement, juvenile prostitution and pornography, child trafficking and sexual assault.
- [104]. In general terms, Article 609-decies of the Italian *Codice penale* [Penal Code]<sup>96</sup> grants the minor psychological assistance over the entire course of any criminal proceeding, such as the presence of his/her parents or other persons chosen by the minor and admitted by the judge, and care and support through central or local public social services for care and support.
- [105]. A special procedure provided by Article 392-bis of Italian *Codice di procedura penale* [Code of Criminal Procedure]<sup>97</sup> allows the full testimony of a witness under 16 to be taken in the manner described below by the judge in charge of the preliminary investigations. This witness does not then need to repeat it before the trial judge. The purpose of this procedure (known as '*incidente probatorio*') is to obtain oral evidence from the minor as soon as possible, before anybody can put pressure on him/her. In this procedure, the witness's statements are always tape- or video-recorded.
- [106]. Special safeguards are provided for minor witnesses who may have been victims of trafficking, irrespective of whether the testimony takes place during the preliminary investigation or at the trial. According to Articles 398, par. 5*bis*, and 498, par. 4, 4*bis* and 4*ter* of the Italian Code of Criminal Procedure,<sup>98</sup> child witnesses should be examined directly by the judge, who asks the minor questions raised by both the defence and prosecution. The judge may be assisted in this by an expert psychologist. The testimony may be given outside the court, in special facilities designed for this purpose or at the child's home. So as to avoid any contact between the parties, the accused and defence lawyers should remain in a room separated by one-way glass from the room where the child victim or witness is to give testimony, so that the accused and the defence team can see the child during his/her testimony, without the child seeing them. Communication between the judge and lawyers takes place through an intercom system.

<sup>96</sup> Available at [http://www.altalex.com/index.php?idnot=36774\(02.07.2008\)](http://www.altalex.com/index.php?idnot=36774(02.07.2008)).

<sup>97</sup> Available at [http://www.altalex.com/index.php?idnot=36804\(02.07.2008\)](http://www.altalex.com/index.php?idnot=36804(02.07.2008)).

<sup>98</sup> Available at [http://www.altalex.com/index.php?idnot=36804\(02.07.2008\)](http://www.altalex.com/index.php?idnot=36804(02.07.2008)).

Moreover, Article 472, par. 4 of the same Code of Criminal Procedure<sup>99</sup> provides that hearings concerning child trafficking should not be open to the public.

- [107]. Data on the number of final convictions based on child trafficking cases is not available because no public office collects it.
- [108]. For legal provisions granting trafficked children access to justice, see points 89, 90, 92 and 93 above.
- [109]. Data on compensation paid to trafficked children by traffickers is not available because no public office collects this; data on compensation paid to trafficked children by the State is not available because this type of public compensation is not provided in the Italian legal system (see point 91 above).

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<sup>99</sup> Available at [http://www.altalex.com/index.php?idnot=36816\(02.07.2008\)](http://www.altalex.com/index.php?idnot=36816(02.07.2008)).

## H. Miscellaneous

- [110]. In the public debate promoted by NGOs, there are concerns about the uniform and effective application of Article 18 of the 1998 Italian Law on Immigration (see points 68 and following). For example, the NGO Caritas sent a letter to the former Minister of Rights and Equal Opportunities reporting an incorrect application of Article 18. The letter also requested that a coordination body be instituted that would even involve delegates from NGOs.<sup>100</sup>
- [111]. The debate on a mechanism to facilitate coordination with the national and local authorities of foreign countries is particularly in the spotlight. The debate is especially endorsed by the *Direzione Generale della Cooperazione italiana allo sviluppo* [General Directorate of Italian Cooperation for Progress] of the *Ministero degli Esteri* [Ministry of Foreign Affairs] which helps poorer countries to develop strategies, best practices and codes of conduct and promotes legislative reform in regard to matters affecting children.<sup>101</sup>
- [112]. The public debate particularly focuses on the possibility of establishing a *Garante per l'infanzia* [an independent Children's Authority] in order to suggest appropriate laws regarding children to Parliament and supervise administrative activities.<sup>102</sup> So far, however, the proposal has not been considered by the new government.
- [113]. In May 2004 the *Direzione Generale della Cooperazione italiana allo sviluppo* [General Directorate for Italian Cooperation for Progress] of the *Ministero degli Esteri* [Ministry of Foreign Affairs] drafted guidelines on issues relating to children, including child trafficking, setting out priorities and intervention strategies in the national and international context.<sup>103</sup>
- [114]. In April 2002, the association Gruppo Abele instituted a legal service, *InTi*, in order to inform people about national legislation on people trafficking. The *Associazione Studi Giuridici* (ASGI) [Legal Studies Association] and the *Regione Piemonte* [Piemonte Regional Council]

<sup>100</sup> See <http://www.gruppoabele.org/Index.aspx?idopinione=71> (02.07.2008).

<sup>101</sup> See <http://www.esteri.it/mae/doc/innocenti1.pdf> (04.08.2008)

<sup>102</sup> See <http://www.solidarietasociale.gov.it/NR/rdonlyres/83C7B80B-1173-4080-AC2F-14C81C1961C4/0/DocumentoGarante.pdf> (04.08.2008)

<sup>103</sup> See

<http://www.cooperazioneallosviluppo.esteri.it/pdgcs/italiano/LineeGuida/pdf/LineeGuidaMinori.pdf> (04.08.2008)

have acted together to develop this service. Among its main activities, there is the support for a reasonable application of Article 18 of the 1998 Italian Law on Immigration, and it provides support in making an application for family reunion or a residence permit.<sup>104</sup>

*Regione Lombardia* [Lombardia Regional Council] and the *Comune di Venezia* [Venice Municipality] are involved in the 'West Project' which trains the security forces about people trafficking through seminars where officers share their experiences of implementing a methodology to identify and support the victims.<sup>105</sup>

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<sup>104</sup> See <http://www.gruppoabele.org/index.aspx?idmenu=294> (02.07.2008).

<sup>105</sup> All the information about the project aiming to assist trafficking victims is available at <http://www.savethechildren.it/2003/download/Pubblicazioni/StC-AGIS-Final-Report-2007.pdf> (08.04.2008)



## I. Good practices

- [115]. As already highlighted (see particularly points 19-24, 26-29, 30, 32, 33-35, 37, 40, 41-48, 50-52, 53, 55, 56, 58-61, 65, 68-71, 73-75, 76, 78-79, 80, 82-88, 89-90, 93, 95-96, 97-98 and 102-105 above), the Italian legal system does provide many good solutions to prevent and to tackle human trafficking in general, and child trafficking in particular. Moreover, the Italian public authorities, both at central level and at regional and local level work together with civil society organisations to offer full social protection to the victims.

## Annex 1 - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking								
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)			7536	4743	5920	5217	4842	6150
Number of trafficked children receiving education/training, in particular secondary education and vocational training			30		390	981	849	1012
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)			1235	1343	2353	2421	1894	2066
Number of final convictions based on child trafficking cases, per year								

Total of amount of compensation paid to trafficked children, per year								
Average of amounts of compensation paid to trafficked children, per year								
Range of amount of compensation paid to trafficked children, per year								

Any other tables or statistics relevant for child trafficking

(the data provided does not concern only minors, but also includes adult victims: see the report *Verso la costruzione di un Piano nazionale Anti-tratta*, quoted at point 21 above).<sup>106</sup>

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<sup>106</sup> Available at [http://www.progettoroxana.it/roxana/components/com\\_docman/dl2.php?archive=0&file=cmFwcG9ydG9fY29taXRhdG8ucGRm](http://www.progettoroxana.it/roxana/components/com_docman/dl2.php?archive=0&file=cmFwcG9ydG9fY29taXRhdG8ucGRm) (02.07.2008).