

ANTONIO BALSAMO*

PROTECTING HUMAN DIGNITY THROUGH CRIMINAL LAW: FROM MODERN SLAVERY TO FREEDOM THROUGH JUSTICE**

ABSTRACT. This paper explores the evolving challenges of human trafficking and the critical role of criminal law in safeguarding human dignity. It highlights the increasing complexity of human trafficking, driven by global crises and digital exploitation, and underscores the need for enhanced judicial responses. The study advocates for a human rights-based approach to international judicial cooperation, emphasizing the cross-fertilization between the European Convention on Human Rights and the UN Palermo Protocol. It examines recent Italian Supreme Court case law affirming the principle of non-punishment for trafficking victims, particularly through the lens of state of necessity. Furthermore, the paper discusses the social reuse of confiscated assets as a tool for inclusion and resilience against organized crime, showcasing innovative practices in Italy and across the EU.

CONTENT. 1. The evolution of human trafficking and the progress required in judicial activity. – 2. The fruits of cross-fertilization between ECHR and UN Palermo Protocol: towards a human rights-based approach to international judicial cooperation. – 3. The principle of non-punishment of victims of trafficking in persons in the recent case-law of the Italian Supreme Court. – 4. Social reuse of confiscated assets as a factor of inclusiveness.

* Deputy Attorney General at the Court of Cassation.

** The article builds upon the presentation given at the conference “International Protection Of Human Dignity Through Criminal Law: Strengthening Italy’s Implementation Record (Dignita)”, held on February 25th, 2025, and organised by RomaTre University.

1. *The evolution of human trafficking and the progress required in judicial activity*

There is a growing awareness that human trafficking is a multi-billion-dollar business that has changed dramatically in recent years, driven by global challenges such as war, large migration and refugee flows, cybercrime, climate change. The involvement of organized crime and the rapid evolution of digital technologies have exacerbated the situation. Online technologies are regularly abused to exploit trafficking victims. Financial crises, armed conflicts and forced displacement have strained justice systems, significantly reducing investigations, prosecutions, victim identification and protection.¹

The statistics on trafficking in human beings published by Eurostat on 24 January 2024 showed that in the European Union there was an increase in the number of detected victims and a decrease in the number of suspected and convicted traffickers in 2022, compared to 2021.

In particular, 10,093 victims of human trafficking were registered in the EU in 2022, an increase of 41% compared to 2021. Over the same period, the number of suspected traffickers (8,064) decreased by 16% and the number of convicted traffickers (2,097) decreased by almost 17%.

The same statistics highlighted that in 2022, for the first time, the number of registered victims for labour exploitation (3,990) came close to the number of victims sexually exploited (4,014), each amounting to about 41%: therefore, the percentage of labour exploitation was almost equal to that of sexual exploitation, while trafficking for other purposes – criminal activities, forced begging, benefit fraud, organ removal and others – reached a total of 1,699 victims (18% of all trafficking victims).

It is therefore clear that facing these new challenges requires a shift in judicial activity, both in terms of international judicial cooperation and at a domestic level, with the aim of bringing victims from modern slavery to freedom.

¹ See ‘UNODC launches new action to combat human trafficking and migrant smuggling’ (22 April 2024) <www.unodc.org/unodc/en/press/releases/2024/April/unodc-launches-new-action-to-combat-human-trafficking-and-migrant-smuggling.html> accessed 8 September 2025.

2. *The fruits of cross-fertilization between ECHR and UN Palermo Protocol: towards a human rights-based approach to international judicial cooperation*

The methodology of legal reasoning and interpretation illustrated by Paulo Pinto de Albuquerque, which aims at the cross-fertilization of international human rights and other fields of international law,² appears to be more important than ever today in the field of international judicial cooperation.

Until a few years ago, international judicial cooperation was essentially considered as a network of obligations binding states to one another, within an intergovernmental framework, for addressing the transnational dimension of a wide range of criminal phenomena.

The recent case law of the European Court of Human Rights, however, brought about a significant change in the overall role of judicial cooperation, which is no longer limited to a purely intergovernmental perspective, but is, instead, firmly rooted in the protection of fundamental human rights.³

Such a new approach entails including mutual legal assistance within the framework of positive procedural obligations arising from the provisions of the ECHR, aimed at protecting the fundamental rights of victims and binding on all state authorities: executive, legislative, and judicial.

As noted by prominent scholars,⁴ this perspective was opened by the judgment issued by the European Court of Human Rights on 7 January 2010 in the case *Rantsev v. Cyprus and Russia*, which developed an innovative and systematic interpretation of the ECHR in light of the Palermo Protocol (i.e. the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime).⁵

² See the separate opinions of judge Pinto de Albuquerque in several ECHR judgments, including *Hrvatski Liječnički Sindikat v. Croatia*, no. 36701/09, 27 November 2014; *Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012; *K.M.C. v. Hungary*, no. 19554/11, 10 July 2012; and on points of principle, *Case of Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (GC), no. 47848/08, 17 July 2014.

³ Maria Assunta Accili Sabbatini, 'La Convenzione di Palermo e i negoziati per il rafforzamento della cooperazione internazionale' (2019) 5(4) *Rivista di Studi e Ricerche sulla criminalità organizzata* 29 35-37.

⁴ Serena Forlati, 'The notion of Organised Crime and the European Convention on Human Rights', in Stefania Carnevale, Orsetta Giolo and Serena Forlati (eds), *Redefining Organised Crime. A Challenge for the European Union* (Hart Publishing 2017).

⁵ In particular, paragraph 289 reads as follows: 'In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking

By doing so, the European Court of Human Rights relied on the UN Palermo Protocol, as well as the Council of Europe Convention on Action against Trafficking in Human Beings, in order to construe the scope of article 4 ECHR (prohibition of slavery and forced labour) and of the positive obligations stemming from that article.

As a consequence, obligations to rely on instruments for international cooperation, whenever this would be conducive to the effective protection of human rights, can be construed as a facet of the obligation to protect human rights.⁶

Such a development refers to a matter – the serious violations of fundamental rights connected to human trafficking – in respect of which important innovations were introduced as to the mechanisms of judicial cooperation.

It is worth mentioning the relevant experience developed at the Public Prosecutor's Offices of Palermo and Catania and at the National Antimafia and Counter-Terrorism Directorate, where, in the context of pilot projects carried out in partnership with UNODC, it was possible to benefit of the cooperation of three magistrates, respectively from Nigeria, Ethiopia and Eritrea.⁷

A significant peculiarity of this experience consists of the enhancement of the functions of the liaison magistrate, employed not only as an intermediary (or facilitator of contacts) between the competent authorities of two countries, but also as a real partner in investigation. The advanced model of cooperation thus created was described as a 'co-working system', where the liaison magistrate performed the functions of an investigative link with the host country, working side by side with the Italian prosecutors. The liaison magistrate participated personally in operational and coordination meetings, learning new techniques and building up new experiences, and, at the same time, providing the Italian colleagues with his/her know-how and legal/judicial knowledge, and with the keys to decrypt criminal behaviour and strategies.⁸

cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories. Such a duty is in keeping with the objectives of the member States, as expressed in the preamble to the Palermo Protocol, to adopt a comprehensive international approach to trafficking in the countries of origin, transit and destination.'

⁶ See UNODC, 'Issue Paper. The United Nations Convention Against Transnational Organized Crime and International Human Rights Law' (April 2022) <https://www.unodc.org/documents/organized-crime/tools_and_publications/21-01901_UNTOC_Human_Rights_eBook.pdf> accessed 8 September 2025.

⁷ See Antonio Balsamo, 'Twenty years later: the new perspectives of the Palermo Convention' (2020) 6(3) *Rivista di studi e ricerche sulla criminalità organizzata* 5; Chervine Oftadeh and Annalisa Pauciullo, 'Rethinking Judicial Cooperation between Africa and Europe' [2019] *Eu crim* 194.

⁸ Giovanni Russo, 'Strengthened judicial cooperation between Nigeria and Italy: key results and case briefs', presen-

3. *The principle of non-punishment of victims of trafficking in persons in the recent case-law of the Italian Supreme Court*

As pointed out in the UNODC's Legislative Guide to the Palermo Protocol, the rationale of the principle of non-punishment of victims of trafficking in persons is grounded in foundational criminal law principles that recognize that criminal liability should be based upon voluntary conduct. The non-punishment principle is also seen as an important tool to increase the likelihood that victims will exit their trafficking situation and cooperate freely with law enforcement and other authorities in the investigation and prosecution of their traffickers. Furthermore, the principle helps to safeguard the rights of victims, to ensure that they are provided immediate access to necessary support and services and to avoid subjecting them to further trauma or victimization.

Since 2012, the Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe stressed that 'criminalisation of victims of trafficking not only contravenes the State's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the State's obligation to investigate and prosecute those responsible for trafficking in human beings.'⁹

However, there is significant variation in the manner in which the non-punishment principle has been introduced in the domestic legal systems of the different countries.

The non-punishment principle has been enshrined in domestic legislation in some States, such as Argentina and the UK.

In particular, the UK has given the non-punishment principle domestic legal effect through the Modern Slavery Act 2015, the Nationality and Borders Act 2022, the power of the criminal courts to stay a prosecution as abuse of process and the review process via the appellate courts.¹⁰

tation delivered at the side event held on 14 October 2020 on 'Deploying African Liaison magistrates to fight transnational organized crime: Building on the Nigerian experience.'

⁹ GRETA, 'Second General Report on GRETA's activities' (4 October 2012) <<https://rm.coe.int/greta-2012-13-2ndgenrpt-en/16807b4d74>> accessed 8 September 2025.

¹⁰ IBA Legal Policy & Research Unit and British Institute of International and Comparative Law, 'Human trafficking and the rights of trafficked persons' (2023) <https://www.biiicl.org/documents/171_human_trafficking_and_the_rights_of_trafficked_persons.pdf> accessed 8 September 2025.

In other countries, the principle is not enshrined in hard law (e.g., criminal code provisions) or procedural standards (e.g., prosecutor guidelines), but other defences under national law can have similar effects to the principle (e.g., the common law defence of duress).

As indicated by the GRETA reports, there is still no specific provision on the non-punishment of victims of human trafficking in Italy. If a victim of trafficking is involved in criminal activities, general criminal law rules on the exclusion or limitation of criminal liability can be applied. In particular, Article 54 of the Criminal Code provides that a person is not punishable for a criminal offence committed in a state of necessity, provided that the act committed is proportionate to the danger avoided. But examples of the application of the general criminal law provision on ‘state of necessity’ to victims of trafficking continued to be very limited until 2024.¹¹

However, there is a new commitment to implement the non-punishment principle in the most recent case-law of the Italian Supreme Court.

Such an approach is clearly expressed in the Supreme Court of Cassation ruling No. 2319/2024, which overturned the previous two-month prison sentence of a woman who complained of being forced to flee, at just 18 years old, and of having been subjected to very serious violence by traffickers during her journey from Nigeria to Libya, repeatedly raped, with constant danger to herself and the accumulation of a huge debt repaid first with the prostitution activity in Italy and then by complying with the proposal to become a drug courier.

Ruling no. 2319/2024 is based on an interpretation of Article 54 of the Criminal Code consistent with European and international law and opens a path of cross-fertilization in which human rights become the ‘common language’ that makes justice a powerful factor for social inclusion.

A new concrete meaning is given to the defence of state of necessity, which can be invoked by a vulnerable person who appears to be victim of human trafficking, subjected to conditions of subjugation by criminal organizations dedicated to drug trafficking, and forced to transport narcotics, without a concrete possibility of escaping the dangerous situation by resorting to the protection of the authorities.

To this end, the judge is tasked with determining, through an individualized assessment, the specific situation of the victim, taking into account factors such as her personal conditions at the time of departure from Nigeria and her experiences during

¹¹ GRETA, ‘Evaluation report Italy. Third evaluation round’ (23 February 2024) <<https://rm.coe.int/greta-2024-03-fgr-ita-en-2750-4314-7273-1/1680ae9f81>> accessed 8 September 2025.

the journey, including in transit countries; her living conditions in Italy (with specific reference to the working context, the relationship with compatriots, the sources of livelihood and the sexual exploitation suffered); the existence of a debt, its amount, and the reasons why it was contracted; the need to repay the debt with specific concern for her family; the specific condition of subjection to the will of others; the belief that she cannot escape the control of her exploiters and that she cannot resort to the authorities; the connection between the nature of the danger threatening her and the crime for which she is being prosecuted; the risks to which she would have been exposed if she had refused, with reference to possible retaliation, even indirect, by her exploiters.

There is no doubt that the aforementioned Supreme Court ruling can play a key role in protecting the dignity of victims of human trafficking, fostering the renewal of our legal culture on an international horizon.

4. *Social reuse of confiscated assets as a factor of inclusiveness*

Significantly, the new frontier of the harmonization of the legislation of the Member States of the European Union on the fight against the economic dimension of crime also includes the most expressive definition of the social reuse of confiscated assets.

Indeed, whereas 38 of Directive (EU) 2024/1260, on asset recovery and confiscation, reads as follows:

The social reuse of confiscated property sends a visible message to society in general regarding the importance of values such as justice and legality, reaffirms the prevalence of the rule of law in communities more directly affected by organised crime, and builds the resilience of those communities against criminal infiltration in their social and economic fabric, as observed in those Member States that have already adopted such social reuse measures.

Therefore, Member States are encouraged to take the necessary measures to allow for the possibility to use confiscated property for public interest or social purposes, so that it is possible to maintain confiscated property as State property for justice, law enforcement, public service, social or economic purposes or to transfer such confiscated property to the authorities from the municipality or region where it is located so that those authorities can use it for such purposes, including for assignment to organisations carrying out work of social interest.

A meaningful experience is underway in Palermo, where a social tailoring enterprise (*Al Revés Società Cooperativa Sociale*), based in a building confiscated from the Sicilian mafia, is achieving significant results in the rehabilitation of migrants and vulnerable people.

As a factor of inclusiveness, the social reuse of confiscated assets has become a relevant point of convergence between international cooperation and protection of victims of human trafficking.

Worth noting is the outcome of the innovative procedure by which the Italian government returned to France, for social use, an apartment located in Paris, confiscated from a member of the Calabrian mafia following an Italian judicial decision. On 24 February 2021, the *Agence de gestion et de recouvrement des avoirs saisis et confisqués* (AGRASC), which was entrusted with the management of this apartment, leased it to the association *l'Amicale du Nid*, which provides assistance to victims of the prostitution system and supports them in their efforts to change their lives.

Experiences like these shed light on the rationale behind EU Member States' joint commitment to combating organized crime. It is not just a matter of criminal justice. It is also, and above all, a far-reaching strategy aimed at ensuring that every person, and especially the most vulnerable members of society, can enjoy their human rights and fundamental freedoms, as stated in the "Falcone resolution" (resolution 10/4) adopted in 2020 by the Conference of the Parties to the Palermo Convention.