

FEMM Mission to Italy

17 - 19 December 2018

KEY FINDINGS

Abortion in Italy

- Italian Law 194 “on the social protection of motherhood and the voluntary termination of pregnancy” legalises abortion under certain conditions.
- Law 194 also legalises and regulates the practice of conscientious objection (CO). CO may not be invoked by health professionals if the personal intervention is essential in order to save the life of a woman in imminent danger.
- Prevalence of CO among gynaecologists in Italy is high, allegedly partly because abortion providers experience discrimination and harassment.

Trafficking of migrant women for prostitution in Italy

- In Italy, prostitution is legal, although organised prostitution, whether indoors in brothels or controlled by third parties, is prohibited.
- In 2016, the most commonly reported form of exploitation of trafficked persons was forced sexual exploitation, with females representing 81% of the total number of victims.
- In 2016 about 80% of Nigerian women and girls who arrived in Italy by sea were likely to have been trafficked for the purpose of sexual exploitation in Italy or other EU countries.
- Victims suffer serious psychological problems as a consequence of the mental and physical violence to which they are subjected.

From 17 to 19 December 2018 a delegation of Members of the Committee on Women’s Rights and Gender Equality (FEMM) will travel on a mission to Italy. The focus of this mission is on conscientious objection to abortion and the trafficking of migrant women for prostitution in Italy. The FEMM Committee requested the Policy Department for Citizens’ Rights and Constitutional Affairs to provide this briefing for the mission.



Abortion in Italy

Abortion in Italy became legal in May 1978 under Italian Law No. 194 “on the social protection of motherhood and the voluntary termination of pregnancy”. Italian women were allowed to terminate a pregnancy on request during the first 90 days. A proposal to repeal the law was considered in a 1981 national referendum, but was rejected by nearly 68% of voters; another referendum aimed at eliminating the restrictions was rejected by 88.4%.

Italian women are eligible to request an abortion for health, economic or social reasons, including the circumstances under which conception occurred. Abortions are performed free-of-charge in public hospitals or in private structures authorised by the regional health authorities. Law 194 also allows termination in the second trimester of the pregnancy only when the life of the woman would be at risk if the pregnancy is carried to term or the fetus carries genetic or other serious malformations which would put the mother at risk of serious psychological or physical consequences.

Law 194 states that, unless a state of emergency requires immediate intervention, a period of seven days, not compulsory, has to occur between the medical authorization and the effective date of the termination. Although the law only permits pregnancy termination to women at least eighteen years old, it also includes provisions for women younger than eighteen, who can request the intervention of a judge when the legal tutor refuses the intervention, or there are reasons to exclude the legal tutor from the process. The judge has to make a decision within five days of the request. Women younger than eighteen don't need parental consent in case of urgent situation or after 90 days.

Some 20,000 unsafe and illegal abortions are said to be performed in Italy every year, compared with about 100,000 legal ones. The number of illegal procedures is increasing, advocates for women's rights say, even as the number of legal ones is decreasing.

Conscientious objection to abortion in Italy

Law 194 legalises and regulates the practice of conscientious objection (CO). CO has been defined as “the refusal to participate in an activity that an individual considers incompatible with his/her religious, moral, philosophical, or ethical beliefs.” Under Law 194, if the health personnel demands to be conscientious objector, they have to declare it in advance (Art.9). However, conscientious objection may not be invoked by health professionals if the personal intervention is essential in order to save the life of a woman in imminent danger.

A resolution¹ by the Council of Europe has found that women's rights are being violated in Italy. The Council's Social Rights Committee found that the situation in Italy violated both the women's right to protection of health (Art. 11), and the right to dignity at work (art. 26) of non-objecting medical practitioners, because of different treatment and moral harassment.

In a significant number of Italian hospitals, even if a gynecology unit exists, there are no or very few doctors who do not object to performing abortions, the committee said. Women seeking an abortion are sometimes forced to go elsewhere in Italy or abroad, or bypass the authorities to get a termination.

¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680687bdc

The prevalence of conscientious objection to abortion among gynecologists in Rome and the surrounding region ranges from 81.9% (according to the Department of Health) to 91.3% (according to the Free Association of Italian Gynecologists). Only 60% of Italian hospitals offer abortion services.

A survey which investigated the efficacy and acceptability of laws and policies that permit CO and ensure access to legal abortion services² indicates that several interviewees who favour abortion access explained that Article 9 had made sense when the law was initially passed in 1978, since it would have been unrealistic to force providers to suddenly comply with a new requirement to provide abortion services. However, in their view, the way the law has been implemented has resulted in an inversion of the initial intent to allow an exception to the norm of providing care.

Instead, they explained, objection has become the norm and abortion provision the exception. Interviewees from all sides of the debate noted that abortion providers in Italy experience discrimination, increased workloads, and limited career trajectories. Many said that some clinicians registered as conscientious objectors in order to avoid these burdens, rather than for moral or religious reasons, and referred to this as “convenient” objection.

Article 15 of Law 194 requires that health personnel be trained in and make use of “more modern techniques of pregnancy termination which are physically and mentally less damaging to the woman and are less hazardous. However, medication abortion accounted for only 13.8% of abortions in Italy in 2013, and access varies dramatically based on regional restrictions.

Interviewees emphasised the social and political influence of the Vatican, despite the fact that only 30% of Italians regularly attend mass. Many publicly funded hospitals are affiliated with the Catholic Church and do not provide abortion services even though some employees may be willing. Interviewees who favour abortion access reported that, in their view, the Catholic Church’s overt opposition to abortion has contributed to the stigma associated with the procedure in Italy. Pope Francis himself, speaking at a gathering of Italian Catholic physicians in 2014, encouraged doctors to make “brave choices that go against the current,” referring pointedly to conscientious objection and abortion.

Meanwhile, women who have illegal abortions face fines of between €5,000 and €10,000, which were introduced in 2016. These fines replaced a 'symbolic' fine of €51, which had been given to women who obtained an illegal abortion, and was aimed at encouraging them to denounce doctors who performed it as well as encourage them to use the state healthcare system in case any complications arose.

Interviewees across the board remarked that the law in Italy is well written but not applied. Those opposed to abortion felt that counseling clinics do not adequately fulfill their duty to dissuade women from having abortions. Conversely, those who favour abortion access underlined the inadequate performance of the Servizio Sanitario Nazionale (SSN) in maintaining access to abortion services in the face of widespread individual objection. One respondent stated that: “I really think that the question is not conscientious objection but a well-organised health system, which recognises abortion as a health procedure.”

Trafficking in migrant women for prostitution in Italy

The international trafficking of persons, especially of women and children for prostitution and other purposes, is a global scourge and a worldwide problem of monumental scope. Prostitution,

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473038/> - Regulation of Conscientious Objection to Abortion - An International Comparative Multiple-Case Study

mistakenly defined as the so-called “oldest profession,” is and continues to be accepted as an integral part of the social exchange between men and women, while the inherent violence contained in such an exchange is often denied and left to perpetuate itself. Legal trends, particularly in some European countries, actually or potentially legalise or decriminalise the system of prostitution and sanction it as a normal part of the social order.

Prostitution in Italy

In Italy, prostitution (Italian: *prostituzione*) is defined as the exchange of sexual acts for money, is legal, although organised prostitution, whether indoors in brothels or controlled by third parties, is prohibited. The Legge Merlin (the Merlin Law) came into power on 20 September 1958. This law, still in force today with very little changes, revoked the regulation system, banned brothels, and established a new criminal offence called "exploitation of prostitution" (*sfruttamento della prostituzione*) with the aim to punish procuring of sexual services.

Prostitution in Italy became much more visible in the early 1990s with the increase of migration from Eastern Europe and Western Africa, which had begun in the 1970s. The dissolution of the Soviet Union, the Yugoslav Wars, and new immigration policies (such as Legge Martelli of 1990) contributed to a rapid influx of sex workers in 1989-1990 originating from former Soviet bloc countries. A second wave of immigrant sex workers from Nigeria and Peru, arriving to Italy using tourist visas and staying in the country after they had expired (the so-called *clandestini*) ensued, followed by a third wave from Albania. The fourth wave in 1995 also came from Nigeria and Albania, while in 1996-1998, even more migrants came from Moldova, Lithuania, and Albania. Italian immigration laws became much more restrictive in 1998, with the enactment of the Legge Turco-Napolitano.

With migration, street prostitution also became more visible, with the prostitutes now being considered to be mainly foreigners. Among these migrants were women who took up prostitution with varying degrees of voluntariness, with some women suffering coercion and debt bondage (human trafficking), including under-aged girls. The issues of foreign nationals, coerced prostitution, and under-aged prostitutes have re-shaped the prostitution debate in Italy in recent years. Descriptions of the conditions of migrant women, particularly young women, on the streets, shifted the debate in the 1990s from the perception of prostitutes as independent and assertive women to that of victims of male violence.

While it was always possible to request a residency permit on humanitarian grounds, this was not well known or utilised by foreign sex workers. In 1996, the first "Justice Permit" for trafficking victims who denounced their traffickers was introduced. The position of the relatively weak and scattered women's movement was that victims should not be further victimised by having them expelled to their home country, or by putting them in a possibly life-threatening situation.

In 2008, a new bill outlawing street prostitution was introduced and approved. This bill is framed as an amendment to the Legge Merlin of 1958, by providing for penalties for the act of prostitution, solicitation or availing oneself of sexual services in a place open to the public (Art. 1). Article 2 provides for penalties for recruiting, inducing, promoting, using, managing, organising, controlling, or profiting from the sexual services of a person under 18, or for those promising any kind of reward for a sexual act with a person between 14 and 18. It also provides for repatriation of foreign minors engaging in prostitution. Article 3 deals with organised crime, penalising conspiracy to exploit prostitution via article 416 of the penal code. Article 4 provides no new resources and repeals article 5 of the Legge Merlin, which it replaces, prohibiting *libertinaggio* (solicitation constituting offence or harassment) subject to up to 15 days imprisonment.

The bill is opposed by the Catholic Church, sex workers, harm reduction advocates, feminist groups, lawyers and human rights and immigrant groups, and continues to be a matter of both popular and academic debate. A 2010 court decision created a new precedent in that clients who did not pay the worker would be considered guilty of rape. This was considered a major breakthrough for sex workers' rights.

Trafficking of migrant women for prostitution in Italy

Human trafficking is a transnational crime that is defined in Article 3 of the “*Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Human Trafficking, in particular Trafficking Involving Women and Children*”³. According to this definition, human trafficking means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The European Union has issued two directives on trafficking in human beings: Council Directive 2004/81/EC of 29 April 2004, on the residence permit issued to third-country nationals who are victims of trafficking in human beings, or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; and Directive 2011/36/EU of the European Parliament and of the Council, of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council’s Framework Decision 2002/629/JHA. At a wider European level, trafficking in human beings is defined by the Convention on Action against Trafficking in Human Beings⁴.

In Italy, the offense of human trafficking is defined by Article 601 of the Criminal Code, as amended by Legislative Decree 24/20146, as part of the transposition of the EC Directive 2011/36/EU. Article 18 of the Consolidated Act on Immigration and Article 27 of the Implementing Regulation govern the procedures for issuing a residence permit “for social protection” to a foreigner whose safety is at risk due to attempts to escape a criminal organisation committing crimes such as forced prostitution, child exploitation, begging, enslavement and human trafficking punishable by mandatory arrest *in flagrante delicto*, pursuant to Article 380 of the Criminal Code, or as a result of statements provided during preliminary investigations or trial procedures.

The Global Slavery Index estimates that on any given day in 2016 there were 145,000 people living in conditions of modern slavery in Italy. This is a prevalence of 2.4 victims for every thousand people in the country. In 2016, according to the Italian government’s current database for tracking trafficking cases, 1,172 victims of trafficking were assisted under the national protection program. The most commonly reported form of exploitation was forced sexual exploitation (674), with females representing 81% of the total number of victims (954). Nearly 10% of the victims were children (111) and about 59% of the total were from Nigeria (696)⁵.

Women migrating from Nigeria to the European Union (EU) in particular are at risk of being exploited in Italy in the sex industry. The International Organisation for Migration (IOM) estimates that about 80% of Nigerian women and girls who arrived in Italy by sea in 2016 are likely to have been trafficked

³ Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Human Trafficking, especially Trafficking involving Women and Children (2000).

⁴ Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005.

⁵ <https://www.globalslaveryindex.org/2018/findings/country-studies/italy/>

for the purpose of sexual exploitation in Italy or other EU countries. A smaller number of women and girls originate from Kenya, Ghana, and the Ivory Coast. Outside Africa, other countries of origin from which the highest numbers of women are trafficked are Romania, Albania, Moldavia, Russia, Ukraine and Bulgaria. There are various differences in the modalities of trafficking between those women and girls trafficked from Africa and those trafficked from Eastern Europe.

Over the past three years, IOM Italy has seen an almost 600% increase in the number of potential sex trafficking victims arriving in Italy by sea⁶. This upward trend has continued during the first six months of 2017, with most victims arriving from Nigeria. In many cases, Nigerian women come from a specific part of the country, the Edo region, and are forced into slavery through contracts signed in Nigeria involving specific forms of religious blackmail known as *juju*. This is a bonding ritual performed by local priests, typically involving women's blood, nails, or body hair, through which victims are psychologically bound to their traffickers to repay the debt incurred to pay for their travel to Italy. These traffickers have associates operating in Italy, called madams, who bring the victims under their control and force them to work in the sex industry to repay these debts. In many cases, Nigerian women are unwilling to denounce their exploiters once they arrived in the country because they are afraid of the consequences of breaking a *juju* oath.

According to research conducted by Pathfinders⁷ among hundreds of repatriating survivors of sex trafficking in Edo State, poverty remains the number one factor rendering women and girls vulnerable to sex trafficking. However, additional factors such as parental pressure, eroded mindset/values and limited education and economic opportunities combine to render young women and girls vulnerable to being trafficked.

Victims suffer many psychological consequences from being trafficked and prostituted. Many of them end up having serious psychological problems as a consequence of the magic *juju* rites and the mental and physical violence to which they are subjected. Because they believe that they are being helped by those who traffic them, the realisation that their helpers are exploiting them in vicious ways is often the cause of great psychological suffering.

Exploiters use various and cruel forms of violence: verbal and physical abuse; rape; burning women and girls with hot irons if they refuse to prostitute; making them continue prostituting on the road even when they are ill, menstruating, or pregnant; forcing them to undergo abortions without anaesthetics; forcing them to risk their lives by having unprotected intercourse; taking away their children as leverage to make them submissive; and attacking their families in Nigeria as a way of pressuring them to continue prostituting. As part of the psychological pressure, victims are told lies, such as stories of how the Italian police shoot at girls without residence permits. The list of humiliations and violence is endless⁸.

Trafficking of women and girls from Eastern Europe is, in many aspects, similar to that of Nigerians, especially the physical and psychological violence to which they are subjected. The dynamics of trafficking are, however, different. The model of trafficking used by Eastern European traffickers is industrial in contrast to the helping model used by Nigerian traffickers. In the majority of cases, criminal organisations operating in these Eastern European countries are quite violent and aggressive. The victims are controlled physically, kept under surveillance, and easily sold from one gang to another, often with the collusion of girlfriends who may either be currently or formerly in prostitution, and who monitor the fresh recruits who are made to prostitute on the roadside.

⁶ Human trafficking through the central Mediterranean route: data, stories and information collected by the International Organisation for Migration

https://italy.iom.int/sites/default/files/news-documents/IOMReport_Trafficking.pdf

⁷ <http://pathfindersji.org/nigeria-human-trafficking-factsheet/>

⁸ *Trafficking for Prostitution in Italy* - Esohe Aghatise - Associazione IROKO Onlus

Following the end of the east-west divide and the opening of the former east European countries to the west, Albanian women and girls began to arrive in Italy. Unscrupulous men promised many of the trafficked Albanian women and girls marriage and a rich life in western Europe. Albanian women and girls often come from traditional patriarchal societies, where family honor and purity of the girls at marriage are very strong values. When in Italy, the Albanian men who have convinced the women and their families that they will marry the women on arrival are the same men who then turn them to roadside prostitution. The men plead sudden economic difficulties and cajole the women into believing that they can only obtain money through the women's temporary prostitution. For love of their men, the victims end up selling their bodies on the roadside.

Women and girls from other east European countries are often recruited from topless bars, where they are already engaged in sexually exploitative situations and are earning very little money. Scouts pick them up in the clubs and traffic them to Italy and other EU countries with promises of earning much more in a short time. Believing that they are going to earn a lot of money, victims find they are hardly able to put together a living because they must pay hotel bills and many other expenses. Some victims trafficked from Bulgaria and the Ukraine report that they were abducted on their way home from school or work.

Trafficking from Romania is conducted mainly by Romanian men, with the involvement of some Italian men. Until the Romanian victims become sick or die, whatever they earn is handed over to their exploiters. Driven by their inability to keep any of the money they net from prostitution, and following the availability of services and protection for victims of trafficking a large number of Romanian victims escape from their exploiters and seek assistance. Because of the high incidence of escapes, some of the Romanian traffickers have now agreed to let Romanian victims keep a part of their earnings.

With the passing of the law on immigration in 1998, a legal framework was created for assisting victims of trafficking. Until 1998, there had been no specific legal framework within which social protection and services could be given to victims of trafficking. A previous law, Law Decree 477/96, granted special 1-year residence permits to non-European citizens exposed to serious peril in Italy, if they cooperated with the police and made legal declarations during the course of preliminary investigations or a trial in a penal proceeding. However, the provisions of this law were not accompanied by measures of social protection and general assistance to victims.

Although there is collaboration between the police and NGOs offering services to victims, a negative aspect of police involvement in trafficking cases is the focus on attempts to repress what is called the moral degradation of social life, which is often blamed on the presence of foreign women in prostitution in Italy. This attitude encourages increased police repression of foreign women and girls engaged in roadside prostitution. Especially if the women and girls do not collaborate with the police, refusing to reveal or give comprehensive information about their exploiters, they may be picked up by the police along the roadsides and deported to their countries of origin. The police regard these deportations as penalising the exploiters, not the victims themselves, because the police maintain that such actions cause a financial loss to the criminal organisations and traffickers who lose at least one week of a woman's earnings. Although some of these women and girls may be trafficked back into Italy to engage in prostitution, as in the case of the Albanians, the police think that deportations still represent a financial setback for the traffickers requiring additional expense to bring the women back into Italy.

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