

**Comparative national action against  
modern slavery:  
The domestic workers issue.  
Belgium, Spain, France, Italy**

**Daphne Initiative  
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**Avec le soutien de la  
Commission européenne**

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## INTRODUCTION

The Universal Declaration of Human Rights and the Civil and Politics Rights International Covenant state that:

“No one shall be held in slavery nor in servitude; all forms of slavery and the trade of slaves are prohibited”.

Slavery, an economical, a human and a social reality of our century was still a legal institution in the 19<sup>th</sup> century. Wars between France and Great-Britain led to a disruption of the transatlantic trade (and not of slavery). In 1814, those two states planed to suppress the slave trade (Treaty of Paris). In 1815, by the declaration of the Vienna Congress, other six states were willing to do so. The years 1831, 1833 and 1845 will emphasize on the fight against the trade. Even if those treaties did not punish the trade, it was a first step in refusing slavery internationally. At the end of the 19<sup>th</sup> century, the General Act of the Berlin Conference in 1855 and the General Act of the Brussels Conference in 1890 envisaged the suppression of slavery but it was abolished only in 1919 by the Treaty of Saint-Germain-En-Laye.

The United Nations Society and then, the United Nations have been fighting also against slavery. In 1926, the international convention on the Abolition of slavery which looked like the Brussels Act, was adopted.

In 1956, under the social and economic Council of the UN's suggestion, another convention was adopted and added a listing of all kinds of forms of servitude, slavery, debt bondage. It did not mention forced labour which will be dealt with by the International Labour Organization in the Convention n°29 of 1930 on forced labour and in 1956, in the convention n°105 that abolished forced labour.

All these treaties and conventions show their relative efficiency.

As regards the traffic in human beings and the exploitation of the prostitution of a person, the General Assembly of the UN adopted in 1949 the convention on the suppression of the traffic in human beings and of the exploitation of the prostitution of a person.

Slavery has been the first important phenomenon to strike a blow at human rights and is still considered as a priority despite of its condemnation. Nowadays, slavery covers a variety of fundamental rights violations and is extended to “ the sale of children, child prostitution, child pornography, children exploitation, sexual mutilation of young girls, the use of children in armed conflicts, debt bondage, trafficking in persons and the sale of human organs, the exploitation of prostitution” and domestic slavery and economic slavery.

Other regional institutions such as the European Union (EU) and the Council of Europe (COE) are fighting against this reality.

Thus, the EU, by the Joint Action of the 24<sup>th</sup> of february 1997 (97/154/JAI) (see appendix 10) related to the fight against trafficking in human beings and the sexual exploitation of children suggests the revision to member States of their legislations in order to set up “efficient, deterrent and proportional criminal penalties” for those who are responsible for the international traffic. The EU also recommends to member States to take the proper measures to assume the victims’ protection. This initiative is due to Belgium after the adoption in 1995 by the belgian parliament of a law (April, the 13<sup>th</sup> 1995) dealing with the traffic in human beings.

Moreover, under the Dutch chairmanship of the EU, the conference of the Ministers of employment and social services adopted in April, the 26<sup>th</sup> 1997 the Hague Declaration in which they encourage the prevention of the traffic in human beings, the repression of criminal organisations and the victims’ protection.

At the moment, Italy is the only one to have considered in its legislation the 1997 Joint Action recommendations and the Hague Declaration. Nevertheless, the austrian and spanish parliaments were discussing in 1999 the introduction of some of these recommendations in their legislations.

Throughout this comparative study, we will focus on european legislations as regards slavery and the traffic in human beings and more particularly the one of Belgium, Spain, France and Italy. We chose those 4 countries because they are those who were really willing to get involved in the fight against slavery with the Committee against modern slavery (CCEM). Thanks to the project of Daphné Initiative supported by the European Commission, there exists today in Europe, with Anti-Slavery International (Great-Britain) and the CCEM-France, other committees in Austria, Belgium, Spain and Italy.

National legislations related to the fight against slavery (Part I) and the victims' protection (Part II) will be presented and compared; then, the special case of employers protected by a diplomatic immunity (Part III) will be examined.

## **I – National legislations as regards slavery.**

### **A – Slavery, a reality not legally recognized in France and in Spain.**

#### **1. Despite of a late abolition by France.**

The constitution only recognized the prohibition of slavery as a constitutional principle (art.18) in 1793.

Until 1848, the term of “slavery” meant legal bondage in France but since its abolition, slavery disappeared in the french legislation. Only remains a formal conviction of slavery as a crime against humanity (art. 212-1 of the New Penal Code) which implies a notion of “mass” that is not applicable to individual cases of slavery.

The New Criminal Code and the labour regulations punish some component elements of slavery without defining it globally. Indeed, the new criminal code prohibits the abduction of a person (art. 224-1), the abuse of a person's vulnerability (art. 225-13) and to subject a person to living and labour conditions contrary to human dignity (art.225-14).

At last, the labour regulations prohibit clandestine work and resorting to illegal workers (art. L.324-9).

All those provisions allow to suit any person responsible for reducing domestic workers to slavery.

In France, courts have pronounced a decision on that matter the first time on the 16<sup>th</sup> of March 1999 (Charline RAHANTANIRINA v. RAJAONA and RATOVO RABESETROKA) and on the 10<sup>th</sup> of june 1999 (Henriette SILIADIN v. the BARDET spouses).

In total, France has a legislation roughly complete as regards modern forms of slavery.

## **2. The new spanish criminal code does ignore slavery despite of the emergence of the international realization.**

Spain and France are in the same situation. Spain does not have any legal provision related to slavery despite of the criminal code. The information of the public and of the authorities still has to be done.

Article 311 punishes the imposition of abusive working conditions by means of fraud, violence, intimidation and the abuse of a situation of necessity.

The spanish supreme court has already begun to work on that direction as we can see in a case decided on the 12<sup>th</sup> of march 1991.

Article 312 punishes the traffic in the workforce and the use of clandestine immigrants.

At last, art.316 punishes the lack of prevention relating to the risks that could imply the work.

The new spanish criminal code, as well as the french one, defines some behaviours such as intimidation, all sorts of violence and so on. These delicts, generally presented, can be applied to abusive behaviours against any person and particularly to a slavery situation.

## **B – Slavery, a reality legally condemned by Belgium and Italy.**

### **1.Belgium has punished the traffic in human beings since 1995.**

The belgian criminal code does not give a definition of slavery but punishes and defines the traffic in human beings, preferring that notion than the one of slavery (the 13<sup>th</sup> of april 1995 Act), (see appendix 2).

The law dealing with the repression of the traffic in human beings and child pornography gathers articles of the criminal code which punishes 3 clear situations:

-the trade of foreigners (art.77 bis of the 15<sup>th</sup> of december 1980 Act).

- trafficking in adults and minors for the purpose of prostitution (art.380 bis).
- child pornography (art.383 bis).

It is important to notice that these offences considered as elements of the traffic are not necessarily linked to the international traffic in human beings and art.77 bis of the 15/10/80 Act punishes the exploitation of foreign people but without any connection to their sexual exploitation. The belgian legislation like the french, the italian and the spanish ones, punishes the abuse of vulnerability which could infer that european national legislations do give a special importance to this crime and consider it as a priority.

Chapter III, art.8 of the 1995 Act gives an extraterritorial effect to the belgian legislation.

The directives of the 13th of january 1997 to the Office of Foreigners, to the Public Prosecutors' Department and to the social services inspection related to the assistance of the victims of the traffic in human beings (Moniteur belge 21/12/97), reassert that trafficking concerns a multitude of exploitation situation of a person or of a person's work specially foreigner and in different economical areas. Thus, the ambiguity of the traffic in human beings definition in the 13/04/95 Act seems to have disappeared.

Domestic slavery such as defined by the CCEM seems to fall within the scope of art.77 bis of the 15/12/80 Act on foreign people, then used in the law dealing with the traffic. Indeed, the CCEM defines domestic slavery under 5 criterias, 3 of which are cumulative:

- the confiscation of the victim's papers
- the abuse of vulnerability
- working and living conditions contrary to human dignity
- cultural isolation
- family isolation (.../...).

## **2. Italy does punish slavery under international conventions.**

The italian criminal code has maintained in its legislation articles respecting the 1926 and 1956 UN international conventions on the abolition of slavery and the trade of slaves and all slavery-like practices.

Indeed, in chapter III “delicts against personal freedom”, section 1 “delicts against the individual personality”, enslavement (art.600), the trade and the traffic in human beings (art.601) and the sale and the purchase of slaves (art.602) are punished. Nevertheless it seems that there is no definition of slavery in the Italian legislation.

Article 600 of the Italian Criminal Code states that “*anyone holding a person in slavery or in any slavery-like condition is sentenced to 5 up to 15 years imprisonment*”.

At present, the Italian Parliament is debating 2 reform bills of the Criminal Code.

A private bill (progetto di legge n°5350) presented on the 2<sup>nd</sup> of November 1998 by a member of Parliament, introduces in section 1 of chapter III of the Criminal Code an art.601 bis which defines the traffic in human beings (see appendix 8).

It also provides for prevention and protection measures for the victims by means of a freephone number, specialized reception centres, reinsertion programs and the creation of a national observatory on the traffic in human beings.

The Social Services and the Home Office ministers presented on the 23<sup>rd</sup> of March 1999 to the Council of Ministers a private bill (disegno di legge n°5839) (see appendix 7) that modifies section 1, chapter III of the Criminal Code adding an art.602 bis which qualifies all kinds of human beings exploitation as a “crime” and not as an “offence” anymore (15 years imprisonment). Thus, it gives a clear distinction of the “traffic in human beings”, be it international and national.

The Italian government is willing to adopt criminal provisions punishing a maximum of modern forms of slavery, slavery-like practices, the trade and the traffic in human beings.

## **II – The protection of the victims.**

### **A – A lack of protection in France and in Spain.**

#### **1.The french isolated position.**

France is the only country not to have an administrative protection and a social assistance program for the victims. In the absence of specialized structures, the protection, the social assistance and legal aid of the victims is assumed by NGOs such as the CCEM.

Until now, the victims' stay is dealt with by an Order of the 2<sup>nd</sup> of november 1945, in its drafting of the 11<sup>th</sup> of may 1998 (see appendix 1).

However, in most of the cases, any of the regularization heads provided by this Order is applicable to these cases. Then, they will be decided under the discretionary power of the Prefecture administration as told by the supreme administrative court: " *in all cases where an explicit provision (...) does not forbid it (...)*", *the administration can always "straighten out pending procedures in front of it"*.

Experience has showed that the submission for an out-of-court settlement is ineffective. Therefore it seems important to set up an adequate procedure in order to assume the regularization of the foreigners' stay, presence of whom is required on the french territory under legal procedural regulations.

The report "for a new policy of the victims' assistance" emphasizes "that the victim can not be categorized but is a human being. To help the victim can not be limited to prosecution. The victim can get damages because of ill-treatment (...). Thus, any policy related to the victim's assistance must first of all take in charge the guarantee of the person's fundamental rights who suffered the consequences of a criminal offence".

This report shows that politics are really willing to take action. The Prime Minister wants to go on with the efforts that were done 15 years ago. In conclusion, politics want the authorities' action to take into consideration the working-out of a blueprint law and the setting-up of a first plan of actions dealing with the new policy regarding the victims' assistance within 2 years.

So, a blueprint law should be taken in order to give a definition of the “victim” and to mention what his/her rights are. This legal text should precise national and local procedures to help him/her. The national program implemented within 2 years should create a great interest in favour of the victims.

If we pay attention to the new policy on the assistance of the victims regarding the European Joint Action on the fight against trafficking in human beings, we must notice that any residence permit is envisaged for foreign victims in an illegal situation whereas the report emphasized the existence of “forgotten or ignored victims”.

As the submission to an out-of-court settlement is uncertain, how a public policy to assist the victims can take them into account if it does not provide for their regularization, specially by means of a temporary regularization in order not to fear any legal procedure against them?

Finally, if France has confirmed its policy of assistance, the actions and propositions cited in the report are hardly applied to the victims of domestic slavery because most of them are foreigners and in an illegal situation.

Since the creation of the CCEM (30/03/94), the number of victims has been increasing: from 105 in september 1998 to 191 in october 1999.

Among the victims, those from the Ivory Coast (19 cases), Madagascar (17 cases), India (15 cases) and Philippines (15 cases) are larger. Most of them are in an illegal situation and to get them more vulnerable, employers keep their passports. Victims are mainly women but men are also involved (14%). 26% of the victims suffered from physical violence and 9% suffered from sexual offences.

31 minors out of 39 in France have been taken in charge by the CCEM. Amongst them, 5 were under 18 at the end of 1999, one teenage died, 6 suffered from torture and 10 were raped.

Until october 1999, 149 slave employers have been recorded by the CCEM. 40 different nationalities are involved but most of the employers come from West Africa (43 persons) and Middle East (30 persons); 29 are french.

23% of the employers was part of an embassy staff or international state employee protected by an immunity of jurisdiction.

At the end of 1999, lots of legal procedure were being examined, 38 of which in front of a criminal court, 3 in front of the industrial tribunal and one in front of a civil court. There are 25 pending cases: 5 criminal cases, 7 in front of the industrial tribunal and 13 out-of-court settlements. 26 cases were reorientated towards associations and other 36 cases were left because of a lack of evidence, cooperation with justice or of prescription.

## **2. The spanish minimum protection.**

Unlike France, Spain assures the foreign victims' regularization restrictively. The Royal Order 155/1996 of the 2<sup>nd</sup> of february 1996 confirming the 26/03/84 Act (5/1984) on the right of asylum and the refugee's status, governs the conditions of the foreigners' stay and provides in its art.53 for the possibility to be granted a residence permit under exceptional circumsatnces which has a one-year validity and is renewable for 3 years. It is granted for humanitarian motives, particularly to victims of racism and xenophobia (see appendix 9). Unfortunately, this provision is not clear enough to be sure that it could be applied to victims of slavery.

The Comite Contro la Esclavitud moderna en el Estado Espanol" which was created recently, has not been able yet to give statistics on domestic slavery but can assure that this form of slavery is not marginal in Spain.

## **B – The protection and the assistance organized by the belgian and italian law.**

### **1.Important protection measures in Belgium but subjected to conditions.**

Since 1994, the belgian legislation (decree of the 7<sup>th</sup> of july 1994) (see appendix 4) provides for the delivery of a residence permit to foreign victims of the traffic in human beings.

The implementation of this provision is guaranteed by the directive of the 21<sup>st</sup> of february 1997 and falls within the scope of the 13/04/95 Act on the repression of the traffic in human beings and child pornography. This law gives competence to the Centre pour l’Egalité des Chances et la Lutte Contre le Racisme-belgian federal service-to assume the promotion, the coordination and the monitoring of the policy on the fight against the international traffic.

Belgium has granted residence permit and work permit to foreigners who are trafficked but more particularly to victims of exploitation for the purpose of prostitution: in 1997, 150 permits were delivered. These residence permits are granted provided that victims cooperate during legal procedures against traffickers. It is difficult for the victims to cooperate because they fear retaliation from their “employer” or procurer.

The interdepartmental coordination service on the fight against the international traffic in human beings founded 2 reception centres: Pag-Asa in Brussels, Surya in Liège and Payoke in Antwerp created in 1988. These specialized reception centres assume the protection and the social, administrative and legal assistance of the victims in Belgium and to prepare their possible return in the country of origin.

From 1996 to 1998, 734 victims had been welcome in the reception centres, 62% of them were sexually exploited for the purpose of prostitution. However, the number of persons who are victims of other forms of slavery such as economic slavery (20%) or domestic slavery (11%) is increasing.

To the Centre pour l’Egalité des Chances, it increases because “the procedure provided for the persons who were trafficked in general and the assignment of these reception centres are better known from the services in touch with the victims.

Most of the time, domestic slavery victims come from Philippines and work for diplomats in Brussels.

## **2.An administrative protection and a social assistance provided unconditionally by the italian law.**

Unlike the conditions stated in the belgian legislation, art.16, chapter III of the law n°40 of the 6<sup>th</sup> of march 1998 (see appendix 5) related to the immigration regulation and the status of foreigners, provides for a regularization procedure more flexible and applicable to victims of “situation of violence or exploitation situation”. This special residence permit can be delivered to the victim in order “to take the victim away from violence and from any criminal organized group and to take part into an assistance and social reinsertion program” (art.16§1). The victim can be granted a 6-months validity permit, renewable for one year and more if a legal procedure asks for it. This permit can turn into a work permit when the foreigner is under contract or if he/she has a residence authorization as a student if he/she is at school or university. This method encourages the victim not to consider himself/herself as a victim and to regain his/her dignity.

Assistance and integration are followed up by local communities or NGOs. So, victims can have a medical assistance, an access to educational training, look for a job or work.

These provisions are specially made for the victims of forced prostitution which is common throughout Italy and well known as a modern form of slavery.

The Comitato Contro la Schiavitù Moderna was created recently and so, has not been able yet to give any statistics about domestic slavery but we can assure that 46% of the domestic workers working in Italy are foreigners.

### **III – The diplomats special issue.**

At the end of 1999, 67 victims out of 193 reported to the CCEM France used to work for employers having a diplomatic immunity.

Diplomats or international state employees can bring their domestic staff in the country where they are sent to. Under the international custom, States have a mutual duty to deliver a residence permit (“special card”) to the domestic workers who are still under contract with their employers. It implies that if an employer fires one of his domestic workers, he/she will lose his/her residence permit and will be in an illegal situation.

There are 2 kinds of diplomatic immunity: an immunity of jurisdiction and of execution. Most of the time, they are accumulated. Until now, regarding slavery cases in France, a diplomatic immunity implies impunity.

However, the Industrial Tribunals of Paris and Créteil sentenced 2 diplomats employing Ismah SUSILAWATI (Ismah SUSILAWATI v. Kamal, Hasan MACKI, Conseil de Prud’homme de Paris, 1/02/99) and Marcelle RASOANJANAFARA( Marcelle RASOANJANAFARA v. Pascal CHAIGNEAU, Conseil de Prud’homme de Créteil, 29/07/99). The employers appealed and these cases will be decided in 2001.

Even if these cases were successful, the enforcement of the tribunals decision will be a problem because employers use their immunity in order not to be subjected to any sentence. Isn’t there a lack of legal provisions in this area?

In Spain, the association ATIME had a similar case Rikka HILLAOUUL in 1992 who was employed by a moroccan diplomat. Unfortunately, ATIME was not successful because of the diplomatic immunity.

The Vienna Convention of the 18<sup>th</sup> of april 1961 on diplomatic relations deals with the privilege and immunity system which was set up initially to prevent diplomats from being under pressure or the threat of a legal procedure against them in the country of destination. So, how to enforce concretely and efficiently the law when the immunity of jurisdiction stands as a legal barrier to a breach of that law?

Belgium and France have started to take a new step in the fight against this situation striking a blow at the fundamental liberties.

The 8<sup>th</sup> of July 1999, the French minister of Foreign Affairs spoke about new measures undertaken “to prevent employers from doing possible abuse and to try to improve the information of overseas domestic workers staff employed by diplomats”.

Belgium precised in a decree n°1415 of the 7<sup>th</sup> of June 1999 the conditions under which special identity cards could be delivered to private domestic workers.

## CONCLUSION

Slavery and trafficking in human beings ask for a global and concerted answer from member States of the European Union and countries of origin.

The 1997 Joint Action was the first step in the harmonization of the European national legislations as regards the fight against the traffic in human beings and sexual exploitation. Italy and Belgium are the only one to respect the European provisions.

At present, Belgium has the most complete legislation but can not be applied to France in so far as it works in a structured prevention mechanism and the repression of the traffic involves a structured intervention of the State departments.

Italy seems more interesting because the assistance of the victims is not under the condition of a legal procedure which avoids the expulsion of the victim from the country of destination if the trial decision was not in favour of the victim and a selection amongst the victims as regards their ability to sustain a trial. Moreover, the Public Prosecutor's authorization is also a way to avoid any abuse regarding the recourse to this procedure. At last, the possibility of a regularization of the victims' administrative situation at the expiry of the residence permit (provided for art.16 of the Italian law) allow them to regain their dignity.

Spain does not have any provision as regards victims of slavery but provides for the delivery of a residence permit under exceptional circumstances. Paradoxically, the Spanish system could be criticized because the National Health Service is discriminatory regarding to overseas domestic workers.

In France, it would be necessary to recognize modern slavery as a criminal offence in order to consider those who are trafficked as real victims.

More generally, it is a pity that France has not resorted yet to the European provisions such as the 1997 Joint Action as regards the protection of the victims. We have to wait for the implementation of the new policy to realize whether the procedures respond to their needs.

Therefore the european committees against modern slavery suggest to member States of the European Union to harmonize their legislations in order to define modern forms of slavery and to recognize domestic slavery as one of them.