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DEGLI STUDI
DI PADOVA



UNIVERSITÀ DEGLI STUDI DI PADOVA
Department of Political Science, Law, and International Studies

UNIVERSITÉ CATHOLIQUE DE LYON
Institut des Droits de l'Homme de Lyon

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THE GENDERED DIMENSION OF HUMAN TRAFFICKING:
SEXUAL EXPLOITATION OF TRAFFICKED WOMEN IN ITALY

Supervisor: Dr. Olivier FERRANDO
Co-supervisor: Prof. Paolo DE STEFANI

Candidate: Nicole BONESSO

Matriculation No. 223062880

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Abstract

The purpose of this thesis is to analyse the gendered dimension of human trafficking, focusing specifically on human trafficking for the purpose of sexual exploitation, and taking into consideration the Italian case and how the Italian government answers to the need for a gender-based approach to combat human trafficking. The international framework on human trafficking is analysed in depth, outlining the main concepts and definitions, and also considering the gendered dimension of human trafficking: sex trafficking. Women sexual exploitation is also analysed as one of the main concepts explored, and an important section is consecrated to the question of prostitution and how to discern ‘voluntary’ from ‘forced’ prostitution, which is a fundamental part of the international framework on trafficking. The international legal framework on human trafficking is analysed thoroughly, highlighting the most important provisions, and focusing not only on the instruments directly related to trafficking, but also on the provisions that guarantee protection for more vulnerable groups such as children, women, and migrants. Considering the focus on the Italian case, the European framework is also analysed, and an important attention is given to the recent jurisprudence of the European Court of Human Rights. The Italian framework is therefore presented, considering the trafficking framework and two overlapping frameworks that influence the trafficking process in the country: prostitution policies and immigration laws. While the Italian framework on trafficking seems to be compliant with international and European standards, a closer analysis shows that the Italian approach does not provide for a sufficient support of trafficking victims, and it has been found lacking a gender perspective and of appropriate preventive measures, especially in the case of prostitution and migration laws, that are structured in a way that encourages human trafficking more than fighting it. As a conclusion, some recommendations on possible improvements to be carried out to the Italian framework on trafficking are made, and some points for future reflection are highlighted.

Résumé

L'objectif de ce mémoire est d'analyser la dimension sexospécifique de la traite d'êtres humains, en mettant l'accent sur la traite des personnes à des fins d'exploitation sexuelle, et en tenant compte du cas italien et de la façon dont le gouvernement italien répond à la nécessité d'une approche fondée sur le sexe pour lutter contre la traite des personnes. Le cadre international sur la traite est analysé en profondeur, en décrivant les principaux concepts et définitions et en tenant compte de la dimension sexospécifique de la traite des personnes : la traite sexuelle. L'exploitation sexuelle des femmes est également considérée comme l'un des principaux concepts explorés, et une section importante est consacrée à la question de la prostitution et à la distinction entre prostitution « volontaire » et prostitution « forcée », en tant qu'élément fondamental du cadre international sur la traite. Le cadre juridique international sur la traite des personnes est analysé en profondeur, mettant en évidence les dispositions les plus importantes et mettant l'accent non seulement sur les instruments directement liés à la traite, mais aussi sur les dispositions qui protègent les groupes les plus vulnérables comme les enfants, les femmes et les migrants. Compte tenu de l'accent mis sur le cas italien, le cadre européen est également analysé, et une attention importante est accordée à la jurisprudence récente de la Cour européenne des droits de l'homme. Le cadre italien est donc présenté, compte tenu aussi du cadre de la traite que de deux cadres qui se chevauchent et influencent le processus de traite dans le pays : les politiques de prostitution et les lois sur l'immigration. Bien que le cadre italien sur la traite des personnes semble être conforme aux normes internationales et européennes, une analyse plus approfondie montre que l'approche italienne ne prévoit pas un soutien suffisant pour les victimes de traite, et il a été constaté qu'il n'y a pas une approche sexospécifique et des mesures préventives appropriées, en particulier dans le cas de la prostitution et des lois sur la migration, qui sont structurées de manière à encourager la traite des personnes plus qu'à la combattre. En conclusion, quelques recommandations sur les améliorations possibles à apporter au cadre italien sur la traite sont formulées, et quelques points de réflexion futurs sont mis en évidence.

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Introduction

The aim of this thesis is to analyse the gendered dimension of human trafficking, focusing in particular on human trafficking for the purpose of sexual exploitation, with a specific focus on the Italian case and on how the national legal framework influences human trafficking in the country.

The phenomenon of human trafficking has started to attract the attention of the international community in the last decades, but its roots go back to the slave trade. Because of the covert nature of the crime of trafficking, it is difficult to have a clear idea of the number of people who are trafficked around the world. Nonetheless, it is possible to observe that the most common form of human trafficking is sex trafficking, and that the victims are mostly women and young girls, that make up 91% of victims of trafficking for sexual exploitation according to the latest Global Report on trafficking, published by the United Nations Office for Drugs and Crime (UNDOC). For this reason, it is important to analyse in detail not only the phenomenon of human trafficking in itself, but also the importance of gender and the necessity of adopting a gender-based approach in combating human trafficking and particularly sex trafficking.

The prevalence of female victims of sex trafficking is strictly interconnected with various factors, including gender inequality, that makes women and girls more susceptible to poverty, does not guarantee them equal employment opportunities, and limits their access to education, therefore forcing them to take extreme measures in order to survive, which causes them to be more vulnerable to human trafficking. Furthermore, it is fundamental to consider the impact that gender-based violence has on the number of female trafficking victims: violence against women is culturally accepted and normalised, notwithstanding the international efforts to fight it, and this causes not only a higher number of women to become victims of trafficking, but it also makes them more likely to experience violence within the trafficking process.

Considering sex trafficking, the higher prevalence of female victims finds its roots in the sexualisation and objectification of women, as they are seen as little more than objects to be used, often at the disposal of men who believe that it is their right to purchase them, or their services. Trafficking for sexual exploitation is intrinsically different from other forms of trafficking, as the high number of female victims proves that gender plays a

fundamental role in human trafficking, and that it is not possible to ignore it when adopting laws and policies to combat it. In addition, human trafficking for sexual exploitation is often connected to the world of prostitution and the sex business, and the lines between ‘forced’ and ‘voluntary’ prostitution are not always as clear as national laws or the international framework on the matter would suggest.

The aforementioned factors are all of paramount importance in analysing the gendered dimension of human trafficking, and in this thesis the focus will be on the Italian case, with the purpose of analysing the Italian framework on human trafficking and how Italy responds to the need of a gendered approach to trafficking in persons and, more specifically, sex trafficking. As a matter of fact, as will be analysed further, Italy is one of the European hotspots for sex trafficking, and one of the European countries with the highest number of potential trafficking victims.

In order to better comprehend the international framework on human trafficking, the first part of this thesis is consecrated to the definition and the understanding of the conceptual and legal framework on human trafficking and women sexual exploitation. In the first section, the trafficking process will be analysed in depth, providing important insight on how victims of human trafficking are recruited and transported, and what groups are more vulnerable to trafficking. In the second section an important focus will be on the concept of women sexual exploitation, and the issue of the distinction between ‘voluntary’ and ‘forced’ prostitution will be tackled in relation to sex trafficking, analysing it both from a theoretical and feminist point of view, and from a legal standpoint. The international legal framework on human trafficking will be taken into consideration, starting from the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, which provides the baseline for the legislation on trafficking at the international level; other instruments will also be analysed, particularly referring to a gendered approach in tackling human trafficking in order to prevent the trafficking of women and young girls and the gender-based violence against them, that can be both a cause and a consequence of human trafficking and sex trafficking. Considering the focus on Italy, the European instruments on trafficking in human beings will be analysed, as they will serve as comparison to understand the effectiveness of the Italian framework. Therefore, both the Council of Europe Convention on Action Against

Trafficking in Human Beings and the EU Directive on preventing and combating trafficking in human beings and protecting its victims of 2011 will be analysed, as well as the most important jurisprudence of the European Court of Human Rights on trafficking cases.

The second part of the thesis will be entirely focused on the Italian case, therefore the Italian framework on trafficking will be outlined and analysed in depth, along with the intertwined issues of migration and prostitution laws, that play an important role in the country's response to human trafficking issues and have a relevant effect especially on victims of sex trafficking. While in the first section the focus will be mostly on outlining the trafficking process in Italy and its peculiarities, the second section will analyse the effectiveness of the Italian framework in combating human trafficking and especially women sexual exploitation, considering whether or not Italy accounts for the gendered dimension of trafficking and how the country tackles the overlapping of the trafficking framework with the national prostitution laws. In particular, it is important to consider the impact that national laws on prostitution have on sex trafficking and on the sexual exploitation of women, also taking into account a broader perspective connected to the sex business and the culturally motivated objectification of women.

In the final remarks I therefore advocate for an approach to combating human trafficking that is not only gender-based, but also victim centred, and that considers the vulnerabilities of different groups to human trafficking not singularly, but from an intersectional perspective. Adopting an intersectional approach is the only effective method not only to protect people from being trafficked and to guarantee that victims receive the proper support and care, but also to act on preventing human trafficking by eliminating its root causes, such as gender inequality, poverty, and gender-based violence against women.

PART I. Conceptual and legal framework on human trafficking

CHAPTER I – Main concepts: human trafficking and women sexual exploitation

The aim of the first chapter is to present the main concepts that will be the object of analysis of this thesis: human trafficking and women sexual exploitation.

I will begin by analysing the concept of human trafficking, particularly its definition according to international standards, as well as the impact it has at the global level; I will therefore analyse what categories are more at risk, and the different forms of exploitation that are included in the definition of trafficking in human beings. I will then analyse the trafficking process, and I will provide an overview of the measures that have proven to be more effective in combating this phenomenon.

Secondly, I will consider the concept of women sexual exploitation, particularly in relation to prostitution, and I will consider different points of view regarding the most effective approach to adopt in defining women sexual exploitation and prostitution, particularly with regards to anti-trafficking measures. Furthermore, I will focus on sex trafficking as a form of human trafficking, focusing on its victims and on the process; finally, I will highlight the importance of adopting a gender-sensitive approach in implementing strategies to combat human trafficking, as human trafficking is a gendered phenomenon influenced by sex-based discrimination, which must be taken into account when adopting policies and legislation on trafficking in persons.

1.1 Human trafficking: definition, impact, and counter-trafficking

Human trafficking, also defined as trafficking in persons, trafficking in human beings, or modern slavery, refers to a number of crimes often associated with the economic exploitation of people (Burke et al. 2022, 4). Human trafficking has become a major international concern over the last decades (Roth 2012, 1), but it is not to be considered a phenomenon limited to the modern age. As a matter of fact, the trafficking and enslavement of women, men and children have roots that stretch across all time and

space. Naturally, slavery and human trafficking have evolved in nature and extent during the centuries, following the development of major historical events such as the discovery and conquest of the Americas, the advent of the industrial revolution, and the rise of the capitalist system, as well as the advent of globalisation and the emergence of a global economy (Newman 2022, 32).

While slavery and human trafficking are ancient phenomena that have existed for centuries, the commitment of the international community to eradicate them is far more recent. Campaigns for the abolition of slavery started in the 1780s, also as a result of the spreading of the abolitionist ideas of British and French Enlightenment thinkers; by the end of the 19th century, slavery had lost its nearly legal status in the Atlantic world, as the trade in human beings was beginning to be perceived as an impediment to the enjoyment of human rights and their progress at the global level (*Ibid.*, 47). The legal abolition of slavery did not however stop the practice altogether, as the enforcement of the laws prohibiting slavery was loose at best, especially in African, South Asian, and South-East Asian countries. For this reason, in 1925 the first international effort in combating slavery and the trade of human beings started to take shape: the League of Nations declared its intention to elaborate a formal agreement for the abolition of slavery. This commitment led to the League of Nations' Slavery Convention of 1926, where envoys from 40 countries agreed to eliminate and prevent slavery and the slave trade in all its forms, including forced labour and sexual exploitation, as well as other practices comprised under the umbrella term 'slavery' (*Ibid.*, 49).

Notwithstanding the effort of the international community and the ratification of the Slavery Convention, different forms of coerced labour and sexual exploitation continued to exist at the global level, with various labels other than slavery (*Ibid.*). One particular concern in the international community, and especially for European States, was the increase of the so-called 'white slave traffic' of women and girls to the European colonies for prostitution (Roth 2012, 9). The term 'white slave traffic' was used to distinguish female sexual slavery from the African slave trade, but it was soon abandoned because of its discriminatory nature and with the growing awareness that not only white women were trafficked for the purpose of sexual exploitation.

Women sexual exploitation was not the only form of trafficking, as with the advent of globalisation, and the increase of migration flows, different kinds of trafficking in persons

started coming to light, for example what can be defined as ‘clandestine trafficking of labour’. This evolution is linked to the increase of migration for work purposes, and the subsequent establishment of legal barriers to migration for the purpose of labour in Northern European countries, which brought migrants to having to look for different methods to enter European countries, exposing them to the risk of being trafficked. In response to these developments, the international community adopted the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, which among its provisions guarantees the protection of migrants workers and their families, also by calling for State Parties to adopt the necessary measures to protect migrants from being trafficked (*Ibid.*); unfortunately, this Convention is poorly ratified (only 58 States have ratified it) and therefore has a limited effectivity.

At the same time, starting from the 1990s, the international community started showing a growing interest in human trafficking and related issues, namely the association of trafficking with irregular migration and transnational organised crime (*Ibid.*). As a matter of fact, human trafficking has been increasingly associated not only with large and organised criminal groups, but also with small criminal networks and local gangs, as well as violations of labour and immigration laws, and government corruption (Burke et al. 2022, 4).

In the last decades, efforts to combat trafficking in human beings have been made at the international and at the European level, particularly involving the United Nations (UN), the International Labour Organisation (ILO), the Council of Europe (CoE), the European Union (EU) and the Organisation for Security and Cooperation in Europe (OSCE).

1.1.1 Defining human trafficking: forms of exploitation and victims of human trafficking

The definition given by the Palermo Protocol

The fundamental instrument at the international level to combat human trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2003 (hereinafter ‘the Palermo Protocol’), which is connected to the United Nations Convention against Transnational Organised Crime of 2000. Human trafficking is defined in Article 3 of the Protocol as follows:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The definition of trafficking within the Palermo Protocol has the objective to provide a legislative foundation and enhance international cooperation, in order to facilitate a convergence of approaches in combating and preventing human trafficking at the international level. The definition is not universally accepted, as there have been disagreements among practitioners, scholars, activists and politicians, and variations on it have been proposed, but it is nonetheless commonly used, and provides for a starting point to analyse the main constitutive elements of the trafficking process (Burke et al. 2022, 4-5).

The crime of human trafficking is composed of three core elements: the act, the means, and the purpose. As per the Protocol definition, the act can be the recruitment, transportation, transfer, harbouring or receipt of persons, the means include forms of coercion, use or abuse of force, deception or even taking advantage of a position of vulnerability of a person, as well as giving payments or benefits, or abduction; the purpose is that of exploiting the trafficked person, and the concept of exploitation ranges from forced labour and sexual exploitation to slavery, including every similar practice (UNDOC n.d.).

The act of human trafficking, as described before, includes the transfer, or the transportation, of the trafficked person, and therefore it is possible to say that one of the essential parts of it is the movement of the trafficked person. Nonetheless, it is important to note that transfer or transportation of the person does not imply the passage from one country to another: the protection against human trafficking also includes the trafficking that takes place within the borders of a country (Burke et al. 2022, 5). An important example at the European level is the *S.M. v Croatia* case, decided by the Grand Chamber of the European Court of Human Rights in 2020, that concerns a young woman trafficked inside her own country: this case is part of the building jurisprudence of the Court regarding human trafficking, and will be analysed further on. In addition, not only

contributing to the movement of the person constitutes human trafficking: harbouring or reception are also considered elements that fall within the definition of an act of trafficking in human beings.

The different forms of coercion

To understand the crime of trafficking, it is also important to analyse the significance of the concept of coercion: in this context, the term refers to direct threats of harm or physical restraint against any person, having a person believe that failure to perform an act may result in harm or physical restraint against any person (including, for example, family members), or the abuse, or threatened abuse, of the legal process. However, most victims of trafficking come from a vulnerable position, which can cause them to agree to traffickers' demands without being explicitly coerced: in that case, it is also necessary to take into consideration whether or not the person had any viable option to support their basic needs. This is the case especially when working with victims of sex trafficking: in these situations, it is possible to identify the desperation to preserve one's own safety, or the safety of one's child, as a form of coercion (Burke et al. 2022, 5). Coercion is not the only mean that defines the crime of trafficking, as also abusing of the situation of vulnerability of a person falls within the Palermo Protocol definition and constitutes a possible mean used by traffickers.

Human trafficking can have a multitude of different forms, some more frequent than others. The most used categories of trafficking are based on the type of work required by the victims, and the most common are forced labour and sex trafficking. Nonetheless, it is important to underline that human trafficking cannot be easily compartmentalised: for instance, especially in the case of women victims of trafficking, sexual exploitation can occur even if the women in question are involved in what can be seen as human trafficking for purposes of labour exploitation (*Ibid.*, 6).

The form of human trafficking that is closer to slavery is bonded labour (or debt bondage), and it occurs when a person takes, or is coerced into taking, a loan, and as a way to repay it, the person has to work; however, the duration and the amount of work necessary to repay the loan are not defined, and consequently it is also possible that the debt in question is passed down for generations. Not all cases of a person working in order to repay a debt are considered human trafficking: in some cases, it is possible to have a fair arrangement

and compensation. The least frequent form of human trafficking nowadays is chattel slavery, that is characterised by the direct ownership of a person by another: it was the most prevalent form of slavery in the United States before 1865 (*Ibid.*). Another form of slavery is the so-called descent slavery, that occurs when an individual is born into slavery because of their belonging to a social class, or an ethnic group, that is considered to have a 'slave' status (*Ibid.*, 7).

Early and forced marriage are to be considered a form of human trafficking, and they affect disproportionately girls and women: they are married without a choice, and consequently are often forced to live in conditions of servitude and experience physical, psychological, and sexual violence from the men they are married to. As mentioned before, one of the most common forms of human trafficking is forced labour, that consists in forcing an individual to work against their will and without retribution, by also restricting their freedom, with the use of violence or threats. Forced labour includes also involuntary domestic servitude, where the victim has to attend to the needs of a house such as cooking, cleaning, childcare and other tasks; in order for this to be considered under the definition of human trafficking, the employer has to use force, fraud or coercion to maintain control over the worker, who is often isolated and has no access to the authorities, and therefore no way to escape the situation (*Ibid.*).

Sex trafficking is considered to be one of the most common, but also of the most traumatic, forms of human trafficking; it is characterised by a "commercial sex act [...] induced by force, fraud or coercion; or a sex act in which the person induced to perform is under 18 years of age" (*Ibid.*). Sex trafficking is a form of human trafficking that concerns mostly women and girls, but also men and boys can fall victim to it.

A different but not less common form of trafficking is organ trafficking. Organ trafficking is generally carried out in different ways if compared to other kinds of trafficking, but it is possible to identify four types of tactics: traditional, mirroring, killing, and conflict. The traditional method involves locating a vendor and supplying the organ to the recipient, while mirroring entails the methods that are common in other forms of human trafficking (*Ibid.*, 10). The less common method used to traffic organs is killing the vendor, and concerning the fourth tactic, conflict, it is possible to observe that areas of the world that are experiencing conflict and war are among the most targeted by organ traffickers (*Ibid.*, 7).

The victims of human trafficking

As stated in the UN Protocol to Prevent and Suppress Human Trafficking, a category particularly vulnerable to trafficking are, along with women, children. Child trafficking in particular is a general term used to describe any act that involves the displacement of a child for the purpose of economic exploitation: the elements of coercion, fraud or force become unnecessary when the victim is under 18 years of age (*Ibid.*). At the international level, the sale and trafficking of children is noted as one of the worst forms of child labour, under the ILO Convention n°182 against the worst forms of child labour (International Labour Organization 1999). Child soldiering is another form of trafficking of children, and it consists in using them as combatants, or forcing them into labour or sexual exploitation in the context of an armed conflict or in armed forces (Burke et al. 2022, 7).

The majority of identified victims of human trafficking are women and girls trafficked for the purpose of sexual exploitation (Roth 2012, 1), and this statistic is reflected in the popular opinion that victims of trafficking are mostly young girls, coerced or kidnapped into the sex industry (Burke 2022, 10). While the foundations of this belief are not incorrect and are supported by data, women and girls are not the only victims of trafficking: women, men and children are all trafficked for the purposes of sexual exploitation, forced labour, for the marriage market, for adoption and for the selling of organs (Roth 2012). As a matter of fact, while it is true that the vast majority of people that are trafficked for sexual exploitation and domestic work are women and girls, men and boys constitute the majority of victims for other kinds of trafficking and exploitation (Swauger et al. 2022, 131).

The people who have a higher risk of becoming victims of trafficking are those who belong to vulnerable groups: undocumented migrants, at-risk youth (runaways, but also young people belonging to the LGBT+ community), women and girls, members of oppressed or marginalised groups, people who live in poverty (Burke et al. 2022, 10).

Human trafficking is strictly interconnected with the smuggling of migrants, and for this reason, a large proportion of those who fall victims to human trafficking are undocumented migrants, but also migrant workers and asylum seekers (Roth 2012, 5): in fact, as people leave their homelands, especially when they are already marginalised, or

they belong to minorities, or even find themselves to be stateless, they are more susceptible to trafficking (Swauger et al. 2022, 129). In addition, more factors that contribute to increasing the risk of being trafficked are lack of legal protection, poverty and limited employment options, difficulties in understanding or speaking the language, and social isolation (Burke et al. 2022, 11).

People are often trafficked while trying to migrate, especially in the cases of irregular migration. While it is a common belief that men migrate more frequently than women, in reality women constitute 48% of migrants worldwide, and more than 50% in Europe (Migration Data Portal 2023). Even though women migrate as much as men, they are still more vulnerable to human trafficking, as there are aggravating factors such as the increasing rates of poverty among women and the discrimination within the labour market (Roth 2012, 6). Contrarily to common beliefs, victims of trafficking are rarely forced to migrate: they are often what can be defined as ‘willing’ migrants, that are often deceived, or coerced, into different forms of human trafficking during the migration process (Roth 2012, 6).

As mentioned before, at-risk youth (which includes young people that, for a series of circumstances, find themselves in a situation of exceptional vulnerability) are often targeted by traffickers for labour exploitation, begging, and often for commercial sex (Burke et al. 2022, 10). Especially when the targets are young people, traffickers use a combination of violence and affection to nurture loyalty and affection in the victims, which makes it more complicated for them to exit the cycle of exploitation and to rebel against the perpetrators (*Ibid.*, 10-11).

Traffickers target vulnerable populations because they do not have the resources or the support to defend themselves, and often they have limited work options, which makes them desperate and more easily manipulated and controlled (*Ibid.*, 11). For this reason, extreme situations such as political instability and war, or natural disasters, can create an environment that fosters trafficking, as they are the cause for large displacements of people and can create economic insecurity (Roth 2012, 6; Burke et al. 2022, 11). One of the most recent examples of how a war can increase the risk of human trafficking is the conflict in Ukraine, and even though it is still soon to have clear data to analyse, the United Nations Office for Drugs and Crime predicts a 5% increase in detected Ukrainian human trafficking victims in 2023 (UNDOC 2022a).

1.1.2 The trafficking process and its impact

The development of the trafficking process

Trafficking in human beings is a complex crime, that includes different aspects and that intertwines with other phenomena at the global level. As mentioned before, human trafficking is strictly connected to migrant smuggling, and they both find themselves connected with transnational organised crime and criminal networks.

The business of human trafficking can be carried out by individuals, small criminal groups, but also organised crime groups and transnational organised crime groups. The trafficking process can involve different people playing different roles: it is possible to be involved for a simple border crossing, while there are also large organisations that are involved in the process from beginning to end, from the recruitment of victims to their selling and reselling. These large organisations are usually organised crime groups and criminal organisations at the local, national, or transnational level, and they are involved in more than just human trafficking: their activities range from drug trafficking, to trafficking in firearms, but also migrant smuggling (Burke et al. 2022, 19).

Human trafficking is not always perpetrated by criminal organisations: it is important to consider that, especially in cases of child trafficking, close family and friends can also be involved. As a matter of fact, in cases of child trafficking, 41% of the recruitments are carried out by close family and friends (International Organization for Migration 2017). Intimate partners also play an important role in the initial phases of child trafficking, constituting 14% of the recruitments, but what is important to underline is that intimate partners of the victim are involved in 91% of the cases of trafficking for sexual exploitation (*Ibid.*). The process of trafficking has evolved also with the evolution of technology, and one of the critical aspects nowadays is the use of internet: it is not uncommon for traffickers to promote job opportunities, often abroad, to deceive people into leaving their country and ultimately fall victims of human trafficking (UNDOC 2022b). This can be defined a sort of decentralisation of human trafficking, which causes it to be even more difficult to track: for this reason, understanding the role of organisations and individuals involved in trafficking is essential (Swauger et al. 2022, 126).

One of the main roles in the trafficking process is the role of the recruiter. As mentioned before, the recruiter can be a friend, a family member, or an intimate partner, but it can also be a stranger that uses fraudulent methods to gain the trust of the victim. Recruitment

methods can vary from the use of the internet, as already mentioned, to in-person recruitment (for example in bars, restaurants, clubs), or through direct contact with the family or legal guardians of the victim, especially in case of children. In addition, there are different roles that can be involved in different forms of trafficking. For instance, the ‘broker’ acts as a middle person between the recruiter and the employer, the ‘contractor’ oversees all the exchanges concerning the trafficking of the victim; usually an employment agent is involved, in order to secure the ‘employment’ for the victim and to make arrangements for passports or visas. There are also the people that arrange for the transport of the victim, therefore travel agents, document forgers, and transporters, that accompany the victim on the journey until the point of destination, to the broker or directly to the employer (Burke et al. 2022, 20). The employer is the person that purchases, sells, or exploits human trafficking victims, and usually is accompanied by an enforcer, or a guard, to ensure the compliance of victims and prevent them from escaping. Two roles specific for sex trafficking situations are the ‘pimp’, a sex trafficker that controls a person who is prostituted, and the ‘bottom bitch’, usually a victim of sex trafficking that holds a privileged position compared to the others (*Ibid.*, 21).

As mentioned in the previous section, one of the constitutive elements of the human trafficking process is the movement, the transportation of the victim. For this reason, even though it is important to remember that human trafficking does not necessarily involve crossing borders, the crime of human trafficking is often linked to migrant smuggling: the two practices are often related, but they are also very different in nature. Migrant smuggling is defined by Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air to the UN Convention against Transnational Organised Crime as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”. The crime of migrant smuggling is therefore characterised by the facilitation of illegal entry of another person in another country, the creation of false documents on behalf of said person, or the authorisation, by illegal means, of a permanent stay for a non-national and non-resident in the country. From this definition, it is possible to understand that the fundamental theoretical difference between trafficking and smuggling is that smuggling violates the law of the State where a person is smuggled, while trafficking violates the fundamental human rights of the person that is trafficked

(International Organization for Migration n.d.). In addition, smuggling is usually a voluntary act, as the person that is smuggled pays a certain amount to be transported, while human trafficking is the result of an act of coercion, fraud, or abuse of a position of vulnerability (Burke et al. 2022, 13). Notwithstanding this, it is important to underline that a smuggling process can at any moment turn into human trafficking: for example, it is not uncommon for persons to voluntarily agree to be smuggled to another country to work in the sex industry, or to do domestic labour, without knowing that once they arrive at destination, they will be fully under the control of their ‘employer’, and therefore become a victim of trafficking (*Ibid.*, 14).

Human trafficking exists within the framework of irregular migration, and it responds to the demand for flexible and often low-skill, illegal labour, as well as ‘exotic sexual labourers’ in the destination countries. The legal channels for labour migrations, despite the increased willingness to migrate, are few and even more restricted for certain groups of people, especially women. The role of traffickers is to provide the link between supply and demand, particularly by assisting in international border crossing, and as said before, the undocumented status of migrants in the country of destination makes them more vulnerable to exploitation (Roth 2012, 6).

The impact of human trafficking on its victims

While analysing the process of trafficking, it is also important to focus on the victims, and on how traffickers are able to control them. As a matter of fact, traffickers use different methods to exercise control over the victims, depending on different factors: the age and gender of the victim, the culture of the group they work in, the personality of the traffickers themselves and the behaviour of the victim (Burke et al. 2022, 21). The most widespread methods to ensure control over the victim are violence (to the point of rape and murder) and threat thereof, against the victim or the people they care about, deprivation of agency and isolation of the victim, confiscation of identification and travel documents, and the exploitation of religious beliefs and practices to force victims to comply (*Ibid.*, 21-22).

In order to understand human trafficking and to provide help for the victims, a fundamental step is understanding the situation they find themselves in, and how they perceive it. As a matter of fact, while from the outside the situation has the characteristics

of manipulation and deception, victims on the inside of it could have a different perception (Swauger et al. 2022, 131). The reason for this discrepancy in perception can be found primarily in the vulnerable condition of the victim, and secondly in the methods used by traffickers, regardless of the kind of trafficking: these methods are designed to deceive victims into exploitation and prevent them from leaving. To approach their victims, traffickers often invent fake job offers or even romantic relationships, and only later they charge exorbitant fees (for example for visas, food, and accommodation) to keep victims under their control; in this way, victims will feel constantly indebted to the traffickers, and it will be more difficult for them to leave (*Ibid.*, 132). The relationship between trafficker and victim can often become complex, and there are instances where it can result in the Stockholm Syndrome, a “psychological phenomenon wherein hostages experience and express empathy and positive feelings for their captors” (Burke et al. 2022, 10-11). This phenomenon is very frequent among children, but it has been observed that also victims of sex trafficking experience an attachment to the traffickers, whom they believe to be their boyfriends, or their caretakers in general (Swauger et al. 2022, 132).

Victims of trafficking are often subjected to resocialisation, meaning that the behaviours and attitudes learned during primary socialisation (within their family, usually) are often overturned. The type of resocialisation that victims of trafficking experience can shape the way they view themselves, and the way they interact with others in the future; an example is that of victims of trafficking that have come to question their right to privacy, as a consequence of having had to undress in front of strangers, or of using public bathrooms. In this sense, a person that believes to be less deserving of privacy and autonomy will have a different approach in future interactions if compared to someone that is assured in their independence (*Ibid.*, 133).

As previously mentioned, vulnerable populations have a higher chance of becoming victims of human trafficking: in this sense, socialisation plays an important role. Vulnerable individuals have often experienced some form of socialisation that increases the possibility of being exposed to human trafficking, whether for reasons related to race, social class, gender, or citizenship (*Ibid.*).

1.1.3 Anti-trafficking measures: what works?

The main approaches to combat human trafficking

Human trafficking has been a pressing issue for the last decades, as mentioned in the first section. For this reason, the international community has engaged in various actions to prevent human trafficking and punish its perpetrators. The States' responses to trafficking in human beings are based on the Palermo Protocol of 2000, and on regional instruments such as the Council of Europe Convention on Action against Trafficking in Human Beings of 2005. These instruments require States to raise awareness on human trafficking among the general public, to cooperate at the international level to prevent and suppress this practice, and to assist and protect victims of trafficking, as well as guarantee that traffickers are prosecuted (Roth 2012, 9). On the basis of these legal instruments, national responses to human trafficking are often based on the 'Three P Strategy', which consists in three basic elements: the prevention of trafficking, the protection of victims, and the prosecution of perpetrators. It is necessary for these three aspects to be used organically, as a part of the same strategy, as they should be seen as interconnected parts of a comprehensive approach to trafficking (*Ibid.*, 10).

The first component of the strategy, the prevention of trafficking, can include measures that have as an objective raising awareness on the issue of human trafficking, which can lead to reduce the vulnerability of potential victims; in addition, it is important to put into place an adequate training for relevant actors (educators, caregivers, police forces) on the phenomenon and on its counter measures. The second pillar of counter-trafficking is the protection of victims, which includes providing them with the necessary instruments to exit from the cycle of trafficking, guaranteeing assistance and safety to witnesses and their families, facilitating a safe return to the country of origin or, if necessary, allowing them to remain the territory of transit or the destination country, and most importantly preventing re-victimisation. The third aspect of the three P strategy is the prosecution of perpetrators, which has to be carried out in order to combat human trafficking. This includes measures to criminalise human trafficking within the internal legislation of States, but also ensuring that the legislative and judicial responses to the phenomenon are

adequate and effective in pursuing those who have committed the crime of human trafficking (*Ibid.*).

The three P approach focuses on every aspect of trafficking, but it is important to underline that this approach has also been integrated by another, the so-called 'Three R' approach, that is more victim-centred: this method focuses on the rescue, rehabilitation, and reintegration of victims of trafficking (*Ibid.*, 10-11). The necessity of a victim-centred approach can be seen in analysing the practical challenges that law enforcement officers face when trying to prosecute traffickers, and they are often related to the victims. As a matter of fact, it is rare for victims to report their trafficking experience directly to law enforcement agencies: they often go through NGOs, or find themselves involved in immigration raids, or law enforcement activity involving prostitution. Some of the reasons for the lack of direct reporting from the victims include the fear of retaliation from traffickers, the stigma and pressure around victims of trafficking, especially in cases of sexual exploitation, and the fact that victims often do not perceive themselves as such, as they are convinced that they have committed a crime and therefore fear imprisonment, sanctions, or even deportation from the authorities. The psychological status of victims has also to be considered when analysing the reasons why they don't report their situation: trafficked individuals are often deeply traumatised because of the abuse and exploitation they have suffered at the hand of their traffickers, which can cause severe and enduring consequences for their physical and mental health. Some of these consequences can include memory loss, and for this reason, victims may need time to recover; in addition, it is not uncommon for victims to hesitate to share their story with strangers, and they may not have a desire for cooperation at all (*Ibid.*, 7). It is also important to consider that protection programs for victims, witnesses and their families are often found lacking, and it is even more complex to implement them in the case of a crime that often happens at the international level, such as human trafficking (*Ibid.*, 8).

The aforementioned approaches constitute an important starting point in understanding what are the best counter trafficking measures, and their effectiveness in contrasting this phenomenon. Over the years, some criticism has been moved regarding the anti-trafficking framework, with a particular focus on the protection of victims. It is not uncommon for law enforcement agencies to consider the legal and judiciary side first, and not to take into account the victims' human rights. In addition, counter trafficking

measures have been under scrutiny because of their focus on protecting States from illegal migration, without putting in place measures to assist and protect victims of trafficking, or to prevent the exploitation and trafficking of migrants in general (*Ibid.*, 12). While human trafficking and irregular migration are connected, it is also important to underline that victims of trafficking are not necessarily forced to leave their countries violently: evidence exists that an increasing number of identified victims of trafficking enter the countries of destination legally, and only later find themselves unable to escape their situation. A pressing issue regarding the connection between human trafficking and irregular migration is that anti-trafficking measures can be used as a motive to tighten immigration laws and border controls, and can also be instrumentalised in the fight against terrorism. Moreover, when putting into place anti-trafficking measures, it is important to take into account the psychological situation of the victims, as mentioned before, and this often does not happen during criminal proceedings; in fact, these procedures can be traumatising for the victims, and even put them in dangerous situations (*Ibid.*, 13).

The effectiveness of measures adopted to combat human trafficking

Anti-trafficking measures have been in place for the last two decades, since the adoption of the Palermo Protocol in 2000, and as analysed before, not all of them have been useful and effective, especially in the framework of protecting the victim and adopting a victim-centred approach. To understand what anti-trafficking measures are more effective, the fundamental starting point is the assessment of anti-trafficking programs, and their subsequent evaluations. As a matter of fact, the evaluation of anti-trafficking programs can offer an insight on the points that need developing, and on the practices that work better to prevent and suppress human trafficking (Bryant and Landman 2020, 132).

After more than twenty years from the adoption of the Palermo Protocol, it is possible to highlight some practices that have proven to be effective in the fight against human trafficking. In the framework of prevention, raising awareness is a fundamental asset to counter human trafficking, but for it to be effective, it is necessary for the campaigns to be targeted to particular groups (possibly people that are at a higher risk of becoming victims of trafficking), to vehiculate a clear and explicit message, and to be adapted to

local contexts, which often includes adapting the language, definitions, and examples to the target (*Ibid.*, 133). Even though human trafficking is a phenomenon that has a strong international component, strengthening the national legal framework is fundamental in order to make anti-trafficking measures effective: this includes conducting trainings at the national and local level, improving support systems for the victims, and supporting the campaigns to raise awareness on the matter (*Ibid.*, 133-34). As noted earlier, the focus on victims and survivors of human trafficking has to be central in anti-trafficking programs: it is important to provide services such as medical support, hotlines, and most importantly long-term reintegration services, for example in education or job placement, as well as long-term support for the recovery from the traumatic experience. In addition, it is important to tailor the intervention to the particular case, and avoid ‘one size fits all’ approaches, that can prove to be ineffective in assisting victims and survivors (*Ibid.*, 134). For the first time in 20 years, in 2020 the number of detected victims of trafficking has decreased of 11% if compared to 2019. This decline in detected victims is likely connected to the Covid-19 pandemic and related restrictions, that have temporarily reduced some forms of trafficking (for example trafficking for the purpose of sexual exploitation, or cross-border trafficking), but the pandemic has also influenced the efficiency of law enforcement and health systems, which likely put a damper on the ability of some countries to respond to trafficking challenges. The strain put on law enforcement and on health services, especially in medium-low income countries, may also have caused trafficking to move to more hidden locations, where it is less likely to attract the attention of the authorities. Overall, the decrease in the number of detected victims is not to be read as a positive sign that the threat of human trafficking is slowing down. On the contrary, with the lifting of pandemic-related restriction, it is possible that risks of trafficking will increase in the following years, also considering crisis, conflicts, and climate change as factors (UNDOC 2022a).

In addition, also the number of people convicted for human trafficking has decreased: they are 27% less in 2020 than they were in 2019. For this reason, it is essential to improve anti-trafficking measures, especially in the areas of protection of victims and prosecution of traffickers: it is not only the pursuing of those who commit the crime of trafficking that is not up to standards, but also the active identification of victims; in fact, reports find

that most victims escape exploitation by coming forward on their own, and not because of identification by the authorities (*Ibid.*).

1.2 Women sexual exploitation: the gendered dimension of human trafficking

Women sexual exploitation is a vast and complex issue, that includes different terminology and can be applied to different contexts, also outside of human trafficking. Since the negotiations of the 2000 Palermo Protocol, discussions have taken place regarding the definition of human trafficking, and particularly its relation to prostitution: particularly, the question revolves around how trafficking for the purpose of sexual exploitation should be defined in relation to prostitution (Roth 2012, 19). This issue is particularly relevant in order to balance the provisions contained in international instruments regarding human trafficking and exploitation, and national legislations, that have different approaches to prostitution.

There are two principal viewpoints on this matter: one side considers all prostitution as sexual exploitation and therefore incompatible with human dignity, the other seeks to distinguish voluntary from forced prostitution and from trafficking in human beings with the purpose of sexual exploitation. This debate finds its roots in academia, where the recent developments of the sex workers' movements have led to question whether prostitution has to be considered at all times as sexual exploitation, and therefore an expression of violence against women and a violation of human rights, or if it is possible for it to be an expression of sexual autonomy, and thus the result of a free choice (*Ibid.*). The position of those that view prostitution as a form of gender-based violence finds its origin in the belief that prostitution should be considered as a form of slavery, therefore as a human rights violation: it has been defined as "the most extreme and most crystallized form of sexual exploitation" (Barry 1995, 11). This 'sexual domination position' (Roth 2012, 21) shares some concepts and ideas with the old-style abolitionist trend, which called for the abolition of prostitution, and that culminated in the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. According to the supporters of the sexual domination position, even when a woman enters voluntarily in prostitution, this decision has to be weighted by taking into account the economic, psychological, and social situation of the woman, which in most cases brings to the understanding that the choice was not really free and meaningful,

considering the external circumstances that led to it (*Ibid.*). For this reason, engaging in prostitution is not seen as a free choice, but more as the “absence of a meaningful choice” (Leidholdt 1993, 136).

For this reason, according to the advocates of the sexual domination position, free will in prostitution is to be considered as questionable, for three main reasons. In the first place, prostitution is perceived as resulting from gender inequality and as a survival strategy for women who have no other choice: as Catherine MacKinnon points out, “if prostitution is a free choice, why are the women with the fewest choices the ones most often found doing it?” (Mackinnon 1993, 28). Secondly, it is necessary to consider that prostitution in most cases puts the woman who practices it in abusive situations, that cause her physical, psychological, and social harm. In the environment of prostitution, women are objectified and treated as commodities, and for the most part obliged to accommodate any request of their clients; for this reason, it is not possible to distinguish consensual and forced prostitution, and these practices should not be separated from human trafficking for purposes of sexual exploitation. Lastly, prostitution does not only affect women who practice it, but women and girls in general, as it reinforces harmful stereotypes and gender inequality and discrimination, as well as increasing violence against women (Roth 2012, 23).

On the other side, those who believe that prostitution can be the result of a free choice support the so-called ‘sex work position’ (*Ibid.*, 24), which has emerged initially as a form of resistance by women in prostitution to the laws and policies that regulate the practice. The proponents of the sex work position believe that not all prostitution constitutes violence against women and that on the contrary, sex work is a mean for women to guarantee their financial independence and their right to work. They believe that women in prostitution should be considered as sex workers, with their own labour rights, and not just as victims of modern slavery or human trafficking. Advocates for the sex work position have often critical positions towards anti-trafficking measures, as they can lead to increased border control and stricter immigration policies, which can make women that migrate for sex work more subject to abuse; in addition, they point out that the anti-trafficking framework does not address abuse in the sex industry and does not guarantee the necessary protection to sex workers’ human and labour rights.

Supporters of the sex work position believe that the choice of a woman to engage in sex work or to migrate for sex work should be respected, and that the problem is not prostitution in itself, but the conditions under which it is carried out (*Ibid.*, 25). As mentioned before, proponents of the sex work position are particularly critical of anti-trafficking measures for the impact they have on migrants and migration, and they focus in particular on the fact that putting human trafficking and prostitution on the same level does not account for women who decide to migrate voluntarily, even for sex work (*Ibid.*, 27). As a matter of fact, according to Laura Augustin, there are not many differences between a migrant woman working in households, or in caring work, and woman working in the sex industry, and therefore sex work should not be stigmatised or antagonised (Agustin 2003, 384-86). Nonetheless, the sex work position is not accepted unreservedly by all its supporters: some believe that defending sex work as unproblematic and normalising it, also from a legislative standpoint, would not necessarily help women, especially in the case of migrant women that are residing illegally in a country and do not have access to work permits (Roth 2012, 29). According to Agustin, the heart of the issue of trafficking for sexual exploitation doesn't reside in the fact that migrant women provide sex work, but in their irregular status within a country.

In the light of this discussion, different approaches have been adopted by different States at the global level. There are four main models of policies on prostitution that have been adopted at the national level: regulation and decriminalisation have the objective of protecting women in prostitution by providing them with labour rights, therefore trying to limit the undesirable side-effects of prostitution, while prohibition and abolition (particularly neo-abolition) have the goal of reduce prostitution altogether and reduce the demand, particularly by criminalising clients (Roth 2012, 29-30).

With regards to international instruments, the most significant among them seem to accept a distinction between voluntary and forced prostitution, as well as human trafficking for sexual exploitation, but in practice, the distinction is not always straightforward (*Ibid.*, 20).

1.2.1 Defining women sexual exploitation in the context of human trafficking

In 2003, Secretary General of the United Nations Kofi Annan issued a global bulletin on sexual exploitation, in order to define it and set the standard in the world to combat it. Sexual exploitation was defined in the bulletin as follows:

For the purposes of the present bulletin, the term “sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term “sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

This definition applied at first to any individual, regardless of age, who was affected by sexual violence, mostly for political or social advancement; currently, this term applies, at the international level, to gender-based crimes that include sexualisation and exploitation of women and girls (Gerassi 2015, 2).

Sexual exploitation is one of the most widespread purposes of human trafficking, but defining what counts as trafficking for sexual exploitation and what is considered prostitution, or sex work, is difficult. A distinction is however needed, since it is fundamental for the research on the subject, and to inform lawmakers and policymakers on how to regulate the commercial sex industry: for example, it is important to understand whether regulating prostitution, or adopting a more neo-abolitionist approach, is best to reduce human trafficking (Dempsey 2017, 61). The issue is that it is difficult to make reliable estimates concerning the prevalence of trafficking for sexual exploitation, partly because of the hidden nature of the commercial sex economy, partly because having access to victims of trafficking for sexual exploitation is difficult (*Ibid.*, 61-62).

From an academic point of view, legal definitions are a fundamental starting point to understand what should count as trafficking for sexual exploitation, and therefore to make correct evaluations concerning the impact and the prevalence of this form of trafficking. The first point to analyse in order to understand what falls under the definition of human trafficking for sexual exploitation, is the question of how to approach the distinction between human trafficking and prostitution from a practical and legal standpoint. As a matter of fact, putting aside the academic debate that has been analysed previously, a distinction between human trafficking for sexual exploitation and prostitution has been adopted in legal binding instruments globally, and for this reason, this distinction must be considered by lawmakers and policymakers when addressing human trafficking (*Ibid.*,

64). While the legal definitions may vary across different jurisdictions, at the international level the most relevant definition is the one contained within the Palermo Protocol, and apart from the elements that have already been analysed in the first section (particularly the three constitutive elements of trafficking: act, means, and purpose), there are other defining characteristics that contribute to identify a case of human trafficking with the purpose of sexual exploitation:

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article (art. 3).

It is possible, from this definition, to identify some elements distinctive of the crime of human trafficking for sexual exploitation: firstly, all child prostitution is considered trafficking, even if the means enunciated in Article 3a of the Palermo Protocol are not used. Secondly, as mentioned in the first paragraph, travel and transportation are not required in order to define a crime as human trafficking: the act element of trafficking can be satisfied also by harbouring or receiving an individual, not necessarily transporting them (Dempsey 2017, 65). Moreover, in the case of adult prostitution, the means elements defined in the Palermo Protocol are remarkably broad: the definition outlines twelve means, mutually independent, that can be used to categorise a situation as human trafficking (*Ibid.*, 66). The twelve means are, as laid out in Article 3a of the Palermo Protocol and analysed in detail by Michelle Madden Dempsey:

- (1) Threat of force;
- (2) Use of force;
- (3) Other forms of coercion;
- (4) Abduction;
- (5) Fraud;
- (6) Deception,
- (7) Abuse of power;
- (8) Abuse of a position of vulnerability;
- (9) Giving payments to achieve the consent of a person having control over another person;
- (10) Giving benefits to achieve the consent of a person having control over another person;
- (11) Receiving payments to achieve the consent of a person having control over another person; or
- (12) Receiving benefits to achieve the consent of a person having control over another person.

For a case to count as human trafficking for sexual exploitation, only one of these means must be present: for this reason, it is not necessary to have been threatened or deceived, as if there has been an abuse of power or of a position of vulnerability, the framework to be considered is that of human trafficking.

Another important element in the Palermo Protocol definition is the fact that the consent of the victim is not relevant from a legal standpoint. This does not mean that trafficked persons cannot consent, as there are cases in which they do consent to their own exploitation, but simply that in presence of any of the means enunciated in Article 3a of the Palermo Protocol, the consent will not be considered relevant as a matter of law, even if present as a matter of fact (*Ibid.*, 67).

As observed by the former United Nations Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, the Palermo Protocol provides a resolution on the debate on the acceptability of the commercial sex industry, and therefore on the distinction between human trafficking for sexual exploitation and prostitution, by establishing clear criteria for understanding what counts as trafficking (Huda 2006, 32-33).

To clarify even further what needs to be considered as human trafficking for sexual exploitation, it is possible to use the *Travaux préparatoires* (“preparatory works”) of the Palermo Protocol, which provide a better definition of some key terms (Dempsey 2017, 71). In particular, when defining human trafficking for sexual exploitation, it is important to understand what can be considered an ‘abuse of vulnerability’, which according to the *Travaux préparatoires* can be “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved” (UNDOC 2006, 347). The *Travaux préparatoires* provide also a specification related to the terms ‘exploitation of the prostitution of others’ or ‘other forms of sexual exploitation’, stating that they are not defined in the Protocol, and therefore must be “without prejudice to how States parties address prostitution in their respective domestic laws” (*Ibid.*, 347).

It is also interesting to consider the position of the United Nations Working Group on Contemporary Forms of Slavery, that in its 2003 report affirms that “international sex trafficking and prostitution within countries are interconnected parts of the global sex industry and must be addressed together”.

Nonetheless, from the analysis of the Palermo Protocol definition of trafficking for sexual exploitation, and the clarifications provided by the *Travaux préparatoires*, it is possible to confirm that, from a legal standpoint, human trafficking and prostitution are not identical, and therefore should not be approached as such. The situation may be slightly different in practice, as even though legally the two phenomena are different, they often overlap at the practical level: prostitution, as practiced in the world, often satisfies the elements of trafficking, and it is difficult to find a case in which a person's experience within prostitution does not involve an abuse of power or of vulnerability (Huda 2006, 9).

For this reason, although human trafficking and prostitution are legally distinct and lawmakers and policymakers should take this distinction into account, it is also important for States and governments to ensure that their policies on prostitution (whether they go towards decriminalisation or abolition) do not contribute to perpetrate human trafficking for sexual exploitation.

1.2.2 The gendered dimension of human trafficking: sex trafficking

The most common form of human trafficking is classified as sex trafficking. After analysing what exactly can be considered sex trafficking, and how it should be differentiated from prostitution or sex labour, it is now important to define sex trafficking, and to analyse the reasons of its prevalence.

Sex trafficking is defined as “human trafficking for the purpose of sexual exploitation to include forced prostitution, pornography, and, for children, sexual corruption and child sex rings” (McCabe 2022, 79). The industry of sex trafficking is particularly linked to organised crime, as the trafficking of persons for the purpose of sexual exploitation often relays on the requests and preferences of the recipients: in the commercial sex industry there is often the need for a specific kind of victim (based on skin colour, appearance, ethnicity), and organised crime networks are aware of these preferences and work to accommodate them (*Ibid.*, 80).

From an historical standpoint, the more common demographic for victims of sex trafficking is young and female. The most recent data support this statement, as 64% of the victims of trafficking for sexual exploitation are adult women, and 27% are young girls, which brings the prevalence of female victims of sex trafficking to 91% overall

(UNDOC 2022a). Because of the challenges in recognising when women are involved in prostitution as a result of sex trafficking, the collection of data on the phenomenon is complex, as well as the identification of the victims, because in many cases they are viewed as individuals involved in prostitution and therefore fall under the category of illegal, or legalised, prostitution, and are not considered as victims of trafficking. In addition, the estimates on the number of children victims of trafficking may be conservative, as contrarily to the indications contained in the Palermo Protocol, the prostitution of children is not always recognised as sex trafficking (McCabe 2022, 81). Victims of sex trafficking are not only subjected to forced prostitution: other forms of sex trafficking are forced production of pornography, bride trafficking, and sex tourism.

The challenge in separating prostitution and sex trafficking is also a result of the fact that many adult victims of trafficking may have agreed to prostitution initially, but are subsequently trafficked and therefore deprived of the control on their activities and their earnings; in many cases, this increases the difficulty in obtaining assistance from law enforcement, and it can cause a perception of these victims being unworthy of legal assistance, as their involvement in prostitution was voluntary at first. For children, the situation is different, but not less problematic: the consent to sexual exploitation for them is usually given by a family member, or they can be trafficked by their partners, and for this reason children victims of trafficking often trust their trafficker and distrust everyone else (McCabe 2022, 82).

There are many individual factors that can increase the possibility of being trafficked, as mentioned in the first section: the more the individual is in a situation of vulnerability, the more chances there are to fall victim to human trafficking. For victims of sex trafficking especially, some of these factors may include language and culture: in some cases, the language skills in the destination country of the victims of trafficking are basic or non-existent, making it nearly impossible to communicate and understand the situation they find themselves in. In addition, these victims may come from a cultural background that has taught them to mistrust law enforcement and to fear the authorities, *de facto* lowering their chances to seek help. Sex trafficking can also happen as a result of debt bondage, particularly caused by the idea of owing something to the trafficker, and also as a result of family involvement, as mentioned before in the case of children trafficking; nonetheless, it is not just children that can be victims of familial trafficking. As mentioned

before, also in the case of sex trafficking situations such as being part of the LGBT+ community, that in certain cases can bring to homelessness, depression and in general lack of family support, can put someone in a position of vulnerability, and therefore pose a higher risk of becoming a victim of trafficking (*Ibid.*, 83).

Moreover, other factors that can increase the risk of sex trafficking are: military presence, as women who engaged in prostitution in areas with a strong military presence can find themselves victims of trafficking when the military vacates the area; the cultures of spousal prostitution and the mail-order bride industry, where women are perceived as an object to purchase, and even disposable or exchangeable; as well as structural conditions of poverty, inequality, and corruption, which are all elements related to sex trafficking (*Ibid.*, 84).

In considering the risk factors that can bring to sex trafficking, it is also important to link the consequences that being trafficked can have on an individual: victims of human trafficking for sexual exploitation live through traumatic experiences, that can cause long-lasting health problems, not only from a physical standpoint, but also from a psychological perspective. Victims of sex trafficking can experience, along with physical and sexual abuse, also some forms of emotional abuse, which can bring them to suffer from post-traumatic stress disorder and depression (Gerassi 2015, 6-7).

The prevalence of sex trafficking is not only due to the vulnerability of certain categories, but also to the fact that States and governments don't approach the issue and its impact on individuals and society in the correct way. As stated above, recognising cases of sex trafficking can be difficult, and oftentimes authorities have little to no recognition of cases of sex trafficking, therefore slowing the investigative efforts by criminal justice systems (McCabe 2022, 88). In addition, punishments for the crime of sex trafficking are not adequate and don't act as a deterrent: for example, in the comparison between human trafficking, firearms trafficking, and drug trafficking, the maximum sentence for human trafficking is up to 10 years, while in the cases of drug and firearms trafficking the punishment can be a life sentence in the United States (McCabe and Manian 2010, 157). In recent times, the recognition and punishment of sex trafficking has been complicated by the advancement of the internet: this mode of communication is difficult to monitor, and regulations are difficult to enforce. Internet is used to distribute pornography produced by victims of sex trafficking, but it can also be used to recruit them, often

through fake job advertisements, or through websites and forums where individuals are deceived (McCabe 2022, 88). This new method of communication also facilitates the existence of sex rings, especially involving children: in sex rings, adults exchange pornography and other kinds of sexual activities with multiple victims, usually on instant messaging apps and discussion-only online forums, and because of their online nature, the prosecution of the people responsible is even more difficult (*Ibid.*, 89).

In the cases of sex trafficking, it is possible to remark some common elements: poverty, inequality, corruption, a situation of vulnerability, as well as an unwillingness by victims to report (often caused by a lack of trust in the authorities) and ineffectiveness in law enforcement procedures to identify victims and prosecute traffickers, which can facilitate sex trafficking in itself.

1.2.3 A gendered approach to human trafficking

Human trafficking is a gendered phenomenon, and gender affects all aspects of the trafficking process (Gallagher 2008, 193). As analysed in the above section, discrimination and violence are fundamental factors that increase the vulnerability of women and girls to human trafficking. For this reason, it is important to analyse the roots of this discrimination, in order to better understand how to tackle the issue of human trafficking from a gender perspective.

According to Lisa Huebner, it is possible to identify three forms of oppression against women that contribute to the influence of gender on human trafficking: violence against women, commercialised intimacy, and the feminisation of migration (Huebner 2022, 142).

The Fourth World Conference on Women in 1995, characterised sex trafficking as an international human rights violation, and particularly as a form of violence against women. By adopting this perspective on trafficking, it is clear that victims of sex trafficking don't have to be criminalised, since they are victims and survivors, and for this reason they need support to recover from the trauma and abuse they have faced (Mutter 2018). This is an important change of perspective to adopt when enacting anti-trafficking policies and laws, as one of the most pressing issues in sex trafficking is the fact that victims can end up criminalised because of their participation in prostitution and sex work. Moreover, framing trafficking as gender-based violence against women recognises

the effects that it can have on the victims, from a psychological and physical perspective (Huebner 2022, 146). Gender-based violence against women is part of a structural discrimination perpetrated by men towards women, and it is utilised as a way to assert dominance and power over women (*Ibid.*); this also translates in the commercial sex industry, where women are seen as mere objects to be purchased, exchanged, and exploited, mostly by men. Applying the framework of gender-based violence against women to human trafficking demonstrates the common patterns and the structural nature of discrimination and violence against women, which shows the extent of the violence women have to face during their lives (*Ibid.*, 142).

The second form of oppression identified by Huebner, that increases the risk for women to fall victims to sex trafficking, is commercialised intimacy. In commercialised intimacy, “bodies or parts of bodies are the product, and to make someone a product or an object one must be dehumanised”. In the industry of commercial sex, it is not only the strictly physical aspect of it that is considered: there is also an emotional side that is often (even involuntarily) pursued by the recipient, and this emotional side includes emotions of love, and care that are primarily experienced through women’s bodies (*Ibid.*, 147-48). For this reason, sex work and care work, also in the framework of human trafficking, constitute a sort of ‘mimicked intimacy’ for those who purchase trafficked women, who are then forced to meet the physical and emotional needs of the recipient, or the client (*Ibid.*, 148). Undoubtedly, it is not only the emotional part that the clients are after: the physical aspect is also relevant, to the extent that the body of trafficked women becomes itself a property and a site of exchange, causing it to be dehumanised and to increase the probability of abuse happening.

Lastly, another form of oppression that exacerbates the vulnerability of women to human trafficking is the feminisation of migration. Women migrate internationally for various reasons, particularly for domestic work, care work, and sex work: these migrations, that often happen from less rich nations to richer ones, put women more at risk of being trafficked. The reasons why women migrate are linked to socially constructed gender ideologies that view women as more apt to a certain kind of job (as mentioned before, domestic work or sex work), and therefore exposes them to a greater risk of becoming victims of trafficking: in the destination country they are often isolated and end up being part of the informal sector, without protection or legal resources to seek help (*Ibid.*, 151).

In addition, it is also important to consider that the common belief that victims of trafficking are kidnapped from their families and brought in another country is not always correct: as a matter of fact, women are commonly recruited by seemingly legitimate organisations that promise them a better life in another country, under the condition of marriage, work, or modelling (*Ibid.*, 152).

Adopting a gendered approach to human trafficking means being aware of the inequalities and the difference in the trafficking experiences of women and men, and addressing their diverse needs in the adoption of anti-trafficking policies (Palumbo 2015).

Nonetheless, taking gender alone into consideration is not sufficient: an intersectional approach is needed, in order to correctly frame gender issues in human trafficking and tackle them effectively. Intersectionality is defined in feminist literature as “an analytical lens to explain how multiple and discrete social categories – race, gender, sexuality, class, and nationality – work together to create unique experiences of privilege and subordination” (Huebner 2022, 155), and it is this lens that needs to be applied to the human trafficking framework.

For instance, gender-based violence against women is not only a matter of gender: experiences may differ relating to nationality, race, and class; the same can apply to commercialised intimacy, where specific traits in women are required for specific jobs (for example, women of colour are often associated with hyper loving care abilities, and therefore viewed as ‘natural nurturers’). The same intersectional approach applies to the migration of women, as the outcomes vary at different intersections of race, gender, nationality, religion, and class (*Ibid.*, 156).

The factors that make women more at risk of becoming victims of sex trafficking are not related solely to gender, and in order to adopt a gendered approach to combat human trafficking, it is essential that all the factors are considered, to improve the protection of women victims of trafficking and the prosecution of traffickers.

CHAPTER II – Legal framework: international and European instruments to combat human trafficking

The second chapter is dedicated to the analysis of the legal framework on human trafficking. The focus is going to be on international and European instruments to combat human trafficking.

In the first section, I am going to analyse the main international instrument in the human trafficking framework, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime of 2000. In addition, I will also focus on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, provided by the Officer of the High Commissioner for Human Rights, that provide a practical and rights-based guidance on how to apply the provisions contained in the Palermo Protocol. I will then move the focus of my analysis on international instruments that target groups that are particularly vulnerable to human trafficking, therefore women, migrant workers, and children. I will analyse the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and three general recommendations of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee): the General Recommendations No. 19 and No. 35 on gender-based violence against women, and the General Recommendation No. 38 on trafficking in women and girls in the context of global migration. Furthermore, I will consider the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 and the way it tackles the issue of human trafficking; in addition, for the matters of provisions regarding child trafficking I will analyse the Convention of the Rights of the Child of 1989 and specifically its Protocol on the Sale of Children, Child Prostitution and Child Pornography. Furthermore, I will include in my analysis other international instruments that contain provisions useful to combat human trafficking, such as three Conventions of the International Labour Organisation (the Convention of Forced Labour n°29, the Convention on the Abolition of Forced Labour n°105, and the Convention n°182 on the Worst Forms of Child Labour). I will also include a brief mention of the Conventions on slavery, as well as other provisions contained in other Conventions that relate to the human trafficking framework.

In the second section, I will focus on the European framework, starting from the Council of Europe Convention on Action against Trafficking in Human Beings of 2008, as well as the monitoring system connected to this Convention. In addition, I will analyse the jurisprudence of the European Court of Human Rights (ECtHR) regarding article 4 of the European Convention of Human Rights: this jurisprudence, although recent, recognises human trafficking as relevant to the scope of article 4, that protects individuals against slavery, servitude and forced labour.

I will then consider the anti-trafficking framework of the European Union, starting from Article 5 of the EU Charter of fundamental rights, and subsequently analysing the EU Anti-trafficking Directive and the most recent EU Strategy on Combatting Trafficking in Human Beings.

2.1 International instruments to combat human trafficking

In the decades before the rise of human trafficking to the attention of the international community, other instruments had been adopted, especially concerning the issue of ‘white slave traffic’ and ways to tackle it. For instance, the first Agreement for the Suppression of ‘White Slave Traffic’ was adopted by thirteen Western European States in 1904, and six years later, this Agreement became a fully-fledged Convention (Roth 2012). This Convention contained protective and preventive measures, as well as innovative obligations for state parties to punish the perpetrators. An ulterior evolution was made in 1921, when the League of Nations adopted the Convention for the Suppression of the Traffic in Women and Children, which abandoned the incorrect term ‘white slave traffic’ and included more generally women and children, much as the more recent Palermo Protocol.

These first Conventions lay the grounds for the adoption of the more recent international instruments to combat human trafficking, and it is possible to observe some similarities between what was then defined as ‘white slave traffic’ and modern human trafficking: the means of coercion are similar, as well as the methods to retain control over victims (*Ibid.*, 47).

Human trafficking became a pressing issue in the international agenda, and especially in Europe, starting from the 1990s: it was in that period that large groups of people started to migrate in Europe, mostly due to the dissolution of the URSS and the armed conflicts

that were happening in Former Yugoslavia. Even with an increase in number of people displacing from their origin countries, the legal options to enter Western Europe were limited, and it is in this setting that organised criminal groups started making their appearance in a more substantial way at the international level: they had the possibilities to open up different routes for migrants that were not able to enter a country legally (Roth 2012).

In the first years, many studies were made, especially trying to understand the connection between human trafficking, migrant smuggling, and transnational organised crime: it was the rise of the prevalence of the latter that brought the attention of the international community on human trafficking, which culminated in the adoption of the United Nations Convention against Transnational Organised Crime and its Protocols in 2000. For the first time, an international instrument focused not only on the traffic of women and children for sexual exploitation, but on human trafficking in general.

2.1.1 The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime

The main provisions in the Palermo Protocol

The UN Convention against Transnational Organised Crime has the objective to respond to the threat of criminal organisations that cross borders: in the forward to the Convention, former Secretary General of the UN Kofi Annan States that “if crime crosses borders, so must law enforcement”. The Convention expresses as a goal the promotion of the cooperation between States to prevent and combat transnational organised crime efficiently; to do so, the Convention establishes an obligation to criminalise “any serious crime”, as defined in Article 2b: “Serious crime shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”. In addition, the Convention focuses on the criminalisation of four specific crimes: the participation in organised criminal groups (article 3), money-laundering (article 6), corruption (article 8) and the obstruction to justice (article 23). An important element present in the Convention is the obligation for State Parties to protect victims and witnesses, enunciated in articles 24 and 25; this protection must be guaranteed

especially in cases of threat, intimidation, or possibility of retaliation against those involved (see annex 1).

While the Convention focuses more on law enforcement and organised crime, the Protocols focus each on a particular area where transnational criminal organisations can thrive. In particular, as underlined in the sections above, organised crime and human trafficking are deeply interconnected, and for this reason, the United Nations felt the necessity to adopt a universal instrument that could address all aspects of human trafficking.

The Palermo Protocol (see annex 2) was adopted in 2000 and it entered into force in 2003, and it represents the first legally binding instrument with a common definition of human trafficking. The objectives of the Palermo Protocol are clearly stated in Article 2, and they constitute the basis of the 'three P strategy' mentioned in the first chapter:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

The Protocol provides a series of measures that must be adopted by States in order to comply with these provisions. For instance, the Protocol affirms that all State Parties should adopt legislative measures to criminalise human trafficking and any offence related, as well as impose adequate sanctions; in addition, the state of which a victim of human trafficking is a national or permanent resident should facilitate the repatriation said victim, as well as cooperating with other States to identify victims and perpetrators of trafficking, by exchanging information with law enforcement, immigration or other relevant authorities of other States Parties. Moreover, it is necessary for States to provide an adequate training to law enforcement or other authorities with a perspective on human trafficking, particularly on the methods used in preventing it, prosecuting the perpetrators, and protecting the victims. The Protocol also underlines that this training should have a human rights-based approach and take into account a gender-sensitive and a child-sensitive approach, in order to ensure a better protection tailored on the needs of every victim.

The Protocol incorporates a series of measures that have the objective of protecting victims of trafficking, but the vast majority of them are optional, as they are to be applied

“in appropriate cases and to the extent possible under [the] domestic law [of the State Party]” (art. 6). These measures include the protection of the privacy and of the identity of victims, ensuring that the legal proceedings are conducted in a way that allows victims to present their views and concerns regarding perpetrators, and providing for the physical, psychological, and social recovery of the victims (for instance, appropriate housing, counselling, medical assistance and employment, educational and training opportunities). Moreover, State Parties need to take into account the special needs of the victims in taking into consideration age and gender, and guarantee the physical safety of the victims, as well as ensure that they receive compensation for the damage suffered.

With regards to preventive measures, the Protocol does not only focus on actions with the goal to prevent trafficking, but also on actions to prevent victims from revictimization. Among the measures that the States can adopt, the Protocol lists research, information, and media campaigns, as well as social and economic initiatives; moreover, States are required to adopt policies and programmes in cooperation with non-governmental organisations and civil society, which should also be strengthened by the means of bilateral or multilateral cooperation at the international level. Other measures to be adopted need to tackle the educational sector, in order to start the prevention as soon as possible and discourage the demand that is at the base of all forms of exploitation of persons, which is what leads to trafficking.

State Parties are also required to strengthen border control measures, although “without prejudice to international commitments in relation to the free movement of people” (art. 11), in order to better prevent and detect trafficking in persons. These measures may include ensuring that commercial transport is not used in the trafficking process, revoking entry visas to persons involved in trafficking, ensuring that trafficking documents are not easily falsified, altered, replicated, or issued.

It is important also to emphasise that in Article 14 of the Protocol, it is specified that the provisions contained in the Protocol do not affect rights and obligations of States and individuals under international law (including international humanitarian law and international human rights law), and that a special mention is made concerning the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, with specific regards to the *non-refoulement* principle.

The OCHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking

The Palermo Protocol provides a comprehensive view on human trafficking, but the provisions concerning the assistance and the protections of victims are not complete, and most importantly, optional (Roth 2012, 103). This is probably a consequence of the fact that the Protocol has been developed in the context of law enforcement and the fight against transnational organised crime, as opposed to having a focus on human rights and on the victims of trafficking.

For this reason, in 2002, the Office of the High Commissioner for Human Rights (OHCHR) has developed the Recommended Principles and Guidelines on Human Rights and Human Trafficking, with the goal to provide practical guidance and to include a human rights-based approach in the prevention of trafficking, and mostly in the protection of victims.

The OHCHR identifies four main principles to follow when adopting measures to combat human trafficking: firstly, the primacy of human rights. The rights of the victim must be at the centre of all efforts by the State, and States have “a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons” (OHCHR 2002). For this reason, anti-trafficking measures cannot affect the human rights of the victims of trafficking. The second principle identified concerns the prevention of trafficking, that should address the demand of trafficking as the root of the problem, and therefore work to eradicate it. In addition, measures need to be taken to address the factors that increase vulnerability of certain categories, and to eradicate all public-sector involvement in trafficking. The third principle focuses on protection and assistance to the victims, that should not be detained, charged, or prosecuted for illegal acts they may have committed while in a situation of trafficking, nor for their illegal entry or permanence within the destination country. Victims must be provided with assistance of any kind: legal, medical, psychological, and they must be protected from further exploitation and harm, with an approach that must consider the special needs of the victim (for instance in the case of children). Lastly, the fourth principle concerns criminalisation, punishment, and redress: all possible measures must be taken by the States in order to criminalise trafficking and connected acts, States have to apply appropriate and effective sanctions to the persecutors,

and they must guarantee access to appropriate and effective legal methods to victims of trafficking.

Using these four principles as a starting point, the OHCHR promotes eleven guidelines that States need to take into consideration when adopting legislation and policies on human trafficking. The guidelines include the need to continue to promote and protect human rights, as their violation is both a cause and a consequence of human trafficking, and the necessary effort from States in identifying trafficked persons and traffickers, as identification is fundamental to guarantee the victim's rights and to investigate the trafficking process. In addition, it is important to carry out research, analysis, evaluation, and dissemination on good practices and effective and realistic anti-trafficking measures, for example by standardising the collection of statistical data on human trafficking. Moreover, the OHCHR provides guidelines on the guarantee of an adequate legal framework and law enforcement responses to human trafficking, as one of the major obstacles to the fight against trafficking is the lack of specific legislation at the national level. In addition, it is fundamental to provide protection and support for trafficked persons, without any kind of prejudice or discrimination, and with the adoption of special measures in case the victim is a child. The guidelines underline the importance of prevention, for example by analysing the factors that create demand for exploitation and acting on them, and they also emphasise the importance of granting an effective access to remedies for trafficked persons. Additional obligations are aimed at the States to train, educate, and most importantly control peacekeepers, civilian police, humanitarian and diplomatic personnel, in order to ensure that they have the necessary instruments to approach human trafficking and that they are not involved in the trafficking process. Ultimately, the OHCHR highlights the need for cooperation and coordination between States and regions, as human trafficking is a regional and global phenomenon that cannot always be approached effectively only at the national level.

The Palermo Protocol, if considered together with the OHCHR Recommended Guidelines and Principle, offers a complete framework to tackle human trafficking and to adopt the necessary measures in order to prevent the phenomenon, protect the victims and prosecute the perpetrators, but at the practical level, many steps need to be taken still in order to fully eradicate the phenomenon, especially considering a human rights-based approach.

2.1.2 Other instruments in the human trafficking legal framework: the protection of vulnerable groups and the International Labour Organisation Conventions

The protection of women and migrants against human trafficking

In addition to the international instruments specifically dedicated to human trafficking, it is possible to find provisions on the matter also in Conventions that focus on the protection of vulnerable groups, namely women, children, and migrants. Moreover, it is also important to analyse the work of the International Labour Organisation (hereinafter ILO), especially concerning human trafficking with the purpose of forced labour and the protection of children from human trafficking.

In the matter of the protection of women against human trafficking, it is possible to take into consideration the CEDAW Convention of 1979, that in its Article 6 States that all State Parties shall “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women” (see annex 3). It is possible to observe here that the Convention deals only with forced prostitution and trafficking, therefore implying a distinction with prostitution *per se* in its legislative framework (Roth 2012, 56).

In addition to the CEDAW Convention, the CEDAW Committee has also adopted three General Recommendations that contain provisions on women victims of trafficking. The first is the General Recommendation No. 19 on violence against women (see annex 4), which defines trafficking in women and sexual exploitation, also with regards to the ‘new forms’ of exploitation such as sex tourism, the exploitation of domestic labour, and the practice of mail-in brides, as forms of gender-based violence against women, as they are “incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity” (CEDAW Committee 1992). In 2017, a second General Recommendation on gender-based violence against women (the General Recommendation No. 35) was adopted by the CEDAW Committee, with the goal to update the General Recommendation No. 19 (see annex 5); in this case, there are no new specification on trafficking in women, but it is possible to observe that being a victim of trafficking is considered as an aggravating factor for women, which makes them more susceptible of suffering from violence and abuse, and for this reason States must adopt

adequate measures to protect them, taking into account all the intersecting factors that can affect the situation (CEDAW Committee 2017). More recently, in 2020, the CEDAW Committee has adopted the General Recommendation No. 38, on trafficking of women and girls in the context of global migration. This Recommendation has a paramount importance, as it analyses the gendered dimension of trafficking and provides a series of recommendations for States, in order to tackle the issue more effectively. The Committee affirms that the high number of women and girls victims of trafficking is due to the lack of a gendered approach in combating the phenomenon, despite the provisions contained both in the Palermo Protocol and in the OHCHR Principles and Guidelines. In particular, the prevalence of female victims reveals that the roots of the phenomenon are to be found in sex-based discrimination, which has to be addressed along with the existing economic and patriarchal structures, as well as the discriminatory regimes adopted by State Parties in terms of labour, migration, and asylum, as these factors exacerbate the vulnerability of women and girls to trafficking (CEDAW Committee 2020). The Committee solicits States to address the root causes of trafficking in women and girls, such as systemic gender-based discrimination faced by women and girls, situations of conflict and humanitarian emergencies, the discrimination faced by women and girls in migration and asylum regimes, and the demand that fosters exploitation and leads to trafficking. In addition, the Committee remarks that it is important to address the issue of the use of digital technology for trafficking, as in the recent years and especially after the Covid-19 pandemic, there has been an increase in the recruitment for sexual exploitation online, as well as an increased demand for child sexual abuse material, and technology-facilitated child sex trafficking. Considering these root causes, the recommendations made by the Committee are focused mainly on the victims and on the respect of their human rights, particularly in adopting gender-sensitive court proceedings (for example, by protecting their privacy and safety), as well as committing to the non-criminalisation of victims.

The protection of women from human trafficking and the contents of the General Recommendation No. 38 intersects with the protection of migrants, as the CEDAW Committee invites States to adopt a safe migration framework, in order to protect migrants from human trafficking. In addition, victims of human trafficking may qualify for refugee status under the 1951 Convention on the Status of Refugee, or other forms of complementary protection (Stoyanova 2019).

An additional obligation for States to prevent and eliminate “the employment of migrant workers in an irregular situation” can be found in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, that calls for the protection of migrant and their families also from persons or groups that use violence, threats, or intimidation against migrant workers in irregular situation, or their families (see annex 6).

The provisions on child trafficking and other relevant instruments

Regarding the protection of children from child trafficking, it is possible to consider the 1989 Convention on the Rights of the Child (see annex 7), that particularly in Article 39 calls for States to adopt all appropriate measures “to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse”, including those resulting from a situation of human trafficking. Along with the Convention, the United Nations have adopted in 2000 an Optional Protocol, which concerns the sale of children, child pornography and child prostitution. This Protocol has the objective of guaranteeing that an age-sensitive approach is used when dealing with children victims of trafficking, particularly tackling the root causes such as gender discrimination and harmful traditional practices, as well as protecting the best interest of the child.

Outside of the United Nations framework, the ILO has adopted the Worst Forms of Child Labour Convention (No. 182) of 1999, that contains important provisions and State obligations to protect children from human trafficking. This Convention enumerates child trafficking, as well as slavery, forced labour and sexual exploitation among the worst forms of child labour, and calls for States to take effective and timely measures to provide for the rehabilitation of victims, as well as their social integration, by taking into account their special needs (also from a gender perspective) and provide them access to free basic education.

The ILO has also adopted two other Conventions focusing on compulsory or forced labour and services; the first is the Forced Labour Convention (No. 29) of 1930, which gives a definition of forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered

himself voluntarily”, the second is the Abolition of Forced Labour Convention (No. 105) of 1957, that calls for the abolition of forced or compulsory labour in all circumstances. It is worth mentioning that the interdiction of human trafficking is found in other international instruments, such as the International Covenant on Civil and Political Rights, particularly in Article 8 that prohibits slavery and all forms of slave trade, as well as forced and compulsory labour (see annex 8).

In addition, it must be noted that in the 1950s the United Nations adopted two Convention that can be considered as the predecessors of the Palermo Protocol: the first is the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, which focused mainly on traffic for the purpose of sexual exploitation and on prostitution, with strong abolitionist views. This Convention was nonetheless criticised for being ineffective in combating trafficking, and for not adopting a human rights-based approach and therefore being ineffective in protecting the rights of the trafficked person (Roth 2012, 55). The second Convention follows the steps of the 1926 Slavery Convention, and it is the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, that had the objective of intensifying international and national efforts on the abolition of slavery, slave trade, and all equivalent practices.

2.2. The European framework on human trafficking

The European framework to combat human trafficking is a multilevel system, composed of different instruments adopted by different organisations, that act together as different parts of a system. The creation of this system followed the inability of single States to address the human trafficking issue, particularly at the beginning of the 20th century, when trafficking in persons was not considered a pressing issue and therefore there was a lack of harmonisation between national legal systems (Đukić and Andrejić 2022). The first regional instrument adopted in the human trafficking framework is the Council of Europe Convention on Action Against Trafficking in Human Beings of 2005, ratified by all European countries except for Russia; this instrument was followed by the European Union Anti-Trafficking directive of 2011, a binding instrument for EU Member States, and even before these two binding instruments, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings was

created by the Organisation for Security and Cooperation in Europe (OSCE) in 2003, along with an Action Plan to Combat Trafficking in Human Beings.

The system in its entirety does not consider only legislative measures, but it has the objective of adopting a multidisciplinary approach in combating human trafficking: the envisaged strategy to combat trafficking in persons at the European level includes the adoption of a balance between criminalisation, the efficiency of investigations and the protection of the human rights of the victims, including a gender-sensitive approach (*Ibid.*).

The European system to combat human trafficking is therefore composed of different bodies and organisations, starting from the Council of Europe but also including the EU, the OSCE, non-governmental organisations, and national mechanisms; the functioning of the regional system depends on their links and relationships, which creates a polycentric system with a holistic approach. This system is designed to enable identification, definition, and implementation of measures, activities, and procedures with a multilevel approach, by acting in the domain of criminal law as well as in the prevention of trafficking, and protection and assistance for victims. The lack of a unified governing body at the European level makes the necessity for cooperation between the three mechanisms even greater, in order to guarantee the best coordination possible of policies and activities (*Ibid.*).

Nonetheless, the instruments and the mechanisms for combating trafficking in Europe have a unity of objectives and find their starting point in the Palermo Protocol, which is the baseline for defining human trafficking and for the adoption of measures to combat it: for this reason, the European system has proved some degree of effectiveness, even though it is not possible for the moment to assess the effectivity of the overall mechanism. In the following sections, I will focus on the mechanisms put in place by the Council of Europe (the Convention and its monitoring mechanisms) and by the European Union, particularly the Anti-Trafficking directive and the recently adopted Anti-Trafficking Strategy for the period 2021-2025.

2.2.1 The Council of Europe Convention on Action Against Trafficking in Human Beings

The Council of Europe Trafficking Convention (hereinafter ‘Trafficking Convention’) was adopted in 2005. The Trafficking Convention is to be read as an

instrument that has the objective to enhance the protection guaranteed by the Palermo Protocol, and it does not affect the rights and obligations derived by its provisions, as specified in Article 39 of the Convention itself (see annex 9).

The Trafficking Convention defines its purpose in the first Article: the aim of the Convention is to prevent and combat trafficking in human beings, protect the human rights of the victims and design a comprehensive framework for their protection and assistance, and promote international cooperation on action against trafficking in human beings. It is important to note that the Convention puts immediately a specific attention on the necessity to protect the human rights of the victims, which follows the statement, contained in the Preamble, that “trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being”. In addition, in the same Preamble it is also stated that the main objectives must be the respect for victims’ rights and the protection of victims: it is clear that the Trafficking Convention adopts a different approach if compared to the Palermo Protocol, as it is more focused on a human rights-based approach and on a victim-centred approach.

The Trafficking Convention applies to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime (art. 2). In addition, it contains a non-discrimination principle, that contributes to the human rights-based approach of the whole Convention: the enjoyment of rights and protective measures is to be secured without discrimination on any grounds, and the list of possible discriminative elements that follows is large and open to additions, as it includes “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (art. 3).

The definition of human trafficking stated in the Trafficking Convention is identical to the one that can be found in Article 3 of the Palermo Protocol, which guarantees a continuity and helps unifying the efforts to combat the phenomenon at the international and regional level. Following the steps of the Palermo Protocol, the Trafficking Convention requires States to take appropriate measures to prevent trafficking in human beings, such as awareness raising and education campaigns, but it specifies the need for a human rights perspective, therefore calling for the use of gender mainstreaming and a child-sensitive approach in the development, implementation, and assessment of the policies and programmes adopted to combat trafficking in persons (art. 5). In addition,

the Convention mentions the need for measures to discourage the demand of trafficking, particularly for preventive measures that must include educative measures on sex-based discrimination, the importance of gender equality, and the dignity and integrity of every human being (art. 6); the Convention calls also for the adoption of border measures and enhanced security and control of documents.

In comparison with the Palermo Protocol, the Trafficking Convention has a more victim-centred approach, and it focuses specifically on the adoption of measures to protect and promote the rights of victims and to guarantee gender equality, to which Chapter III is entirely dedicated. In particular, the Trafficking Convention recognises the importance of identifying the victims, as the failure to do so hinders the respect of the victim's rights and is an obstacle to the advancement of criminal proceedings against traffickers; the Convention also specifies that if the competent authorities have "reasonable grounds to believe that a person has been victim of trafficking in human beings" (art. 10), then the person will not be removed from the territory of the receiving State, and until the completion of the identification process, the person will be granted the assistance measures that the Convention enumerates in article 12. Victims of trafficking in persons must be granted protection of their private life and identity, they must receive assistance, as States must provide appropriate and secure accommodations, psychological and material assistance as well as access to medical treatment, translation services, counselling, assistance in the case of criminal proceedings and access to education for children (art. 12).

Moreover, States are required to provide victims with a recovery and reflection period of 30 days, in order to allow the victim to recover and escape the influence of the traffickers, as well as eventually take an informed decision on whether or not to initiate criminal proceedings. The victims have to be allowed to reside in the destination State's territory during this period, and they cannot be expelled; the victims also have the right to receive a renewable residence permit if their situation requires it, or if the authorities consider it necessary for the victims' cooperation to criminal proceedings (art. 13-14).

Article 24 of the Trafficking Convention also includes a series of aggravating circumstances in the determination of the penalty for perpetrators that States must take into account in their national legislation:

- a. the offence deliberately or by gross negligence endangered the life of the victim;

- b. the offence was committed against a child;
- c. the offence was committed by a public official in the performance of her/his duties;
- d. the offence was committed within the framework of a criminal organisation.

In addition to aggravating circumstances for traffickers, the Trafficking Convention in Article 19 encourages States to adopt measures to also criminalise the use of the services of a person, with the knowledge that the person is a victim of human trafficking. Furthermore, States must adopt a non-criminalisation approach for victims of trafficking, by considering that their participation in unlawful activities was the result of coercion, abuse of power, or in general that they have been compelled to do so (art. 26).

It is also worth mentioning that, with regards to the investigation and prosecution procedure, the Convention requires States to have their authorities prosecute trafficking offences both *ex parte* and *ex officio*, meaning that it will not be necessary for the victim to make a complaint, but the procedure can be brought forward directly by the authorities (art. 27).

The Trafficking Convention also establishes two monitoring mechanisms: the Group of experts on action against trafficking in human beings (GRETA), and the Committee of the Parties. The GRETA oversees the evaluation procedure, at the end of which it will adopt recommendations and write reports based on State reports, information received by the civil society, national experts and, if necessary, country visits. The Committee of the Parties oversees the adoption of the Convention and can interpret its dispositions, as well as participate in exchanges of good practices and information with other mechanisms at the national and international level.

2.2.2 The jurisprudence of the European Court of Human Rights: human trafficking and Article 4 of the European Convention on Human Rights

The European Convention on Human Rights (ECHR) and its Protocols do not mention trafficking in human beings; nonetheless, the European Court of Human Rights (ECtHR, or ‘the Court’ hereinafter) has been adopting in recent years a jurisprudence that has the objective to include human trafficking as falling under the scope of Article 4 of the ECHR, that prohibits slavery, servitude and forced labour.

Human trafficking was considered for the first time as falling under the scope of the ECHR in 2010, with the landmark case *Ranstev v. Cyprus and Russia*, decided by the first section of the Chamber in January 2010. The case concerned the death of a young woman,

arrived in Cyprus on a visa scheme and coerced into prostitution in the country. In its decision, the Court states that “trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention”. While including human trafficking in the scope of Article 4, the Court does not specify whether it falls under the definition of slavery, servitude or forced and compulsory labour; as a matter of fact, the Court states that it is “unnecessary to identify whether the treatment about which the applicant complains constitutes ‘slavery’, ‘servitude’ or ‘forced and compulsory labour’” (*Ranste v. Cyprus and Russia*, par. 282).

While the inclusion of human trafficking into Article 4 was generally appreciated, there was some criticism on the lack of definitional clarity, as the Court did not explain how the facts of the case pertained to the definition of human trafficking, nor did it clarify how to interpret terms such as ‘sexual exploitation’ or ‘the exploitation of the prostitution of others’ in the context of Article 4 (Stoyanova 2020). One of the reasons for the lack of this definitional clarity is that in the case of *Ranste v. Cyprus and Russia* the Court seemed to have adopted two different interpretative approaches, that can be described as ‘the ECtHR characteristics approach’ and the ‘international law definition’ (Hughes 2022, 1048). The first approach takes into account the nature of the crime of trafficking, the intentions of the traffickers and the impact that it has on the victims, as stated by the Court itself: “trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership” (*Ranste v. Cyprus and Russia*, par. 281). At the same time, as mentioned before, the Court also considers the international definition of human trafficking, as stated in the Palermo Protocol and in the Trafficking Convention. The two understandings of human trafficking considered by the Court are not incompatible with one another, and they often can converge, but they are not synonymous: for example, it is clear that the international definition requires three core elements to classify a situation as human trafficking, while the characteristics approach does not (Hughes 2022, 1048).

The Court has not resolved this definitional uncertainty in the cases following *Ranste v. Cyprus and Russia*, by continuing to oscillate between the two approaches, up until 2020, with the case of *S.M. v. Croatia*.

S.M. v. Croatia was decided by the Grand Chamber of the ECtHR in June 2020. It is the first Grand Chamber judgment on human trafficking, and it represents an important evolution of the Court's Article 4 jurisprudence. The case concerns S.M., a Croatian woman born in 1990, who had been physically and psychologically coerced into prostitution by another Croatian national. The first important element to consider concerning the judgement of the Court is the fact that initially, S.M. had not raised Article 4 in her application: it was the Chamber of the ECtHR that, following the applicant's argument that the State had failed to respect its positive obligation to investigate the case, had advanced the possibility of a breach of Article 4, under the justification that the Court is the "master of the characterisation to be given in law to the facts of the case" (*S.M. v. Croatia (Chamber)*, par. 36). Notwithstanding this, once the case arrived at the Grand Chamber of the Court, the violation of Article 4 was found unanimously, even though some residual concerns on how Article 4 was invoked were raised by two judges in a joint concurrent opinion. The fact that the Court decided to analyse the case under Article 4 suggests that within the ECtHR there is a desire to further develop its Article 4 jurisprudence on human trafficking, and that is what the Grand Chamber has done in its judgment (Hughes 2022).

The second element that is important to underline in this judgment, is the fact that for the first time, the Court considered internal human trafficking, meaning trafficking that happens within a State and that does not require the crossing of borders. Specifically, in its judgment the Court states that "the concept of human trafficking covers trafficking in human beings, whether national or transnational, whether or not connected with organised crime" (*S.M. v. Croatia (Grand Chamber)*, par. 296). By affirming that human trafficking can take place within the borders of a country and that it is not necessarily linked to organised crime, the Court shows a tendency to centre the analysis of the issue more on the victim than on the punishment of the perpetrator, particularly by focusing the attention on addressing the victim's needs and providing them assistance (Hughes 2022, 1051).

Thirdly, in *S.M. v. Croatia* the Court identifies three positive obligations that States have to respect in order to guarantee that Article 4 is not violated: States must put in place an administrative and legislative framework to punish and prohibit trafficking, the duty to protect victims or potential victims of trafficking, and a procedural obligation to investigate situations of potential trafficking (*S.M. v. Croatia (Grand Chamber)*, par. 306).

In the present case, the Court found a breach of the procedural obligation by the Croatian authorities.

Lastly, the Court in its judgment aligns its definition of human trafficking with the international law definition, particularly with the Palermo Protocol and the Trafficking Convention: a situation will be considered as human trafficking “in so far as the constituent elements of the international definition of trafficking in human beings, under the Anti-Trafficking Convention and the Palermo Protocol, are present” (*Ibid.*, par. 296). While some clarity has been made in respect to the definition of human trafficking within the scope of Article 4 of the ECHR, some issues remain: for instance, it is still not clear what is the nature of the relationship between human trafficking and the concepts enunciated in Article 4, meaning slavery, servitude, and forced and compulsory labour (Kane 2021). In addition, the Court raised the issue on the concept of forced prostitution and its position within Article 4: the Court has stated that only forced prostitution (and therefore, not voluntary prostitution) falls under the scope of Article 4. The Court specifies that the exploitation of the prostitution of others constitutes human trafficking only when the Palermo Protocol definition applies, but at the same time, forced prostitution can constitute a violation of Article 4 of the ECHR even when not resulting from human trafficking (Hughes 2022). Nonetheless, the Court recognises the complexity of the issue, as well as the difficulty of clearly defining what counts as forced prostitution, as there is a lack of consensus at the European level (*Ibid.*).

Notwithstanding the complexities and the difficulties in including human trafficking under the scope of Article 4 of the ECHR, the Court has provided some clarification with respect to its earlier jurisprudence, and the case of *S.M. v. Croatia* has to be considered of paramount importance in the evolution of the jurisprudence of the Court in the framework of Article 4, and a step forward in the development of the European framework to combat human trafficking, as it adds a layer of protection and gives victims of trafficking the possibility to appeal the European Court of Human Rights when States don't respect their positive obligations.

2.2.3 The European Union framework on human trafficking

The European Union Anti-Trafficking Directive

Article 5 of the Charter of Fundamental Rights of the European Union States that human trafficking is prohibited, making the interdiction of trafficking in human beings one of the main elements of the protection of human rights within the European Union (see annex 10).

The most important anti-trafficking instrument in the European Union is the EU Directive on preventing and combating trafficking in human beings and protecting its victims (hereinafter, EU Anti-Trafficking Directive) of 2011 (2011/36/EU), which has as main goals preventing and combating human trafficking, as well as protecting its victims. The EU Anti-Trafficking Directive builds on the Palermo Protocol and on the Trafficking Convention, and it recognises human trafficking not only as a crime, but also as a human rights violation (see annex 11).

In adopting a human rights-based approach, the EU Anti-Trafficking Directive recognises in the Preamble that trafficking has a gendered dimension that must be considered, particularly with regards to the fact that women and men are trafficked with different methods and for different reasons, and therefore measures taken by the States and by the EU itself must be gender-specific where appropriate. The EU Anti-Trafficking Directive specifically states the importance of a holistic, human rights-based approach, and calls for the cooperation with international organisations with competence with regards to trafficking in persons. By including these elements in the Preamble of the Directive, it is clear that the European Union intends to adopt a rights-based legislative response to the crime of trafficking (UNODC et al. 2011).

The importance of adopting a gender perspective in combating human trafficking is reiterated in article 1 of the Directive, especially because of the higher vulnerability of women and girls to human trafficking due to the structural factors that have already been described in the first chapter. A gender-sensitive approach in the adoption of anti-trafficking measures is needed to strengthen the prevention of the crime and to provide a better protection for the victims; but even though it is important to take into account the different experiences and the inequalities between women and men victims of trafficking, it is essential to do so without enforcing gender stereotypes (*Ibid.*).

The definition of trafficking in human beings contained in article 2 of the EU Anti-Trafficking Directive aligns with the definition of the Palermo Protocol and of the Trafficking Convention, but in addition, the Directive specifies the meaning of what ‘position of vulnerability’ means for the purpose of this definition: “a position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved”. The Directive focuses on the exploitation element of the definition as well, by enumerating the practices that *a minimum* must be considered as exploitation; in adopting a human rights-based approach, the elimination of the exploitation of human beings should be the primary concern for States, as well as ensuring that victims receive adequate assistance and support (*Ibid.*).

An important element to underline in the EU Anti-Trafficking Directive is the non-prosecution or non-application of penalties to victims of trafficking in persons, enunciated in article 8. Member States should therefore take the necessary measures to ensure that national authorities are entitled not to prosecute or impose penalties on victims of trafficking for their involvement in criminal activities, as their participation in said activities was the result of coercion, use of force, or abuse of vulnerability, or any other action defined in the means element of the crime of trafficking. Nonetheless, the Directive leaves the application of this principle to the discretion of Member States, which could lead to some discrepancies in the implementation of this provision, as well as allowing some States to continue to prosecute victims of trafficking (*Ibid.*).

Following the victim-centred and human rights-based approach enunciated in the Preamble, the EU Anti-Trafficking Directive focuses on a series of measures to assist and support victims of trafficking, as well as to protect them during criminal investigations and proceedings, in Articles 11 and 12. Victims shall be protected from the moment the competent authorities have “a reasonable-grounds indication for believing that the person might have been subjected [to human trafficking]” (art. 11). The assistance and support measures do not have to be contingent on the willingness of the victim to cooperate in the criminal proceedings, even though linking the access to protection and assistance after an initial reflection period to the collaboration with the authorities in prosecuting the criminals is prevalent in many countries. In order to guarantee the most effective protection to victims, Member States have to adopt the necessary measures to identify victims as soon as possible; this provision is to be read particularly following a gender-

sensitive and child-sensitive approach, as the identification of women and children victims of trafficking is particularly challenging (UNDOC et al. 2011). The EU Anti-Trafficking Directive explicitly refers to the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection, and on the content of the protection granted, particularly with regards to the information that must be given to victims of trafficking as a form of assistance and support; as a matter of fact, victims of trafficking can be granted the status of refugee under the 1951 Convention on the Status of Refugee, or other forms of international protection, and within the European Union Member States have an obligation to provide protection, including protection against *refoulement*, when necessary, in addition to granting the refugee status or subsidiary protection (*Ibid.*). Victims of trafficking have also the right to be assisted during criminal proceedings, and to have access without delay to legal counselling and to legal representation, which can be granted free of charge in case the victim does not have sufficient financial resources. The protection granted to victims must be assessed by analysing the individual situation of the trafficked person, for example by granting access to witness protection programmes; in addition, Member States must ensure that the victim receives specific assistance in order to prevent secondary victimisation, particularly avoiding contact between the victim and the persecutor, unnecessary repetition of interviews, the giving of evidence in open court, and unnecessary questioning concerning the victim's private life (art. 12). Secondary victimisation could cause the victim to lose faith in the legal system and increase the frequency of post-traumatic stress disorder, as well as causing her to experience a different trauma (UNDOC et al. 2011), and for this reason it is fundamental to properly protect the victim also during the criminal proceedings.

The EU Anti-Trafficking Directive in Articles 13 to 16 enunciates a series of measures taking specifically into account child trafficking, particularly focusing on the consideration of the child's best interest and highlighting the special needs that children victims of trafficking have. These measures include the appointment of a guardian or a representative for the child in case the holders of parental responsibility are proven not to be able to ensure the child's best interest, but also measures to provide assistance and support to the family if necessary; children victims of trafficking dispose also of an

enhanced form of protection in the case of criminal proceedings, for instance hearings may take place without the presence of the public, and the child could avoid being directly present in the courtroom, and can give his testimony with the support of appropriate communication technologies (art. 15).

Aligning with other international instruments, the EU Anti-Trafficking Directive addresses the measures that must be taken in order to prevent human trafficking as well, in Article 18. The preventive measures included in the Directive are: reduction of demand of trafficking, information and awareness raising campaigns, research and education programmes, regular training for officials and competent authorities. In addition, to effectively discourage demand, measures must be taken to establish as criminal offense the use of services of a trafficked person, with the knowledge that the person is a victim of trafficking in human beings.

Adopting a multilevel perspective, the EU Anti-Trafficking Directive underlines the importance of establishing national rapporteurs or equivalent mechanisms in all Member States, whose tasks will include carrying out assessments of trends of human trafficking, analysis on the measures taken to prevent and combat the phenomenon and their results, as well as cooperation with relevant civil society organisations in the field, and reporting (art. 19).

The European Union Strategy on Combating Trafficking in Human Beings

The EU Anti-Trafficking Directive is supported by the EU Strategy on Combating Trafficking in Human Beings, that was updated in April 2021 to cover the 2021-2025 period. The EU Strategy focuses on the adoption of a comprehensive approach, that encompasses prevention, protection, and prosecution, by providing the Member States with areas of improvement to adopt effective anti-trafficking measures.

The EU Strategy focuses firstly on the importance of legislation, cooperation at the international and regional level, and funding to facilitate joint investigations and prosecutions; in particular the European Commission commits to further support Member States in the implementation of the EU Anti-Trafficking Directive, particularly in providing adequate funding, and to launch an evaluation on the Directive as well, in order to consider whether or not a review is necessary.

The first and most fundamental step in combating human trafficking is reducing the demands that fosters it, and for this reason the EU Strategy focuses on the criminalisation not only of trafficking itself, but also of the use of services of trafficking victims; in addition, the EU Strategy addresses employers and certain business sectors that may rely on the workforce of people in vulnerable situations, by asking them to incorporate in their policies anti-trafficking objectives and to raise awareness on the issue.

The EU Strategy focuses also in combating impunity and adopting strategies to tackle organised crime and the criminal business model, where criminal organised group exploit legal businesses (such as hotels and nightclubs) for their trafficking operations. Moreover, it is important to improve the training of law enforcement and justice practitioners on specific elements of the crime of trafficking, as well as on taking into account victims' perspective and needs, and adapt the measures taken to combat human trafficking to the digital age and new technologies used to recruit victims.

As specified in the EU Anti-Trafficking Directive, the protection, support, and empowerment of the victims is crucial in a human rights-based approach, and the EU Strategy reiterates the importance of the early identification of victims, and of taking into account their specific needs, which seems to remain a challenge in the practical application of the Directive. The EU Strategy focuses on the reintegration of victims into society as well, emphasising the importance of social, economic, and educational measures, and it highlights also the added difficulties faced by victims that are not EU citizens, since they are at a higher risk of being re-trafficked when repatriated.

The implementation of the EU Strategy is monitored by the EU Anti-Trafficking Coordinator, whose main tasks consists in improving the coordination between the European Union institutions and agencies, Member States, third countries and international actors, as well as balancing different policies and legislations on human trafficking with a multilevel perspective, taking into account police and judicial cooperation, human rights protection, migration policies, and social and labour law (Bąkowski and Voronova 2021).

PART II. The Italian case: the ineffectiveness of Italian legislation in combating human trafficking and women sexual exploitation

CHAPTER I – The Italian framework on women trafficking

The aim of the first chapter is to present the specific framework of the country that will be the object of analysis of this thesis: I will therefore focus on the Italian framework on human trafficking, and specifically on women trafficking.

I will begin by analysing the trafficking process in Italy, focusing on the main actors involved and on the groups that are more targeted as victims; in addition, I will be discussing the relevance of organised crime groups. I will then focus on the link between human trafficking and migrant smuggling in Italy, and on the influence that Italian migration policies have on human trafficking and women sexual exploitation. Furthermore, I will analyse some statistics from national, regional, and international organisations, in order to better understand the framework and how to improve it.

Secondly, I will focus on the Italian legal framework concerning human trafficking, and I will also analyse the Italian prostitution framework, as it is fundamental to understand the issues related to women sexual exploitation. In addition, I will focus on the connection between these two frameworks and their overlapping, considering both a general European perspective and focusing on the Italian case.

1.1. Women trafficking in Italy

Human trafficking is strictly intertwined with migration and border control policies, as most trafficked persons are migrants travelling from one country to another. Even though we must not forget the existence of internal trafficking, human trafficking (and, more specifically, women trafficking) in Italy has a strict connection with migration flows that enter the country. Italy has become a destination country for migrants only in the late 1970s, transitioning from a country of emigration to a country of immigration (Andrijasevic 2003, 252).

It is interesting to notice that, with the increasing number of migrants crossing the Italian borders since the 1970s, a new discourse on migration has started to emerge within the Italian public opinion, with newspapers framing mass migrations as ‘invasions’ and depicting migrants as a crisis that need to be dealt with (Andrijasevic 2003). This type of narrative has only worsened in recent times, especially starting from 2015, when migration flows started increasing significantly; news outlets, especially from countries that are more likely to receive a high number of migrants (among them, Italy) have a tendency to depict a negative image of migrants and migration itself, by using terms such as ‘invasion’, or ‘crisis’ when referring to heavier migratory flows (Arcila-Calderón et al. 2023).

The way media outlets describe a phenomenon shapes the general public’s perception of it, and for this reason it is important to observe that there is a differentiation in the narrative concerning men and women who migrate. Female migrants are not perceived in the same way as their male counterparts: for instance, in pictures showing people crossing borders, women are prevalently absent (Andrijasevic 2003, 256). The lack of representation for migrant women leads to their portrayal as characters endowed with little to no agency, as they gain visibility only when victims of trafficking or as war refugees, but rarely as central characters of border-crossings.

Understanding the migration process for women and the different ways they can become victims of trafficking in Italy is fundamental to adopt the appropriate policies and measures to prevent them from being trafficked. For instance, the narrative on women victims of trafficking depicts them as irregular migrants, that cross the border illegally and without documents: that is not always the case, as a high number of women who become victims of trafficking in Italy enter the country with a valid visa, and only after it expires, their stay in the country becomes irregular (*Ibid.*, 259).

When analysing the women trafficking framework in Italy, it is fundamental to take into account all aspects of the process, and not give into the stereotypes that see women as beings lacking agency, or that fall victims of human trafficking only as a consequence of kidnapping, that are deceived into trafficking, or forced into illegality by traffickers. The trafficking process in Italy is much more complex and it needs to be understood in depth to adopt counter-trafficking measures that are effective and that can provide the appropriate support to women victims of trafficking.

1.1.1. The trafficking process in Italy

How trafficking victims arrive in Italy

The understanding of the trafficking process in Italy is strictly interconnected with the migration process, and the existence of foreign and national organised crime groups. As a matter of fact, Italy has the characteristic of being both a southern European criminal hub and a destination and transit country for migratory flows (Antonopoulos et al. 2019). Migrants arrive in Italy from North and West Africa, Eastern Europe, the Balkans and China, with a predominance of people coming from Libya (Shelley 2014). The data from the International Organisation for Migration report a total of 105,131 migrants arrived in Italy in 2022, but because of the difficulties in tracking and recognising trafficking victims, the estimates on the number of migrants who have been trafficked are not exhaustive by any means. In addition, as human trafficking for sexual exploitation and labour exploitation in Italy is mainly managed by foreign organised crime groups, it is even more challenging to monitor the number of victims of human trafficking, as this criminal market is covert by nature (Antonopoulos et al. 2019, 27). In addition, Italy does not have a unified identification system for victims of trafficking, therefore the only data that can be accessed takes into consideration solely victims of trafficking that have entered the assistance and protection programmes (see annex 12).

There are different main routes for trafficked migrants to reach Italy. There are two different routes in Europe: the first one is through Eastern Europe, the second one includes crossing Western European countries (*Ibid.*, 29). In addition, three different routes can be identified from Africa to Italy, that constitutes not only a destination country, but also a major transit point: the first is the Western route, which includes countries such as Mali, Gambia and Senegal; the second one is the so-called Central route, that has as major source countries Nigeria, Ghana and Niger; the third one is the Eastern route, that includes crossing through Somalia, Eritrea and Darfur in Sudan (*Ibid.*, 28).

As it has already been analysed in the first section of this thesis, the reasons that bring migrants to depart from their country of origin are recurrent: people who migrate to Italy might wish to escape instability or violence, or to improve their economic situations and better provide for their families. Because of this, these migrants are more vulnerable to being recruited by traffickers: as a matter of fact, potential victims are often approached

in poor villages in Africa, but also in China and Eastern European countries. Recruiters are not necessarily strangers to the victims, as family often plays an important role in the trafficking process, and particularly in Eastern European countries victims can also be recruited by their partners (*Ibid.*, 31).

Victims of trafficking are recruited with the promise of legitimate, well-paid jobs, and recruiters exploit their vulnerable situation or their need to leave their country of origin; in addition, they might establish a contact with the victims also by using Internet and social media, and this is increasingly common as the reach of social networks is expanding more and more every year. The process usually starts with the trafficker (or, in general, the person linked to an organised crime group) trying to attract potential victims online, either by promising them a better job and to improve their economic condition, or by promising them marriage, travels, and a better life in general; the online profiles used to attract these victims usually show travel packages or job offers that seem legitimate and are used to gain the trust of the victims (Di Nicola, Baratto, and Martini 2017).

It is also important to mention that migrants can travel to Italy with or without documents. In fact, it is possible for them to arrive legally in the country, as it is common with Eastern Europeans trafficking victims, who are provided with false travel documents by their traffickers; similarly, Chinese victims travel to Italy with study or tourist visas, therefore entering the country legally before becoming irregular migrants once their documents expire (Antonopoulos et al. 2019). On the other hand, migrants who come from African countries (especially Nigerian victims) do not have passports or travel documents, and for this reason, they are encouraged by traffickers to ask for asylum once they arrive in Italy. They are often left in reception centres until the resident permit is issued, and only after they are recovered by the traffickers (*Ibid.*, 32). In most cases, the documents are then confiscated by traffickers, which causes the victims to be even more isolated and vulnerable and prevents them from going to the authorities for fear of being recognised as an irregular migrant and therefore deported. There are also cases in which victims of trafficking are provided with new, fake, but valid documents, in order to shield them from police controls; particularly in the case of migrants who arrive in Lampedusa, it has been highlighted a tendency to direct them to a specific neighbourhood in Naples, where a high concentration of forgers is rumoured to exist (*Ibid.*, 31).

The sexual exploitation of trafficked women in Italy

As mentioned before, foreign organised crime groups are highly involved in the sexual and labour exploitative markets in Italy. These markets are widespread throughout the country, but nonetheless specific hubs for the two different forms of exploitation exist: the cities of Turin, Milan, Naples, Castel Volturno and Palermo for sexual exploitation, managed by Nigerian, Albanian and Romanian criminal groups; while for labour exploitation the main areas are the province of Foggia and the area of Capitanata (*Ibid.*, 33). Italian organised criminal groups are often not involved directly in these types of exploitation at the national level, but they participate in the trafficking process by reaching agreements with foreign criminal groups, for example granting them the use of their lands for sexual exploitation in exchange of illegal services or goods, such as drugs or weapons (Direzione Investigativa Antimafia 2017). In other cases, Italian organised crime groups contribute to the trafficking process by disembarking migrants that become then victims of trafficking for sexual exploitation; for this service, the national criminal groups receive a monetary payment from the foreign groups that then handle the sexual exploitation market (Antonopoulos et al. 2019, 34-35).

Victims of trafficking for sexual exploitation in Italy are often from Romania, Albania, Nigeria, and China. When they arrive in the country, they are usually controlled by their traffickers through a mobile, that has a GPS system, and they have a telephone number through which they receive details and instructions on how to reach the final destination; this increases the difficulty for police controls to identify them as victims of trafficking, since victims often call their families when they arrive and it is the families that inform the traffickers of the victim's arrival (*Ibid.*). In the case of victims coming from countries such as Romania or Poland it is even more difficult to recognise them as victims of trafficking, as their European documents allow them to stay in Italy without having to provide further documentation (Savona, Gimmoni and Mancuso 2014). Victims coming from different countries usually don't share the same exploitation experience, due both to the demands of the clients and to the different *modus operandi* of the organised crime groups: Nigerian victims are often forced into prostitution since the beginning, and they are brought to work on the streets, sometimes even inside the migrants reception centres or in their surroundings; on the other hand, Eastern European and Chinese women victims

of trafficking are more likely to work in closed spaces, such as apartments or massage centres (Antonopoulos et al. 2019, 34-35).

Taking into account a case study indicted by the Court of Campobasso in 2010, it is possible to have a more precise reconstruction of how victims of human trafficking coming from Eastern European countries are forced into sexual exploitation. The case considers victims coming especially from Poland and Romania. Once the women arrive in Italy, they are asked to start working: initially, as they have been recruited with the promise of not being involved in prostitution, their work mainly consists in keeping company to male clients in nightclubs, with reassurance that they will be protected should they be touched inappropriately (Savona, Gimmoni and Mancuso 2014, 148). Nonetheless, the victims are still under strict control from their traffickers, and at some point, the nature of their job changes: they start being asked to perform sexual services in order to perceive higher wages, and through a system of incentives and disincentives they find themselves forced into sexual exploitation. In the case of resistance from the victims, the traffickers start using coercion, by withholding the victim's documents, or psychological violence, by progressively reducing material benefits for the victims, so that they feel forced to accept the trafficker's conditions (*Ibid.*).

The process is slightly different for trafficking victims coming from Nigeria, as it can be observed by considering a case study indicted by the Court of Ancona in 2009. While the first case focused on indoor prostitution, as the victims were forced to work inside a nightclub, this case refers to outdoor prostitution. Nigerian victims are immediately brought into sexual exploitation on the streets and they are mostly managed by *Mamans*, usually Nigerian women that were involved themselves in the criminal organised groups and that manage the recruitment, the work, and the payment of Nigerian human trafficking victims. Similarly to what happens to Eastern European victims, to force women into sexual exploitation traffickers and *Mamans* use violence and threats, towards the victims or their families; at the same time, they are strictly supervised, controlled in their working time as well as in their spare time (*Ibid.*, 153).

Notwithstanding these differences, in the exploitation schemes carried out by foreign organised crime groups there are common elements that can be highlighted: firstly, there is a high level of internal trafficking, or movement of victims. In fact, victims are often moved from one city to another, and they can be found working in places distant from the

ones they live in. Secondly, victims are forced into sexual exploitation with the use of violence (Antonopoulos et al. 2019, 35). A particular case is that of Nigerian women, that are obliged to perform a specific voodoo rite, the so-called *juju*, in which they have to swear that they will respect the contract with the traffickers; these rites are performed by Nigerian ‘holy men’ before the victims leave their countries, and it functions as a guarantee that the victim’s debt will be repaid. The victims are usually intimidated by these holy men, that threaten misfortunes happening to the women if they don’t respect their contracts (Savona, Gimmoni and Mancuso 2014, 150). In extreme cases, Nigerian traffickers also resort to violent means, but violence is more typically used by Eastern Europeans criminal groups, that use it as a means to ensure the victims’ loyalty. Lastly, another common element that can be observed is the role of women in managing exploited victims: as seen before, they are commonly called *Mamans*, and they are often involved in prostitution themselves, but they also have the task to control, organise and manage trafficked victims, also by collecting their income (Antonopoulos et al. 2019, 35).

The financial side of human trafficking in Italy

The human trafficking and exploitation markets revolve around money and financing, starting from the money that the victims need to travel and reach their destination countries up until the money that traffickers gain from their exploitation. When it comes to financing travels and documents, different situations can occur: it is possible for the *Maman* to be a sponsor and pay in advance, or alternatively an outside sponsor is included (usually someone close to the family of the potential victim); sometimes, the families themselves anticipate the requested money, often getting into debt or selling their properties and therefore expecting to be repaid by the earnings of the victim once they have reached the destination country (Antonopoulos et al. 2019). In the case of Nigerian organised crime groups, it is possible that other payments are requested, especially in Libya, as they require the collaboration of local criminal or military groups to accommodate the victims; in this case, if the person responsible for the financing does not provide the money when requested, the victim can be bought by other criminal groups, even in Libya. In the same way, it is frequent for Chinese victims to be sold many times during their journey to Italy, sometimes to members of the same organised crime group or to other groups; the objective in this case is to profit more from the trafficking process

(*Ibid.*, 41). At the same time, Chinese and Nigerian organised crime groups can also simulate kidnappings of the victims, which causes the initial amount of money to be renegotiated and more money to be extorted from the families of the victims. On the other hand, Eastern European organised crime groups often adopt a scheme where travel, visas and documents are paid for in advance, and the victims will then repay the amount once they start working in Italy (*Ibid.*).

Estimating profits of human trafficking at the national and international level is complicated, and when there is data available, it is unreliable (Europol 2015). It is safe to say that the main source of profits for organised crime groups is the payments that victims make to repay their debts. Estimates report that the total amount of debt for Nigerian women and girls can amount up to 60,000 euros, while for Chinese victims the sum is around 20,000 euros. It is important to highlight that these sums do not correspond to the amount of money spent to support the travels and documents for the victims, and therefore they are set arbitrarily by the traffickers (Antonopoulos et al. 2019, 45).

It usually takes the victims years to repay the debt, but when they do, most of them are able to free themselves from their exploitative situation. In the case of Nigerian women, it is more likely for them to become *Mamans* and therefore to start managing the victims that keep arriving, often exploiting contacts previously developed (*Ibid.*). In order to repay the debt, trafficking victims have to give their daily earnings to the traffickers, and in some cases they also have a daily threshold of earnings to reach: in the case of Nigerian and Eastern European victims it can be around 100 to 300 euros per day. The daily earnings vary based on ethnicity, physical appearance, and place of work; Nigerian women usually earn less if compared to Eastern European and Chinese women, which reflects the expectations and preferences of their clients (*Ibid.*, 46). Eastern European (and particularly Albanian) organised crime groups usually have a more contractual approach and therefore leave 30-50% of their earnings to the victims, while on the contrary Nigerian and Chinese groups tend to keep all the generated income, therefore practically forcing victims to become *Mamans* and start exploiting other women in order to be able to sustain their families and send money to their country of origin (*Ibid.*).

Victims of human trafficking become therefore directly involved in the criminal activities, and for this reason they do not feel safe in denouncing their situation to law enforcement authorities; this, in addition to the threats of violence, to the psychological pressure and,

in the case of Nigerian victims, to the fear of the consequences of breaking the *juju*, can discourage women and girls victims of trafficking from trying to escape the situation by collaborating with the authorities. The numbers of victims that report their situation to the police are low, and even less are actually able to exit from the situation of exploitation (Savona, Gimmoni and Mancuso 2014).

1.1.2. The Italian immigration framework and its impact on victims of trafficking

A gendered approach to migration policies

As mentioned in the previous section, human trafficking in Italy is strictly interconnected with migration, particularly because of the country's position as both a destination and a transit country. For this reason, it is important to analyse the Italian immigration framework, in order to better understand its connection to human trafficking and the impact that the Italian legislation on migration can have especially on women victims of trafficking. As a matter of fact, migration has to be considered as a gendered phenomenon: as previously stated, women who migrate are rarely seen as active participants in their choices and are often perceived solely as victims or as passive actors. This lack of a gender-oriented approach in the analysis of migratory flows and in the adoption of related policies influences the experience of migrant women, and it can have negative effects on women's lives once they reach their destination country, or within the migration process itself (Giovannetti and Zorzella 2022). Female migratory flows differ from the male ones in terms of development, elaboration, travel routes, but also in the way women approach their relationship with their family, their social group, and the relationships they form in the destination country. For this reason, it is not sufficient to only take into account the economic and cultural variables in migrant women's lives, but it is also necessary to consider their gender as directly correlated to the causes and consequences of migration, which brings to a reconfiguration of the dynamics of migration (*Ibid.*, 27).

It is not only a gender-oriented approach that is necessary in analysing female migratory flows, but also an intersectional one: an intersectional analysis is fundamental in order to incorporate not only the objective characteristics of women who migrate (such as gender, ethnicity, age, nationality, social status) but also their subjectivity, identity and, most

importantly, their agency (Degani and De Stefani 2020). A gender-oriented approach is lacking not only in academic studies and researches on migration, but also in media outlets and news, where women are not mentioned; the only ‘role’ they seem to have is that of victims to be protected, and they are not seen as active agents who make decisions on their own (Rizzi 2022). Women are considered a vulnerable group *per se*, therefore categorising them as constantly needing protection and somewhat ‘inferior’ (Giovannetti and Zorzella 2022), not taking into account the fact that the vulnerability of migrant women to specific forms of human rights violations (exploitation, sexual abuse, some forms of torture) is the consequence of societal factors, and not an intrinsic characteristic belonging to women. Women are more vulnerable to specific violations of their human rights when migrating because of the reduced protection and welfare support they receive in destination countries, and also because of an increased risk of being exploited and becoming victims of human trafficking during the journey, and once they reach the destination country (Degani and De Stefani 2020, 120).

The Italian national immigration framework

The Italian legal framework on migration is mainly regulated by the Legislative Decree 286/199, the Italian Immigration Law (in Italian, *Testo unico sull’immigrazione e sulla condizione dello straniero*), which has been modified multiple times, lastly in 2018 with the so-called ‘Security Decrees’ (*Decreti Sicurezza*), specifically to combat irregular migration. The Italian Immigration Law has three main fundamental principles: the management of migratory flows, the contrast to irregular migration, and the integration of migrants on the territory of the country (Italian Chamber of Deputies n.d.). It is also interesting to notice that Italy does not have an *ad hoc* instrument regarding migrants who seek international protection or asylum seekers: therefore, refugee and international protection policies are a subset of the Italian immigration policies, meaning that they are not perceived as a humanitarian issue. For this reason, State policies on the reception of refugees and migrants demanding international protection may be influenced by political, geopolitical, and security interests before taking into account the human rights of the migrants who arrive (Degani and De Stefani 2020).

The Italian framework on migration is influenced by the geographical position of the country, which, as previously mentioned, facilitates access to migrants coming from

North Africa, Sub-Saharan Africa, Eastern Europe, and Asia. In the last decade, particularly following the Arab Spring, migration from North African and Middle Eastern countries to Europe has intensified, and Italy has been one of the main access points: only during 2015 and 2016, around 335,000 irregular migrants entered Italy from the Mediterranean, which has caused the Italian Immigration system to be strained (Vari 2020). As a consequence of the high numbers of migrants arriving in Italy, the Italian public opinion has started to display growing racist and xenophobic sentiments, with people calling for the closure of maritime borders to stop migrants from coming, and allowed populist and far-right political parties to gain consensus by supporting an anti-immigration agenda (*Ibid.*).

It was this wave of anti-immigration sentiment that led the Italian government to consider more restrictive immigration policies, and to strike accords with third States in order to limit the number of migrants arriving in the country. It is important to analyse the measures taken by the Italian government in this direction, as they have a negative impact on the protection of migrants' human rights and on the fight against human trafficking.

In the context of adopting more restrictive legislative measures, in 2018 the newly elected right-wing Italian government adopted the Security Decrees, which modified the Italian Immigration Law, with the objective of reducing irregular migration towards Italy on one side, and to lower the number of people who could be granted protection or a residence permit in Italy on the other. This was, according to the government, to guarantee that only migrants in real need of protection would receive it.

To achieve these objectives, in the Security Decrees the Italian government abrogated the humanitarian residence permit (*permesso di soggiorno per motivi umanitari*). In fact, before 2018, the Italian Immigration Law contained a provision that allowed the State to grant a foreigner a residence permit in Italy without necessarily meeting the conditions to be able to stay in the country, based on "serious reasons, in particular of a humanitarian nature, or grounded on constitutional or international obligations" (art. 5.6). This 'humanitarian residence permit' was not necessarily included within the refugee protection path, and it allowed State authorities to interpret what a 'serious reason' could be in order to allow a foreigner to stay in the country; it was also consistent with the principle of *non-refoulement*, which prohibits the deportation of any person to a country where they might risk torture or ill-treatment (Degani and De Stefani 2020). This

provision was replaced by a ‘special protection residence permit’ (*permesso di soggiorno per protezione speciale*), which can be granted on the basis of a series of definite situations that supposedly include all potential legitimate grounds for humanitarian protection and lasts only for a short period of time (6 months). This permit can be granted for various reasons, such as being victim of human trafficking for the purpose of exploitation, being victim of sexual violence or gender-based violence, medical reasons, or if there is a risk of torture, ill-treatment, or persecution in the country of origin. While the situations included in the new provision are numerous, it does not signify that they cover all possible cases, and they inevitably leave gaps that were covered by the humanitarian residence permit. The abrogation of the humanitarian residence permit represents a step back in the protection of migrants’ human rights, and it can be argued that it contravenes the very idea of the right to asylum, especially considering the universal character of the fundamental rights defined in the Italian Constitution (*Ibid.*, 138-139). The consequences of the abrogation of the humanitarian residence permit are many, among them the fact that a high number of migrants has been forced to leave the reception centres and has lost the status of legal resident in the State, *de facto* increasing the number of irregular migrants in the country, which at the same time increases the number of migrant in vulnerable situations and their risk of exploitation and trafficking (*Ibid.*, 140).

Italy-Libya Memorandum of Understanding

Before the adoption of these more restrictive immigration policies, in 2017 the then left-wing Italian government had tried to manage the issues related to the high number of migrants arriving to the Italian shores by asking for external cooperation: on one side, Italy asked for the support of the European Union, but on the other, the State decided to strike a deal with Libya, with the objective to contain irregular immigration (or, as it is defined in the document itself, illegal immigration). This agreement takes the name of Memorandum of Understanding, and it consists in an exchange between the two countries: on one side, Italy is providing Libya with monetary investments to support the economic stability and the development of the country, as well as vessels and border security instruments; on the other side, Libya is intercepting boats of migrants trying to reach Italy by sea, and preventing them from arriving in Europe (Vari 2020, 105). The

agreement also includes funding for Libyan detention centres and for other organisations involved in the forced or voluntary departure of migrants from Libya.

One of the main issues connected to this agreement, that also has the support of the European Union, are the widespread human rights violations that have been happening in Libya in recent years, especially at the expense of migrants. In particular, in a 2022 report, the UN Independent Fact-Finding Mission on Libya condemns the human rights violations committed on migrants in the country, stating that it exists a strong basis to confirm that acts of murder, enslavement, torture, imprisonment, rape, and other inhumane acts are perpetrated against migrants. In addition, the continuous violations show that not only Libya has done little to improve the situation, but the same applies to its partners, including Italy and Malta, as both countries have signed agreements with Libya in the field of migration control (UN Human Rights Council 2022, 12).

When brought to Libya, migrants are held in detention centres, in inhumane conditions and victims of widespread human rights violations; torture and rape are reported to be common in the detention centres, particularly used as instruments of humiliation, exploitation, and punishment. Some of the migrants are also reported to be detained in facilities controlled by non-State armed groups or held captives by human traffickers. The State authorities, and particularly specifically the Libyan Coast Guard, have also been observed to be collaborating with human traffickers and smugglers (UN Human Rights Council 2022, 13).

As highlighted by the UN Independent Fact-Finding Mission on Lybia, countries that have agreements with Libya on migration control have a responsibility to improve the human rights situation in the country and prevent migrants' human rights violations. In particular, due to Italy's assistance and support to the Libyan operations, the State should be held accountable for the widespread human rights violations happening in the detention centres (Vari 2020, 134).

Non-governmental organisations, such as Human Rights Watch and Amnesty International, and international organisations, including the United Nations and the Council of Europe, have called for a modification of the agreement between Italy and Libya, particularly by conditioning the release of funds to Libya's respect of human rights standards and the *non-refoulement* principle, and including other recommendations to improve the situation of migrants in the detention centres. Notwithstanding this, in

November 2022 the date limit to make modifications to the agreement passed, and in February 2023 the agreement has been renewed for three more years, without any changes (Tranchina 2023).

It is possible to affirm that Italy's policies and legislation on migration have worsened following the increasing number of migrants arriving in the country, and that they do not provide the necessary protection for those who are more at risk of exploitation and human trafficking. As a matter of fact, the increased number of irregular migrants in Italy following the abrogation of the humanitarian residence permit makes them more vulnerable to being exploited and becoming victims of human trafficking, and the agreement that Italy has with Libya indirectly supports smugglers and traffickers departing from the North-African country towards Italy.

1.2. Human trafficking and prostitution in Italy

In recent years, the sex business has experienced a significant growth, not only in Western countries but in all areas of the world, including the Global South. In order to manage this expansion, many countries started a process of reform of their legal instruments and public policies related to prostitution, highlighting the need for an institutional response to the evolution of the sex business, which has taken different forms and unprecedented proportions in comparison to the past (Degani and Perini 2019).

As analysed in the first chapter, human trafficking and prostitution are linked, as to this day the most common form of human trafficking is sex trafficking, and therefore trafficking for exploitation of the prostitution of others.

For this reason, when analysing sex trafficking and what policies are to be adopted to combat this phenomenon, it is impossible not to take into consideration prostitution policies, and their impact on human trafficking for sexual exploitation.

The framework of prostitution is complex, as it has already been analysed in the first chapter, especially from a policy-making point of view: in fact, a policy on prostitution needs to consider many different viewpoints, starting from the balance between public morals and consumer culture, but also considering the different positions concerning women's sexuality and their empowerment. There are many factors to account for when tackling the prostitution framework, including gender, economic and social status, age, and the relevance that migration has in the prostitution discourse (Degani 2017, 46).

Prostitution, by definition, involves a commercial exchange, particularly the selling of sexual services; for this reason, money is a key feature of prostitution. This is important to consider, as most women in prostitution come from low-income backgrounds, and entering the sex business constitutes a source of income that would not be achievable with other types of jobs (Degani and Perini 2019, 37). The fact that most women in prostitution come from a disadvantaged background, both from an economic and social perspective, can also raise questions on whether ‘voluntary’ prostitution is indeed possible, or if there must always be a form of coercion, or strict necessity, to take into account. Both indoor and outdoor prostitution present some issues, but while women involved in outdoor prostitution have higher chances to come into contact with associations or NGOs that can help them denounce and exit their situation of exploitation, women who practice indoor prostitution are more invisible and risk being exploited to a higher degree (Outshoorn 2004).

In the Italian context, women involved in outdoor prostitution are mostly migrants, while the number of Italian women involved in the sex business is decreasing, and it is mostly focused indoors. For this reason, it is fundamental to integrate the discourse on prostitution and human trafficking with the discourse on migration, especially focusing on the exposure that migrant women arriving in Italy have to the phenomenon of human trafficking for sexual exploitation, and the particular vulnerabilities attached to it (Degani and Perini 2019, 37).

Before understanding how prostitution policies can influence the sex trafficking framework in the Italian context, it is necessary to analyse in depth the existing measures that Italy has in place concerning human trafficking and prostitution, in order to better comprehend how to navigate these issues.

1.2.1. The Italian framework on human trafficking

The legal framework on human trafficking

From a legal standpoint, the Italian framework of human trafficking is based on internal legislation and the reception of international instruments, such as the 2000 Palermo Protocol, the 2005 CoE Convention on Trafficking, and the EU Anti-Trafficking Directive of 2011.

The Italian Parliament approved in 2003 the Law No. 228/2003, regarding measures against trafficking in persons, aimed at introducing new criminal provisions and modifying existing ones in order to combat new forms of slavery, and, more specifically, forms of slavery resulting from human trafficking (Italian Chamber of Deputies n.d.). The main focus of the law consists in amending articles 600, 601 and 602 of the Italian Criminal Code, regarding respectively the crimes of ‘reduction or maintenance in slavery or servitude’, ‘trafficking in persons’ and ‘purchase and alienation of slaves’, for which the penalties increase considerably, reaching a maximum of twenty years. Article 600 of the Italian Criminal Code specifically punishes with imprisonment from eight to twenty years whoever reduces a person into slavery, or in a condition similar to slavery. The acts punished by article 600 are: exercising a power over another person corresponding to that that characterises the right of ownership, therefore viewing said person as a property, and reducing or maintaining a person in a continuous state of subjection, forcing them to work or to provide sexual services, to engage in begging, or other services that involve the exploitation of said person. In order to define more precisely this type of crime, it is specified that ‘reduction or retention in the state of subjection shall take place when the conduct is carried out by violence, threat, deception, abuse of authority or by taking advantage of a situation of physical or mental inferiority or a situation of need, or by the promise or the giving of sums of money or other benefits to those who have authority over the person’ (Italian Criminal Code, art. 600). It is important to observe that Italy has ratified the Palermo Protocol only in 2006, three years after the adoption of the Law No. 228/2003, but it is evident that in the definition of the acts considered as reduction or retention in a state of slavery, the element of coercion is necessary to delineate the crime. Article 601 of the Italian Criminal Code refers specifically to the crime of trafficking in persons, for which the penalty is imprisonment from eight to twenty years, and it can be applied both in cases where the victim of trafficking is already in a situation similar to slavery, as defined in article 600, and in cases where the person is trafficked with the purpose of being exploited. The elements that constitute the crime of human trafficking have been introduced with the legislative decree No. 24/2014, that modifies article 601 of the Italian Criminal Code to implement the EU Anti-Trafficking Directive. The definition of the crime of trafficking is therefore in line with the international standards, as according to the Italian Criminal Code can be punished

whoever recruits, introduces into the territory of the State, transfers even outside said territory, transports, yields authority over a person to another person, offers lodging to one or more persons who are in the conditions specified in Article 600, or performs the said conducts against one or more persons by deceit, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, or of a weaker physical or psychic condition or a condition of need, or by promising or giving money or of any other advantage to the person having control over that person, for the purpose of inducing or forcing him/her to perform work, sex or to beg or, in any case, to perform unlawful activities entailing his/her exploitation or removal of organs.

The punishment for the crime of human trafficking is imprisonment from eight to twenty years. In this definition it is possible to observe the three constitutive elements of the crime of trafficking as defined in the Palermo Protocol, as there are the acts (recruit, transfer, transport, harbouring), the means (deception, violence, threat, abuse of authority or of a situation of vulnerability) and the purpose (any illegal activity that involves exploitation).

Article 602 of the Italian Criminal Code has a residual nature, as it defines as ‘purchase and selling of slaves’ as any act, with the exclusion of those indicated in article 601, that involves the purchase, the selling, or the cession of a person under any of the conditions described in article 600.

In addition, the Law No. 228/2003 contains provisions regarding preventive measures and the assistance to victims of these crimes. In particular, the establishment of a Fund for anti-trafficking measures, with the objective of financing programs for the assistance and social reintegration of victims. The law also introduces a special program for victims, to guarantee proper housing, food, and medical care; in addition, in case the victim is of foreign origin, it is also possible to apply the provisions of humanitarian nature contained in article 18 of the Italian Immigration Law, that will be analysed later (Italian Chamber of Deputies, n.d.).

The Italian framework on trafficking in persons does not only include the implementation of the 2011 EU Anti-Trafficking Directive, but it has also been integrated following the ratification of the 2005 CoE Convention on Trafficking. The latter has been ratified with the Law No. 108/2010, but there have been few significative changes in the Italian Criminal Code, as the Law No. 228/2003 was already in line with the European standards. The main novelty introduced by the Law No. 108/2010 consists in the specification of aggravating circumstances to the crime. The aggravating circumstances, described in article 602-ter, are the following: the crime is committed on a person under 18 years of age, or when the crime is committed with the purpose of sexual exploitation or organ

removal, or then the crime results in a grave threat to the life or physical or mental integrity of the victim. Furthermore, as required by the CoE Trafficking Convention, when acts such as forging a travel or identity document, procuring, or providing such a document, or retaining, removing, concealing, damaging, or destroying a travel or identity document of another person are committed with the purpose of carrying out or facilitating the crimes described in articles 600 to 602, it constitutes an aggravating circumstance.

The legislative decree No. 24/2014, in addition to the amendment of the articles of the Italian Criminal Code, includes the creation of the Single programme for the emergence, assistance and social integration of victims of trafficking and exploitation (*Programma unico di emersione, assistenza e integrazione per le vittime di tratta e grave sfruttamento*) and the adoption of the National plan against trafficking in persons and the severe exploitation of human beings (*Piano nazionale contro la tratta e il grave sfruttamento degli esseri umani*).

National action plan against trafficking and serious exploitation of human beings 2022-2025

In 2022, the Italian government has adopted a renewed National Action Plan with the objective to combat human trafficking and the severe exploitation of human beings. The Italian national plan follows the international standards and is structured around four pillars: prevention, prosecution, protection, and partnership. Following the research carried out by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, the Italian national plan takes into consideration the gendered dimension of human trafficking, highlighting that women and girls are more subjected to physical and sexual violence in situations of exploitations, both from their traffickers and from their clients. In addition, when adopting policies to assist and protect victims of trafficking, the plan underlines the importance of adopting a gender-sensitive approach, as women and girls victims of trafficking have a different experience of exploitation, especially in the case of sexual exploitation, if compared to men and boys. It is important, for this reason, to understand the phenomenon of human trafficking from a gender perspective, in order to invest in more effective prevention and assistance policies.

In addition, the Italian national plan focuses also on recent events to highlight new challenges that need facing in order to combat human trafficking. Firstly, it is important to consider the impact of the Covid-19 pandemic on the methods used to recruit potential victims: in particular, the use of internet as a means to contact potential victims has increased, and in 2020 the Italian Postal Police has noticed a rise in cases of grooming, especially during the first lockdown. The Covid-19 pandemic has also hindered the victims' access to justice and the implementation of the assistance programs, and in addition, traffickers have started to employ an online business model to recruit and exploit victims, making it more difficult for law enforcement agents to act. Secondly, the plan highlights the potential risks of an increase in human trafficking victims following the Russo-Ukrainian conflict, as a high number of people, especially women and unaccompanied minors, is migrating from Ukraine towards Italy. This could potentially bring criminal organised groups to take advantage of the situation to recruit people coming from Ukraine as victims of sexual and labour exploitation.

The Italian anti-trafficking plan recognises the complex nature of the crime of human trafficking, and for this reason, it proposes a multilevel and multiagency approach. The National Action Plan recognises the importance of both the need for social assistance for victims of human trafficking and the importance of prosecution and punishment for traffickers, and it delineates the necessary steps to guarantee that both sides function effectively.

The National Action Plan is structured around four guidelines, as mentioned before, and it delineates specific areas of intervention regarding each guideline.

The first area of interest is the prevention of human trafficking, with the main objective of acting on the causes of the phenomenon and limiting the negative effects it has on individuals and society in the countries of origin, transit, and destination.

The preventive measures adopted by the national anti-trafficking plan focus on four main steps; firstly, it is fundamental to raise awareness on the phenomenon and to promote lifelong learning among the general population and, specifically, for those who have a higher chance to come into contact with trafficking victims. In order to achieve this, the plan calls for an implementation of sensibilisation activities, for example with specific campaigns that have the objective of providing a better understanding on the subject and reducing the demand for services provided by victims of trafficking and severe

exploitation; in addition, the plan recognises the strong connection between human trafficking and migration in Italy, and for this reason, it calls for the continuous education of authorities stationed at the places where migrants and asylum seekers arrive, such as border crossing points or disembarkation sites. The national plan focuses on the continuous education of all actors directly involved in the fight against human trafficking and the protection and assistance of victims, following a multi-agency approach and with a specific focus on the knowledge and correct application of the current legislation. Furthermore, the plan focuses specifically on labour exploitation, promoting specific outreach interventions and a collaboration with the Labour Inspectorate (*Ispettorato del Lavoro*).

Secondly, it is important to promote the cooperation with the countries of origin, especially by exchanging relevant information and by promoting legal routes for migration. The plan also calls for awareness-raising campaigns in the countries of origin, as well as direct interventions with the objective of improving the living conditions, strengthening the institution, and assisting victims or potential victims of human trafficking.

Thirdly, the national plan calls for the implementation of awareness-raising and research projects on trafficking and severe labour exploitation, also taking into consideration the increasing migratory flows and a gender perspective.

Lastly, the anti-trafficking plan highlights the importance of a multi-agency approach concerning labour exploitation, calling for better administrative controls and promoting measures to facilitate the individuation of victims and potential victims.

The second area of interest highlighted by the national plan is prosecution of the crime of human trafficking, with a specific focus on the education and sensibilisation of national authorities. Firstly, the anti-trafficking plan calls for a multi-agency approach to reinforce judicial cooperation, particularly by identifying professionals specialised in anti-trafficking measures within Prefectures, State Police Headquarters and Prosecutor Offices, and by promoting judicial cooperation and the creation of bilateral accords with countries of origin.

Secondly, the national plan focuses on raising awareness and improving the knowledge of the phenomenon among civil and criminal courts, especially concerning child trafficking. This approach includes the adaptation of interrogation techniques for victims

of trafficking, as well as improving prosecutors' knowledge of referral mechanisms for victims of trafficking.

Thirdly, it is important to act directly on the prosecution of the crime of trafficking in persons, particularly by reinforcing the multi-agency approach and by cooperating with the countries of origin or transit of trafficking victims.

The third pillar of the Italian anti-trafficking plan focuses on the protection and assistance of victims of trafficking. The first important step to improve the assistance mechanism is the early identification and referral of trafficking victims, especially once they reach sea, land, or air borders. This can be achieved by improving communication between different border authorities, as well as with the exchange of good practices and the knowledge of how trafficking networks operate.

Particular attention is paid to the protection and assistance of victims of child trafficking, especially unaccompanied migrant children, who need special support. It is necessary to encourage their reunification with their parents once they reach Italy and inform them of their rights and what services they can have access to, especially concerning international protection. It is also fundamental to grant them appropriate psychological assistance, by applying a child-based approach.

The national plan also includes the improvement of the National Referral Mechanism, a cooperation system through which state actors fulfil their obligations to protect and promote the human rights of victims of trafficking, coordinating their efforts in a strategic partnership with civil society; the main objectives of this referral mechanism are the protection of victims' human rights and the implementation of an effective mechanism to point them to the services at their disposal.

In addition, it is also fundamental to act on the reception and inclusion processes, especially by improving the social inclusion of victims and inserting them in the labour market. In fact, it is difficult for trafficking victims, and primarily for women, to find a job and therefore become autonomous in the country. This is a consequence of the abuse they experienced during the exploitation and the trafficking process, but it can also be linked to a lack of skills or knowledge of the language. For this reason, it is fundamental to implement actions that have the objective of educating survivors of human trafficking and preparing them for the insertion in the workforce.

Lastly, it is important to adapt the protection and assistance mechanisms to the new challenges related to human trafficking, particularly concerning sexual and labour exploitation and the usage of internet as a recruiting method.

The final pillar of the anti-trafficking national plan is partnership, specifically connected to the national and transnational governance of policies aimed at preventing and combating human trafficking.

This goal can be achieved through the promotion of development cooperation and international cooperation, especially by acting in the main countries of origin of trafficking victims to favour the socio-economic development and to implement support programs for victims and potential victims. In addition, the anti-trafficking plan calls for the creation of a unified database on human trafficking, to have a clear picture on the phenomenon inside the country and to have updated information on ongoing investigations, new victims identified, security issues and any other relevant information.

Instruments to protect and assist victims of human trafficking in Italy

As mentioned in the Italian anti-trafficking plan, the protection and assistance of victims is a fundamental pillar in the fight against human trafficking. Italy has a multi-level governance and multi-agency approach, meaning a standardised approach in dealing with victims of human trafficking does not exist, and the objective of the involved actors is to offer each victim of trafficking the support that suits them the most (Degani 2020). The Italian system for the protection and assistance of victims of human trafficking is managed by the Department of Equal Opportunities (DEO), through the allocation of financial resources to public or private institutions; the decision on how to allocate said funds is made on the basis of a call for applications addressed to these institutions, that present their own projects that will then constitute different sides of the protection and assistance system (*Ibid.*). As a consequence, the Italian system is structured on regional and local projects rather than services provided at the national level, as the institutions that participate in the calls for application often act at the regional, and sometimes even local level; in some other cases, it is private entities that promote these assistance projects. One of the projects that has been active since 2000, managed by the DEO in partnership with the Veneto Region, is the Anti-Trafficking Toll-Free Number, that functions as an

anti-trafficking hotline and can grant first line assistance and guide the callers towards the relevant services nationwide (DEO n.d.).

Notwithstanding the plurality of actors involved, the Italian government has general guidelines on the protection and assistance of victims of trafficking and severe exploitation, as delineated in different instruments: firstly, article 13 of the Law No. 228/2003 on human trafficking stipulates the creation of an assistance and protection program for victims trafficking in persons; secondly, article 18 of the Italian Immigration Law guarantees a special residency permit and access to assistance, protection, and social integration to victims or potential victims of human trafficking; thirdly, a Decree of the President of the Council of Ministers (*Decreto del Presidente del Consiglio dei Ministri*) defines the specific guidelines to be followed by public and private entities putting in place projects for the protection and assistance of victims of trafficking, *de facto* unifying all the aforementioned provisions under the idea of a Single programme for the emergence, assistance and social integration of victims of trafficking and exploitation. According to this programme, each project is expected to include four specific activities: firstly, emergence and contact with the victim or potential victim of human trafficking, followed by the reporting and protection of the victim, also considering the need for a recovery and reflection period; secondly, it is necessary to provide initial assistance to the victims in preparation for the social inclusion process; thirdly, the beginning of vocational training and integration into working life; lastly, autonomy building with the objective of consolidating the social integration process, as well as establishing the victim's independence in every aspect of their life.

The main objective of this programme is the social reintegration of the persons supported, and civil society organisations are fundamental to the achievement of this goal, as they are often specialised in assisting vulnerable people at risk, offering psychological support or legal counselling, providing cultural or linguistic mediation, offering social and health services, organising school education, vocational training or language courses, or even offering direct job placement (Degani and Perini 2019, 49).

A fundamental instrument that supports regional and local entities, and civil society organisations in the application of the Single programme is the special protection residency permit granted under article 18 of the Italian Immigration Law. This special permit is granted to people who are in a situation of violence or exploitation, and who are

at risk as a result of statements made during the preliminary investigations or during a trial, or because of the attempts made to escape their condition. The two conditions, the situation of violence or exploitation and the danger deriving from it, must exist at the same time, and in particular, the risk must be concrete and current, and it can be directed both towards the person and their family members.

In order to obtain the special protection residency permit, there are two different tracks that can be followed: a so-called 'judicial track' and a 'social track'. The judicial track consists in the reporting of the traffickers made by the victim; therefore, it includes the involvement of the local and national authorities, and the special protection residency permit is issued by the local Prosecutor's Office. On the contrary, the social track does not require for the victim to file a complaint, and in this case the special protection residency permit is granted upon the recommendation of a local institution or a civil society organisation in the context of the Single programme for assistance and protection of victims of trafficking (Degani 2020). Therefore, the residency permit is not granted as some sort of reward for the cooperation of the victims in the criminal investigation against the traffickers, and therefore it is recognised the importance of allowing victims of trafficking to recover from a social and psychological point of view before exposing themselves to a judicial procedure (*Ibid.*, 23).

1.2.2. The Italian framework on prostitution and the overlapping with human trafficking

The Italian legal framework on prostitution

Prostitution in Italy is regulated by the Law No.75/1958, the so-called Merlin Law, that sanctioned the abolition of the regime of regulation of prostitution, particularly by calling for the abolition of 'closed houses' or 'houses of tolerance', which were the designated sites aimed at containing prostitution under the direct control of the state (Azara 2022, 268). Before the adoption of this law, prostitution was regulated by the Italian state through the existence of closed houses, for which the government granted licences, also profiting from their existence through taxation (*Ibid.*).

It is important to highlight that the debates around the abolition of state regulation of prostitution were not focused on women's rights or their sexual freedom, but rather on national security, public health, and morality. In particular, it was the ruling class in favour

of perpetrating the regulatory regime that moved the attention on hygienic-sanitary arguments, to try and de-legitimise the core reasons of the Merlin Law. On the other hand, socialist Senator Angelina Merlin, that presented the proposal for the law, sought to not only criminalise the exploitation of prostitution, but also to contribute to the emancipation of Italian women (*Ibid.*, 269).

The Law No. 75/1958 was initially presented in the Senate in 1948, with the title ‘Abolition of the Regulation of Prostitution and Fight against the Exploitation of the Prostitution of Other People’; the objective of this law was not to render prostitution illegal, but to criminalise the exploitation of the prostitution of others, both by third parties and brothels. According to Senator Merlin, the regulatory measures in place up until that point legitimised the facilitation and encouraging of prostitution, which undermines the value of human dignity and freedom (*Ibid.*, 270). This law was adopted following similar steps taken by other Western European countries, particularly France, that had adopted abolitionist measures by banning closed houses in 1946.

The Merlin Law criminalises the acts of recruitment, facilitation, encouragement of prostitution, exploitation or aid to the exploitation of prostitution, as well as ‘enticement’, in articles 3, 6 and 7 (*Ibid.*, 271; Degani and Perini 2019). In addition, the law includes procedures to criminalise international trafficking for the purpose of prostitution, and the participation in national or international criminal organisations with the purpose of exploitation of the prostitution of others. These provisions are in line with the 1949 UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, but it is also important to notice that the Merlin Law does not contain a definition of prostitution, therefore lacking a specific framework to understand what can be considered as ‘exploitation of prostitution’.

Further clarification has been provided in different sentences of the Italian Court of Cassation, which has framed aiding and abetting prostitution as a crime, therefore criminalising clients under certain circumstances (sentences 2074/1983 and 5318/1982), but also criminalising women in prostitution, for example when sharing a car ride with one another, or by sub-contracting an apartment for purposes of prostitution (sentence 2525/1998). In addition, the Court of Cassation has clarified that sexual services are to be taxed (sentences 20528/2010 and 10578/2011), and that clients refusing to pay a woman in prostitution may be liable for rape (sentence 8286/2010).

It is important to highlight that outdoors and indoors voluntary and independent prostitution are legal in Italy, but are not in any way regulated by the state. The only exception is represented by some Italian municipalities that, on the basis of Law No. 125/2008, can impose administrative sanctions on women in prostitution and their clients; however, these local provisions can be adopted only for a limited period of time, and in case of emergency, as per the sentence 115/2011 of the Court of Cassation (Di Nicola 2021).

From the point of view of public opinion, prostitution is considered as a potential threat to public morality, security, and public order; on the contrary, women and their rights are taken into consideration only in a polarised manner, depicting them either as ‘bad girls’ trying to earn money easily, or poor victims forced into exploitation (Degani and Perini 2019, 44). In this respect, clients who purchase the services of women in prostitution are viewed as part of the threat solely considering outdoor prostitution, since they are considered to pose a threat to people living in the areas where street prostitution happens; on the contrary, clients are not taken into account when discussing indoor prostitution, which is often represented as ‘voluntary’ and with a low impact on security (*Ibid.*). Notwithstanding this, as previously mentioned, women who are trafficked for the purpose of sexual exploitation can frequently find themselves involved in indoor prostitution, and because of the hidden nature of this phenomenon they are more at risk of violence and have lower chances of being identified as victims and therefore of entering in assistance and protection programmes.

In addition, there is an added stigma concerning prostitution practiced by migrant women, as it is always considered as coerced and therefore problematic, because it frames the woman as a vulnerable subject, as well as trying to make women fit in the portrait of the ‘perfect victim’: a person deprived of any kind of agency, coerced into prostitution, ‘stolen’ from their country of origin (Abbatecola 2018). This stigmatisation of migrant women victims of trafficking causes a lack of research and understanding of the root causes of the phenomenon, especially from an economic and social point of view, which in return poses a risk of ineffectiveness for anti-trafficking policies, that often do not take into account the diverse experiences of trafficking victims.

The overlapping of the human trafficking and prostitution frameworks

The advent of globalisation has brought to an increase in foreign prostitution, and to an inevitable overlapping of the frameworks of human trafficking for sexual exploitation and prostitution, especially considering the reform of prostitution policies in order to identify the most effective solution to combat sex trafficking. In particular, it is important to take into account the different perspectives on prostitution policies, as they inevitably influence not only the anti-trafficking response of the state, but also the demand for sex trafficking itself: for this reason, in the last years legislative instruments and policies have been existing in the polarisation between legalisation and decriminalisation of prostitution on one side, and prohibitionism and abolitionism on the other. At the same time, the political discourse on prostitution and human trafficking has gradually evolved, adopting a human rights perspective and taking into consideration the different positions supported by the feminist movement (Degani and Perini 2019, 57).

In recent years, a new trend in prostitution policies is emerging within European Union countries: client criminalisation, with the goal of better separating the target, framework, and the individual condition of women in prostitution, therefore distinguishing ‘voluntary’ prostitution and sex trafficking. The goal would therefore be that of criminalising clients who voluntarily engage with victims of trafficking for sexual exploitation, in order to lower the demand in the first place (Peršak and Vermeulen 2014). As a matter of fact, a recent European Union study has highlighted the interconnection between prostitution policies within Member States and the number of victims of human trafficking for sexual exploitation and human rights violations that take place in those same Member States. In particular, the study highlights how the differences within national legislations on prostitution in the European Union can cause an increase in the number and strength of transnational organised crime groups involved in human trafficking in the States who attract more sex flows; in addition, the differences in national legislations also cause a displacement of women in prostitution within the Union, which can further expose them to the risk of being trafficked and therefore increase the possibility of human rights violations (Di Nicola 2021).

On the other hand, while the two phenomena are interconnected, it is also important not to overlap them completely. While it is clear that a framework on prostitution based on general tolerance and a lack of public awareness on human trafficking can increase the

risk of sexual exploitation, it is important to consider prostitution not only in relation to human trafficking, but also to treat it as a separate issue with its own questions and problems to be addressed (Degani and Perini 2019, 58). In particular, the decriminalisation of prostitution might represent an advantage in the protection of migrant women's rights; for this reason, when adopting policies on both human trafficking and prostitution, it is fundamental not to follow a standardised approach, and therefore analyse the complexities of both these phenomena from a human rights, and, most importantly, a women's rights perspective. The focus must be on victims of sex trafficking and women in prostitution, in order to avoid the stigmatisation, victimisation, and lack of women's agency that usually characterises the public discourse on these phenomena.

At the same time, from a policy point of view, the distinction between these two phenomena is not always clear: for example, when talking about the criminalisation of clients of victims of sex trafficking, the difficulty resides in the fact that clients often do not make a distinction between women who are voluntarily in prostitution and women who are sexually exploited (Di Nicola 2009). For this reason, clients could only be criminalised for purchasing the sexual services of a victim of trafficking only when the authorities recognise the person in question as exploited, which poses practical difficulties and risks being ineffective in protecting women victims of trafficking.

In the Italian case, the difficulties in separating women who are voluntarily in prostitution and victims of sex trafficking are connected to the national social intervention system, particularly to its characteristics: the fact that the Italian system is based on local referral mechanisms and that it draws upon the work of civil society organisations and NGOs, while allowing for better welfare and services, it makes it more complex to distinguish voluntary from coerced prostitution (Degani and Perini 2019, 59).

In addition, in the Italian framework the crimes of reduction or maintenance in slavery or servitude, trafficking in persons, and purchase and alienation of slaves fall under the responsibility of the Anti-Mafia District Authority, while crimes related to border security, migration, and prostitution are prerogative of the Public Prosecutor Office. This separation can pose problems especially when prosecuting traffickers, as oftentimes prosecutors prefer to charge them with less severe charges to have the certainty that they will be found guilty, and therefore be convicted. For this reason, situations that are

classified as exploitation of prostitution could in reality fall under the scope of human trafficking or slavery (*Ibid.*, 60).

On one hand, policymakers must be sensitive to the impact that policies on prostitution have on human trafficking for sexual exploitation and its victims, but at the same time, trafficking in persons and prostitution must not be confused and the two frameworks should not completely overlap, as it would lead to inadequate counter trafficking policies and to incomplete prostitution policies, lacking a human rights perspective.

CHAPTER II – Questioning the effectiveness of the Italian framework on human trafficking for sexual exploitation

Having presented the complex Italian framework on human trafficking and the related issues of migration and prostitution, and considering the focus on women sexual exploitation, the focus of this second chapter is to understand whether this framework is effective.

In order to do so, I will start by focusing on the general human trafficking framework, considering therefore all forms of human trafficking, and its compliance with the international and European standards on anti-trafficking measures, considering in particular the issues related to the prevention of trafficking in persons and the national system for the assistance of victims and the protection of their human rights, from a gender perspective. In addition, I will focus on the importance of guaranteeing an effective remedy and appropriate legal assistance to trafficking victims, and I will analyse how the Italian framework tackles this issue.

Secondly, since the most prevalent form of human trafficking in Italy is trafficking for sexual exploitation, and as it affects women disproportionately, I will focus on the impact that prostitution policies have on human trafficking, analysing the existing policies at the European level and comparing which seems to be more effective in protecting women victims of trafficking for sexual exploitation. In addition, I will analyse what improvements can be made to the Italian framework on human trafficking, with specific regards to the protection of victims of trafficking and their rights, also considering the recent European Court of Human Rights case of *A.I v. Italy* and the recommendations made by non-governmental organisations and international reporting mechanisms.

2.1. Italian compliance with international and European standards on human trafficking

As analysed in the previous chapter, the Italian counter-trafficking mechanism finds its strength in the action of civil society organisations, non-governmental organisation, and local and regional administrations. The first National Action Plan on combating human trafficking and severe exploitation has been adopted only in 2016, and before its approval, Italy did not have national guidelines or agreed procedures for the

identification of victims of trafficking. While the situation has improved, following the adoption of the first and the second National Action Plan on human trafficking, some issues still remain, most of them as a consequence of the fragmentation of the Italian anti-trafficking response. One of the first issues that hinders Italy's response to human trafficking is the lack of a uniform identification system of victims of trafficking, which also influences the data on presumed victims and identified trafficking victims every year: in fact, the Department of Equal Opportunities (DEO) gathers data only on victims of trafficking who benefit from the assistance, protection and social integration programmes that it funds, but there are no statistics on victims that have been identified but that don't participate in these programmes, or on presumed victims. For this reason, there is a serious gap between the data on victims of human trafficking in Italy and the actual scale of the phenomenon, also due to the lack of information on internal trafficking and insufficient attention to forms of trafficking different from sexual exploitation (GRETA 2019, 11).

In addition, while a Steering Committee (*Cabina di regia*) working under the DEO was established in 2016 with the objective of planning, financing and implementing anti-trafficking measures following the National Action Plan, the DEO still has a limited capacity to lead and coordinate the fight against human trafficking, and Italy is still lacking a dedicated national coordination structure with the authority to bring together all relevant actors, including NGOs and civil society, involved in anti-trafficking measures. Furthermore, Article 29 of the CoE Trafficking Convention highlights the necessity for a National Rapporteur with the ability to critically monitor the effectiveness of the anti-trafficking framework; this National Rapporteur should be independent and distinct from the national coordinator (which, in the Italian case, is the DEO) and it should be able to identify the eventual shortcomings of the national anti-trafficking policies, as well as formulate legal and policy recommendations (*Ibid.*, 12). This National Rapporteur currently does not exist in Italy.

In 2022, the second National Action Plan has been adopted, covering the period 2022-2025, and while meetings with stakeholders and civil society organisations have taken place, no independent evaluation has been carried out on the first Plan, showing a lack of the independent monitoring spirit that is at the base of the human rights-based approach to anti-trafficking that is fundamental to the CoE Trafficking Convention. The 2022

National Action Plan focuses intensely on the training of relevant professionals, starting from local and national authorities but also including lawyers, prosecutors, and judges, as well as social workers, border control officers, and generally all professionals that may come into contact with victims of trafficking. Notwithstanding this, there is no specification in the Action Plan on whether these trainings should be compulsory, nor on how their effectiveness will be evaluated.

According to the US Office to Monitor and Combat Trafficking in Persons, Italy is considered a 'Tier 2' country, meaning that the Italian government does not fully meet the minimum standards for the elimination of human trafficking, but is making significant efforts to do so. The standard to which this Office refers to are those contained in the US Victims of Trafficking and Violence Protection of 2000.¹

The shortcomings highlighted within the Italian counter-trafficking framework concern firstly the measures for the prevention of human trafficking and the protection of victims' rights, especially from a gender perspective and considering the Italian framework on migration, and secondly the availability of an effective remedy and adequate legal means for victims of trafficking.

2.1.1. Preventive measures and the protection of victims of human trafficking and their rights

The effectiveness of preventive measures in Italy

The raising awareness measures on human trafficking in Italy take place mostly at the local level, as they are carried out by local administrations and civil society organisations. The number of preventive measures at the national level is therefore

¹ The minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons. (Trafficking Victims Protection Act 2000, par. 7106)

limited, and while Italy has funded and continues to fund campaigns to raise awareness in origin countries (for example, countries in the Horn of Africa and West Africa), considering that human trafficking in Italy is strictly connected to migration, there is still a lack of inclusion of migrant communities in designing and implementing awareness-raising actions. In addition, there are no studies nor researches on the impact of the campaigns that have already been implemented, which calls for an assessment of their effectivity and subsequent adjustments (GRETA 2019, 20).

It is also possible to observe a general lack of focus on preventive measures regarding labour exploitation: while in 2020 Italy has adopted its National Guidelines on the identification, protection, and assistance of victims of labour exploitation in agriculture, taking a step forward in the protection of trafficking victims in this area, the number of projects regarding labour exploitation is limited if compared to those relating to sexual exploitation; furthermore, while it is important to focus on exploitation in the field of agriculture, there are other sectors where victims of trafficking are exploited, such as the textile sector and domestic care work, which is prominent in Italy. For this reason, it is important to improve the training of relevant authorities, especially labour inspectors throughout the country, as well as expanding their capacities so that they can be actively engaged in the prevention of trafficking in human beings.

Another fundamental issue concerning the prevention of human trafficking in Italy is related to irregular migration. In particular, Italy has limited channels of legal entry into the country, and this rather than discouraging migration altogether increases the chances of people trying to enter the country illegally, therefore exposing themselves to a higher risk of being trafficked (*Ibid.*, 25). The Italian immigration policies also have an impact on the country's capacity to identify and assist victims of trafficking, as any victim of human trafficking wishing to come forward is exposed to the risk of being identified as an irregular migrant and therefore being detained or expelled; in addition, the identification criteria for victims of trafficking at the borders are not consistent, therefore allowing victims among irregular migrants, asylum-seekers and unaccompanied children to go undetected (GRETA 2019; Ezeilo 2014).

Preventive measures must be taken also considering a child-based approach, and for this reason it is fundamental to intervene in the education system to raise awareness on human trafficking, its risks, and how to avoid it. While sensitisation programmes have been

included in the National Action Plan, their implementation is still lacking. In addition, specific measures need to be put into place concerning migrant children, who are among the categories more at risk of trafficking: once they arrive in Italy, unaccompanied children are often held in first-line reception centres that are not suitable for them, due to a lack of space in second-line reception centres, where people belonging to vulnerable categories can receive adequate support and assistance. This causes unaccompanied children to go missing from the reception centres, and in general exposes them to greater risk of being trafficked (GRETA 2019, 30). Furthermore, even in the moment when unaccompanied children are placed in care homes, they often disappear, likely ending up exploited by organised criminal groups (Ezeilo 2014, 5).

The most important aspect of prevention is discouraging the demand for human trafficking, therefore for services provided by persons victims of exploitation. In the field of labour exploitation, there is a lack of rigour and effectiveness in labour inspections, that are often announced in advance, therefore making it difficult to strictly control the phenomenon (GRETA 2019, 22). As for sexual exploitation, the Italian legislation does not criminalise prostitution, but only the exploitation of the prostitution of others, as analysed in the previous chapter. In addition, the legislation on human trafficking does not sufficiently take into consideration a gender-sensitive approach, and the resources to assist women victims of trafficking from a gender perspective are not always adequate. Furthermore, Italy does not provide women and girls who wish to leave prostitution with alternative income-generating opportunities, and there are no systematic rehabilitation and reintegration measures for victims of trafficking (CEDAW Committee 2017).

As for the clients of victims of sexual exploitation, there has been an increase in the male sexual demand in the last years, including an increment in the number of men who seek sexual services from children. No measures have been adopted to act on the side of demand of these services, either from the legislative side, such as the criminalisation of the use of sexual services knowing that the person is a victim of trafficking, or from the awareness-raising side, for example by sensitising potential clients on the conditions of those who provide said services (GRETA 2019, 33).

Effectiveness of victim protection and assistance in the Italian framework

In both the first and the second National Action Plan, the Italian government refers to a National Referral Mechanism, which has the objective to define the procedures and roles of all relevant actors that come into contact with potential victims of trafficking, in order to improve the victim identification process. Notwithstanding this, the National Referral Mechanism has not yet been implemented in practice, therefore leaving the identification of trafficking victims fragmented and inconsistent (GRETA 2019; ASGI 2022). The identification process is fundamental in the case of migrants victims of trafficking, and without national guidelines and a unified National Referral Mechanism, the risk of not being able to provide the support they need increases. In addition, there is a lack of knowledge and expertise in the identification of victims of labour exploitation and other less frequent forms of trafficking (*Ibid.*).

The first National Action Plan, in an attempt to improve the identification process at borders, has adopted new Guidelines for the identification of victims of trafficking among applicants for international protection and referral procedures; however, the growing number of referrals from the Territorial Commissions to specialised NGOs has increased their workload, without having additional funding allocated to support it. While in the second National Action Plan the funds for counter-trafficking measures have increased, it is important to provide NGOs with sufficient resources to assist and protect victims of trafficking (GRETA 2019, 40).

The fragmentation of the existing referral mechanism causes a large number of victims of human trafficking to go unnoticed, and the fact that a unified database to aggregate all the available data by sex, nationality, age, and form of exploitation does not yet exist prevents the competent authorities from having a comprehensive view on the phenomenon.

Assistance measures for victims of human trafficking are provided by NGOs and civil society organisations, and while the funding provided for them has been increased in the second National Action Plan, many victims or presumed victims of human trafficking, especially asylum-seekers, are placed in reception centres that do not provide the necessary support for them because of the lack of appropriate accommodations; in addition, media have reported that organised crime groups have been able to infiltrate

these centres and have started managing them, therefore exposing migrants to the risk of being trafficked and exploited (*Ibid.*, 43).

Particular attention must be paid to the identification and assistance of children victims of trafficking, which is currently lacking in the Italian system: since the official data on trafficking victims in Italy only includes those who have received assistance, the number of children included is incredibly low, therefore not considering the overwhelming majority of young victims that are left outside the official anti-trafficking system (GRETA 2019, 44).

In addition, Italy does not provide a reflection and recovery period as per Article 13 of the CoE Trafficking Convention, which causes presumed victims of human trafficking to risk deportation before they have had the chance to recover from the trauma they experienced. While trafficking victims have the possibility to receive a residence permit without cooperating in the criminal proceedings, the application of the social path described in the previous chapter is not consistent, as it is possible for some officials to interpret strictly the conditions for issuing the special protection residence permit, namely the existence of a ‘concrete risk’ and the ‘gravity and imminence of the danger’. Furthermore, the waiting periods to receive a residence permit are long, and even once they have been issued, the process to turn them into work permits is complex, which hinders the victims’ chances of being able to reinsert themselves in society. The situation for victims of trafficking has been further complicated by the abolition of the humanitarian residence permit (*Ibid.*, 50).

2.1.2. Effectiveness of criminal proceedings and repatriation of victims

The procedures to access compensation and effective remedy for victims of human trafficking in Italy are complex and mostly ineffective. While the crime of human trafficking is included in the Italian Criminal Code, article 601 is not sufficiently used to prosecute traffickers, resulting in a limited number of claims for compensation. In addition, traffickers often do not have sufficient assets, property, or legal income in the country, which makes it even more difficult for the victims to receive adequate compensation. No measures have been taken by the Italian government to promote effective compensation for victims of trafficking, and if they return to their country of origin, there is no real possibility for them to claim damages (GRETA 2019; ASGI 2022).

In the Legislative Decree 24/2014 the Italian government has included the possibility for victims to ask for State compensation in cases where the offender or the perpetrator is unknown, but the amount is limited at 1,500 euros per victims, which is evidently not sufficient when considering the harm that a victim of trafficking can suffer (*Ibid.*). It can be said that Italy is failing to implement article 15 of the CoE Trafficking Convention, that guarantees compensation and legal redress to victims of trafficking.

The Italian legislation on trafficking, while in line with most international and European standards, is not yet fully consistent with the provision contained in the Palermo Protocol and in the CoE Trafficking Convention. For instance, there is no specific provision within the Italian legislation that States the irrelevance of the consent of the victim of trafficking to be exploited, which is fundamental especially in the case of criminal proceedings. In addition, as mentioned in the previous section, there is no legislative measure that criminalises the use of services of a person with the knowledge that they are a victim of trafficking, which is necessary in order to fully comply with the CoE Trafficking Convention, as stipulated in Article 19. At the same time, victims of human trafficking should not be punished for criminal acts they have committed while exploited; this is not always the case in Italy, as there have been cases of victims of trafficking punished if the exploitation was not proven, and the non-punishment clause often does not include offences such as illegal entry or stay in the country, and therefore migrants victims of trafficking can be punished during the identification process (*Ibid.*).

Furthermore, it is important to question the effectiveness of the investigations and the judicial procedures concerning offenders, as conviction rates for traffickers are very low. In 2021, 204 traffickers were convicted under articles 600, 601 and 602, for an average sentence of 9.2 years (US Office to Monitor and Combat Trafficking in Persons 2022). This low number, if compared to the number of investigations carried out, shows that there are difficulties during the prosecution phase; for instance, it is possible that, during the cross-examination phase of a trial, the initial statement of a victim becomes inadmissible if the victims does not remember it, which is highly possible considering the fragile state are in (Ezeilo 2014, 15).

The return of victims in their countries of origins should be conducted with regard to their rights, safety, and dignity, but this is not always the case in Italy. Especially with regards to the strict immigration policies existing in the country, Italy has often used measures of

forced repatriation on trafficking victims, often without taking into consideration the potential dangers they could face in the countries of origin. For example, there have been cases of Nigerian women whose forced removal had been ordered despite the fact that they had applied for international protection; fortunately, since forced return flights are monitored by the National Guarantor for the persons deprived of their liberty, the deportation proceedings for these women were suspended, but their forced return could have exposed them to risks of violence and re-victimisation (GRETA 2019, 53).

This is caused by the absence of standardisation in the detection, identification and referral procedures for victims or potential victims of trafficking in persons, which causes them to be detained in repatriation holding centres and subjected to forced removal, *de facto* violating the non-punishment clause.

In addition, it is important to highlight the impact that the Memorandum of understanding between Italy and Libya has on the application of the principle of *non-refoulement* for trafficking victims. As stated by the UN Special Rapporteur on trafficking in persons, especially women and children in 2018, forced returns to migrants to Libya constitute a violation of the principle of *non-refoulement* on account of the gross human rights violations that are perpetrated in Libyan detention centres (Giammarino 2018, 9). With regards to the repatriation of migrants, including potential victims of trafficking, to Libya, Italy has already been found guilty of violation of Article 3 of the ECHR in the judgment *Hirsi Jamaa and others v. Italy* of the ECtHR, therefore it is important to highlight that the obligation of *non-refoulement* applies also to Italian operations in Libyan territorial waters (GRETA 2019, 55). In this respect, it is fundamental to ensure a comprehensive risk and security assessment, and to use forced returns of victims of human trafficking only as a last resort.

2.2. Improving the Italian framework on trafficking and women sexual exploitation

As analysed in the previous sections, the Italian framework on human trafficking still lacks effectivity in different aspects. The importance of improving the effectiveness of this framework is paramount, as Italy is one of the most common destination countries for migrants and one of the European Union countries that is most targeted by human

traffickers, especially due to the high demand for cheap sexual and labour services (Europol 2016).

While the current data on human trafficking in Italy is not complete, since it only considers victims who have used the protection and assistance services of the Italian anti-trafficking system, it is still possible to observe that the most prominent form of human trafficking in Italy is trafficking with the purpose of sexual exploitation, especially of women and young girls; nonetheless, in recent years, labour exploitation has been increasing, especially involving men and young boys. Trafficked persons are mostly migrants arriving in the country for various reasons, and they either come into contact with traffickers during the journey to Europe or, in some cases, they rely on trafficking networks to leave their countries, not expecting to be exploited once they reach Italy. Once migrants become victims of trafficking, regularising their status becomes complicated, and considering the lack of efficacy in the identification process in Italy for victims of trafficking, it is difficult for them to free themselves from the situation of exploitation.

The main issues connected to human trafficking in Italy are the presence of organised crime groups, both national and transnational, which manage trafficking network especially in Sub-Saharan countries such as Nigerian and East European countries such as Albania and Romania; restrictive migration policies that do not provide for a correct identification and assistance of presumed victims of trafficking and expose them to further risks of being trafficked; a lack of effectivity in the prosecution of offenders and traffickers; and insufficient measures to discourage the demand of services of trafficked persons, especially in the field of labour exploitation and sexual exploitation.

Notwithstanding the fact that the majority of trafficking victims in Italy are women, and while a gender-sensitive approach has been mentioned in the recent National Action Plan, Italian legislation and policies on trafficking have been found lacking of a gender dimension, which hinders the country's abilities to provide appropriate assistance and support to women victims of trafficking, especially migrant women (CEDAW Committee 2017).

In addition, an intersectional approach seems lacking in the Italian anti-trafficking framework: it is important to consider not only the single factors that could increase the risk of being trafficked for a person, but also to account for the intersection of these

factors. For example, it is true that women and girls are generally more at risk of being trafficked, particularly in the sex market, but this risk increases even more in the case of black women, as it is possible to see in Italy with the overwhelming prevalence of Nigerian women and girls victims of trafficking; in addition, other factors such as financial instability, poverty, belonging to the LGBT community or being considered ‘at risk youth’ increases the chances of being trafficked, and the more these factors combine, the more it is fundamental to adopt *ad hoc* measures to prevent and protect people who are more at risk of being trafficked.

For this reason, an improvement on the Italian framework on trafficking is necessary, also considering the intersecting policies that influence human trafficking within the country, namely immigration policies and prostitution policies.

2.2.1. Prostitution policies and their impact on sex trafficking

Different prostitution policies and their application in the European Union

As mentioned before, human trafficking for sexual exploitation is the prevalent form of trafficking in Italy, and in Europe in general. For this reason, when discussing measures to counter sex trafficking, it is necessary to tackle the issue of prostitution policies and how they influence trafficking for sexual exploitation. Acting on prostitution policies is fundamental to address the root causes of trafficking, namely the demand for services that underlies human trafficking itself. Extensive research has been done in order to establish the link between prostitution policies and human trafficking, and most importantly to identify what is the best approach to discourage the demand of sexual services from exploited persons (particularly women). Since trafficking for sexual exploitation and the sex business affect women overwhelmingly, I will mostly refer to the situation of women, but it is important to highlight that laws on prostitution are not gendered, and they apply to both women and men in prostitution.

Historically, policies to tackle prostitution have developed around four distinct ideal-typical models: the prohibitionist model, the regulatory model, abolitionism, and the neo-abolitionist model. With the evolution of the sex business and the emerging of different points of view on prostitution and its nature, more hybrid models have emerged in recent times, spacing from legalisation (regulated or unregulated) to new forms of

prohibitionism. The prohibitionist model generally prohibits both indoor and outdoor prostitution, and oftentimes both the client and the person who sells sexual services are punished. New forms of prohibitionism are emerging recently, based on the so-called Swedish or Nordic model, that will be analysed later, where only clients are criminalised; however, in some cases, only the woman in prostitution is punished. Regulatory policies stipulate for the regulation of both indoor and outdoor prostitution, therefore the selling and purchase of sexual services are legal if practiced according to the law; in some cases, women in prostitution are asked to formally register and to undergo specific medical checks, while in some other cases prostitution is considered as any other job, with its fiscal obligations and related welfare services. The abolitionist model is in the middle between legalisation and prohibitionism: prostitution (both outdoor and indoor) is tolerated, but it is not regulated by the State unless situations of grave exploitation come to light. A variation of the abolitionist model is the neo-abolitionist model, which is the one currently applied in Italy: outdoor prostitution is not prohibited nor regulated, while indoor prostitution is prohibited but only in closed houses (Degani 2017, 51).

In recent times, the discourse on prostitution policies has evolved, mainly revolving around two opposite models that claim to take into account women's rights and gender equality in framing prostitution: the Nordic (or Swedish) model, and legalised prostitution.

The Nordic model has the goal of ultimately abolishing prostitution, but it takes into account a gender perspective, considering prostitution as a result of gender inequality and therefore as harmful for women who sell sexual services. For this reason, the focus of the Swedish model is not to punish women in prostitution, but rather to criminalise the purchase of sex (Crowhurst and Skilbrei 2022, 99-100). The Sex Purchase Act was adopted in 1999, and the objective was to curb the market for prostitution at first, and, in the long period, change social norms related to prostitution, also by setting an example to be followed by other countries (*Ibid.*). As a matter of fact, a number of countries inside and outside Europe have adopted this model, while adapting it to their different contexts, namely Norway, Iceland, Canada, France, and Ireland (*Ibid.*). On the other hand, the model that supports legalised and regulated prostitution allows both the selling and the purchase of sex within a regulated market, requiring a license for the management of closed houses and giving the local authorities (local police, inspectors, tax authorities and

the justice system) oversight on the sex market (Huisman and Kleemans 2014). The difference between the legalisation of prostitution and the regulatory model is in the fact that prostitution is viewed as ‘regular labour’, and therefore there should be no distinction with other forms of legitimate and state-regulated work (Nordquist 2023, 4).

From the point of view of scholars who support legalised prostitution, legalisation provides women in prostitution with legal routes to denounce exploitation if they need it, guarantees them better healthcare and protects their human dignity; in addition, it can reinforce criminal punishments for forced prostitution and allows local authorities to control more closely the places where the selling and purchasing of sex takes place (Zeegers and Althoff 2015). At the same time, it is also important to admit that cases of human trafficking for sexual exploitation can still take place even when prostitution is legalised, and that many women in prostitution might have been forced into the industry (*Ibid.*, 367). On the other hand, legalised prostitution might also incentivise underground prostitution for those who wish to evade taxes, and it does not always consider the issue of foreign women: they might not have the necessary documents to legally work in the country, therefore increasing the risk of human trafficking (Nordquist 2023, 5).

Considering the Nordic model, scholars affirm that it might be more effective in preventing forced prostitution, since its objective is that of reducing the demand at the source by criminalising the purchase of sex (*Ibid.*). At the same time, criminalising buyers might cause an increase in sex tourism towards countries with more permissive regulations on prostitution, and women in prostitution might still be punished through immigration policies, as it happens in Sweden, that does not allow for non-nationals to sell sexual services (*Ibid.*, 4).

In the European Union the most common model is the unregulated legalisation of prostitution, adopted by Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, and Spain; among these countries, only three² explicitly criminalise clients purchasing sexual services from trafficked victims. Prostitution is legalised and regulated in Austria, Germany, Greece, Hungary, Latvia, and the Netherlands, and only Germany criminalises the purchase of services from victims of sex trafficking. The prohibitionist model is adopted by the remaining countries in different forms: Croatia and Romania criminalise

² Estonia, Finland and Luxembourg.

the women who sell sexual services and the clients only if the services are purchased by a victim of trafficking, France, Ireland and Sweden adopt the Nordic model, and Lithuania punishes both the selling and the purchase of sexual services (Di Nicola 2021, 24).

What better prostitution policy to combat human trafficking?

In 2014, both the European Parliament and the Parliamentary Assembly of the Council of Europe have published documents analysing the relationship between sexual exploitation, prostitution, and their impact on trafficking and gender equality. Both these documents call upon member States to consider the criminalisation of the purchase of sexual services, based on the Nordic model, as the most effective tool to prevent and combat sex trafficking, also by not punishing people who sell these services. In addition, in States where prostitution has already been legalised, the Parliamentary Assembly calls for the implementation of raising awareness campaigns to change the general attitude towards the purchase of sexual services, in order to reduce the demand for prostitution. While the two resolutions seem to indicate a general consensus at the European level, this is not the case. The affirmation that prostitution represents a violation of human rights and is a form of gender inequality has a political nature (Di Nicola 2021, 9), and it can be countered by those who affirm that women in prostitution have a right to sell sexual services when this transaction does not include coercion, exploitation, or abuse (Amnesty International 2015).

On the other hand, as it has been thoroughly analysed in the previous sections, the policies on prostitution have an impact on sex trafficking and human trafficking in general, and it is important to analyse the effects and impacts of different prostitution policies in terms of benefits and costs, in order to orient policymakers towards a model that is compatible both with the fight against human trafficking and with the respect of women's human rights (Di Nicola 2021, 9). Extensive research has been done on the subject in the last decades, and while the results are for the most part empirical, also due to the lack of reliable information on the actual number of victims of trafficking, they suggest a general line that can be adopted in prostitution policies to support the fight against human trafficking.

An empirical analysis published in *World Development* in 2013 shows that countries with legalised prostitution (both regulated and unregulated) tend to have higher human

trafficking inflows than countries that adopt a prohibitionist approach (Cho, Dreher, and Neumayer 2013). In 2017, Hedlin created a Prostitution Law Index, which does not only take into account whether prostitution is legal or not, but also if it is regulated and if a state criminalises only the purchase of sexual services, or also the selling. This Index therefore divides prostitution regulations into four categories³, and it allows to rank different prostitution models across different countries on a scale from 1 to 4, based on their expected effectiveness in reducing sex trafficking. The results of the research show that in countries whose approach moves towards criminalising the purchase of sexual services, sex trafficking and human trafficking are less widespread (Hedlin 2017). The same conclusion has been reached by a 2022 study, that sees the Swedish model as the one with the most potential to eliminate sex trafficking, but only by also eliminating forms of voluntary prostitution; at the same time, legalised and regulated prostitution is preferable than legalised but unregulated prostitution, even if the results will be less effective than those obtained with the Nordic model (Lee and Persson 2022).

In addition, studies show that legalised prostitution might decrease the level of protection for women victims of trafficking for sexual exploitation, since in most cases legalising prostitution makes it more hard to distinguish between voluntary and coerced prostitution, therefore hindering the identification of trafficking victims (Cho 2016, 344).

2.2.2. Possible improvements to the Italian human trafficking framework

In order to improve its anti-trafficking framework and fully comply with European and international standards, Italy still has some important steps to take.

Firstly, considering the analysis carried out in the previous section and a recent study conducted by the European Union on the different regulations on prostitution in EU Member States and their implications on women rights (Di Nicola 2021), it is possible to affirm that the Italian framework on prostitution is not effective in combating human trafficking, and taking into account the unregulated nature of prostitution in the country, it poses a risk in the identification and protection of human trafficking victims. For this reason, in order to improve the Italian anti-trafficking framework and especially to act on the side of demand for human trafficking, it would be more effective to adopt either a

³ 1) illegal to sell sex, but legal to buy sex; 2) legal to sell sex and to buy sex; 3) illegal to sell sex and to buy sex; and 4) legal to sell sex, but illegal to buy sex.

variation of the Nordic model, criminalising clients and implementing a harsher punishment for those who consciously purchase sex from victims of trafficking; or a hybrid approach between the Swedish model and the legalisation of prostitution, therefore regulating the sex market but at the same time criminalising those who buy unregulated prostitution services, and include a more severe penalty for ‘conscious’ clients of victims of sex trafficking (*Ibid.*, 39).

In addition, another important step to consider is the adoption of a victim-centred approach. While the services provided by civil society organisations and NGOs and funded by the DEO have an important focus on the victims and are able to assist them following their experiences and their needs, the same approach is not reflected at the national or legislative level.

As a matter of fact, one of the main issues in the Italian trafficking framework is the identification of victims of trafficking. In particular, the lack of a National Referral Mechanism causes a lack of standardised procedures in identifying victims of trafficking, especially victims of labour exploitation, trafficked children, and victims of internal trafficking. For this reason, the adoption of a National Referral Mechanism is fundamental, and while it has been included in the recent National Action Plan on human trafficking and severe exploitation, it has not yet been implemented. Particular attention is to be given to trafficking for labour exploitation, especially by reinforcing the capacity and training of labour inspectors, supporting the cooperation with trade unions and NGOs (GRETA 2019, 40).

Another important area of action is that of migration policies and legislation, as Italy has a notoriously restrictive immigration policy, meaning that legal ways to enter the country are limited, causing more irregular migration, and exposing more people to the risk of trafficking. The restrictive immigration legislation and the lack of training of border authorities cause victims of trafficking not to be recognised and therefore either be punished as irregular migrants, or be deported and forcefully removed from the country, oftentimes to other countries, such as Libya, where human rights violations are widespread. It is therefore important to consider the impact that immigration policies have on human trafficking, and to change them accordingly; for example, increasing the number of legal ways to enter the country might prevent many migrants to become victims of trafficking. In addition, once migrants and asylum seekers have entered the

country, it is fundamental that, if recognised as victims or potential victims of trafficking, they receive the assistance and support they need, for example by being placed in *ad hoc* centres where they can be monitored and receive protection (GRETA 2019). Particular attention needs to be granted to children victims of trafficking, and for this reason, the adoption of a child-based approach is fundamental, also considering the cases of children that disappear while being held in Italian reception centres that are not appropriate to their vulnerable status (*Ibid.*).

It is fundamental to also take into consideration the continuous need for assistance of victims of trafficking and their vulnerable situation, not only in the first phase of emergence and identification, but throughout all the process of social integration. This has not been the case, for instance, in a recent judgment of the European Court of Human Rights, *A.I. v. Italy*, where Italy has been found in violation of article 8 of the European Convention of Human Rights concerning the respect for family life. The applicant in this case was a Nigerian woman victim of trafficking, who had been denied contact with her two children following the decision of a minors court. The two children had been declared eligible for adoption, but the proceedings for said adoption had been pending for three years. In this case, the Court observed the decision of the national court had been taken without considering the vulnerable status of the applicant as a victim of trafficking. In particular, the Court stated that “although the authorities have provided her with healthcare and social support, [...] the national courts did not take into account the vulnerability of the applicant in assessing her parental abilities and her request to maintain contact with her daughters” (par. 102). This judgement highlights the importance of a victim-centred approach in all aspects of the assistance and social integration process for victims of trafficking, that cannot be limited to the first steps; in the case in point, the national courts had failed to consider the added vulnerability experienced by the applicant as a victim of trafficking, and therefore had not acted on her best interest, or in the best interest of her daughters.

In addition, it is important to act on the investigation and prosecution aspects of the Italian trafficking framework that, as mentioned in the previous section, are not completely compliant with European and international standards. In fact, not only it is necessary to put into place an effective system of compensation for victims, that oftentimes are not able to receive damages for the abuse and exploitation they have experienced, but it is

also fundamental to guarantee that traffickers are adequately punished, which is not currently the case, seeing the low conviction rates in recent years. One fundamental step to improve the trafficking framework is providing training to competent authorities, including border security officers, local authorities, but also judges, prosecutors, lawyers and in general every person that may come into contact with a victim of trafficking.

Furthermore, in order for a trafficking network to be effective, frequent, and independent evaluation is needed. For this reason, it is necessary for the Italian government to establish a National Rapporteur that has the authority to monitor the anti-trafficking activities of State institutions, and that can eventually make recommendations to persons and institutions concerned, in order to strengthen the anti-trafficking framework and act on the areas that have been found lacking.

Conclusion

Human trafficking cannot be fought by tackling it in a void, by considering it as a separated issue, or without considering what other issues might be connected to it. A fundamental example in the Italian case is that of the migration framework in the country, that not only fails to account for human trafficking, but also puts already vulnerable people more at risk of being trafficked; the same could be said about the prostitution laws in Italy, that do not control the sex business, therefore making it easier for traffickers to perpetrate the sexual exploitation of women, and at the same time they do not act on the demand for victims of trafficking, for instance by criminalising those who purchase sexual services.

The research carried out in this thesis shows that Italy is not entirely in compliance with international and European standards on human trafficking, and that the Italian system is relatively recent and, for some aspects, underdeveloped. For example, Italy has been found lacking an effective victim identification system, which hinders the country's ability to properly act against traffickers and in support of victims. Focusing on the overlapping frameworks of human trafficking and prostitution, the Italian legislation on prostitution has proven to be ineffective to reduce human trafficking, and on the contrary, it is possible that the abolitionist approach adopted by the government allows for sex traffickers to act more freely in the country.

While it has been thoroughly analysed that human trafficking for sexual exploitation and prostitution are not the same and that they should be approached differently, it is also clear that prostitution policies heavily influence the human trafficking framework. For this reason, it is fundamental to consider the question of prostitution in the decision-making process related to trafficking, particularly sex trafficking. While different documents already exist at the international and at the European level concerning the better approach to adopt regarding prostitution policies, it would be fundamental to adopt a unified stand and to encourage the harmonisation of said policies, especially within the European Union. Various studies that have been mentioned in the last section show that the Nordic model, and in general the criminalisation of those who purchase sexual services, is one of the most effective approaches to the question of prostitution when considering the fight against human trafficking. Criminalising clients does not only shift the focus of the issue

from the women in prostitution to those who purchase their services, but it also guarantees a certain degree of safety for people who seek to exit prostitution, since they do not have to fear being arrested. The criminalisation of clients acts on the root causes of sex trafficking (the demand for trafficked women) without risking the safety of trafficking victims.

Notwithstanding the number of studies that have been analysed in this thesis to understand the correlation between human trafficking and prostitution policies, further research is needed on the matter, also considering the different positions on prostitution and the sex business itself, that are far from reaching a consensus, even in the domain of feminist theory.

The demand for trafficking victims and its root causes are fundamental elements to tackle when discussing policies to combat trafficking, especially women trafficking, and this is strictly connected to the necessity for an intersectional and gender-specific approach. This type of approach has been found lacking in the Italian framework at the practical level, which can be seen as concerning, considering the high number of female victims of trafficking in the country.

Naturally, prostitution is only one of the overlapping frameworks that influence Italy's ability to properly protect victims of human trafficking and prosecuting traffickers. Further research can be done on the Italian migration policies and on how the strict immigration laws in the country favour illegal migration and, consequently, human trafficking; in fact, it could be argued that guaranteeing safer paths to enter the country could result in a better control of migratory flows, and in less chances for people to fall victims to traffickers.

In this thesis, I advocate for the importance of an intersectional and gender-based approach to combat human trafficking, which is fundamental in dealing with such a gendered phenomenon. The adoption of such an approach does not only have to account for the trafficking framework itself, but also for the intertwining frameworks that impact the trafficking process, such as the migration and the prostitution framework, that have been thoroughly analysed through the Italian case, but not only: the educational system can have an important impact in preventing human trafficking, as well as the welfare state, that can help work through economic and social inequalities.

Human trafficking is a gendered phenomenon, and for this reason, it is fundamental to act directly on gender inequalities and gender-based violence against women, to eradicate at the source the roots of a culture that sees women as inferior, as vulnerable, as objects to be used, purchased, and sold, and that is the result of centuries of living in a predominantly patriarchal society.

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Annex 1: United Nations Convention Against Transnational Organised Crime

Article 2. Use of terms

For the purposes of this Convention:

- (a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
- (i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;
- (j) “Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

Article 6. Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 8. Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or inter- national civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 23. Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to inter- fere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24. Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-

disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25. Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Article 2. Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3. Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Article 6. Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 11. Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 14. Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention¹ and the 1967 Protocol² relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Link to full text:

<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

Annex 3: Convention on the Elimination of All Forms of Discrimination against Women

Article 6.

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Link to full text:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

Annex 4: CEDAW Committee General recommendation No. 19: Violence against women

Article 6

13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Link to full text: <https://www.refworld.org/docid/52d920c54.html>

Annex 5: CEDAW Committee General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19

12. In general recommendation No. 28 and general recommendation No. 33, the Committee confirmed that discrimination against women was inextricably linked to other factors that affected their lives. The Committee, in its jurisprudence, has highlighted the fact that such factors include women's ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders.¹¹ Accordingly, because women

experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.

Link to full text:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/231/54/PDF/N1723154.pdf?OpenElement>

Annex 6: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

- (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
- (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
- (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

Link to full text:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers#:~:text=Migrant%20workers%20and%20members%20of%20their%20families%20shall%20not%20be,as%20are%20established%20by%20law>

Annex 7: Convention on the Rights of the Child

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation,

or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Link to full text:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

Annex 8: International Covenant on Civil and Political Rights

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Link to full text:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Annex 9: Council of Europe Convention on Action against Trafficking in Human Beings

Article 2. Scope

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

Article 3. Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured

without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 5. Prevention of trafficking in human beings

1. Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
2. Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
3. Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
4. Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
5. Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.
6. Measures established in accordance with this article shall involve, where appropriate, non- governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

Article 6. Measures to discourage the demand

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- (a) research on best practices, methods and strategies;
- (b) raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- (c) target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- (d) preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

Article 10. Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.
2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
4. As soon as an unaccompanied child is identified as a victim, each Party shall:
 - (a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
 - (b) take the necessary steps to establish his/her identity and nationality;
 - (c) make every effort to locate his/her family when this is in the best interests of the child.

Article 12. Assistance to victims

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
 - (a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
 - (b) access to emergency medical treatment;
 - (c) translation and interpretation services, when appropriate;
 - (d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
 - (e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
 - (f) access to education for children.
2. Each Party shall take due account of the victim's safety and protection needs.
3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.

4. Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.

5. Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.

6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

7. For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

Article 13. Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

Article 14. Residence permit

1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

(a) the competent authority considers that their stay is necessary owing to their personal situation;

(b) the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.

2. The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.

4. If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.

5. Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Article 19. Criminalisation of the use of services of a victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 24. Aggravating circumstances

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- (a) the offence deliberately or by gross negligence endangered the life of the victim;
- (b) the offence was committed against a child;
- (c) the offence was committed by a public official in the performance of her/his duties;
- (d) the offence was committed within the framework of a criminal organisation.

Article 26. Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

Article 27. Ex parte and ex officio applications

1. Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.

2. Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.

3. Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non- governmental organisations which aims at fighting trafficking in human beings or

protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

Link to full text: <https://rm.coe.int/168008371d>

Annex 10: Charter of Fundamental Rights of the European Union

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Link to full text: https://www.europarl.europa.eu/charter/pdf/text_en.pdf

Annex 11: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Article 2. Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

Article 8. Non-prosecution or non-application of penalties to the victim

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Article 11. Assistance and support for victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

Article 12. Protection of victims of trafficking in human beings in criminal investigation and proceedings

1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.
2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.
3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.
4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:
 - (a) unnecessary repetition of interviews during investigation, prosecution or trial;
 - (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
 - (c) the giving of evidence in open court; and
 - (d) unnecessary questioning concerning the victim's private life.

Article 13. General provisions on assistance, support and protection measures for child victims of trafficking in human beings

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.
2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

Article 14. Assistance and support to child victims

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due

account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

4. This Article shall apply without prejudice to Article 11.

Article 15. Protection of child victims of trafficking in human beings in criminal investigations and proceedings

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.

2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;

(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

(a) the hearing take place without the presence of the public; and

(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

6. This Article shall apply without prejudice to Article 12.

Article 16. Assistance, support and protection for unaccompanied child victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.

2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.

4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.

5. This Article shall apply without prejudice to Articles 14 and 15.

Article 19. National rapporteurs or equivalent mechanisms

Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

Link to full text:

[https://eur-](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:en:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:en:PDF](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:en:PDF)

Annex 12: Statistics of human trafficking in Italy

The data on human trafficking victims in Italy is aggregated by the Department of Equal Opportunities (*Dipartimento per le Pari Opportunità*) of the Italian government. However, the data on the phenomenon are not exhaustive, not only because of the covert nature of human trafficking, but also because Italy does not possess a unified database with aggregated data on victims and potential victims of human trafficking. As a matter of fact, the data provided by the DEO only takes into account victims that have entered in protection and assistance programs and does not consider all identified or potential victims. For this reason, the real scale of the phenomenon in Italy is unknown.

In 2022, a total of 1,823 human trafficking victims were assisted in the country. Among them, the 67,1% are women, the 28,6% are men, and the remaining 4,2% are transgender people. If compared to the previous years, the percentage of women victims of trafficking has decreased, but the number of assisted victims has remained stable. The majority of the assisted victims come from Nigeria (57,4%), representing more than half of the total (DEO 2022). Most of the assisted victims of trafficking in Italy are adults, as only the 2,5% of them are minors.

The most common form of exploitation is sexual exploitation, as 44,7% of assisted victims were being exploited for sexual purposes (*Ibid.*).

It is also important to notice that most of the victims of trafficking had to come forward themselves (18,8%) and therefore were not individuated by State authorities, which shows that the victims protection system in Italy needs improvement. On the other end, it is encouraging to see that the 14,3% of trafficking victims are identified by the Territorial Commissions for Asylum Seekers (*Commissioni Territoriali per i Richiedenti Asilo*) when asking for international protection, which allows them to escape the trafficking scheme and be referred to the dedicated structures.

In 2022, the number of newly assisted victims who entered the anti-trafficking system in Italy is higher than the year before: there were 718 newly assisted victims in 2021, and 808 in 2022 (*Ibid.*). The repartition of trafficking victims is generally stable, with women being around 60% of the total, although in 2022 the percentage of newly assisted men has increased. The main country of origin for newly assisted victims is Nigeria, and the most prevalent form of exploitation continues to be sexual exploitation (*Ibid.*).

It is important to highlight that these numbers are only related to victims who have come forward and have been assisted by the State authorities. As mentioned before, the hidden nature of human trafficking and its links with organised crime groups, especially in Italy, make it almost impossible to understand the full scale of the phenomenon, both at the international and at the national level. Victims of human trafficking in Italy are mainly irregular migrants and they do not possess their documents, as they are confiscated by traffickers in order to control the victims and to prevent them to exit their situation of exploitation.

DATI ESTRAPOLATI DAL SISTEMA INFORMATIZZATO PER LA RACCOLTA DI INFORMAZIONI SULLA TRATTA (SIRIT) IN DATA 09/03/2023* - A CURA DEL NUMERO VERDE ANTITRATTA

DATI RIFERITI ALLE PERSONE CHE HANNO USUFRUITO DEL PROGRAMMA DI EMERSIONE, ASSISTENZA E INTEGRAZIONE SOCIALE NEL PERIODO 01/01/2022 – 31/12/2022

*Si precisa che i dati elaborati nel presente documento relativi alle persone che hanno effettuato almeno un giorno di presa in carico da parte dei Progetti Antitratta attivi in Italia nel corso dell'annualità 2022, possono considerarsi relativamente consolidati e suscettibili di minime variazioni.

ANNUALITÀ DI RIFERIMENTO: 2022		
GENERE	PERSONE ASSISTITE COMPLESSIVAMENTE	
	VALORE	%
FEMMINE	1224	67,1
MASCHI	522	28,6
TRANSESSUALI	77	4,2
TOTALE	1823	100,00

ANNUALITÀ DI RIFERIMENTO: 2022		
PAESE DI ORIGINE	PERSONE ASSISTITE COMPLESSIVAMENTE	
	VALORE	%
Nigeria	1047	57,4
Pakistan	118	6,5
Marocco	84	4,6
Brasile	61	3,3
Costa d'Avorio	50	2,7
Gambia	48	2,6
Senegal	47	2,6
Bangladesh	47	2,6
Mali	44	2,4
Romania	29	1,6
Altre nazionalità (48)	248	13,6
TOTALE	1823	100,00

ANNUALITÀ DI RIFERIMENTO: 2022		
ETÀ	PERSONE ASSISTITE COMPLESSIVAMENTE	
	VALORE	%
MAGGIORENNI	1777	97,5
MINORENNI*	46	2,5
TOTALE	1823	100,00

*Si precisa che il dato fa riferimento alle persone risultate minorenni al momento di ingresso nel programma di emersione, assistenza e integrazione sociale.

ANNUALITÀ DI RIFERIMENTO: 2022		
AMBITO DI SFRUTTAMENTO	PERSONE ASSISTITE COMPLESSIVAMENTE	
	VALORE	%
Sessuale	815	44,7
Destinata allo sfruttamento	433	23,8
Lavorativo	427	23,4
Vittima di violenza art. 18 bis	47	2,6
Economie criminali forzate	19	1,0
Accattonaggio	17	0,9
Collaboratore di giustizia	10	0,5
Servitù domestica	9	0,5
Matrimoni forzati	8	0,4
Altro*	38	2,1
TOTALE	1823	100,00

*La voce "Altro" si riferisce a persone che hanno subito sfruttamento nel Paese di origine oppure durante il viaggio in Italia, o ancora, a persone rientrate in Italia in virtù del Regolamento di Dublino, e a forte rischio di ri-vittimizzazione.

ANNUALITÀ DI RIFERIMENTO: 2022		
Soggetto Segnalante	PERSONE ASSISTITE COMPLESSIVAMENTE	
	VALORE	%
Autonomamente	343	18,8
Commissioni Territoriali per Richiedenti Asilo	260	14,3
Enti del privato sociale	220	12,1
Amico/a – Conoscente delle vittime	152	8,3
Unità di contatto	150	8,2
Istituzioni locali/enti territoriali – Servizi socio-assistenziali	118	6,5
I.O.M.	95	5,2
Forze dell'ordine – Polizia squadra mobile	61	3,3
CAS (Centro di Accoglienza Straordinaria)	55	3,0
Sportello informativo	50	2,7
Istituzioni locali/enti territoriali – Servizi sanitari	37	2,0
SPRAR/SIPROIMI/SAI	34	1,9
Forze dell'ordine – Carabinieri	31	1,7
Avvocato	30	1,6
Forze dell'ordine – Carabinieri NIL	17	0,9
Privati cittadini	14	0,8
Direzione Territoriale del Lavoro	14	0,8
Tribunale	10	0,5
Prefettura	10	0,5
Forze dell'ordine – Polizia squadra volanti	9	0,5
Centro antiviolenza	7	0,4
Colleghi/e delle vittime	7	0,4
Progetto FAMI	5	0,3
Forze dell'ordine – Polizia Municipale	4	0,2
Associazione sindacale	3	0,2
Forze dell'ordine – Guardia di Finanza	2	0,1
Forze dell'ordine – Polizia Polfer	2	0,1
Comitati di cittadini organizzati	2	0,1
Cliente	2	0,1
IPM (Istituto Penale per i Minorenni)	1	0,1
Servizio Antitratta europeo	1	0,1
Altro	77	4,2
TOTALE	1823	100,00

*La voce "Altro" riguarda tutti i soggetti non compresi nell'elenco delle risposte selezionabili.

ANNUALITÀ DI RIFERIMENTO: 2022		
Regione di emersione	PERSONE ASSISTITE COMPLESSIVAMENTE	
	VALORE	%
Piemonte	274	15,0
Emilia-Romagna	248	13,6
Lombardia	198	10,9
Campania	195	10,7
Sicilia	172	9,4
Veneto	133	7,3
Calabria	117	6,4
Toscana	86	4,7
Puglia	75	4,1
Lazio	67	3,7
Liguria	58	3,2
Friuli-Venezia Giulia	53	2,9
Trentino-Alto Adige	30	1,6
Marche	28	1,5
Umbria	24	1,3
Sardegna	23	1,3
Abruzzo	19	1,0
Basilicata	18	1,0
Molise	4	0,2
Valle d'Aosta	1	0,1
TOTALE	1823	100,00

DATI ESTRAPOLATI DAL SISTEMA INFORMATIZZATO PER LA RACCOLTA DI INFORMAZIONI SULLA TRATTA (SIRIT) IN DATA 09/03/2023* - A CURA DEL NUMERO VERDE ANTITRATTA

**DATI RIFERITI ALLE NUOVE PERSONE EMERSE E PRESE IN CARICO
NEL PERIODO 01/01/2022 – 31/12/2022**

*Si precisa che i dati elaborati nel presente documento relativi all'attività di presa in carico condotta dai Progetti Antitratta attivi in Italia nel corso dell'annualità 2022, possono considerarsi relativamente consolidati e suscettibili di minime variazioni.

ANNUALITÀ DI RIFERIMENTO: 2022		
GENERE	NUOVE PRESE IN CARICO	
	VALORE	%
FEMMINE	481	59,5
MASCHI	280	34,7
TRANSESSUALI	47	5,8
TOTALE	808	100,00

ANNUALITÀ DI RIFERIMENTO: 2022		
PAESE DI ORIGINE	NUOVE PRESE IN CARICO	
	VALORE	%
Nigeria	382	47,3
Pakistan	72	8,9
Marocco	55	6,8
Brasile	36	4,5
Bangladesh	35	4,3
Costa d'Avorio	25	3,1
Romania	19	2,4
Senegal	19	2,4
Gambia	16	2,0
Ghana	15	1,9
Altre nazionalità (36)	134	16,6
TOTALE	808	100,00

ANNUALITÀ DI RIFERIMENTO: 2022		
ETÀ	NUOVE PRESE IN CARICO	
	VALORE	%
MAGGIORENNI	794	98,3
MINORENNI*	14	1,7
TOTALE	808	100,0

*Si precisa che il dato fa riferimento alle persone risultate minorenni al momento di ingresso nel programma di emersione, assistenza e integrazione sociale.

ANNUALITÀ DI RIFERIMENTO: 2022		
AMBITO DI SFRUTTAMENTO	NUOVE PRESE IN CARICO	
	VALORE	%
Sessuale	313	38,7
Destinata allo sfruttamento	207	25,6
Lavorativo	214	26,5
Vittima di violenza art. 18 bis	21	2,6
Accattonaggio	9	1,1
Economie criminali forzate	7	0,9
Matrimoni forzati	3	0,4
Servitù domestica	2	0,2
Collaboratore di giustizia	1	0,1
Altro*	31	3,8
TOTALE	808	100,00

*La voce "Altro" si riferisce a persone che hanno subito sfruttamento nel Paese di origine oppure durante il viaggio in Italia, o ancora, a persone rientrate in Italia in virtù del Regolamento di Dublino, e a forte rischio di ri-vittimizzazione.

ANNUALITÀ DI RIFERIMENTO: 2022		
Soggetto Segnalante	NUOVE PRESE IN CARICO	
	VALORE	%
Autonomamente	152	18,8
Commissioni Territoriali per Richiedenti Asilo	95	11,8
Enti del privato sociale	86	10,6
Amico/a – Conoscente delle vittime	68	8,4
Istituzioni locali/enti territoriali – Servizi socio-assistenziali	64	7,9
Unità di contatto	64	7,9
I.O.M.	46	5,7
Sportello informativo	32	4,0
Forze dell'ordine – Polizia squadra mobile	29	3,6
Avvocato	24	3,0
SPRAR/SIPROIMI/SAI	18	2,2
CAS (Centro di Accoglienza Straordinaria)	14	1,7
Istituzioni locali/enti territoriali – Servizi sanitari	14	1,7
Forze dell'ordine – Carabinieri	13	1,6
Forze dell'ordine – Carabinieri NIL	12	1,5
Direzione Territoriale del Lavoro	12	1,5
Centro antiviolenza	7	0,9
Tribunale	6	0,7
Progetto FAMI	5	0,6
Privati cittadini	5	0,6
Associazione sindacale	3	0,4
Forze dell'ordine – Guardia di Finanza	2	0,2
Prefettura	2	0,2
Comitati di cittadini organizzati	2	0,2
Forze dell'ordine – Polizia squadra volanti	1	0,1
Cliente	1	0,1
Servizio Antitratta europeo	1	0,1
Colleghi/e delle vittime	1	0,1
Forze dell'ordine – Polizia Municipale	1	0,1
Altro*	28	3,5
TOTALE	808	100,00

*La voce "Altro" riguarda tutti i soggetti non compresi nell'elenco delle risposte selezionabili.

ANNUALITÀ DI RIFERIMENTO: 2022		
Regione di emersione	NUOVE PRESE IN CARICO	
	VALORE	%
Piemonte	128	15,8
Emilia-Romagna	101	12,5
Sicilia	91	11,3
Veneto	72	8,9
Campania	71	8,8
Lombardia	51	6,3
Puglia	50	6,2
Toscana	47	5,8
Calabria	35	4,3
Lazio	29	3,6
Friuli-Venezia Giulia	26	3,2
Liguria	21	2,6
Umbria	18	2,2
Marche	17	2,1
Trentino-Alto Adige	17	2,1
Sardegna	14	1,7
Abruzzo	10	1,2
Basilicata	9	1,1
Valle d'Aosta	1	0,1
Molise	0	0
TOTALE	808	100,00