

Double marginalisation of women victims of trafficking: spotlight on Italy

Dott.ssa Federica Fullone *

SUMMARY: 1. What is human trafficking? – 2. Human trafficking-related to migration. – 3. Double marginalization of migrant women. – 4. International and European Union law in the matter of Human trafficking – 5. Jurisprudence of ECHR. – 6. Focusing on Italy: Italian legislation. – 7. Protection of victims according to Italian law. – 8. Critical issues.

1. Without a sense of the magnitude of the problem, it is impossible to prioritize human trafficking as an issue relative to local or transnational threats, and it is hard to assess whether any particular intervention is affecting it. Trafficking is a worldwide spread phenomenon, it affects every country and region, Europe too. According to European Commission, more than 14 thousand victims of trafficking were registered in the EU-27 Member States. Over half of the registered victims were trafficked for sexual exploitation and fifteen per cent were trafficked for labour exploitation in the EU-27. Nearly three-quarters of all registered victims were female (women and girls) and close to one quarter were male in the EU-27. Trafficking in human beings is a complex serious crime defined as "*the recruitment, transportation, transfer, harbouring or receipt of persons, utilizing the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation*", by Article 3, paragraph (a) of the Trafficking in Persons Protocol. It has three founding elements: *action* (recruitment, ...); *means* (threat, ...); and *purpose* (exploitation).

To ascertain whether a particular circumstance constitutes trafficking in persons has to acknowledge the definition of trafficking in the Trafficking in Persons Protocol. Relevance of the victim's consensus is excluded in the qualification of trafficking in person as a crime. To assure burden of proof not weighing on victims and to prevent traffickers from using the supposed victim's consensus as a defence. Despite similarities, human trafficking and the smuggling of people are essentially different. Smuggling of Migrants implicates the procurement for financial or other material benefits of illegal entering a person into a state where is not a national or resident. The distinction between trafficking and smuggling is the purpose of movement. Smuggling normally takes place when people are facilitated to move

* Dott.ssa Magistrale in Giurisprudenza presso l'Università degli Studi di Milano.

across borders. Smugglers assist migrants in return for material benefits. Their relationship ends when migrants are moved across borders and to destination points. In contrast, trafficking is the movement of people with intentional exploitation of people to reap continuing profits. Traffickers control victims physically and financially. There are three important differences between trafficking in persons and migrant smuggling, regarding consent, exploitation, and transnationality. The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have acquiesced to it. Conversely, trafficking victims have either never agreed or, if they initially consented, that concurrence has been rendered meaningless by the coercive, deceptive, or abusive actions of traffickers. It is assumed that smuggled migrants know about their movement. International law deems smuggled migrants are complicit with their smugglers in the process of movement. Oppositely, human trafficking is identified as non-consensual and entails a lack of knowledge. Victims of trafficking should therefore be entitled to protection and assistance. In addition, smuggling ends with the migrants' arrival at their destination, although trafficking involves the ongoing exploitation of the victim in some manner to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be affected more severely and to be in greater need of protection from revictimization and other forms of further abuse than are smuggled migrants.

Moreover, smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another State or only moved from one place to another within the same State. In terms of movement, the purpose of smuggling migrants is facilitative - to fulfil a contract to move people across borders, in return for material benefits. The bond between a smuggled migrant and a smuggler is unequal and will end in the destination country. In contrast, the movement of trafficked persons is based on deception and coercion and is for exploitation throughout the trafficking process to reap profits. The profit in trafficking does not derive from the trafficking itself though, from the trade of trafficked person's sexual services or labour or both within a country or across borders. Secondly, in terms of victimisation, smuggled migrants are not considered victims but criminals due to their violation of national immigration law. On the contrary, trafficked persons are identified as the victim under international law as well as national law, as a result of exploitation throughout the process of trafficking.

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims adopts a gender-specific approach to trafficking in human beings recognising that women and men, girls and boys, are trafficked into different situations and that they require gender-specific assistance and support. The whole cycle of trafficking in human beings is highly gendered, both in terms of the motivations for trafficking from the perspective of demand to the gendered policy and institutional responses for addressing trafficking in human beings, including prevention policies. Vulnerability to trafficking and different forms of exploitation is shaped by gender. This is since the majority of trafficked victims (53 per cent) are trafficked for sexual exploitation, with women and girls representing 97 per cent of those victims. According to the same report, 40 per cent of victims globally are trafficked for labour, with women and girls representing over one-third of those victims. While trafficking of women is a global phenomenon, most victims in the EU (65 per cent)

come from the EU Member States. Data collected on different forms of exploitation in the EU showed that the majority (69 per cent) of registered victims were trafficked for sexual exploitation and that victims of this crime are predominantly female (95 per cent). Women and girls are more vulnerable to trafficking because they are disproportionately affected by some factors which make them easy prey for traffickers. Root causes of trafficking include poverty, economic exclusion, social and gender inequality, domestic violence, armed conflicts and demand for labour and sexual services.

2. Currently, the multi-faceted problem of human trafficking can be viewed in various forms, depending on how states respond to it. Trafficking can be classified as a transnational organised crime if a state aims to tackle and suppress organised criminal groups. Such an issue can also be perceived as a migration issue if a state prevents an influx of irregular migration by imposing stricter immigration laws and policies.

Within migratory flows, human trafficking can be recognised as irregular, illegal or undocumented migration. Human trafficking is a multi-faceted concern, cutting across various social problems as migration, prostitution, slavery, and labour exploitation. The upsurge of irregular migrants, including smuggled migrants and victims of trafficking, has become a concern of the international community. Within the boundary of irregular migration, different terms, that are illegal and undocumented migration, have been interchangeably used without justification. There is a paucity of academic consensus on the term used for illegal, irregular and undocumented migration. Therefore, irregular migration is the preferred term used in this study for the following reasons.

First, the term undocumented migration is seen as a transgression of a state's legal order. It seems to be used often when migrant's documents have changed, especially before, between and after crossing borders. Both trafficked people and smuggled migrants may be classified as undocumented migrants when a migrant's documents are confiscated by their traffickers or smugglers. In some cases, the adjective may be used when migrants cease to fulfil conditions or possess necessary authorisation concerning entry, residence and employment.

Second, the locution "illegal migration" seems to immediately stigmatise a migrant as a criminal, who violates state sovereignty. An illegal migrant is deemed "a foreigner arriving clandestinely on to the territory of a state; staying beyond his or her permitted period of entry and residence; working when not permitted to do so or in a manner inconsistent with his or her immigration status". If she or he breaches immigration or employment law, a migrant is seen as having committed offences rather than in need of assistance and protection.

Irregularity of migration is arguably a cause of vulnerability for migrants. Various peculiar routes used by people for their movement are considered illegitimate activities that violate state sovereignty. Many states have claimed that illegal migration has disrupted a state's attempts to combat human trafficking and to eliminate smuggling. Various forms of irregular migration, such as smuggling and human trafficking, have been brought into international political debates and become key issues in contemporary international migration. It can be said that irregular migration, human trafficking, and the smuggling of migrants are mutually connected.

3. Women and girls remained the majority of the victims of trafficking in human beings in 2017-2018. In the EU-28, 58 % of all registered victims were female (women and girls), whilst male victims (men and boys) represented 39 % of all registered victims. Women and girls remained the majority of the victims of trafficking in human beings in 2017-2018. In the EU-28, 58 % of all registered victims were female (women and girls), whilst male victims (men and boys) represented 39 % of all registered victims. The swell in the number of women migrants, together with the double vulnerability of women migrants makes the study of gender migration deserving more attention. Pedraza stated that: “despite the overwhelming presence of women in migration flows, until recently the role of women in migration had been neglected”. Besides, there is a need to study the migration of women separately because “migration is a profoundly gendered process and the conventional explanations of men’s migration in many cases do not apply to women.” Studies carried out on women’ migration focuses more on economic reasons, more precisely on the remittances they send back home to help families. A solely economic explanation of women migration only provides a small part of the picture. The whole picture is much broader encompassing the very crucial non-economic reasons of women’s migration and their subsequent experiences. Therefore, proper attention should be given to the highly gendered, non-economic reasons of migration as well. In some cases, discrimination and violence in the private or public sphere could represent women’s main motivation to migrate, although in many instances they may not be identified as such. For example, prejudice against certain categories of women, such as single mothers, wives, widows and LGBTIQ+ individuals, can act as a strong push factor. On arrival in the country of destination, violence and discrimination for women endure. This is primarily due to their women status, which reflects gender inequalities existing in the country of origin and destination societies, as well as their status as foreigners. Often, these two main causes of vulnerability intersect with additional risk factors.

The risk of facing violence increases with elements such as – but not limited to – legal status, age, class, culture, ethnicity, religion, sexual orientation, gender identity or disability. In addition, the lack of local language skills, inadequate access to appropriate jobs, limited knowledge of their rights and, in certain cases, earlier experiences of violence in their home communities all combine to reduce migrant women’ capacity to protect themselves against abusive situations. Social isolation and diminished contact with family and community networks, especially in societies where the extended family plays an important role in intra-couple behaviour, may increase the likelihood of migrant women suffering from severe forms of violence and for longer periods.

Forms of discrimination occur at several levels. Often, policies regulating entry to the labour market and access to public services result in de facto discrimination against migrant women concerning access to legal recourse, social security, housing, education, health care, employment and other socio-economic opportunities, as well as a lack of security and protection from violence. The result is usually the systematic disempowerment of migrant women, which a further increase of their vulnerability to various forms of discrimination and violence. Because many potential migrants lack access to information about legal channels

to migrate for work purposes, some fall prey to traffickers who exploit them. In transit or destination countries, trafficked victims are susceptible to severe forms of exploitation: including forced labour, sexual exploitation, begging, forced marriage and other practices similar to slavery. Trafficked persons are also vulnerable to domestic violence and stigmatized after the trafficking experience. Trafficked women often experience severe physical violence and need specific assistance and (re)integration options, including access to medical services, psychosocial support, legal counselling, training and/or educational support.

The concept of “vulnerability” linked to migrant condition gained a precise juridical connotation thanks to a group of experts in the human rights of migrants, nominated by the Human Rights Commission in 1997. According to this authority, an essential element that determines the weakness of migrants consists in a situation of mere fact (powerlessness) which would characterize the relationship between migrants and both Country of destination and social forces, and which ends in a condition of marginalisation such as to exclude them from the system of right’s protection to the point where it impedes the full and effective enjoyment of them subjective positions. The concept of migrant women “double marginalization” resides in the social perception of their “inferiority” condition compared to men, moreover, their migrants status instigate a very likely exposition to criminal trafficking in person. As emerged from the activity of the Special Rapporteur of UN for migrant’s human rights, who underlined the relationship between different forms of discrimination and the conditions of migrant, with a special refers to violence against women.

4. Legal instruments dealing with human trafficking date back to the abolition of slavery. They include provisions within the Slavery Convention (1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). Additional tools of international law mentioning trafficking of persons include the Universal Declaration of Human Rights (1948), the International Covenants on Civil and Political Rights (1966), The United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949) and the Convention on the Elimination of all Forms of Discrimination Against Women (1979). These instruments laid the foundation for contemporary conventions and efforts to eliminate trafficking.

International agreement on what constitutes “trafficking in persons” is very recent. It was not until the late 1990s that states began the task of separating trafficking from other practices with which it was commonly associated such as facilitated irregular migration. The first-ever agreed definition of trafficking was incorporated into the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol).

The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15th November 2000, is the main international instrument in the fight against transnational organized crime. The Protocol is the first global legally binding instrument with an agreed definition on trafficking in persons. The definition

objective is to facilitate convergence in national approaches concerning the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in person cases. The Protocol represents the first international legal instrument addressing labour exploitation as a form of human trafficking. Formerly, trafficking in persons was thought of as only referring to sexual exploitation. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

The UN Convention applies when trafficking in person is committed by a transnational criminal organization. This provision constitutes a limit in two different ways: first, Convention appeals to not all the forms of trafficking; second, it seems that the provision of protection refers to a set of rules instead of safeguarding the victims of trafficking. Looking at the European dimensions, the UN Trafficking Protocol definition formed the basis for the Council Framework Decision on combating trafficking in human beings of 19 July 2002. The definition agreed at the EU level includes largely the same elements and like the Palermo protocol. Moreover, trafficking in human beings is explicitly prohibited under the Charter of Fundamental Rights of the European Union. It is also listed as a crime in Article 83 of the Treaty on the Functioning of the European Union.

In 2011, the European Parliament and the Council issued Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims. Directive replaces the Framework Decision 2002/629/JHA on combating trafficking in human beings and is the first EU legislation on the subject. The Directive adopts a human rights approach. It includes a strong gender perspective recognizing that women and men are often trafficked for different purposes and that, therefore, assistance and support measures should also be gender-specific where appropriate. The Council of Europe Convention on Action Against Trafficking in Human Beings signed in 2005 by 47 Council of the Europe Member States, several non-European States and the EU, entered into force in 2008 and represents the most comprehensive international instrument addressing human trafficking. The Convention provides a more victim-focused approach and is designed for European, rather than international implementation. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims. The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention assures rights to victims of trafficking, in particular, the right to be identified as a victim, to be protected and assisted (as provided by Articles 11 and 12), to be given a recovery and reflection period of at least thirty days, to be granted a renewable residence permit, and to receive compensation for the damages suffered. The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs. A noteworthy instrument introduced by the Council of Europe Convention is the Group of experts on action against trafficking in human beings (GRETA), a monitoring system set up to supervise the implementation of the obligations laid down by the Convention.

In the meantime, several EU instruments in various policy areas contribute to addressing trafficking in human beings. EU legislation on the right of victims of human trafficking to reside in the EU, on the sexual exploitation of children, and on sanctions against employers who knowingly employ illegally staying third-country workers, complement the Directive on trafficking in human beings. The EU Internal Security Strategy in Action further addresses trafficking in human beings. The overarching framework of the EU external migration policy — the Global Approach to Migration and Mobility — highlights the importance of cooperating with third countries of origin, transit and destination and identifies as one of its four pillars the prevention and reduction of irregular migration and trafficking in human beings

In 2012, the European Commission adopted a Communication on the EU Strategy toward the Eradication of Trafficking in Human Beings. The European Commission seeks to focus on concrete measures to support the transposition and implementation of Directive 2011/36/EU. The strategy identified violence against women and gender inequalities as a root cause of trafficking and sets out a series of actions to address the gender dimensions thereof, as vulnerability to trafficking for different forms of exploitation is shaped by gender. The strategy includes prevention, protection and support of the victims, as well as prosecution of the traffickers.

Last April the Commission adopted a new EU Strategy on Combatting Trafficking in Human Beings, related to the one aimed at tackle organised crime. Concrete actions are intended to identify and stop trafficking early on and to protect the victims.

5. The European Convention on Human Rights makes no direct reference to the modern crime of trafficking in persons. However, article 4 of the European Convention on Human Rights provides everyone with the absolute right not to be treated as a slave or to perform forced or compulsory labour, except for certain limited types of obligations specified in Article. Hereupon, it ensures a positive obligation on public authorities to intervene to stop slavery, servitude or forced or compulsory labour as soon as they become aware of it. Moreover, article 4 assures a positive obligation to penalise and prosecute effectively those involved in any act aimed at keeping someone in slavery, servitude or forced or compulsory labour.

The European Court of Human Rights found, unanimously, that trafficking in human beings, although not explicitly mentioned in the ECHR, fell within the scope of Article 4. In the case of *Siliadin v. France* of 2005, the Court looking into a situation of an African girl held in servitude as a housemaid in France considered that the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim. The European Court of Human Rights held that the girl had been kept in servitude and that France had breached its positive obligations under the prohibition of slavery and forced labour, not giving specific and effective protection to the girl. Nevertheless, this case focused only on the failing criminal law framework in place at the time.

In 2010, ECHR took a more thorough look at the whole issue of trafficking, clarifying the obligations of states. The Court focused on two other aspects: positive obligations to

prevent trafficking and protection of victims. Rather than, just on the positive obligation to penalise and prosecute acts of slavery, servitude or forced labour. The *Rantsev v. Cyprus and Russia* case not only represents a milestone but more generally elucidates state obligations in the battle against transnational crime.

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership. It treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly, the Court held that trafficking itself was prohibited by Article 4.

The significance of this case is in aiming at the exploitive nature of the sex industry and the willingness of States to turn a blind eye to it. *Rantsev* brings with it questions regarding the very ability of the Court to adjudicate over issues emanating from Article 4 of the European Convention on Human Rights (ECHR). With the determination of the Court that obligations emerging from Article 4 of the ECHR come into play because trafficking is based on slavery, the Court reveals itself as not having truly engaged with the legal distinctions that exist between these two concepts, so it has further muddied the waters as to where the legal distinction should be made regarding various types of human exploitation, be it the forced labour, servitude or slavery.

In July 2020 European Court of Human Rights, which already addressed the issue of human trafficking, has had the first occasion to consider whether Article 4 applied to the trafficking and exploitation of women for prostitution. The Court noticed the irrelevance of the applicant's nationality since Article 2 of the Anti-Trafficking Convention refers to "*all forms of trafficking in human beings, whether national or transnational*".

The Strasbourg Court found not necessarily that special treatment for potential victims of human trafficking presuppose an official confirmation of perpetrated offence: victims need support even before the offence of human trafficking is formally defined. Emphasis has been given when applicants made a reasonable claim or whether there is prima facie evidence of subjection to prohibited treatment. In this particular case, the Chamber found that the applicant made an arguable claim and that there was prima facie evidence that she had been subjugated to treatment contrary to Article 4 of the Convention. In the end, the Court, acknowledging the position of GRETA, recognized that there may be different reasons why victims of human trafficking and different forms of sexual abuse may be reluctant to cooperate with the authorities.

6. After the so-called Merlin law and throughout the eighties of the Twentieth Century, prostitution in Italy was a matter of indigenous women which implied work conditions less marked by rough exploitation.

Merlin Law abrogated articles 531-536 of Criminal Code, for our study, notably relevant are article 535 of Criminal code "*Trafficking of women and minors*" and article 536 "*Trafficking of women and minors using violence, threat or deceit*", which were substituted by article 3.1 n.6, criminalizing who may procure someone. The framework radically changed with the inclusion of foreign women in the "market", as a consequence of the geopolitical changes of

the period: the economic crisis and the decay of the ex-Soviet bloc. Geo-political changes between 1980-2000 brought out a reality different from the one in which Merlin law has intervened. To face those changing various legislative action has followed, which had to take in account the connection between prostitution and human trafficking. The first two regulatory actions are dated back to 1998: one is the Legislative Decree 25th July 1998, n. 286, "*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*"; the other one is law 3rd August 1998, n 269 "*Norme contro lo sfruttamento della prostituzione, della pornografia, del turismo sessuale in danno di minori, quali nuove forme di riduzione in schiavitù*". Legislative Decree 286/1998 is a crucial instrument of protection for victims of trafficking. A paradigmatic example is article 18, guaranteeing a special residence permit to foreign trafficking victims combined with the possibility to join a program of aid and social integration. Law 269/1998 modified some articles of the Criminal Code, as article 601, to which was added a clause punishing trafficking and trading of minors to procure them. The article, in its original formulation, punished the trafficking or trading of slave or people in a similar condition to enslavement. Article 601 appeared unsuitable to fight transnational trafficking of human beings, often characterized by forms of sexual exploitation perpetrated against adults.

Italian repressive system against trafficking and enslavement has been deeply adjusted in the last fifteen years, as a result of periodic interventions to adopt national legislation to the International and European one, as the UN Convention of 15th November 2000 and its additional protocol on trafficking, to the Council Framework Decision on Combating Trafficking in Human Beings 2002/629/GAI, to The Council of Europe Convention on Action Against Trafficking in Human Beings entered in force in 2008, and the Directive 2011/36/UE. In article 600 of the Criminal Code has been omitted the vague and imprecise link to "*conditions similar to enslavement*". The element of "servitude" has been introduced *ex Novo* in the field of application of the norm, defined as "continuative subjection of the person who is forced to work, to prostitute herself/himself, or to any service which implies exploitation". Hence, defining elements for the continuative subjection are "abuse of authority or benefit from a situation of vulnerability, physical or psychic inferiority, a situation of need, the promise of giving money or any other advantage to whom has an authority on the person". As an effect of the above-mentioned modification of 2003 and 2014, article 601 of the Criminal Code constitutes the crux in the normative against trafficking.

It should be stressed that the application's field for trafficking is extended beyond what provided by the UN Convention: trafficking is relevant also as mere internal and the conduct deems as trafficking even if perpetrated against one person, regardless of the existence of an organized criminal network with aim of exploitation. Through article 602 of the Criminal Code, the legislator completes criminal protection for trafficking's victim, criminalizing the case of purchasing or transferring an enslaved person. The only difference with the previous norms concerns cases concerning criminal behaviour realized without violence or threat, based on compensation (for the purchase) or the mere transfer (in the other case) of the victim. It's a subsidiary norm coming into force when prerequisites of trafficking are missed.

Trafficking is recognized as a criminal organized phenomenon: article 416, clause 6 of Criminal Code, expressly punishes as an aggravating factor racketing to commit one of the enslavement or trafficking or smuggling crimes. Implementation of special procedures for felonies committed by organized crime when trafficking or enslavement occurred is due to the inclusion of those misconducts in article 51, clause 3-bis of the Criminal Procedure Code.

In the end, the Italian set of rules seems to be, from a repressive perspective, compliant with European legislation, and if compared to it, notably rigorous, providing sanctions up to twenty years of imprisonment.

7. At the international level, Italian legislation has been the forerunner in protecting victims of trafficking: ensuring the rights of assistance, protection and social inclusion to vulnerable subjects, regardless of their collaboration in investigations.

The primary instrument to assure humanitarian protection was article 18 of Legislative Decree 25th July 1998, n.286 (from now on TUI). As stated in the section of the immigration law entitled 'Provisions of humanitarian character', article 18 enabled the questor to grant a residence permit to foreigner victims of violence or exploitation. Residence permit for social protection reasons could be released "in case of danger for safety due to the attempt to escape conditioning from a criminal organisation or declarations made in court". The residence permit ex article 18 accords access to social services, the right to study, and the possibility to be registered in official employment offices. Further, paragraph 5 establishes: if the holder of a residence permit for reasons of social protection obtains a work contract at the end of the social integration process, the residence permit follows the contract time limits. If it is a permanent contract, the residence permit expires when established by the law. Up to 2002, the law required residence permit for reasons of work to be renewed after two years, if the contract was permanent, after one year if the contract was temporary. With the passing of the amendments to the immigration law through Law n. 189 of 30 July 2002 (the so-called Bossi-Fini law), a residence permit for reasons of work is granted when the employer provides and guarantees for suitable lodging and travel expenses when the worker returns to his/her country (Article 5-bis). In general, when completing the integration process under Article 18 and gaining a work permit, someone enjoys rights and restrictions as freedom of movement within the Schengen area).

Another effective characteristic of Article 18 is the distinction between strictly legal and social aspects: the residence permit issuance could be followed by a "judiciary" procedure or by a "social" one. According to the judiciary procedure, the prosecutor informs the questor of the relevant declaration stated by the victim in court and the dangerous conditions she may face. In consonance with the social procedure, an exploited person asking social service for help, firstly, she/he needs to fulfil some prerequisites, when fulfilled, the institutions can file for protection to law enforcement agencies. In procedural terms, the allowance of an Article 18 permit involves three phases: a link between the victim and the NGO/social services/police. This first connection guarantees primary service to the victims and lays the foundation for a trust relationship; NGOs or social service produce relevant material for the police, attesting that a crime has occurred (social channel). Alternatively, the victim may decide to make a sworn statement, and the prosecutor starts an investigation (judiciary

channel). However, even when the victim does not provide a list with the names of traffickers, the prosecutor's office may start an investigation based on facts reported by the NGO, posing a problem in terms of retaliation against the victim. During the legal proceedings - if the procedure occurs through a judiciary channel - the victim is entitled to have a lawyer representing her interests at the trial; the *Questura*, in the case of the judiciary channel, after hearing the option of the prosecutor, grants a temporary six-month residence permit, while the victim has to follow a social integration process. During the protection and assistance phase, the victim has the duty (rather than right) to access the integration programme offered by the NGO. During this phase, the victim is placed in specific, protected lodgings. Those shelters range from 'flight' (escape) houses, religious communities and institutes, family apartments, to autonomous or semi-autonomous houses; depending on the single NGO resources and profile (religious, non-religious, etc.). Victims are entitled to access all medical services (like any Italian citizen), legal services, education/training, and special counselling.

Between phase (1) and the actual granting of the residence permit, there may be a more or less long waiting period, according to the single regions where Article 18 is applied. The method of guaranteeing residence permit under Article 18 depends on the local police sensitivity over the issue or the cooperation between the police and the local NGOs. Whether or not a social or a judiciary channel occurs depends mainly on police discretion in each local context.

The residence permit allows a program for assistance and social integration, due to article 6 of the following Decree 28th December 2006, n.300, citizens of East Europe in a situation of gravity and actual danger could access it. Article 18 of TUI grants efficient protection bolstered by more regulatory intervention.

The 2011/36/UE Directive, for the first time, dealt with trafficking in all its complexity, introducing (as above mentioned) dispositions to contrast, to prevent, to protect victims of the phenomenon, considering the possibility of granting international protection in case of need. Article 11, paragraph 5 and 6 establishes that trafficking victims should be assisted and supported on a consensual and informed basis.

Information should regard the possibility to obtain international protection according to Directive 2204/83/CE and Directive 2005/85/CE.

When implementing the European Directives, Italy has expressively subsumed trafficking victims in international protection seekers with special needs, and it has given specific information on coordination between the two systems of protection and assistance.

Legislative Decree 18th August 2015 n.142 following the Directive 2013/32/UE and the Directive 2013/33/UE introduced some changes in the hospitality system. Relative to the procedure, article 25 clause 1 b) modified article 2 of Legislative Decree 25/08 including trafficking victims in vulnerable persons, so determining the application of the norm in article 28 of Legislative Decree 25/08 about the priority exam of application for protection.

Referring to hospitality, article 17 clause 2 of Decree 142/15 provides to protection seekers identified as trafficking victims the application of an emergency program, assistance and social integration as granted by article 18 clause 3bis of TUI; permitting to trafficking

victim to benefit from internal aid and protection without renouncing to apply for international protection.

Legislative Decree 24/2014 introduced some relevant norms, as the article 10, related to coordination between different systems and the duty to inform victims about international protection and the protection procedure. Notably, clause 1 of article 10 established: “Public Administrations engaged in protection and assistance to trafficking victims and those Administrations which are competent in asylum should find a way to coordinate their activities, even to determine referral mechanism”. The aim was encouraging the competent ministry: Department for equal opportunities of Presidency of the Council of Ministers, as equivalent to national rapporteur on trafficking (according to article 7 of Decree 24/14); the Minister of the Interior for the scope of international protection – to implement prescribed measures to coordinate safeguards and assistance, to facilitate early and correct identification of victims among asylum seekers, ensuring appropriate protection and aid.

On international protection of trafficking victims, two recent cases could be mentioned: a decision of the Bologna Court and the other one by the Lecce Court.

On 31st December 2020, the Bologna Court granted refugee status to a Nigerian woman victim of trafficking, with a well-structured decision in fact and law. Entirely repealing the Territorial Commission decision, the Court did not concur with the evaluation of non-credibility protection, underlining the importance to follow the accurate 2016 Guidelines when facing potential victims or indicators of trafficking victims. A decision erected on the well-founded fear of persecution and the inadequate victim protection by the Nigerian government. The Bologna Court remarked on the importance of the Judge duty to cooperate with the investigation. In particular, the Judge duty to verify the updated conditions of asylum seekers COI, grounding for the judicial inspection on international protection.

On 6th April 2021, the Lecce Court granted a Nigerian woman refugee status, following the Caserta Territorial Commission rejected any form of protection after hearing her three times about the left of Nigeria due to economic difficulties, on the proposal of a woman. The banc believed the asylum seeker account credible, consistent with the founts on trafficking in Nigeria. The Judges emphasized the indispensable presence of the subjective element (the fear) and the objective element (the reasonableness) to subsist a well-founded fear of persecution. Therefore, it's essential to acknowledge the present situation of the Country of Origin. Given well-founded fear has to be founded on the current COI scene

8. The actual situation of people arriving on European coasts makes it possible to retain that the problem of trafficking with aim of exploitation will continue to represent a serious problem. It seems necessary to reconsider the strategies, European and National ones, but also in the matter of international cooperation. Since European policies will go on in the same direction of closure to every shape of regular economic migration, criminal organizations will continue to represent the leading interlocutors for the many people who leave their country of origin.

Legislation currently in force in the field of entrance and stay in Italian territory by extra European citizens continue to feed to the serious problem of exploitation. This phenomenon involves not only the “irregular” migrants but also asylum seekers waiting for the response

from the Territorial Commission, who even if entitled to a temporary residence permit, didn't benefit from any way of social-working inclusion due to the low quality offered by reception centres. The challenge in fighting trafficking is related to law policies in the matter of immigration and asylum in Europe and Italy.[1]

Policies on limiting immigration affect the possibility of an efficient identification of trafficking victims. The political model of immigration management does not seem to show, in this historical period, a sensibility to the subject. A controlling immigration policy shaped on strong restrictions to the entrance doesn't seem to pay attention to the existence of victims among migrants.

Victim's identification constitutes a central theme: international bodies encourage States to use efficient referral mechanism of identification, UN with resolution n.2331 of 20th December 2016 invited State to implement their identification's mechanism "also in relation to trafficking in persons in armed conflict, including where such victims are refugees and internally displaced persons and to address comprehensively victims' needs, including the provision of or access to medical, psychosocial assistance and legal aid, as well as ensure that victims are treated as victims of crime and in line with domestic legislation not penalized or stigmatized for their involvement in any unlawful activities in which they have been compelled to engage".[3]In a report by GRETA[4] to Italy, published on 30th January 2016[5], Italy has been reprimand on the procedure of victims identification as stated in the Council of Europe Convention on Action against Trafficking in Human Beings. GRETA underlined: an imprecise people screening based on trafficking indicators when in Identification and Expulsion Centres (Centro di Identificazione ed Espulsione - CIE); withal unskilled personnel to identify victims of trafficking. GRETA urged the Italian authorities: to adopt a clear legal and policy framework for returning trafficked persons; to safeguard their rights, safety and dignity; to inform victims of trafficking about existing programmes protecting them from re-trafficking and to ensure compliance with the non-refoulement obligation. GRETA urges the Italian authorities to improve the identification of trafficking victims among migrants and asylum seekers by:

- providing operational indicators to all frontline staff to enable them to effectively and proactively identify victims of trafficking;
- ensuring that there are appropriate facilities for holding confidential interviews to identify victims of trafficking in hotspots and other places where asylum seekers and migrants stop.

Updated by the end of 2020, the new edition of Guidelines to *Commissioni Territoriali* presents innovative elements, in particular indicators and referral procedure are implemented, taking into account the previews criticality. The referral procedures reinforced the safeguard of trafficking and exploiting survivors: enforcing early identification as potential trafficking victims in the asylum-seeking system and consequently involving specialized services; recognizing the right to international protection when subsisting.

To implement our study, we had the opportunity to meet Sister Claudia Biondi, Manager in the area "Women abused" for Caritas Ambrosiana, actively involved in fighting inequality. We could interview her and She provides us with stimulating inputs. In her twenty-year experience on victims identification and Referral Mechanism, Sister Biondi verified that the place of appearance for victims are various, and the criteria provided by the referral are just

directions.[6] Sister Biondi pointed up how, even if it's difficult for a woman who comes out from trafficking to fall back into exploitation, it's arduous for women to integrate. She brought the example of Nigerian women, for whom integration is hindered by two factors: illiteracy, which is an obstacle for career progression; and the presence of children. So, the policy for inclusion is stymied, and often the only factor contributing to integration for these women is the presence of a man working on the National territory.

As above mentioned, in the mechanism of identification is crucial to engage all the operators involved with victims, from the staff who help migrants coming from the sea to reach our territory. It is essential to find procedures separating victims from other migrants, to bring them to adequate reception facilities. In Hotspot and Centres of identification and expulsion, this need is urgent, as sometimes victims of trafficking are conducted there.

Sister Biondi, in our interview, underlined how, even if the attention for professional development is significant, during the boom of arrival when extra staff was a need, it was disregard, especially in places as CAS (Emergency centres) or SPRAR (Second-line reception).

Another controversial point regards the relation between the condition of a trafficking victim and asylum seeker. It seems that asking for protection by trafficking victims constitutes a strategy perpetrated by the criminal organization: with a residence permit, the victims represent a less alarming investment for gangsters. Sister Biondi gives us a view of her personal experience. She highlighted how, during the 1990s, women from East Europe were obliged to ask for protection to gain a residence permit and guarantying continuity to their exploiters. So, it's needed efficient communication between the two procedures: recognition of asylum and identification, support and assistance to victims of trafficking.[8] Moreover, in 2020 GREVIO[9] highlighted how current policies of abandoning sea rescue and strengthening deterrence at sea, with the closure of Italian ports to boats carrying rescued migrants (both commercial and NGO vessels), represented a significant risk of refoulement[10] for women migrants who have experienced violence and who have a right to claim asylum in Europe. Returning sea migrants to Libya where there is evidence of large-scale sexual violence against women can be seen as abusing the right to non-refoulement and places women migrants at serious risk of revictimization. In early 2020, GREVIO Commission published an evaluation report on the implementation by Italy of the Istanbul Convention, urging the Italian authorities to uphold their obligation to respect the principle of non-refoulement of victims of violence against women, including by ensuring that the human rights of victims rescued at sea are never put at risk because of disagreements about disembarkation.

Women are and always have been victims of the role they are supposed to fulfil. At the end of our study, we want to stress again this point, which we think is the main issue in the matter of violence against women. Violence is often related to the culture of inequality, occurring when women do not perform the role they are supposed to. Migrant women are affected by the condition of "women" and of "foreigners". A spread cultural heritage conceives women as pure figures, as mothers and housekeepers. Even if Italy took steps forward, the way to effective equality is still slow and insidious. We could not speak about equality until deeply rooted prejudices will be eradicated.

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