

UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL  
SCIENCE, LAW, AND  
INTERNATIONAL STUDIES

**Master's degree in**  
**Human Rights and Multi-level Governance**



INVISIBILITY DOES NOT EQUATE TO INEXISTENCE:  
HUMAN TRAFFICKING AND SERIOUS EXPLOITATION  
FOR THE PURPOSE OF BEGGING IN ITALY

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Matriculation No. 2023356

A.Y. 2022/2023

*Alla mia mamma.*

*'You may choose to look the other way but you can  
never say again that you did not know'*

William Wilberforce

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## **ACRONYMS**

CAS: Centro di Accoglienza Straordinaria

CRDP: The Committee on the Rights of Persons with Disabilities

EU: European Union

GRETA: The Group of Experts on Action against Trafficking in Human Beings

IOM: The International Organization for Migration

OSCE: The Organization for Security and Co-operation in Europe

SPRAR: Sistema di Protezione Richiedenti Asilo e Rifugiati

TAR: Tribunale Amministrativo Territoriale

THB: Trafficking in Human Beings

UNODC: The United Nations Office on Drugs and Crime

## INTRODUCTION

Trafficking in human beings (THB) is a complex and increasingly heterogeneous phenomenon that most people are unaware of. Forms of THB differing from sexual and labour exploitation are particularly unknown. It is the case of forced begging. Indeed, begging does not only stem from poverty or social exclusion, but may also fall into the category of organised crime, exploitation and human trafficking. In the Italian context, the practice is often cited, together with illegal activities, as the third typology of trafficking-related exploitation. However, when attempting to delve into the issue, what emerges overwhelmingly is the difficulty in gathering information due to general poor knowledge and scarce interest in the phenomenon. Moreover, official data on human trafficking emersions convey the idea that exploitative begging represents only an irrelevant part of total cases. Despite this apparent marginality, warnings on the necessity to better investigate and comprehend the phenomenon are addressed both at the national and international levels. They highlight the need for further in-depth analysis of the issue and solicit the state to intensify efforts in the fight against this specific form of trafficking or serious exploitation. Moreover, many indicators suggest that the phenomenon is certainly present but definitely under the radar. Although Italy is in line with international standards and has one of the most advanced anti-trafficking systems in Europe, some obstacles may impede the effective emersion of the phenomenon while making its victims invisible. The reference to the concept of ‘invisibility’, which is also present in the title, does not obviously allude to a hidden and unseen condition of the victims, as might be the case of people trafficked for domestic servitude (‘invisible’ because they are exploited within the domestic wall). Conversely, victims of forced begging are constantly in the public eye. In this case, invisibility is the result of the failure to recognise a reality that is probably much more extensive than it seems.

Through the observance of the social, legislative and judicial spheres, this thesis wants to provide an up-to-date picture of the phenomenon as a whole in Italy. Such cross-sectional overview of the situation will enable a better understanding of the possible limitations and challenges to its effective emergence, and thus also of possible remedies. Ultimately, this work aims to turn the spotlight on a phenomenon that appears



completely under the radar and make its victims less invisible. To do so, the thesis will be structured as follows. Chapter I will introduce in general terms the main topics, namely begging and human trafficking, and how these two can interconnect. In addition, a global overview of the phenomenon of THB for begging is provided through a first focus on Europe and secondly on the other regions. It will continue by describing victims' main profiles and the demand and profit behind the exploitation of the activity. Chapter II will get to the heart of the research and thus deal with the Italian manifestation of the phenomenon. In the beginning, some general notions on human trafficking in the country will be given. They will concern anti-trafficking agents and mechanisms and the most updated information on victims and forms of exploitation. After that, the phenomenon of begging (not necessarily forced) in the Italian context will be analysed. At this point, the linguistic sphere but also the innumerable modalities and causes of the issue will be considered. Only at a later stage, attention will be concentrated exclusively on forced begging. This part will describe the efforts made at the national level to approach and better understand the issue (studies, projects, specifically-designed street units etc.) to give a clearer picture of the actual commitment in the fight against it. Besides providing some examples of THB for begging from the past (which involved mainly minors), the chapter will report on current categories of beggars that show evident indicators of trafficking and serious exploitation. Italy's legislative framework will be addressed in Chapter III. The initial section will consider trafficking-related laws and decrees and will attempt to highlight how they have evolved over time, their adherence to international standards and the regard they have for begging as a possible type of THB and exploitation. The second section will deal, instead, with the national legal framework on begging. An excursus of past provisions regulating and criminalising the practice will allow a better understanding of today's ambiguous regulations. Chapter IV will be devoted to national case law on begging and forced begging. In particular, this part will investigate how the phenomenon emerges at the jurisprudential level, namely whether there are many prosecutions, whether some favoured recipients are present, which categories tend to be criminalised etc. In consideration of the scarce emersion of THB for begging in contrast with the innumerable indicators that signal that such reality is actually much more present than what appears from official data, judicial sentences etc., Chapter V will revolve around

the possible obstacles impeding the phenomenon from coming to light. In the end, some recommendations to allow effective emersion and identification of victims will be addressed.

## CHAPTER I

### Human Trafficking for the Exploitation of Begging

Trafficking in human beings for the purpose of begging occurs when a victim of trafficking is exploited in the practice of begging. The Committee of the International Labour Organisation (ILO) defines the exploitation of begging as ‘the act by any person in any manner whatsoever of: (1) organizing begging by other persons with a view to profit; (2) gaining profit from begging by others, sharing the product or receiving payments from a person habitually engaged in begging; (3) engaging, removing or deceiving a person to engage in begging, or exerting pressure on such person to beg or continue to do so; (4) engaging, removing or deceiving a person for the purposes of personal enrichment with a view to the such person engaging in the provision of a service in return for a gift on the public thoroughfare’.<sup>1</sup> Although it is occasionally mentioned in a limited number of international reports and legal documents as a possible form of trafficking-related exploitation, forced begging is a largely ignored and understudied phenomenon, whose conceptualization as trafficking in human being has been unsystematic so far.<sup>2</sup>

#### I.1 The practice of begging

Traditional definitions of begging refer to the phenomenon by identifying it as the practice of those who live by asking for alms, usually along the streets. This is a very limiting way of describing the plurality of forms with which begging is currently realized, both with reference to places and practices.<sup>3</sup> A more appropriate and exhaustive description comes from the ILO, which has defined ‘begging’ as ‘a range of activities whereby an individual asks a stranger for money based on being poor or needing charitable donations for health or religious reasons. Beggars may also sell small

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<sup>1</sup> Committee of Experts on the Application of Conventions and Recommendations, *Solicitud directa (CEACR) - Adopción: 2004, Publicación: 93ª reunión CIT (2005) Convenio sobre las peores formas de trabajo infantil*, 1999 (núm. 182), (2005) available at: [https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_LANG\\_CODE:2237223,en](https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:2237223,en)

<sup>2</sup> Iveta Cherneva, *Human Trafficking for Begging*, 17 Buff. Hum. Rts. L. Rev. 25 (2011), p. 25, available at: <https://digitalcommons.law.buffalo.edu/bhrlr/vol17/iss1/2>

<sup>3</sup> Paola Degani and Claudio Donadel, *Progetto Stop for Beg: report finale*, Venezia: Regione Veneto (2013), p. 8, available at: <http://www.regione.veneto.it/web/immigrazione/stop-for-beg>,

items, such as dusters or flowers, in return for money that may have little to do with the value of the item for sale'.<sup>4</sup> Beggary can be classified into three distinct categories. According to its motivation, the practice can be the result of need, convenience, or organized crime. The first form of beggary stems from the human need to survive. When an individual runs out of all options to sustain his existence, begging might represent a solution of last resort. The second category includes those people who consider begging their most efficient way of making a living, given their skill set, aspirations and preferences. The last category concerns beggars who are forced to practice the activity by a criminal organization.<sup>5</sup> What emerges is that the simple term 'begging' does not imply the concept of exploitation.<sup>6</sup> There is not a single reason why people voluntarily (or because they have no other choice) choose to practice this activity. The phenomenon of begging is caused by several factors, such as poverty, religion, physical and/or mental disability, culture, national disaster, civil war, bad habits (e.g. drug, alcohol, and gambling dependencies), family heritage, uncontrolled rural to urban migration etc. In the absence of any means of livelihood, many people are driven to begging, some of them temporarily and some other permanently.<sup>7</sup> It is well known that begging is not a recent phenomenon but it remains uncertain when this activity began to be practised. Scholars agree on its inexistence in primitive societies where small groups of relatives used to live together and support one another. Mutual aid served as self-protection and security for the clan or even the whole tribe. It is plausible that the phenomenon of begging has emerged in association with private property. In ancient civilizations, almsgiving was considered a holy deed and begging an honourable act to the point that religious feasts included almsgiving as a ritual.<sup>8</sup> Still today, begging is sometimes closely associated with religion. For example, in South Asia, particularly in India, charity represents one of the noblest human qualities

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<sup>4</sup> Sakina Riaz and Mumtaz, Ali Baloch, *The Socio-Cultural Determinants of Begging: A Case Study of Karachi City Journal of Economics and Sustainable Development*, vol. 10, no.11 (2019), p. 75, available at: <https://www.iiste.org/Journals/index.php/JEDS/article/view/48485>

<sup>5</sup> Nadia Azam, *Beggarization: Beggary as an Organized Crime in Pakistan* (2011), p. 9

<sup>6</sup> OSCE, *OSCE Resource Police Training Guide: Trafficking in Human Being*, TNTD/SPMU Publication Series Vol. 12 (2013), p. 79, available at: <https://www.osce.org/secretariat/109935>

<sup>7</sup> Jabir Hasan Khan and Shamshad, *Socio-economic causes of begging*, International Research Journal of Human Resources and Social Sciences vol.1, no.3 (2014), p. 39, available at: [https://www.researchgate.net/publication/306094400\\_SOCIO-ECONOMIC\\_CAUSES\\_OF\\_BEGGING#:~:text=The%20analysis%20reveals%20that%20the,which%20results%20nearly%20half%20beggar](https://www.researchgate.net/publication/306094400_SOCIO-ECONOMIC_CAUSES_OF_BEGGING#:~:text=The%20analysis%20reveals%20that%20the,which%20results%20nearly%20half%20beggar)

<sup>8</sup> Ibid (n 7), p. 38

according to Hindu tradition. Moreover, in various religions like Islam, Christianity and even Hinduism seeking alms is an opportunity to earn God's blessings.<sup>9</sup> Nowadays, however, voluntary begging is more commonly carried out as an ordinary means of subsistence. In some states, begging represents a family survival strategy. In this case, panhandling becomes a more structural fact rather than an economic one. There are families sending their children to beg to support their parents despite those parents being capable of working and supporting the family themselves. In this context, children are seen as contributors to their family survival and are not necessarily coerced, even though their rights are severely affected.<sup>10</sup> All in all, the possible unforced nature of begging determines the need to understand in which situations the activity is organised with the aim of making an unjust profit and when instead it is the result of other factors, such as poverty, marginality, social segregation or religion.<sup>11</sup> It follows that not all organized begging falls under the international definition of trafficking in persons.<sup>12</sup>

## **I.2 Begging as a form of human trafficking**

In order to clarify when begging is related to human trafficking and coercion, first of all, it is important to define what trafficking in persons is and what its main features are. The concept of human trafficking emerged from centuries' worth of international law. At first, the phenomenon was associated exclusively with issues including the suppression of trading in white women and girls for sexual exploitation, trafficking in women and children, and slavery and practices similar to it, as well as trafficking and exploitation involving the prostitution of others. Yet it was not until 2000, with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) supplementing the United Nations Convention against Transnational Organized Crime, that an international definition to criminalize

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<sup>9</sup> Ibid (n 4)

<sup>10</sup> Ibid (n 6)

<sup>11</sup> Paola Degani, *Lotta alla tratta di persone e diritti umani: un'analisi del sistema degli interventi a sostegno delle vittime alla luce dei fenomeni di grave sfruttamento in Italia*, Centro di Ateneo per i Diritti Umani "Antonio Papisca", Università degli Studi di Padova e Comune di Venezia (2020), p. 42, available at: <https://www.osservatoriointerventitratta.it/report-lotta-alla-tratta-di-persone-e-diritti-umani-unanalisi-del-sistema-a-sostegno-delle-vittime-alla-luce-dei-fenomeni-di-grave-sfruttamento-in-italia/>

<sup>12</sup> Ibid (n 2), p. 26

‘trafficking in persons’ was agreed upon and accepted.<sup>13</sup> Article 3 of the UN Protocol reads ‘(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.’<sup>14</sup> The UN Protocol does not define ‘trafficking victim’. Nevertheless, on a regional level, the Council of Europe Convention on Action against Trafficking in Human Beings defines ‘victim’ in Article 4(e) as ‘any natural person who is subject to trafficking in human beings as defined in this article’. ‘Trafficker’ is also not defined by the UN Protocol. At a minimum, the term indicates an individual who commits the crime of trafficking in persons for the purpose of exploitation.<sup>15</sup>

Begging can be conceptualised as trafficking, provided that the five criteria of human trafficking are met. The three primary elements are action, means and purpose of exploitation. There are then two additional ones -transnational nature and organized criminal group.

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<sup>13</sup> Céline Bauloz, Marika Mcadam and Joseph Teye., *Human trafficking in migration pathways: trends, challenges and new forms of cooperation*, in World Migration Report 2022 (M. McAuliffe and A. Triandafyllidou, eds.), International Organization for Migration (IOM), Geneva (2021), p. 2, available at: <https://www.iom.int/>

<sup>14</sup> UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000), p. 2, available at: <https://www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf>

<sup>15</sup> Ibid (n 2), p. 29

- 1) Action: this criterion refers to ‘recruitment, transportation, transfer, harbouring or receipt of persons’. At this point, it is relevant to remark on the difference between human trafficking and migrant smuggling. The first is a crime against the individual while the second is a crime against the state. Indeed, this latter consists in assisting migrants to enter or stay in a country illegally, for financial or material gain. Smugglers make a profitable business out of migrants' need and/or desire to enter a country and the lack of legal documents to do so. International law requires governments to criminalize migrant smuggling, but not those who are smuggled.<sup>16</sup> Despite the consolidated distinction between the two phenomena, in the context of coerced begging, the boundaries between human trafficking and smuggling have often appeared more blurred. Human smuggling may represent a constitutive element of the transportation phase. The debt incurred by the migrant for the journey might give rise to a relationship of enslavement with the criminal organization that arranged the transport. This is common when the individual is a person on the margins of society, without economic means, who consequentially offers himself/ herself in exchange for the possibility of emigrating.<sup>17</sup> It should also be noted that trafficking does not necessarily involve the act of transportation. Simply recruiting children to beg can fulfil the action element.<sup>18</sup>
- 2) Means: this element concerns the ‘threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person’. In the context of forced begging, traffickers use both violent means and subtler ones. These latter are used for example when a relative induces a member of his/her family to beg thanks to his/her leverage and power position within the family. The means ‘abuse of a position of vulnerability’ is particularly relevant when victims are

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<sup>16</sup> United Nations Office on Drugs and Crime (UNODC), *Human trafficking and migrant smuggling*, available at: <https://www.unodc.org/e4j/en/secondary/human-trafficking-and-migrant-smuggling.html>

<sup>17</sup> Luciana Goisis, *L'immigrazione clandestina e il delitto di tratta di esseri umani. Smuggling of migrants e trafficking in persons: la disciplina italiana*, in *Diritto Penale Contemporaneo* (2016), p. 3, available at: <https://archiviodypc.dirittopenaleuomo.org/d/5059-limmigrazione-clandestina-e-il-delitto-di-tratta-di-esseri-umani-smuggling-of-migrants-e-traffickin>

<sup>18</sup> Ibid (n 2), p. 36

people with disabilities.<sup>19</sup> As will be observed later, individuals with physical and mental impairments are among the favourite subjects for coerced begging. Another category commonly exploited in begging is the one of children. It should be noted that according to Article 3(c) when the victim is under eighteen years of age the element of means needs not necessarily to be met. Because children represent a significant portion of begging victims, Article 3(c) is notable.<sup>20</sup>

- 3) Purpose of exploitation: for this aspect the UN Protocol reads ‘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’. As it is possible to notice from this section of the text, begging is not explicitly mentioned as possible form of exploitation. The expression ‘at a minimum’ plays a key role in the interpretation of this passage with regard to begging. The UN Legislative Guide underlines that the phrase ‘at a minimum’ signals that the list of exploitation forms is not exhaustive. Drafters might have not known of this form of trafficking, or they might have decided to not explicitly include it in the text in order to indicate that the list is complete. Because the Protocol was conceived to be a ‘living instrument’, an inclusive kind of language was chosen to encompass any new form of exploitation, known or unknown, which was not or could have not been foreseen by the drafters.<sup>21</sup> It follows that the omission of begging in subparagraph (a) does not preclude its conceptualisation as a possible form of trafficking-related exploitation. Indeed, many international instruments, reports and guidelines mention begging in relation to trafficking. It is the case of the European Union (EU) Brussels Declaration on Preventing and Combating Trafficking in Human Beings. A 1999 UN report drew attention to the situation of child beggars in South Asia and indicated begging as one of the identified ‘aims of trafficking’. In her 2009 report, the UN Special Rapporteur on trafficking in persons referred to begging as one of the child trafficking-related exploitations. During the UN Office on Drugs and Crime and UN Division for

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<sup>19</sup> Ibid (n 2), p. 36

<sup>20</sup> Ibid (n 2), p. 37

<sup>21</sup> Ibid (n 2), p. 40



the Advancement of Women Expert Group Meeting, it was pointed out that begging, just as other not explicitly mentioned forms of exploitation (i.e. domestic service, illegal adoption etc.), is covered by the UN protocol. Other international organizations' reports refer to organized begging as a form of trafficking in persons. For instance, the International Organization for Migration (IOM) report on trafficking in South Eastern Europe discusses the phenomenon.<sup>22</sup> In other cases, forced begging is considered simply a form of forced labour. This happens in Spain, Sweden, the Czech Republic and Croatia.<sup>23</sup> The ILO as well conceives coerced begging as a variant of forced labour since it is “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/herself voluntarily”.<sup>24</sup> The exploitation of begging has similar features to those characteristics of forced labour. The substantial difference lies in the fact that begging cannot be defined as a properly working activity since there is no right to payment.<sup>25</sup>

- 4) Transnational character: Article 4 of the UN Trafficking Protocol states ‘the Protocol shall apply [...] where those offences are transnational in nature and involve an organised criminal group’.<sup>26</sup> However, the transnationality prerequisite proves controversial when considering internal trafficking. With regard to begging, it appears questionable whether an activity by a criminal organization controlling beggars who operate locally in only one country could be classified as trafficking. To clarify the issue the Legislative Guide to the Protocol affirms that in domestic law the offences of trafficking in persons must apply equally, regardless of whether the case involved transnational elements or is purely domestic. The same is established by the Council of Europe Convention in Article 2, which explicitly reads ‘this Convention shall apply to all forms of trafficking in human beings, whether national or transnational. UNICEF Reference Guide on Protecting the Rights of Child Victims of

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<sup>22</sup> Ibid (n 2), p. 42

<sup>23</sup> Myria Federal Migration Centre, *Annual Report 2016 Trafficking and smuggling of human beings Beggars in the hands of traffickers* (2016), p. 45, available at: <https://www.myria.be/en/publications/2016-annual-report-trafficking-and-smuggling-of-human-beings>

<sup>24</sup> Ibid (n 6)

<sup>25</sup> Ibid (n 11), p. 42

<sup>26</sup> Ibid (n 14)

Trafficking in Europe warns that since trafficking is so routinely connected with the cross-border movement of the children and adults concerned, victims of internal trafficking risk being overlooked. Consequentially, it recommends the inclusion of internal trafficking when applying the Protocol.<sup>27</sup> Moreover, the Convention on Transnational Organised Crime underlines that the transnational criterion is met also in the case where the acts are committed in more than one state, in situations where the act occurs in one state while the planning and preparation are in another one, when the acts involve a criminal group that operates in more than one state, or the acts are committed in one state with substantial effect in another. It follows that, if it is proven that the beggars or their traffickers operate in another country, the transnationality requirement is satisfied.<sup>28</sup>

- 5) Organised criminal group: this last parameter is expressed in Article 2 of the UN Convention, where a detailed description of the required group's features is given (e.g. the number of members, time of existence etc.). In the context of forced begging, a proper criminal organization could not be present. Instead, the family might induce one of its members (e.g. a child) to beg. Some begging is certainly of that type and cannot be labelled as trafficking. Nevertheless, interpreting the familial unit as an organised structured group is still possible if a hierarchy is present (e.g. the father as the head, the mother as the accessory, the uncle as the coordinator and the child as the victim). Family-induced begging can then fulfil all the criteria to be recognised as human trafficking.<sup>29</sup>

### **I.3 A worldwide typology of human trafficking**

In its latest global report on trafficking in persons, the United Nations Office on Drugs and Crime has published the following data. At the global level, most victims are trafficked for the purpose of sexual exploitation. Approximately 50% of trafficking-related victims are forced into prostitution or other forms of sexual exploitation. Forced labour represents the second main form of human trafficking. Recent estimates indicate

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<sup>27</sup> Ibid (n 2), p. 47

<sup>28</sup> Ibid (n 2), p. 48

<sup>29</sup> Ibid (n 2), p. 49

that 38% of the victims are targeted for this form of exploitation.<sup>30</sup> Albeit in smaller numbers, victims were also trafficked for other purposes. Among these rarer typologies of exploitation, such as forced criminal activities, forced marriage, baby selling, illegal adoption and organ removal, exploitative begging appears as a relevant one. According to UNODC data, people who are trafficked for begging account for 1.5% of global victims. Coerced begging emerges also in contexts of ‘mixed forms of exploitation’, in which victims are exploited in multiple ways. It is the case of an individual who is used in begging as well as in criminal activity (often carrying out petty crimes). While the numbers of detections are low, trafficking for exploitative begging is geographically widespread. Indeed, the phenomenon is reported by about 20 countries from all regions.<sup>31</sup> Countries in North Africa and the Middle East report the most significant numbers of this form of trafficking, where it accounts for about 30 % of victims detected in the sub-region.<sup>32</sup> Another figure from the UNODC report that might be relevant with respect to the exploitation of begging concerns forced criminality. The document indicates that outside of trafficking for forced labour or sexual exploitation, trafficking for forced criminal or illegal activities is the most detected form of trafficking. About 6 per cent of total victims detected globally are exploited for the commission of crimes.<sup>33</sup> This information becomes relevant when considering that in some states, like Greece, Bulgaria, Lithuania, Malta etc., the practice of begging is illegal. In some countries, begging is punished with a prison sentence or with a fine. In other cases, it is considered a criminal offence or a violation of the administrative provisions.<sup>34</sup> It follows that, according to the understanding of the practice, cases of forced begging may not be contemplated, and thus reported, as an independent and separate form of exploitation, instead they may fall under the category of forced criminality and illicit activities.<sup>35</sup>

### *1.3.1 A focus on Europe*

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<sup>30</sup> UNODC, *Global Report on Trafficking in Persons 2020*, United Nations publication, Sales no. E.20.IV.3 (2020), p. 33, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>31</sup> UNODC, *Global Report on Trafficking in Persons 2018*, United Nations publication, Sales No. E.19.IV.2 (2018), p. 33, available at: [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf)

<sup>32</sup> Ibid (n 30), p. 35

<sup>33</sup> Ibid (n 30), p. 34

<sup>34</sup> Ibid (n 23), p. 46

<sup>35</sup> OSCE, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (2021), p. 29, available at: <https://www.osce.org/cthb/522934>

The phenomenon of trafficking for the purpose of begging is increasingly attracting the attention of the European region as well. The Europol Organised Crime Threat Assessment (OCTA) highlighted begging as one of the emerging threats that are prevalent within the OSCE region. In the analysis, the phenomenon is described as a criminal offence in which victims, mainly children, are being exploited for profit both by criminal networks and their own families.<sup>36</sup> A further warning cry comes from the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings Valiant Richey, who highlighted the emerging trafficking trends. These include trafficking for the purpose of remote sexual abuse (e.g., online pornography), increased risks of online child exploitation, and last but not least substantial increases in trafficking for sham marriages, forced criminality and forced begging.<sup>37</sup> According to the recently released UNODC report, Central and South-Eastern Europe, trafficking for sexual exploitation is still the prevailing form. However, there have been increases in the share of victims trafficked for forced labour or other purposes since 2016. In particular, trafficking for the exploitation of begging was recorded in the Western Balkans, as well as in other parts of the sub-region.<sup>38</sup> For what concerns Western and Southern Europe the most detected victims are adult women, but men and boys are becoming increasingly detected. Even though sexual exploitation, followed by forced labour, remains the most common form of trafficking, trafficking for other purposes, particularly for criminal activity and exploitative begging, has registered a sharp increase. In the last years, this category experienced growth from 7 % to 25%, more than double the global average of 12%.<sup>39</sup> These forms of trafficking-related exploitation have increased especially in Bulgaria, Croatia, Greece, the Netherlands and Poland. Reports show that victims of trafficking for forced begging include minors, people with disorders related to drug and alcohol abuse, people with physical disabilities, people

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<sup>36</sup> Ibid (n 6)

<sup>37</sup> OSCE, Steady progress made in national anti-trafficking efforts, but challenges persist, OSCE report says (2022), available at: <https://www.osce.org/secretariat/522997>

<sup>38</sup> Ibid (n 30), p. 140

<sup>39</sup> Ibid (n 30), p. 134

from ethnic minorities (such as Roma communities), or who are in difficult financial situations.<sup>40</sup>

The UNODC, together with its global report, has released a country profile document specific for Europe. Starting from Western and Southern European states, many of them register cases of forced begging. In Austria, this trafficking-related exploitation constitutes one of the four main forms.<sup>41</sup> Belgium's profile reports the presence of forced begging, especially in the year 2016.<sup>42</sup> However, little is known about the phenomenon.<sup>43</sup> In 2018, the number of persons convicted of trafficking for exploitative begging in France is 12.<sup>44</sup> In the last years, Germany has witnessed the emergence of some cases.<sup>45</sup> Greece knows the phenomenon quite well since coerced begging has represented together with forced labour the second most detected typology of trafficking-related exploitation from 2014 to 2017. In these cases, members of the family were involved either as perpetrators or as facilitators by allowing perpetrators to exploit the victim.<sup>46</sup> Most beggars were children but adult victims were identified as well.<sup>47</sup> Despite the very low percentage of victims in Ireland, and Luxemburg the countries' profiles include this form of trafficking.<sup>48</sup> In the Netherlands, forced begging and forced criminality are counted together. The number of presumed victims of trafficking for these purposes is preceded only by that of victims of sexual exploitation and forced labour.<sup>49</sup> Portugal dealt with the phenomenon, especially in 2017.<sup>50</sup> In Spain, victims of forced begging started being detected in 2016, with a constant increase in the following years.<sup>51</sup> In Sweden, forced begging represents a problematic reality. In 2018,

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<sup>40</sup> Commissione Europea, *Relazione della Commissione al Parlamento Europeo e al Consiglio: Seconda relazione sui progressi compiuti nella lotta alla tratta di esseri umani a norma dell'articolo 20 della direttiva 2011/36/UE concernente la prevenzione e la repressione della tratta di esseri umani e la protezione delle vittime* (2020), p. 7, available at: <https://eur-lex.europa.eu/legal-content/it/TXT/?uri=CELEX:52020DC0661>

<sup>41</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile Western and Southern Europe*, United Nations publication (2020), p. 33, available at: [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP\\_2020\\_CP\\_Western\\_and\\_Southern\\_Europe.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_CP_Western_and_Southern_Europe.pdf)

<sup>42</sup> Ibid (n 41), p. 7

<sup>43</sup> Ibid (n 23), p. 36

<sup>44</sup> Ibid (n 41), p. 20

<sup>45</sup> Ibid (n 41), p. 25

<sup>46</sup> Ibid (n 41), p. 26

<sup>47</sup> Ibid (n 41), p. 28

<sup>48</sup> Ibid (n 41), p. 31, p. 38

<sup>49</sup> Ibid (n 41), p. 41

<sup>50</sup> Ibid (n 41), p. 45

<sup>51</sup> Ibid (n 41), p. 49

the number of suspected victims of exploitative begging, as well as the number of persons convicted of this form of trafficking, were more than twice as high as that of victims of sexual exploitation and forced labour.<sup>52</sup> In the case of Switzerland, the trafficking percentages do not specify the type of exploitation.<sup>53</sup> Nevertheless, GRETA 2019 report concerning the implementation of the Council of Europe Convention on trafficking identifies forced begging as an alarming reality, in which Roma children are the main victims. The report invites the state to conduct and support further research with respect to this THB- related exploitation.<sup>54</sup> As far as Central and South-Eastern countries are concerned, some of them appear particularly impacted by the phenomenon. In Bosnia and Herzegovina, the exploitation of begging constitutes the first form of THB, thus exceeding even the numbers of sexual exploitation.<sup>55</sup> Trafficking for begging is then mentioned in Estonia, Lithuania, North Macedonia and Serbia's profiles.<sup>56</sup> Montenegro reports that between 2017 and 2018, identified victims were mostly trafficked for the purpose of forced begging and sexual exploitation. They were nationals and Iranians, mostly men and children (both boys and girls).<sup>57</sup> In Poland, it was the third most common form of exploitation until 2016.<sup>58</sup> The phenomenon is present in Romania and victims are mainly Romanian citizens, including children women and above all men.<sup>59</sup> Cases of THB for forced begging have increased in the last years in Slovakia up to being the most detected one among the various forms of trafficking.<sup>60</sup> To conclude, Eastern Europe has at least two countries where begging is exploited. These are the Republic of Moldova and Ukraine.<sup>61</sup>

### 1.3.2 The other regions

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<sup>52</sup> Ibid (n 41), p. 51

<sup>53</sup> Ibid (n 41), p. 53

<sup>54</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (2019), p. 15, available at: <https://rm.coe.int/report-on-the-implementation-of-the-council-of-europe-convention-on-ac/1680981889>

<sup>55</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile Central and South-Eastern Europe*, United Nations publication (2020), p. 5, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>56</sup> Ibid (n 55), p. 17, p. 30, p. 33, p. 43

<sup>57</sup> Ibid (n 55), p. 31

<sup>58</sup> Ibid (n 55), p. 37

<sup>59</sup> Ibid (n 55), p. 39, p. 40

<sup>60</sup> Ibid (n 55), p. 46

<sup>61</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile Eastern Europe and Central Asia*, United Nations publication (2020), p. 22, p. 28, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

The UNODC's latest global report on trafficking has released specific profiles also other regions. Despite the lower officially-reported number of victims for the purpose of forced begging in comparison with Europe, the practice should not go unnoticed. It is then important to highlight that some countries where the exploitation of begging is significant and commonly known (i.e. Senegal and Pakistan) have been omitted from the report. For what concerns Sub-Saharan Africa, THB for the purpose of forced begging is reported in Angola under the wider category of forced labour. Consequently, the number of exploited beggars is not transparent.<sup>62</sup> In Guinea Bissau, forced begging represents the second most common form of exploitation after forced labour.<sup>63</sup> Mali's profile mentions begging as well.<sup>64</sup> Another state is Niger, where THB for sexual exploitation and begging are the most widespread forms of trafficking. Beggars are both adults and minors.<sup>65</sup> UNODC's data on the Asiatic region signals the phenomenon of THB for forced begging only in India and Thailand.<sup>66</sup> In conclusion, data refers that the phenomenon is present in America as well. In North and Central America, Mexico is the only county reporting cases of trafficking for the purpose of begging. This type of exploitation has registered growth starting from 2017.<sup>67</sup> In Central America and the Caribbean, forced begging has been noticed in Dominican Republic, El Salvador and Honduras.<sup>68</sup> Columbia is the only country in the South where the phenomenon has been identified.<sup>69</sup>

#### **I.4 Victims of THB for exploitative begging**

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<sup>62</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile Sub-Saharan Africa*, United Nations publication (2020), p. 4, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>63</sup> Ibid (n 62), p. 9

<sup>64</sup> Ibid (n 62), p. 40

<sup>65</sup> Ibid (n 62), pp. 50-51

<sup>66</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile East Asia and the Pacific*, United Nations publication (2020), p. 38, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>; UNODC, *Global Report on Trafficking in Persons 2020; Country Profile South Asia*, United Nations publication (2020), p. 8, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>67</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile North America*, United Nations publication (2020), p. 8, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>68</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile Central America and the Caribbean*, United Nations publication (2020), p. 8, p. 11, p. 17, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>69</sup> UNODC, *Global Report on Trafficking in Persons 2020; Country Profile South America*, United Nations publication (2020), p. 12, available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>



As with all forms of trafficking-related exploitation, THB for the purpose of forced begging tends to target people belonging to vulnerable groups. Traffickers' interest in vulnerability appears even amplified when dealing with exploitative begging because this condition moves passers-by's pity much more, making them willing to help and donate money to beggars. This is why victims of forced begging are mainly children and people with disabilities. Cases of pregnant women or elderly people are also present.<sup>70</sup> Migrants represent a further category that, especially in some countries, is impacted by forced begging. However, THB for the purpose of begging has been less analysed in relation to this group. Often victims come from impoverished areas. After moving to countries or cities with higher incomes and more economic opportunities, they become targets for traffickers who force them into begging.<sup>71</sup> The case of Italy will later demonstrate this reality.

What emerges when reading the global report by the UNODC is that coerced begging is very often associated with child trafficking. Evidence suggests that children are trafficked into begging by networks or gangs all over the world.<sup>72</sup> While in poorer countries forced child labour prevails on the other forms of exploitation, trafficking for the purpose of begging, together with sexual exploitation and forced criminality, is prevalent in higher-income countries.<sup>73</sup> For instance, in Europe, children are trafficked for begging from some poorer areas of South East Europe to wealthier nations.<sup>74</sup> Forced child begging can be split into two categories. The first one includes children who are forced to beg by third parties. It refers to boys or girls who have been forced to beg by individuals other than their parents or guardians. Such individuals may be distant relatives, family 'friends' or the children's own 'friends' and above all members of criminal gangs or networks.<sup>75</sup> It happens that children are also forced to take drugs to

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<sup>70</sup> Ihmiskauppa.fi, Exploitation in Begging, available at: [https://www.ihmiskauppa.fi/en/human\\_trafficking/forms\\_of\\_human\\_trafficking/exploitation\\_in\\_begging](https://www.ihmiskauppa.fi/en/human_trafficking/forms_of_human_trafficking/exploitation_in_begging)

<sup>71</sup> IOM, Human Trafficking for Forced Begging (2017), available at: [https://www.iom.int/sites/g/files/tmzbd1486/files/our\\_work/DMM/MAD/07312017/ForcedBegging.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/MAD/07312017/ForcedBegging.pdf)

<sup>72</sup> Emily Delap, *Begging for Change: Research Findings and Recommendations on Forced Child Begging in Albania/Greece, India and Senegal*, *Anti-Slavery International* (2009), p. 6, available at: <https://resourcecentre.savethechildren.net/document/begging-change-research-findings-and-recommendations-forced-child-begging-albaniagreece/>

<sup>73</sup> Ibid (n 30), p. 9

<sup>74</sup> Ibid (n 72), p. 6

<sup>75</sup> Ibid (n 72), p. 6



the point that they develop an addiction, which results in a dependency on gangs. Begging then becomes a tool to feed their addiction.<sup>76</sup> Besides, religious teachers are sometimes responsible for child trafficking. It is the case of Senegal, where approximately 50.000 boys (*talibés*) living in traditional Quranic boarding schools are forced to beg for an average of five to eight hours per day to meet their daily quota. Most *talibés* come from remote rural areas or are trafficked from neighbouring states, such as Mali and Guinea-Bissau.<sup>77</sup> These children are often beaten, chained, bound, and subjected to other forms of physical or psychological abuse amounting to inhuman and degrading treatment.<sup>78</sup> They are extremely vulnerable because they are separated from their families for long periods and are entirely dependent on their Quranic teacher.<sup>79</sup> In general, the absence of a family is a risk factor for child trafficking for the purpose of begging.<sup>80</sup> The second category includes children forced to beg by their parents or guardians. This group demonstrates that even though the lack of parental care makes more likely child trafficking, dysfunctional families are often equally dangerous.<sup>81</sup> In these cases, the techniques used to force children to beg go beyond the usual or acceptable means of family discipline.<sup>82</sup> Many are beaten for disobedience, threatened, psychologically abused or starved if they do not gather the expected quota of money.<sup>83</sup> Sometimes, children are forced to play instruments and/or perform tricks to entertain or evoke sympathy from passers-by. They are often under the age of ten. The reason is that younger children gain more sympathy. Infants and young children are often ‘rented’ from their parents or guardians to beg for the day. Forced child beggars work long

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<sup>76</sup> Ibid (n 71)

<sup>77</sup> Anti-Slavery, *Anti-Slavery International briefing on Senegal, 5th periodic report (List of Issues): Forced child begging, 125th session of the UN Human Rights Committee* (2019), p. 1, available at: <https://www.antislavery.org/wp-content/uploads/2019/02/ASI-submission-to-the-Human-Rights-Committee-Senegal-Jan-2019.pdf>

<sup>78</sup> Lauren Seibert, “I Still See the Talibés Begging” Government Program to Protect Talibé Children in Senegal Falls Short, Human Rights Watch (2017), available at: <https://www.hrw.org/report/2017/07/11/i-still-see-talibes-begging/government-program-protect-talibe-children-senegal>

<sup>79</sup> Ibid (n 77)

<sup>80</sup> Ibid (n 30), p. 90

<sup>81</sup> Ibid (n 30), p. 91

<sup>82</sup> Ibid (n 72)

<sup>83</sup> ILO, *ILO 2012 Global Estimate of Forced Labour Regional Factsheet European Union* (2012), p. 2, available at: [https://www.ilo.org/wcmsp5/groups/public/@europe/@ro-geneva/@ilo-brussels/documents/genericdocument/wcms\\_184975.pdf](https://www.ilo.org/wcmsp5/groups/public/@europe/@ro-geneva/@ilo-brussels/documents/genericdocument/wcms_184975.pdf)

hours, suffer physical, mental and verbal abuse and are at very high risk of sexual abuse by people they encounter while begging and by those exploiting them.<sup>84</sup>

Recent studies report that disabled persons are at a higher risk of exploitation and may be more at risk of trafficking in persons than people without disabilities.<sup>85</sup> The very factors that impede disabled people to take an active role in their communities are the same that make them attractive to traffickers.<sup>86</sup> People with disabilities are often worth less to their community and potentially more to traffickers. OSCE 2021 report provides information on emerging trafficking patterns. The specific targeting of people with developmental/ physical disabilities by traffickers represents one of the increasing trends.<sup>87</sup> The Committee on the Rights of Persons with Disabilities (CRPD) expressed concern over the direct link between some forms of disability and different patterns of trafficking, such as forced begging. Indeed, persons with physical disabilities are some of the most attractive candidates for begging since their condition may evoke a stronger impact on public sympathy.<sup>88</sup> In the case of coerced begging, an individual's disability is key to his/her exploitation, as traffickers capitalize on the disability to make money.<sup>89</sup> Disabled children are especially vulnerable to exploitative begging. Disabled adolescents and adults are also at great risk as well.<sup>90</sup> There are reported cases of children and adults being purposefully disfigured and/or maimed by traffickers and then forced to beg.<sup>91</sup> For example, two Indian doctors were accused to have been paid US\$ 200 for every amputation they performed on a healthy child. Other articles report non-disabled children in India and Ethiopia being deliberately maimed by having acid poured onto them, or by being physically maimed in order to increase the amount of

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<sup>84</sup> Ibid (n 71)

<sup>85</sup> OHCHR, *Statement to 24<sup>th</sup> Session UN Committee on the Rights of Persons with Disabilities* (2021), p. 3, available at: <https://www.ohchr.org>

<sup>86</sup> United Nations, *Recommended principles and guidelines human rights and human trafficking: commentary*, New York and Geneva (2010), p. 71, available at: [https://www.ohchr.org/sites/default/files/Documents/Publications/Commentary\\_Human\\_Trafficking\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Commentary_Human_Trafficking_en.pdf)

<sup>87</sup> Ibid (n 35), p. 29

<sup>88</sup> Ibid (n 85), p. 5

<sup>89</sup> Ibid (n 86)

<sup>90</sup> Nora Groce, Marie Loeb and Barbara Murray, *The Disabled Beggar – A Literature Review*, International Labour Office, Gender, Equality and Diversity Branch, Geneva: ILO (2014), p. 7, Available at: [https://www.ilo.org/employment/Informationresources/WCMS\\_310228/lang--en/index.htm](https://www.ilo.org/employment/Informationresources/WCMS_310228/lang--en/index.htm)

money they can earn as beggars. Commonly, disabled adults and children are taught to beg while non-disabled beggars are trained to pretend to have injuries or disabilities. They are taught different ways and nuances of begging such as the best places to beg, the kind of people one should approach and the most effective dialogues and mannerisms to make everyone sympathise.<sup>92</sup> Victims of forced begging may also be given crutches or other props to attract more attention.<sup>93</sup>

### **1.5 The demand and profit of begging**

THB for the purpose of begging is present because demand for it exists. ‘Demand’ is an economic term that, in the context of trafficking in persons, is understood as the desire for exploitative labour or services which violate the fundamental rights of the individual performing those activities. It includes demand for sexual exploitation, cheap labour and domestic workers, organ removal and sale, illicit adoption and forced marriages, criminal activities and begging or exploitation within the army.<sup>94</sup> In general terms, any act fostering whatever form of exploitation that, in turn, evolves into trafficking should be interpreted as demand. In order to understand the ‘consumer-oriented’ nature of the demand for begging, it is useful to clarify the needs which are fulfilled when giving alms to beggars. Three theories attempt to explain the phenomenon. The first theory is the sociological one. It explains people’s sense of satisfaction in giving alms by indicating altruism as a selfless concern for the well-being of others.<sup>95</sup> Conversely, the evolutionary theory conceives altruism in terms of individual sacrifice for the good of the community, because in this way individuals act to protect their own genes. If applied to begging, it follows that giving alms to the needy and young ones within one’s community increases the chances of the community’s survival and one’s own genes. Through donations, they unconsciously try to increase their survival chances. This could explain why passers-by tend to be more generous in front of child beggars or disabled persons rather than with adults or people without disabilities. Nevertheless, this theory is flawed since it cannot explain why foreign tourists may be willing to give money to

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<sup>91</sup> Ibid (n 71)

<sup>92</sup> Ibid (n 90)

<sup>93</sup> Ibid (n 71)

<sup>94</sup> Ibid (n 2), p. 64

<sup>95</sup> Ibid (n 2), p. 65

local beggars, and locals to migrant beggars.<sup>96</sup> The reciprocity theory is the last one. The nature of the relationship between the donor and the beggar is perceived as reciprocal. Not only the donor is thought to give something to the beggar, the beggar as well provides something in return. A ‘feel good’ reward is what the donor gets when giving alms. This positive return can be explained by humans’ need to be reassured of their value and achievements through comparison to others. The act of almsgiving implies that the giver has more and is more successful than the recipient.<sup>97</sup>

Although there is evidence of an existent demand for people practising begging, preconceptions about the actual profit deriving from the activity may lead to underestimating human traffickers’ will to engage in exploitative begging. It is necessary then to provide some data concerning the real earnings coming from this trafficking-related exploitation in order to understand its revenue potential. Money is the clear driving factor behind the existence of forced begging and, indeed, the activity can be lucrative. In China, it was observed that a man exploiting children to beg could earn up to US\$ 30,000 in a year. A Thai child beggar yields to his/her exploiter approximately 1000 Bath (US\$ 30) per day. The average proceeds for Pakistani beggars are 500-650 Rs (US\$ 2.80) a day or almost 15,000 Rs (US\$ 64) a month. According to other estimates, profit is more variable, ranging from 100-10,000 Rs (US\$ 0.43- 4.32) per day or 3000-30,000 Rs (US\$ 12,95- 129.5) per month. This amount of money might appear derisory. However, when comparing this with the minimum wage in Pakistan (around 14,000 Rs/ US\$ 60), begging turns out to be a lucrative business earning more money than minimum wage labour jobs.<sup>98</sup> Studies demonstrate that children with disabilities gather three times as much revenue as healthy ones. These higher earnings have determined the spread of forced mutilation on healthy individuals to make them more profitable.<sup>99</sup> Indeed, it is estimated that traffickers exploiting disabled children to beg can make up to US\$ 40,000 per year in illegal profits through the money donated to these children.<sup>100</sup> However, the profit potential varies according to the level of

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<sup>96</sup> Ibid (n 2), p. 66

<sup>97</sup> Ibid (n 2), p. 67

<sup>98</sup> Omar Bhatti, *Abuse and Exploitation Cycles: The Beggar Mafia in Pakistan* (2022), available at: <https://ghrd.org/abuse-and-exploitation-cycles-the-beggar-mafia-in-pakistan/>

<sup>99</sup> Ibid (n 70)

<sup>100</sup> Ibid (n 71)

development of the country where exploitation takes place. For example, it was reported that a disabled victim of THB for the purpose of begging was first exploited in a country in South-Eastern Europe. Here, the daily revenue amounted to €150, which the traffickers confiscated. The victim was then moved to a Western European state, where begging generated an income ranging from €300 to €1,000 every day.<sup>101</sup> Being trafficking in persons for the purpose of begging an extremely understudied phenomenon, the available data on the actual profit produced by the activity are scarce and fragmentary. Nevertheless, the existing information suggests that the earning potential of this trafficking-related form of exploitation should not be underestimated.

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<sup>101</sup> Ibid (n 31), p. 40

## CHAPTER II

### Human Trafficking and Exploitation of Begging in Italy

When consulting articles and websites dealing with the topic of human trafficking, forced begging is often cited as the third form of exploitation in Italy, right after sexual and labour exploitation. However, the scarce literature and the general lack of knowledge on the topic make it difficult to understand the actual extent of this reality. Despite such poor interest, warnings on the necessity to better investigate and comprehend the phenomenon are addressed both at the national and international levels. Vincenzo Castelli, one of the Italian leading experts in the field of social policies, expressed the need for further in-depth analysis on the issue, which still remains too ignored.<sup>102</sup> During the last cycle of the Universal Periodic Review, Switzerland recommended Italy to intensify efforts to fight against trafficking in human beings, particularly exploitation for labour and begging forces.<sup>103</sup> In addition to that, during the second evaluation round, GRETA solicited Italy to strengthen efforts to investigate and prosecute cases of trafficking for forms of exploitation other than sexual, for example forced begging.<sup>104</sup>

#### II.1 Human trafficking in Italy

As in other developed countries, the phenomenon of trafficking in persons affects Italy as well. The state represents an important territory of transit and destination for THB victims from all over the world. Because of its special geographical position, the country is particularly exposed, by sea, air and land, to migratory movements, whose subjects are willing to risk debt, violence or even death in the hope of a better future. Most of the time, human trafficking arises as a more serious specificity within the

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<sup>102</sup> Vincenzo Castelli, *Lo sfruttamento dei migranti nell'accattonaggio forzato* (2017), available at: <http://www.vincenzocastelli.org/2017/12/video-intervento-accattonaggio/>

<sup>103</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Italy* (2020), p. 18, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/354/30/PDF/G1935430.pdf?OpenElement>

<sup>104</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy -Second Evaluation Round* (2019), p. 62, available at: <https://rm.coe.int/greta-2018-28-fgr-ita/168091f627>

phenomenon of illegal immigration.<sup>105</sup> From its earliest manifestations to its current connotations, trafficking on Italian territories has undergone continuous transformations, which led the phenomenon to become an increasingly complex reality. THB started to become notorious in the 1990s with the exploitation of prostitution of women mainly from Eastern Europe. Since then, there has been a gradual increase in the countries of origin and profiles of victims as well as in the areas of exploitation. Criminal networks have become increasingly sophisticated, going from being semi-amateurish and loosely structured groups to highly organised groups with transnational links, deep roots in the national territory and more devious coercive strategies.<sup>106</sup>

### *II.1.1 Anti-trafficking actors and mechanisms*

Before observing the current data concerning human trafficking in Italy, some knowledge of the main agents operating to contrast THB and identify victims is required for a better understanding of how information is collected. The programme of emersion and first reception (under Article 13 of Law 228/2003) and that of assistance and social protection (guaranteed by Article 18 of Law 286/1998) are the responsibility of the Italian Department for Equal Opportunities. It takes charge of the national direction, promotes annual calls for project funding, monitors and evaluates the system.<sup>107</sup> Both public and private bodies can apply for the implementation of territorial projects.<sup>108</sup> An example of private organisation with more than a decade of experience in the phenomenon of THB is the diocesan Caritas, which has contributed to the construction of the intervention model in favour of victims. About sixty Caritas organisations are dealing with trafficking in Italy, with more or less extensive and organised services and activities.<sup>109</sup> Between 2021 and 2022, there were 21 active anti-trafficking projects all over Italy. Beginning from the North, it is possible to observe *L'Anello Forte 3* in Piedmont and Aosta Valley; *Derive e Approdi 2021* and

<sup>105</sup> Dipartimento della Pubblica sicurezza - Direzione centrale della Polizia criminale - Servizio analisi criminale, *La tratta di esseri umani in Italia focus*, Roma: Ministero dell'Interno (2021), p. 5, available at: [https://www.interno.gov.it/sites/default/files/2021-04/focus\\_la\\_tratta\\_10mar2021\\_10.30.doc1\\_.pdf](https://www.interno.gov.it/sites/default/files/2021-04/focus_la_tratta_10mar2021_10.30.doc1_.pdf)

<sup>106</sup> Vincenzo Castelli, *Punto e a capo sulla tratta: uno studio sulle forme di sfruttamento di esseri umani in Italia e sul sistema di interventi a tutela delle vittime*, Milano: Franco Angeli (2014), pp. 24-25

<sup>107</sup> Ibid (n 106), p. 69

<sup>108</sup> Ibid (n 11), p. 25

<sup>109</sup> Caritas Italiana, *Report di monitoraggio sulla TRATTA 2019 sottotitolo Il ruolo, l'impegno e i servizi attivati dalle Caritas Diocesane* (2019), p. 10, available at: [https://immigration.caritas.it/sites/default/files/2019-07/Tratta%202019\\_web.pdf](https://immigration.caritas.it/sites/default/files/2019-07/Tratta%202019_web.pdf)

*METTIAMO LE ALI* (association Lule) in Lombardy; *Progetto Alba* (association La Strada) in Trentino- Alto Adige; *Il FVG in rete contro la tratta 4* in Friuli Venezia Giulia; *N.A.V.I.G.A.RE* in Veneto; *HTH Liguria: Hope This Helps 3* in Liguria; *Oltre la strada – 2021/2022* in Emilia Romagna. Projects in Central Italy are the following: *SATIS IV* in Tuscany; *ASIMMETRIE 4* (cooperative On the Road) in the Marches, Abruzzo and Molise; *FREE LIFE* (social cooperative Borgorete) in Umbria; *Piano Regionale Antitratta Lazio* in Lazio. The South of Italy is characterised by the presence of *Fuori Tratta* (cooperative Dedalus) in Campania; *La Puglia non Tratta 4 – Insieme per le vittime* in Apulia; *Persone, non schiave* (onlus Ce.St.Ri.M) in Basilicata; *IN.C.I.P.I.T.* in Calabria. For what concerns the islands, in Sicily exist *Rete Sicilia – Maddalena*, *Rete Sicilia – Nuvole Reloaded*, and *FARI 3* (social cooperative Proxima); in Sardinia *Elen Joy* (Congregazione delle Figlie della Carità).<sup>110</sup> The anti-trafficking bodies taking part in these projects are expected to offer a number of services. First of all, mobile street and indoor units are required to facilitate detection and identification, as well as the subsequent contact and engagement with potential victims.<sup>111</sup> Some other services spurring case detection are territorial helplines and drop-in centres.<sup>112</sup> These latter promote the identification process through information and assessment interviews aimed at verifying the presence of elements of trafficking and/or serious exploitation and the motivation to access the social protection programme. Other important services are the taking charge, protection and reception of victims in dedicated facilities in order to prepare an individualised path and the social inclusion of the beneficiary aimed at the complete autonomy of the person.<sup>113</sup>

The drop-in service is offered also by the system of international protection, for example in asylum seekers' reception centres (*CAS: Centri di Accoglienza Straordinaria* and *SPRAR: Sistema di Protezione Richiedenti Asilo e Rifugiati*) or during the procedure for the recognition of international protection led by Territorial

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<sup>110</sup> Osservatorio Interventi antitratta Bando 4 – 2021/2022, available at: <https://www.osservatoriointerventitratta.it/bando-4-2021-2022/>

<sup>111</sup> Caritas Italiana, Fondazione Migrantes, *XXIX Rapporto Immigrazione 2020 - Conoscere Per Comprendere* (2020), p. 161, available at: <https://www.migrantes.it/xxix-rapporto-immigrazione-caritas-e-migrantes-2020-conoscere-per-comprendere/>

<sup>112</sup> Ibid (n 106), p. 82

<sup>113</sup> Ibid (n 11), p. 63



Commissions (administrative authorities establishing those eligible for asylum).<sup>114</sup> Indeed, the connection between the anti-trafficking operators and asylum authorities has been strengthened in the last few years. Their recent collaboration aims to increase the emersion and identification of possible victims among asylum seekers. Besides the already mentioned drop-in centres, Territorial Commissions have started consulting anti-trafficking guidelines and supporting other routine activities, such as providing information in language on the phenomenon of THB to raise awareness among asylum seekers. In some cases, such engagement allows anti-trafficking bodies to intervene even before exploitation is realised. In general, the Territorial Commission reports the suspect case to the anti-trafficking project operating in the same territory and simultaneously suspends the procedure for international protection. The purpose of this suspension is to give the operators of the Anti-Trafficking System the possibility to conduct interviews with the person concerned and to assess the existence or not of the elements relating to serious exploitation. The referral to the anti-trafficking bodies and the suspension of proceedings are useful because they allow the Territorial Commission to acquire a complete picture of information, also taking into account the difficulty for the trafficked person to provide a coherent narrative of his/ her experience, and also considering the mistrust towards the authorities.<sup>115</sup>

The Department of Equal Opportunities has also the merit of having set up the National Anti-Trafficking Hotline (800 290 290). When it was created in 2000, the hotline did not have the same specific connotation as it has today. It simply addressed people who were victims of exploitation, especially the sexual one. Over time, the enlargement of the user base, the changing phenomena and their ever-increasing complexity have required a professionalisation and specialisation of the service in order to make the counteraction effective.<sup>116</sup> Currently, the helpline is operational every day for 24 hours a day, is free of charge and anonymous and enables contact by multilingual specialised personnel. It provides a first telephone assistance service of ‘guided’ orientation to the competent services, both public and private, present on the territory and, in particular, to the protection projects for victims of trafficking and serious exploitation. It comes into

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<sup>114</sup> Ibid (n 111), p. 162

<sup>115</sup> Ibid (n 11), pp. 31-32

<sup>116</sup> Ibid (n 11), p. 62

contact with people who request help and intend to leave the exploitation circuits, social service operators, law enforcement representatives, clients and citizens who wish to report situations of exploitation.<sup>117</sup> In addition, the service gathers, elaborates and analyses the data reported by anti-trafficking projects thus returning interesting reflections supported by numerical evidence.<sup>118</sup> A further function performed by the hotline is that of liaising with the so-called border apparatus, that are the systems that deal with migration in a broader sense, such as the International Protection System, the system for unaccompanied foreign minors, and the centres that deal with gender-based violence and international organization in the field (i.e. OSCE, ICMPD, Council of Europe, IOM, UNHCR). Finally, the service plays an important role in raising public awareness of the issue of trafficking.<sup>119</sup>

Although the cooperation among all the above-mentioned actors and mechanisms is fundamental, it does not prove enough. The actual concretisation of the concept of multi-agency in the fight against THB requires the inclusion of professionals from other fields, naturally in respect of their mandate. This refers to the law enforcement agency, which has an essential role safeguarding the security of victims; labour inspectors and supervisory bodies facilitating the emergence of situations of serious exploitation; the judiciary, which guarantees the fight against the offence, the assessment of punishment and the compensation for the victim; the healthcare and social health systems, able to ensure the right to health and human dignity.<sup>120</sup>

### *II.1.2 Recent data on THB*

The most updated information regarding human trafficking in Italy comes from the 2021 report by the National Anti-Trafficking Hotline. In 2021, the total number of relevant calls to the helpline is 1,359, corresponding to an average of about 113 relevant calls per month. Relevant calls show an increase of about 10 % compared to 2020.<sup>121</sup> In the first quarter of 2022, the same level of relevant calls was received in the same period

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<sup>117</sup> Dipartimento per le Pari Opportunità, Numero verde-800 290 290, available at: <https://www.pariopportunita.gov.it/materiale/numero-verde-800-290-290/>

<sup>118</sup> Numero Verde Antitratta, Relazione sulle Attività del Numero Verde Antitratta (2021), p. 3, available at: [https://www.osservatoriointerventitratta.it/wp-content/uploads/2022/03/Relazione\\_NV\\_2021\\_10.03.22-small.pdf](https://www.osservatoriointerventitratta.it/wp-content/uploads/2022/03/Relazione_NV_2021_10.03.22-small.pdf)

<sup>119</sup> Ibid (n 11), p. 64

<sup>120</sup> Ibid (n 11), p. 63

<sup>121</sup> Ibid (n 118), pp. 5-6

of the previous year.<sup>122</sup> Concerning the call activators, in the first place, there are anti-trafficking projects (45%). Right behind with 19%, which constitutes a significant increase compared to 2020 and 2019 (+70%), there are the calls from potentially trafficked persons and/or victims of serious exploitation. This figure could be interpreted as a consequence on the one hand of more widespread diffusion of the hotline –also thanks to the awareness-raising campaigns led by Anti-Trafficking Projects– on the other hand of institutions' lower capacity to identify potential victims. In third place with 10%, the International Protection System appears (Territorial Commissions, CAS and SPRAR centres). The fourth place with 6% is occupied by private social organisations. At just under 2%, call activations come from friends/acquaintances of potential victims, while police warnings amount to 1.5%.<sup>123</sup> The calls can be categorised according to different motivations. The most recurring one regards service communications (34%). It is followed by 21 % of trafficking alerts and 12% of requests for taking part in a project. At 10% are the calls for help. The rest of the calls concern requests for information on the services, on the National Hotline and calls for immediate help.<sup>124</sup> Regarding the territorial distribution of assisted victims and the regions of greater emersion, no significant discrepancies are noted with respect to previous years. Piedmont, Emilia-Romagna and Lombardy remain the regions most involved. Molise, Sardinia, Umbria and Aosta Valley are instead those least involved.<sup>125</sup>

The latest information on victims' profiles and types of exploitation seems to confirm the constant transformation of human trafficking in the country. Firstly focusing on victim's gender, 68% of new intakes concern female subjects, who are decreasing compared to previous years. 29% are men and 3% are transgender.<sup>126</sup> To continue with victims' nationality, Nigerian people are still the most numerous (54 %). However, an important decrease has been registered in comparison with 2019. In second place with 9%, there are Pakistanis while Moroccans and Ivorians amount to 4%. The 3% are

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<sup>122</sup> Numero Verde Antitratta, *Report trimestrale* (2022), available at: <https://www.osservatoriointerventitratta.it/>

<sup>123</sup> Ibid (n 118), pp. 7-8

<sup>124</sup> Ibid (n 118), p. 10

<sup>125</sup> Save the Children, *Piccoli Schiavi Invisibili XII Edizione* (2022), p. 18, available at: <https://s3.savethechildren.it/public/files/uploads/pubblicazioni/piccoli-schiavi-invisibili-2022.pdf>

<sup>126</sup> Ibid (n 118), p. 36

victims from Senegal and Gambia and 2% each Romanians, Bangladeshis, Brazil and Albania.<sup>127</sup> Although sexual exploitation remains the main form of THB in Italy with 63% of the cases, 2021 has recorded a 10% decrease in cases compared to 2020 and a 20% decrease compared to 2019.<sup>128</sup> This reduction concerns street prostitution of Nigerian women, probably substituted by indoor sexual exploitation.<sup>129</sup> Confirming the change, applications from/for persons of Nigerian nationality have decreased from 50% in 2021 to 37.5% in the first quarter of 2022.<sup>130</sup> In the past years, Nigerian women represented the majority. Nowadays, they constitute only 21.8% of the presences, while 73.9% is represented by Eastern-European women (mainly from Romania, Albania and Bulgaria). Other residual groups of people exploited for prostitution include women from South America and Asia (above all Chinese). Although female subjects represent the greatest majority in this kind of exploitation, a not insignificant group are transgender women.<sup>131</sup> They come mainly from Brazil and Peru and are vulnerable to sex trafficking in Italy.<sup>132</sup> In the country, they amount to 7.6% of total trafficked sex workers.<sup>133</sup> Another worrying phenomenon concerning THB for sexual exploitation is the growing flow of Ivorian girls. They are between 14 and 17 years old and transit to Italy with the aim to reach France, more precisely Paris.<sup>134</sup> An equally new trend is the one of e-trafficking or cyber trafficking, which increased significantly since the COVID-19 pandemic. It refers to all cases of THB perpetrated with the use of computer networks, in all or one of the three elements that define trafficking (conduct, means and purpose). In e-trafficking, traffickers may use online platforms, like social networks, mobile applications, and the dark web, to recruit, exploit victims, and book apartment rentals to make their illicit operations difficult to track.<sup>135</sup> Moreover, the internet applied to THB has allowed spatial separateness. For example, there have been cases of *madames* (older women managing prostitution) who were in Germany while girls were exploited in Naples. The cyber dimension allows constant, immediate and effective control

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<sup>127</sup> Ibid (n 118), p. 37

<sup>128</sup> Ibid (n 118), p. 10

<sup>129</sup> Ibid (n 118), p. 2

<sup>130</sup> Ibid (n 122)

<sup>131</sup> Ibid (n 118), p. 16

<sup>132</sup> Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report: Italy*, U.S. Department of States (2022), available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/italy/>

<sup>133</sup> Ibid (n 118), p. 16

<sup>134</sup> Ibid (n 125), p. 33

<sup>135</sup> Ibid (n 132)

without any exposure to the risk of being identified. Besides sexual exploitation, the cyber evolution of human trafficking has facilitated forced labour, illegal adoption, forced marriages and organ harvesting as well.<sup>136</sup> The second most common type of THB in Italy occurs in the form of labour exploitation. The expression indicates illegal forms of intermediation, recruitment and organisation of labour outside regular employment channels, in violation of dispositions on working hours, minimum wages, social security contributions, health and safety at work, as well as degrading living conditions imposed on workers by taking advantage of their state of vulnerability or need.<sup>137</sup> In 2021, warnings regarding this type of human trafficking have grown to 34%, compared to 23% in 2020 and 10% in 2019. This figure is also the result of the greater attention and effort made by institutions to conduct actions against *caporalato* (illicit system of intermediation and exploitation of labour by illegal intermediaries that recruit manpower)<sup>138</sup>, particularly in the agricultural sector. A concrete example of such commitment is the Three-year Plan to Combat Labour Exploitation in Agriculture and Caporalato 2020-2022.<sup>139</sup> Labour traffickers do not operate exclusively in agriculture, but also construction, household labour, the fishing industry, hospitality, and restaurants.<sup>140</sup> Victims are young people, men, women, regular and irregular migrants, and EU and non-EU citizens, whose only possibility to face economic difficulties, due to situations of precarious presence or illegal stay, is to accept exploitative labour conditions.<sup>141</sup> A third but extremely less detected phenomenon is forced begging. According to the 2021 report, it represents 2% of the total warnings and only 1% of the national intakes.<sup>142</sup> Some other residual forms of trafficking emerge as exploitation in illegal activities, domestic servitude and forced marriages.<sup>143</sup> Human trafficking for organ harvesting is not observed.<sup>144</sup> Similarly, internal trafficking is not registered in Italy.<sup>145</sup>

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<sup>136</sup> Ibid (n 125), pp. 37-38

<sup>137</sup> Ministero del Lavoro e delle Politiche Sociali, *Piano Triennale di contrasto allo sfruttamento Lavorativo 2020-2022* (2020), p. 4, available at: <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/Tavolo-caporalato/Pagine/Piano-triennale-2020-2022.aspx>

<sup>138</sup> Ibid (n 137), p. 4

<sup>139</sup> Ibid (n 118), p. 10

<sup>140</sup> Ibid (n 132)

<sup>141</sup> CGIL, CISL, UIL, *Contributo al Piano Nazionale Antitratta 2021-2023*, p. 2

<sup>142</sup> Ibid (n 118), p. 12

<sup>143</sup> Ibid (n 118), p. 39

<sup>144</sup> Ibid (n 105), p. 16

<sup>145</sup> Ibid (n 104), p. 8

## II.2 Begging in Italy

Begging is a complex social phenomenon due to the variety of subjects it involves, the diversification of the ways in which it is performed, the territorial specificities and the not infrequent connections with other worrying phenomena (i.e. exploitation and human trafficking).<sup>146</sup> What makes the effective understanding of the practice even more difficult is the scarcity of studies and research analysing the topic. Begging keeps being considered a phenomenon of secondary importance, which remains relegated to the side-lines of issues perceived as far more serious, such as poverty, immigration and the exploitation of people.<sup>147</sup>

### II.2.1 Begging and the Italian language

Language can reveal a lot about how a certain phenomenon is perceived in a specific country, different terms referring to the same concept can transmit several shades of meaning and existing definitions give an idea of the society's degree of understanding of the phenomenon in its entirety. The Italian language has four distinct verbs that translate the English version 'to beg'. Although they are often used as interchangeable synonyms, some lexical nuances mark each one of them. The first verb is *accattare* (derivative noun: *accattonaggio*). Treccani dictionary identifies the origin of the term in the Medieval Latin *accaptare* (*ad-captare*, intensive form of *capere*: to take) and defines it as 'the attempt to obtain something (i.e. money, food, objects) as a gift or on loan, especially asking insistently or with servility'. The dictionary entry adds 'with a more generic meaning (most of the time pejorative), to go in search of, to obtain somehow'.<sup>148</sup> The etymological analysis makes clear the negative connotation conveyed by the term. Such characteristic is even amplified by the country's media communication and legislative acts, which often juxtapose the word *accattonaggio* to the adjective *molesto* ('invasive', 'harrassing').<sup>149</sup> Besides being the term with the most pejorative connotation, today, *accattonaggio* appears also the most used one. Some alternative verbs indicating 'begging' are *elemosinare* (deriving from: *elemosina*-

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<sup>146</sup> Francesco Campana, *La mendicizia contemporanea. Riflessioni sociologiche, dati di ricerca e politiche sociali in Alto Adige*, Valentina Trentini Editore (2018), p. 21

<sup>147</sup> Ibid (n 146), p. 11

<sup>148</sup> Dizionario Treccani, available at: <https://www.treccani.it/vocabolario/accattare/>

<sup>149</sup> Ibid (n 146), p. 22

*chiedere/ fare l'elemosina*) and *questuare* (derivative noun: *questua- fare la questua*). Conversely from *accattare*, they recall the religious sphere. *Elemosina* derives from Greek *eleemosyne*, from *eleeo* 'have mercy' (benevolence, compassion), especially towards disadvantaged people. More than the other terms, it insists on the level of feelings, which determine the will to help others. In this case, the semantic attention is placed on the donor rather than on the beggar.<sup>150</sup> *Questuare* is a derivative of the Latin word *quaestus*, meaning 'purchasing', 'obtaining somehow' and it referred the request and collection of oblations made by religious, usually belonging to mendicant orders (Dominicans and Franciscans), for purposes of charity or worship.<sup>151</sup> The fourth and last verb is *mendicare*, from Latin *mendīcus* 'poor person living on alms'.<sup>152</sup> It is probably the most neutral alternative to express 'begging' since the attention is simply focused on the beggar's condition of poverty.<sup>153</sup>

What emerges from the observation of the traditional definitions of 'begging' in Italian dictionaries, which portray it simply as the practice exercised by those who live panhandling on street, is the reductive view of a much more variegated and complex phenomenon.<sup>154</sup> As will be shown later, it is anachronistic, at least in the Italian case, to look at begging exclusively as a poor's survival strategy that enables their basic needs to be met or as a cultural practice characteristic of nomadic communities. All in all, an updated and more comprehensive definition needs to be taken into consideration. In his text on contemporary begging in Italy, Campana has offered an accurate and inclusive description of the phenomenon:

'Begging [in the Italian version, the author chooses the term *mendicità*] is that set of income generating-activities that takes place when a subject (the beggar) requests, based on a condition of need and poverty (real or presumed), from one or more subjects (the donors) a gift, mainly of a monetary nature. The donation can be requested in two ways: either without any obligation of reciprocity or with the exchange of certain goods and/or services. The two modes can give rise to hybrid forms. Begging can be considered either an occasional subsistence strategy of the individual, thus a practice for coping with primary, momentary and contingent needs, also

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<sup>150</sup> Ibid (n 146), p. 23

<sup>151</sup> Dizionario Treccani, available at: <https://www.treccani.it/vocabolario/ricerca/questuare/>

<sup>152</sup> Dizionario Treccani, available at: <https://www.treccani.it/vocabolario/mendicare/>

<sup>153</sup> Ibid (n 146), p. 23

<sup>154</sup> Paola Degani, Claudio Donadel, *Progetto Stop for Beg: report finale*, Venezia: Regione Veneto (2013), p. 8, available at: [https://www.regione.veneto.it/c/document\\_library/get\\_file?uuid=36c4fd99-cced-4751-b2f2-189bec0a69ac&groupId=61739](https://www.regione.veneto.it/c/document_library/get_file?uuid=36c4fd99-cced-4751-b2f2-189bec0a69ac&groupId=61739)

carried out by homeless persons, or an informal job with a strong ethnic specialisation when it involves groups of migrants who have organised themselves within ethnic networks where begging is their main source of income. These networks are often at risk of being vehicles for the exploitation of the most vulnerable, thus making begging a possible area for human trafficking.<sup>155</sup>

### *II.2.2 Begging Modalities*

Traditional begging, meaning the simple request of donation without any kind of exchange, does not represent the prevalent modality of realization of the practice. As Nanni and Posta observed already twenty years ago, new typologies of begging have emerged. Begging is operated by different social groups and through methods and strategies that adapt to territorial specificities (e.g. local culture, citizen's degree of tolerance, repressive tendencies by law enforcement etc.). To give a realistic picture of how begging takes place in the national territory, it is necessary to consider some variables giving shape to different panhandling modalities.<sup>156</sup> Although Nanni and Posta's study cannot be considered the most updated source of information on contemporary begging, the modalities identified by the two authors still represent an important point of reference when analysing the phenomenon. According to them, two main dichotomous variables can be observed: contractual and non-contractual begging and legal and illegal begging.<sup>157</sup> Concerning the first couple, contractual begging implies the provision of a service (also not requested by the beneficiary) or the transfer of an object in return for a monetary donation. In the years immediately following the end of World War II, Italian cities witnessed the emergence of this specific form. Over time, contractual begging started gradually disappearing. However, the migratory waves that have affected Italy since the end of the 20th century determined the reappearance of a renovated form of contractual begging. The non-contractual form (traditional begging) is characterised instead by a passive attitude. The second couple of variables

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<sup>155</sup> Ibid (n 146), pp. 27-28

<sup>156</sup> Walter Nanni, Laura Posta, I nuovi mendicanti: accattonaggio ed elemosina nella società post-industriale, in Caritas Italiana, Fondazione Zancan, *Cittadini invisibili. Rapporto 2002 su esclusione sociale e diritti di cittadinanza*, Feltrinelli: Milano (2002), p. 3

<sup>157</sup> Ibid (n 156), pp. 7-8



distinguishes between forms of begging that are compliant with existing regulations and other forms that are in breach of the law.<sup>158</sup>

The intersection of the different variables results in four distinct begging typologies. The first one is non-contractual and legal begging. It follows that this combination does not include cases of exploitation or any type (material or in the form of service) of exchange.<sup>159</sup> On the contrary, the portrait that has been given of this category considers the simple request of donation operated in street by a multitude of individuals (old and young people, adults, nomadic subjects, disabled persons, entire families and immigrants). They might be commuters, stationary or seasonal subjects who beg around churches, cemeteries, shops or during local fairs, festivals or train rides.<sup>160</sup> A second possible combination of variables results in non-contractual and illegal begging. This typology refers to drug-addicted people, beggars with pets (in this case, the illegality of the act is determined by the bad conditions in which animals are often kept)<sup>161</sup> subjects with mental disorders, people simulating mutilations, illnesses or deformities.<sup>162</sup> The exploitation of begging is contemplated within this category. However, Nanni and Posta's conception of it is limited to child victims.<sup>163</sup> A third category is contractual legal begging, which can occur in innumerable situations, such as palm readers, distributors of holy cards, people providing instructions to orient in public offices or to use vending machines and individuals returning trolleys or carrying bags at supermarkets. The last modality is contractual and illegal begging. It includes services taking a semi-professional and stable form like unauthorised workers at petrol stations and people directing cars to parking spaces.<sup>164</sup> To conclude, a borderline form of begging has also been identified. Street artists, street musicians, sellers of books/objects of pseudo-volunteer associations and sellers of roses in public places are part of it.<sup>165</sup>

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<sup>158</sup> Ibid (n 156), p. 8

<sup>159</sup> Ibid (n 156), p. 11

<sup>160</sup> Ibid (n 156), p. 9

<sup>161</sup> Ibid (n 156), p. 26

<sup>162</sup> Nanni and Posta indicate as a non-contractual, illegal form of begging also the practice operated by a really disabled, ill or mutilated subject. This is because when the text was written, Article 670, which punished begging committed in a 'repugnant' manner, was still partly effective.

<sup>163</sup> Ibid (n 156), p. 9

<sup>164</sup> Ibid (n 156), p. 27

<sup>165</sup> Ibid (n 156), p. 9

In his more recent study, Campana took inspiration from the previous categorization to elaborate on a personal one. By adding a new variable—begging as an individual and contingent survival strategy and begging as an informal pseudo-profession—to the ones already mentioned, he offers a new categorisation of the practice.<sup>166</sup> This time the intersection of the variables determines four distinct categories, which in turn can be legal or illegal. The first modality is occasional begging, followed by organised begging, begging as an auxiliary aspect of an informal job and, lastly, begging in the form of an improvised offer of services. According to the author, the second (non-contractual and stable over time kind of activity, which is planned among several parties and considered as a pseudo-job) and the third (contractual and pseudo-job kind of practice) typologies in their illegal version are likely to be forms of begging exploitation.<sup>167</sup>

### *II.2.3 Begging as a varied and diverse phenomenon*

Besides representing an important reference point to classify all types of begging existing in Italy, more in general, the above-mentioned categorizations deserve credit for clearly highlighting that the phenomenon is not univocal. It is no longer possible to conceive the practice as limited exclusively to the forms of survival strategy and individual or familiar subsistence economy.<sup>168</sup> According to the case, begging can emerge as a phenomenon related to marginalisation, resulting from a process of social exclusion that normally affects homeless people; it can be the result of economic hardship, a situation in which begging becomes an informal professional activity; and last but not least the phenomenon can be a form of exploitation or even of human trafficking. Only in recent times, this latter version has started attracting some attention.<sup>169</sup> Little is known about the phenomenon of begging, especially with regard to reference to situations of severe exploitation. Certainly today it is increasingly palpable intolerance or the difficulty of living with these street realities, or at any rate very

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<sup>166</sup> Ibid (n 146), p. 37

<sup>167</sup> Ibid (n 146), p. 39

<sup>168</sup> Vincenzo Castelli, *Il fenomeno dell'accattonaggio oggi in Italia (tendenze, problematiche, evidenze, Paesi di origine, ricerche attivate*, Comune di Parma Formazione sull'accattonaggio (2017)

<sup>169</sup> Michela Sempredon, Serena Scarabello and Gianfranco Bonesso, *La pratica dell'accattonaggio, tra libertà di scelta, sfruttamento, tratta e connessioni con la criminalità organizzata. Focus sulle persone nigeriane*, Cattedra UNESCO SSIIM, Università Iuav di Venezia (2021), pp. 31-32, available at: [http://www.unescochair-iuav.it/wp-content/uploads/2021/09/2.1a\\_REPORT-begging-ITA-def.pdf](http://www.unescochair-iuav.it/wp-content/uploads/2021/09/2.1a_REPORT-begging-ITA-def.pdf)

complicated seems to be the approach and confrontation with these forms of marginality, certainly extreme in many situations.<sup>170</sup> In conclusion, contemporary begging is neither only the result of voluntary choice nor necessarily a forced kind of activity. On the contrary, it includes an extremely diversified set of realities –people with migratory backgrounds, homeless persons<sup>171</sup>, situations of extreme poverty and cases of deviance<sup>172</sup>– that often risk seeing their specificities disappearing in favour of a general homogenisation. This latter does nothing but hinder the search for effective and personalised solutions to improve beggars’ conditions.

#### *II.2.4 Italian commitment to approach forced begging*

If for begging in general literature was scarce, finding information on the topic of forced begging has proven even more arduous. However, it is valuable to cite those few studies and research that attempted to a greater or lesser extent to explore the phenomenon in Italy. One of the first works is the already mentioned text by Nanni and Posta ‘I nuovi mendicanti: accattonaggio ed elemosina nella società post-industriale’ (The new beggars: begging and panhandling in the post-industrial society), which, besides providing an overall picture of the practice of begging in the early 2000s, addresses the then suspected forms of exploitation of the activity. Another dated but equally important study is Valeria Ferraris' 'Dalla tratta al traffico, allo sfruttamento: i minori stranieri coinvolti nell'accattonaggio, nelle economie illegali e nella prostituzione' ('From trafficking to exploitation: foreign minors involved in begging, illegal economies and prostitution'). This latter partly concentrates on coerced child beggars.<sup>173</sup> More recently

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<sup>170</sup> Ibid (n 168)

<sup>171</sup> A surprising data concerning homeless people provided by ISTAT in collaboration with Caritas, Fiopds and the Ministry of Welfare is that out of 47,684 people living on the street only 10% practice begging while 65% manage to live without resources. This figure rejects one of society's most common prejudices still surrounding homelessness. Redattore Sociale, Solo il 10% di chi vive sulla strada chiede l'elemosina (2012), available at: [https://www.redattoresociale.it/article/notiziario/solo\\_il\\_10\\_di\\_chi\\_vive\\_sulla\\_strada\\_chiede\\_l\\_elemosina](https://www.redattoresociale.it/article/notiziario/solo_il_10_di_chi_vive_sulla_strada_chiede_l_elemosina)

<sup>172</sup> It is the case of Italian beggars in Bologna. Most are young or 40-year-olds with alcohol or drug addiction problems. 98% are men. They all practice a stationary kind of begging. Especially the young ones have a dog with whom they have a symbiotic relationship. This seems to be one of the reasons why they prefer to live on the street than in a dormitory. Andrea Distefano, *Quaderni della Tratta. Accattonaggio 2013-2021 una ricerca in continua evoluzione*, Associazione Comunità Papa Giovanni XXIII (2022), p. 12, available at: <https://quadernidellatratte.apg23.org/>

<sup>173</sup> Valeria Ferraris, *Dalla tratta al traffico, allo sfruttamento: i minori stranieri coinvolti nell'accattonaggio, nelle economie illegali e nella prostituzione* in: Carchedi F., Orfano I., La tratta di

(2014), Castelli's study 'Punto e a capo sulla tratta' has dealt in a brief but relevant section with THB for the purpose of begging in Italy. Here, the text describes the general trends, victims' origins, and places and modalities of exploitation.<sup>174</sup> Always in 2014, the Association Volontarius Onlus published 'La mendicITÀ a Bolzano: storie di vita a confronto', where it is possible to observe some hints suggesting the likely coerced nature of begging.<sup>175</sup> From 2013 to 2015, Italy joined the EU-financed project 'The third sector against pushed begging'. The main issue of the research is the phenomenon of human trafficking for pushed begging while the aim is to produce a database of information about the realities of begging to plan and implement effective interventions.<sup>176</sup> 2015 is also the year of publication of the final report of the project 'Stop for-Beg' by Degani and Donadel. The study addresses the issue of begging for exploitation with the aim to prevent and combat this form of trafficking through the promotion and improvement of multi-agency cooperation and networking among Police forces, public authorities and NGOs.<sup>177</sup> Campana, with his study 'La mendicITÀ contemporanea. Riflessioni sociologiche, dati di ricerca e politiche sociali in Trentino Alto-Adige' ('Contemporary begging. Sociological reflections, research data and social policies in Trentino Alto-Adige') manages to transmit the complexity of the phenomenon of begging, by making reference also to its possible coerced nature. The most updated work on the issue is 'The practice of begging, between freedom of choice, exploitation, trafficking and connections with organised crime. Focus on Nigerian people' by Semprebon, Scarabello and Donadel. The report investigates the recent phenomenon concerning Nigerian beggars in Italian cities.<sup>178</sup>

The effort to better understand this specific form of exploitation does not come exclusively from the academic community, instead NGOs dealing with human trafficking, and in particular, their street units, have a fundamental role in the constant

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persone in Italia. Il fenomeno: soggetti, ambiti, e forme di sfruttamento, vol 1, FrancoAngeli: Milano (2007), p. 242

<sup>174</sup> Ibid (n 106), pp. 57-63

<sup>175</sup> Federica Dalla Pria, *La mendicITÀ a Bolzano: storie di vita a confronto*, Associazione Volontarius Onlus in collaborazione con Ufficio Pianificazione Sociale - Comune di Bolzano (2014), p. 7, p. 12, p. 34, p. 41

<sup>176</sup> CNCA, *Third sector against pushed begging. Prevention and fight against crime. Final manual*, Comunità Edizioni: Roma (2015), p. 8, available at: [https://www.cnca.it/wpfd\\_file/the-third-sector-against-pushed-beggings-prevention-of-and-fight-against-crime-final-manual/](https://www.cnca.it/wpfd_file/the-third-sector-against-pushed-beggings-prevention-of-and-fight-against-crime-final-manual/)

<sup>177</sup> Ibid (n 3), p. 5

<sup>178</sup> Ibid (n 165), p. 20

monitoring of such a changeable phenomenon. Starting from the North of Italy, Association Tampep Onlus<sup>179</sup> operates in Turin (Piedmont) and has a specific street unit for the observation of begging. In Lombardy, there are Lule Onlus<sup>180</sup> and Foundation Gruppo Somaschi<sup>181</sup> that have addressed the issue. Gruppo Volontarius<sup>182</sup> is active in Bolzano (Trentino Alto-Adige) and monitors people begging in the street. Liguria's representative is Jobel Cooperative<sup>183</sup>, which for some years has started observing this form of exploitation in the territory of Ventimiglia and Imperia through a working team composed by an educator and a Nigerian cultural mediator.<sup>184</sup> An important commitment in the fight against forced begging comes from Association Comunità Papa Giovanni XXIII<sup>185</sup> in Bologna (Emilia Romagna) that started to deal with the phenomenon in 2013, through the activation of a specific street unit. In the following years, the association initiated a research with the aim of engaging shopkeepers by gathering their views on local beggars.<sup>186</sup> In Central Italy, the social Cooperative Borgorete<sup>187</sup> (Project Free Life) is active in Assisi, Perugia and Terni (Umbria) and monitors beggars through Cabiria street unit. Cooperative On the Road<sup>188</sup> is present both in Pescara (Abruzzo) and Termoli (Molise), it is probably the Italian anti-trafficking body that most addressed THB and serious exploitation of begging. In 2017, the NGO organised the national conference *Le Mani Sporche: lo sfruttamento dei migranti nel lavoro e nell'accattonaggio forzato* ('Dirty Hands: the exploitation of migrants in labour and forced begging').<sup>189</sup> Moving to the South of the country, Cooperative Dedalus<sup>190</sup>, which is located in Naples (Campania), has achieved unprecedented results in the fight against forced begging. As will be shown in Chapter IV, the cooperative supported a Nigerian young man to be recognised as victim of THB for the purpose of begging. Foundation Città Solidale<sup>191</sup> (Project Incipit) is another

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<sup>179</sup> <https://www.tampepitalia.it/>

<sup>180</sup> <https://www.luleonlus.it/tratta-e-sfruttamento/numero-verde-tratta/>

<sup>181</sup> <https://www.fondazionesomaschi.it/>

<sup>182</sup> <https://gruppovolontarius.it/>

<sup>183</sup> <https://www.jobel.it/>

<sup>184</sup> Jobel Cooperativa Sociale Onlus, *Relazione progetto HTH Liguria Hope This Helps: il sistema della Liguria contro la tratta e lo sfruttamento minorile* (2022)

<sup>185</sup> <https://www.apg23.org/>

<sup>186</sup> Ibid (n 172), p. 4

<sup>187</sup> <https://www.borgorete.it/servizi/tratta-emergenza-sociale/free-life>

<sup>188</sup> <https://www.ontheroad.coop/>

<sup>189</sup> Ibid (n 102)

<sup>190</sup> <https://www.coopdedalus.it/>

<sup>191</sup> <https://www.fondazionecittasolidale.it/>

acute observer. It is part of Project Incipit, which has allowed the creation of four contact units active on the Calabrian regional territory and monitoring the phenomenon of begging.<sup>192</sup> To conclude, Cestrim Onlus<sup>193</sup> in Potenza (Basilicata) has approached the phenomenon.

Despite the low number of studies on the topic and even though only a part of Italian anti-trafficking NGOs is familiar with the phenomenon, what almost all experts (scholars, social operators, mediators etc.) seem to suggest is that percentages relating to THB and exploitation for the purpose of begging (i.e. forced begging represents only 2% of the total cases of THB)<sup>194</sup> are probably underestimated. The very fact that over the last twenty years studies have systematically attempted to bring this issue to the fore is a symptom of an existing problem that is still too much ignored. The nationwide distribution of cooperatives familiar with it is another significant indication of how widespread this type of exploitation is throughout the country. As will be shown in the next sections, two main communities appear more at risk to be affected by the phenomenon: the Nigerian and the Roma ones. Such assumption is supported by both the academic community and national NGOs. Consequentially, this text has taken into consideration, together with existing studies, the interviews I personally conducted with the anti-trafficking cooperatives that have demonstrated to have experience in the phenomenon.

### *II.2.5 Past examples of THB for begging*

Before observing the forms and subjects of what is presumed to be the contemporary exploitation of begging, it is interesting to cite some significant past manifestations of the phenomenon in Italy. Although only in the last years the issue started being noticed, this reality has been present in the country for decades. A common element characterising the initial forms of coerced begging is that victims were always children. The practice of *bambini argati* ('kidnapped children') represented the first manifestation of the phenomenon. It emerged between the 80s and the 90s thanks to some judicial

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<sup>192</sup> Pietro Iaquina, Edith Macri, Elita Anna Sabella, *IN.C.I.P.I.T. and ELEUTHERIA: Analysis of Two Emersion, Assistance and Social Inclusion Projects in the Fight Against Trafficking in Human Beings in the Calabria Region*, in *Rivista Italiana di Economia Demografia e Statistica* vol. LXXV (2021), p. 84

<sup>193</sup> <https://cestrim.com/>

<sup>194</sup> *Ibid* (n 118), p. 12

procedures. In this case, minors were entrusted or sold to third parties by the family, in order to exploit them in activities like begging and the commission of petty crimes. The term *argati* comes from the Macedonian word *argakta* indicating the ownership of the minor to his exploiter, who can exercise his authority also through violence.<sup>195</sup> These children came from East European countries and were part of Roma communities.<sup>196</sup> Starting from the early 90s, Italian cities experienced also a growing presence of young Maghrebi boys practising begging and petty crimes (including drug racket).<sup>197</sup> The North African adolescents came mainly from poor areas of Morocco and Tunisia, where families used to accept the fact of letting their children emigrate accompanied by an adult relative or neighbour. This latter was then entitled to compensation.<sup>198</sup> After a short period, minors were initiated into the activity, so that they could pay for the compensation to the accompanying adult. In the late '90s, the majority of victims of THB for the purpose of begging were Albanian minors. Traffickers bought the children in their country of origin, smuggled them into Italy from the Apulian coast and subsequently moved them to Rome or other cities in the North. It was also ascertained that in order not to arouse excessive suspicion and social alarm children were transferred periodically and moved from town to town.<sup>199</sup> A past in which children were the main, if not exclusive, victims of THB for begging may have entrenched a prototypical idea of the victims of this form of exploitation that may currently be misleading or otherwise not sufficiently inclusive

#### *II.2.6 Nigerian and Sub-Saharan beggars*

Virtually throughout the country, the landscape of urban begging has changed significantly with the increase in migration flows from Sub-Saharan Africa recorded in the period 2015-2018. Some agencies observed an earlier change, around the time of the 2011 migration wave when the first people of sub-Saharan origin were noticed in front of supermarkets and businesses. This presence gradually consolidated from 2014 onwards. However, their profile (in terms of age) and migration journey were not the

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<sup>195</sup> Silvia Bernardi, *Non Coactus Neque Voluit? Il Consenso Della Vittima Al Proprio Sfruttamento E La Vulnerabilità Individuale Nel Diritto Penale* (2019), Tesi di Dottorato di ricerca Diritto Penale (IUS/17), Università degli Studi di Milano, p.35

<sup>196</sup> Ibid (n 195), p. 98

<sup>197</sup> Ibid (n 162), p. 23

<sup>198</sup> Ibid (n 162), p. 25

<sup>199</sup> Ibid (n 162), p. 20

same as the current ones.<sup>200</sup> Before this change, begging was almost an exclusive practice of people belonging to the Roma community and more generally coming from Eastern European countries.<sup>201</sup> Despite some inevitable territorial differences and peculiarities, NGOs, street units and researchers agree on the fact that nowadays Nigerian individuals represent the major beggar community in Italian cities.

The emerging profile concerning Nigerian beggars highlights that they are almost exclusively male subjects.<sup>202</sup> Some women have been observed but they constitute an extremely small minority. They normally appear during religious festivities and bring children with them.<sup>203</sup> Although Nigerians represent the prevalent group, other nationalities are present in different measures according to the territory. In Umbria, for instance, the presence of Senegalese and Ghanaian beggars is also signalled.<sup>204</sup> In Naples, young men from Gambia and Senegal can be observed.<sup>205</sup> Association Papa Giovanni XXIII reports sporadic contact with people from Liberia and Kenya.<sup>206</sup> A particular reality is the one of Catanzaro, where beggars are only and exclusively Senegalese. However, even in this case, the Nigerian component is not absent but seems to play a role in the ‘coordination’ of beggars.<sup>207</sup> The age of these people ranges from 18 to 35 years old.<sup>208</sup> For example, in Bologna, where 80% of African beggars are from Nigeria, the average age is 30 years.<sup>209</sup> Data reported by Gruppo Somaschi shows that, in Milan, they are slightly younger.<sup>210</sup> An operator of Jobel Cooperative tells that in Ligurian cities they are between 20 and 28 years, with one only registered exception of a 45-year-old man.<sup>211</sup> Even in the small town of Brunico, 13 Nigerian beggars between 20 and 30 years were registered in 2018. In Terni, instead, individuals range from 30 to 40 years old.<sup>212</sup> An interesting suggestion comes from the contact person of Dedalus

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<sup>200</sup> Ibid (n 169), p. 54

<sup>201</sup> Interview, On the Road cooperative, 27/04/2022

<sup>202</sup> Ibid (n 169), p. 54

<sup>203</sup> Interview, Jobel cooperative, 08/11/2022; interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>204</sup> Interview, Free Life project manager in Terni: Laura Pelle, 29/04/2022

<sup>205</sup> Interview, Dedalus cooperative, 28/09/2022

<sup>206</sup> Ibid (n 172), p. 9

<sup>207</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>208</sup> Ibid (n 169), p. 54

<sup>209</sup> Ibid (n 172), p. 9

<sup>210</sup> Interview, Gruppo Somaschi cooperative, 23/05/2022

<sup>211</sup> Interview, Jobel cooperative, 08/11/2022

<sup>212</sup> Interview, Cabiria street unit (project Free life), 05/05/2022



(Naples) and Cabiria street unit (project Free Life), who report the tendency of these people to claim to be older than they really are, with the consequent impossibility to exclude the presence of minors.<sup>213</sup> None of the cooperatives and street units I interviewed reports cases of child beggars, except for some cases in the South of Italy.<sup>214</sup> Another important feature characterising the Nigerian and Sub-Saharan category is the connection with the world of international protection. Indeed, most of them are people who did not obtain asylum or other residence permits. Few of them have completed the regularization process but did not manage to achieve a continuity of employment.<sup>215</sup> It has been noticed by some street unit operators that many of the boys started begging after Salvini Decree on security and immigration. This latter determined a greater difficulty in getting regular documents and consequentially a high number of rejections of asylum applications.<sup>216</sup>

Focusing now on the places and modalities characterising Nigerians' begging, it is possible to notice some main trends. Supermarkets and shopping centres are the places where they are most commonly met. Here, they practice a contractual kind of begging since they help people by carrying shopping bags and returning trolleys in exchange for pennies.<sup>217</sup> To the question 'what job/ task do you do?' they reply 'I do the *buongiorno* (good morning)' because they often stand next to the entry of the supermarket greeting every client entering the store.<sup>218</sup> They might also be found in local markets, albeit their presence lately decreased because of the high number of police officers controlling the areas.<sup>219</sup> The city centre, along shopping streets or out of bars, bakeries and pastries, represents another frequent begging place.<sup>220</sup> Many cooperatives highlight that these areas were the scenes of real struggles for the conquest of street positions between the Roma and Nigerian communities at the moment of the sudden rise of the latter.<sup>221</sup> It has been noticed that, in this context, the begging typology changes according to nationality. For example, Nigerians tend to practice a non-contractual and stationary

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<sup>213</sup> Interview, Dedalus cooperative, 28/09/2022; interview, Cabiria street unit (project Free life), 05/05/2022

<sup>214</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>215</sup> Interview, On the Road cooperative, 27/04/2022; interview, Tampep cooperative, 05/10/2022

<sup>216</sup> Interview, Jobel cooperative, 08/11/2022

<sup>217</sup> Ibid (n 169), p. 58; interview, Jobel cooperative, 08/11/2022

<sup>218</sup> Interview, contact person of project Incipit: Sandro Lapenna,

<sup>219</sup> Interview, Jobel cooperative, 08/11/2022

<sup>220</sup> Ibid (n 169), p. 54; interview, Gruppo Somaschi cooperative, 23/05/2022

<sup>221</sup> Interview, Comunità Papa Giovanni XXIII association, 10/05/2022

kind of activity. They simply hold their cap to gather pennies.<sup>222</sup> More recently, the use of caps appears reduced.<sup>223</sup> A further modality was the cleaning of public areas while showing a sheet with the sign ‘I don’t want to beg, I want to integrate into this city’.<sup>224</sup> On the contrary Senegalese, but also people from Pakistan and Bangladesh, exercise a contractual form of begging, by selling small items (flowers, tissues, lighters etc.) or books.<sup>225</sup> The characteristics of the territory are also important factors in conditioning begging modalities. For example, in tourist cities like Venice, some Nigerians were seen helping tourists by carrying their luggage.<sup>226</sup> In Catanzaro (a seaside area), begging street units monitor Senegalese selling goods on the beaches.<sup>227</sup> Parking areas are a further focal point. Sandro Lapenna, who is the coordinator of Calabria’s anti-trafficking project ‘Incipit’, tells that the local street unit started observing the phenomenon of begging in 2019. Originally, the practice was concentrated in car parks and conducted by Senegalese subjects. After the emersion of some problems related to public order (damages to the cars of people who did not give any money), a municipal order was issued for the removal of beggars from the areas. From that point on, Senegalese started appearing outside supermarkets.<sup>228</sup> In general, these men can be often seen in train stations, which are only places of transit. This is because they do not beg there, but commute to go to the city where they practice the activity.<sup>229</sup> Probably they choose different cities (within the same region of residence) from the ones where they live in order not to be recognised.<sup>230</sup> In general, places of worship do not represent a usual location for Nigerian and Sub-Saharan beggars.<sup>231</sup> Nigerian and Sub-Saharan beggars are normally well-dressed and do not adopt an attitude aimed at moving passers-by to pity (i.e. by kneeling, displaying a sign describing a difficult situation,

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<sup>222</sup> Ibid (n 169), p. 80; interview, Gruppo Somaschi cooperative, 23/05/2022

<sup>223</sup> Ibid (n 172), p. 9

<sup>224</sup> Ibid (n 169), p. 58

<sup>225</sup> Interview, Tampep cooperative, 05/10/2022; interview, Cabiria street unit (project Free life), 05/05/2022; interview, President of On the Road cooperative: Vincenzo Castelli, 15/09/2022; Ibid (n 172), p. 8

<sup>226</sup> Ibid (n 169), p. 81

<sup>227</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>228</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>229</sup> Ibid (n 146), p. 135

<sup>230</sup> Interview, Gianfranco Bonesso and Michela Semperebon (authors of *La pratica dell’accontonaggio, tra libertà di scelta, sfruttamento, tratta e connessioni con la criminalità organizzata. Focus sulle persone nigeriane*), 10/05/2022

<sup>231</sup> Ibid (n 146), p. 135

showing impairments etc.).<sup>232</sup> The approach with other people occurs in a low voice and polite way.<sup>233</sup> Consequentially, their presence is often not perceived as disturbing to the point that sometimes supermarket managers offer them some odd jobs (such as loading and unloading goods) in exchange for a small compensation.<sup>234</sup> However, begging is sometimes described as insistent, above all when it is itinerant and not stationary.<sup>235</sup> For what concerns the profit deriving from the activity, it appears very complicated to understand average daily earnings and there are different opinions on that. Some experts retain that it is not a much profitable activity since beggars can collect up to 20-25 euros.<sup>236</sup> Others consider the practice more remunerative. Especially on public holidays, they affirm it is possible to collect up to 200 euros per day.<sup>237</sup> A little bit lower but always consistent is the sum reported by Jobel cooperative, which reports that in periods of the high season they can gather an average of 80 euros every day.<sup>238</sup>

The understanding of street units approach to these people and their needs is also valuable. The methodology used is often derived from methods employed in the contact of victims of sexual exploitation, which are characterised by street contact, the offer of services and job placement. In other cases, the chosen approach reproduces the methodologies used in the field of labour exploitation, which provide attempts at contact both in the places of exploitation and in the gathering ones.<sup>239</sup> Going into more detail, the existing contact units report to operate one or two days per week. Every time, they monitor those places which have been previously identified as crucial ‘begging locations’.<sup>240</sup> The importance of having a cultural mediator in the team is often emphasised, not only from the linguistic point of view but also for the greater capability of interpreting particular dynamics and gaining trust in the men.<sup>241</sup> The first thing that street operator needs to understand is whether the person begging is practising the activity as a form of subsistence economy or if instead signs of exploitation are present.

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<sup>232</sup> Ibid (n 169), p. 59

<sup>233</sup> Ibid (n 172), p. 9

<sup>234</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>235</sup> Ibid (n 146), p. 144

<sup>236</sup> Ibid (n 172), p. 25; interview, Gruppo Somaschi cooperative, 23/05/2022

<sup>237</sup> Ibid (n 169), p. 62

<sup>238</sup> Interview, Jobel cooperative, 08/11/2022

<sup>239</sup> Ibid (n 169), p. 49

<sup>240</sup> Interview, Jobel cooperative, 08/11/2022; interview, Tampep cooperative, 05/10/2022

<sup>241</sup> Ibid (n 169), p. 51; Interview, Jobel cooperative, 08/11/2022; interview, Tampep cooperative, 05/10/2022

In addition to that, the will of the person to get out of that condition must be taken into consideration.<sup>242</sup> After this initial phase of observation, the approach must take place gradually and calmly in order not to scare the individuals.<sup>243</sup> Street units tend not to introduce themselves as anti-trafficking bodies but simply as associations that could offer them some services (e.g. sanitary screening, legal support, comfort goods etc.). Only after a while do beggars start answering simple questions (i.e. name, age etc.). More delicate issues (i.e. are you begging voluntarily? is there someone controlling you? etc.) need more time before being addressed and the individual must necessarily be alone to avoid any possible conditioning.<sup>244</sup> While sharing its long experience (the first begging street unit was born in 2009), cooperative Dedalus reports extreme difficulty in engaging with these people, who appear scared and reluctant to spend time interacting instead of collecting money.<sup>245</sup> Other associations affirm that the young men are willing to chat but do not open up completely.<sup>246</sup> The most emerging needs regard the working sphere and the regularization of status.<sup>247</sup> Nowadays most of these people, who were initially part of the reception system, are irregular on the territory. Consequentially the recurring requests made to NGOs are of a legal nature, namely concerning help in the obtainment of documents.<sup>248</sup> However, many situations are too complex (e.g. individuals whose asylum application has already been rejected) and the association can do little.<sup>249</sup> It happens also that the few times Nigerian beggars visit drop-in centres, they ask for support in arranging the personal curriculum.<sup>250</sup> Although not among beggars' priorities, health assistance interventions are of fundamental importance. Due to their irregular status, these people fear being recognised as illegal migrants even when going to the hospital. Cooperative Jobel tells about having helped a young beggar who was ill with tuberculosis.<sup>251</sup> In very recent times, some street units have observed a change in the attitude of the beggars, which is characterised by indisposition and rage

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<sup>242</sup> Interview, Free Life project manager in Terni: Laura Pelle, 29/04/2022

<sup>243</sup> Interview, Jobel cooperative, 08/11/2022

<sup>244</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>245</sup> Interview, Dedalus cooperative, 28/09/2022

<sup>246</sup> Interview, Tampep cooperative, 05/10/2022

<sup>247</sup> Ibid (n 169), p. 50

<sup>248</sup> Interview, Dedalus cooperative, 28/09/2022; interview, Cabiria street unit (project Free life), 05/05/2022

<sup>249</sup> Interview, Tampep cooperative, 05/10/2022

<sup>250</sup> Interview, Comunità Papa Giovanni XXIII association, 10/05/2022

<sup>251</sup> Interview, Jobel cooperative, 08/11/2022

towards anti-trafficking operators.<sup>252</sup> A further observation that has been moved by different NGOs relates to the sudden decrease and in some cases even disappearance, of Nigerian and Sub-Saharan beggars. Currently, these associations have not clear the reason for such an unexpected change.<sup>253</sup> Gruppo Somaschi suggests that they have all become riders, others hypothesise a transfer to other territories.<sup>254</sup> For instance, Tampep cooperative (in Turin), at the moment of the interview (in early October), was of the idea that the young men were still in seaside areas (more profitable at that time).<sup>255</sup> However, the National Anti-Trafficking Hotline reports having recently received phone calls from Turin reporting alleged cases of begging exploitation of young Nigerian men.<sup>256</sup>

Although almost none of the NGOs I could get in touch with reports cases of effective emersion of situations of THB or serious exploitation, the great majority of them are firmly convinced that behind Nigerian beggars a reality of coercion is hidden. It would be wrong to extend such an assumption to the entire group since many individuals might have chosen the practice just to send additional money home, top up their wages or since it was their only choice.<sup>257</sup> In addition to that, experts' opinions differ with respect to the type of coercion. Some of them are more of the idea that begging is limited to exploitation while cases of real trafficking are rare. Others suspect that THB is more present than it appears. Especially with regard to this category, it is important to emphasise that a path that began as irregular migration can turn into exploitation and slavery once the person has arrived in the destination country and the vulnerable condition leads them to fall into exploitative networks.<sup>258</sup> Having said that, it would be superficial to ignore the innumerable worrying dynamics that are illustrative of both the phenomena of THB and serious exploitation.<sup>259</sup> All associations notice that the first indicator highlighting a sort of control is the presence of an accurate and well-organised shift system. When monitoring the individuals, it appears that beggars are assigned

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<sup>252</sup> Interview, Tampep cooperative, 05/10/2022; interview, Jobel cooperative, 08/11/2022

<sup>253</sup> Interview, Comunità Papa Giovanni XXIII association, 10/05/2022

<sup>254</sup> Interview, Gruppo Somaschi cooperative, 23/05/2022

<sup>255</sup> Interview, Tampep cooperative, 05/10/2022

<sup>256</sup> Interview, Anti-trafficking Hotline operator: Dario Fava, 07/10/2022

<sup>257</sup> Interview, Cabiria street unit (project Free life), 05/05/2022

<sup>258</sup> Ibid (n 106), p. 24

<sup>259</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022; interview, Gianfranco Bonesso and Michela Semprebon, 10/05/2022

specific timetables and locations in which they have to perform the activity so that not to overlap with each other. In case one cannot beg one day, a replacement is readily found and the begging place is rented to this other individual. This practice is referred to as ‘payment of the joint’, which is also present in the context of THB for sexual exploitation.<sup>260</sup> Another element reminiscent of the prostitution context is the subdivision of the areas of the city.<sup>261</sup> Also from the housing point of view, there are indicators of a certain organization. Nigerian beggars live together and are at least 5/6 in an apartment. Everyone pays 250 euros monthly. The holder of the lease is normally a fellow countryman with regular status.<sup>262</sup> The origin of beggars represents a further alarm bell. They come from the South of Nigeria, particularly from Edo state, that besides being the poorest part of the country is also the area of origin of Nigerian trafficked women.<sup>263</sup> According to Dedalus contact person, Enrica Di Nanni, Nigerian beggars’ experience (with respect to the migratory path, recruitment and exploitative dynamics) is very similar to that of Nigerian prostitutes. Even the part concerning magical and voodoo rituals practised by shamans emerges from some beggars’ accounts.<sup>264</sup> The presence of debt is frequently encountered.<sup>265</sup> It is not as high as that of trafficked girls, normally it amounts to 10.000/ 15.000 euros.<sup>266</sup> It is not clear whether the debt is incurred before leaving or once the person arrives in Italy and experiences a situation of vulnerability.<sup>267</sup> All these elements lead to thinking about an organization behind the practice of begging. Experts are still trying to understand whether such coordination is self-managed to make the activity more remunerative or if a hierarchy is present. Probably, both realities exist but the second one is more common.<sup>268</sup> The general foreboding concerns a connection with Nigerian cults, mafia-type organizations which will be analysed in depth in Chapter V. A Jobel street operator reports an episode where he asked a beggar whether someone was controlling him and to whom he was to

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<sup>260</sup> Interview, Tampep cooperative, 05/10/2022; interview, Jobel cooperative, 08/11/2022; Interview, Dedalus cooperative, 28/09/2022, interview, On the Road cooperative, 27/04/2022

<sup>261</sup> Interview, Cabiria street unit (project Free life), 05/05/2022

<sup>262</sup> Interview, Cabiria street unit (project Free life), 05/05/2022; interview, Jobel cooperative, 08/11/2022

<sup>263</sup> Interview, Gianfranco Bonesso and Michela Sempredon, 10/05/2022

<sup>264</sup> Interview, Dedalus cooperative, 28/09/2022; interview, Gruppo Somaschi cooperative, 23/05/2022

<sup>265</sup> Interview, Gianfranco Bonesso and Michela Sempredon, 10/05/2022; interview, Free Life project manager in Terni: Laura Pelle, 29/04/2022

<sup>266</sup> Interview, Gruppo Somaschi cooperative, 23/05/2022

<sup>267</sup> Interview, Cabiria street unit (project Free life), 05/05/2022

<sup>268</sup> Interview, Cabiria street unit (project Free life), 05/05/2022; interview, Gianfranco Bonesso and Michela Sempredon, 10/05/2022

hand over the money. The young men remained vague by replying that it was a very complicated question. After that, the beggar was never seen again.<sup>269</sup> Other revealing indicators of a pyramid kind of structure are the presence of controllers (always Nigerians), who supervise a certain area and to whom beggars hand over the profit coming from the activity;<sup>270</sup> the fact that in case of disputes between beggars there is always a third party intervening to solve the problem;<sup>271</sup> the occurrence of episodes of violence against the beggars for not having gathered enough money or for having kept part of the profit;<sup>272</sup> evidence of multifarious exploitation of beggars, who are often employed also in other activities such as labour exploitation in the agricultural sector or in illegal activities in order to maximise earnings. In this regard, it is interesting the case of a Nigerian woman who had a badly bruised foot. She represents one of the few reported cases of female Nigerian beggars. It could be assumed that she was there simply because of her condition, which impeded traffickers to exploit her in prostitution.<sup>273</sup> In addition to all these indicators of THB and serious exploitation, some even more explicit pieces of evidence demonstrate a clear reality of coercion behind begging. For example, association Papa Giovanni XXIII reports the story of a Nigerian guy who practised begging and had all the requisites to be recognised as a trafficking victim. In 2018, a few days before the legal proceeding, he was killed.<sup>274</sup> To conclude the recent change in the attitude of the beggars (more aggressive) might be connected to the increase of pressure by traffickers to settle the debt.<sup>275</sup> Their sudden disappearance, instead, could be observed together with the data concerning the current decrease of Nigerian trafficked prostitutes.<sup>276</sup>

#### *II.2.7 Roma and Eastern European beggars*

From the interviews I conducted with anti-trafficking bodies and experts, what currently emerges is that the attention is mainly focused on Nigerian individuals due to their

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<sup>269</sup> Interview, Jobel cooperative, 08/11/2022

<sup>270</sup> Interview, Dedalus cooperative, 28/09/2022; interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>271</sup> Interview, On the Road cooperative, 27/04/2022

<sup>272</sup> Interview, Cabiria street unit (project Free life), 05/05/2022; interview, Jobel cooperative, 08/11/2022

<sup>273</sup> Interview, Jobel cooperative, 08/11/2022

<sup>274</sup> Interview, Comunità Papa Giovanni XXIII association, 10/05/2022

<sup>275</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022; interview, Jobel cooperative, 08/11/2022

<sup>276</sup> Ibid (n 122)

numerical relevance and the deep-rooted suspicion of an exploitative network. To a lesser extent but present, people from Eastern European countries, belonging especially to the Roma community, are still begging in Italian cities. The precise country of origin of these people is often difficult to identify. However, as evidenced by the report *Stop For-Beg*, the main reported nationality is Romanian.<sup>277</sup> More recent sources confirm this information and add that a small percentage is represented by Bulgarian people.<sup>278</sup> In Bologna, also Serbians have been observed. However, after the lockdown due to Covid 19, they seem to be come back to their country.<sup>279</sup> Conversely from Nigerian and Sub-Saharan beggars, this category is constituted by EU citizens. Consequentially, they do not need any particular permit to stay and beg on the Italian territory.<sup>280</sup> Since they are largely in possession of a passport that is valid for all EU member states, it happens that they change the country where they practice the activity.<sup>281</sup> Thanks to this freedom of movement, the majority of them return to their country of origin at least 3/4 times every year, for example on the occasion of festivities.<sup>282</sup> The transfer from one country to the other normally occurs by bus and sometimes by plane.<sup>283</sup> In addition to this seasonal commuting, Roma people, like Nigerians, commute daily from their place of living to the city where they beg.<sup>284</sup> They usually live in informal camps, abandoned houses, suburban areas or near stations.<sup>285</sup> Another element distinguishing this category from the previous one is age. Roma and other Eastern European individuals are not young. They range from 40 to 50 years old.<sup>286</sup> Some cooperatives report even older subjects, over 60 years of age.<sup>287</sup> Although even in this case men constitute the majority, women do not represent an exception.<sup>288</sup> For instance, in Bologna, Romanian women are the equivalent of male individuals.<sup>289</sup> The begging modality tends to be the classical one, namely a stationary and non-contractual form. They beg while sitting, using small

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<sup>277</sup> Ibid (n 3), p. 52

<sup>278</sup> Ibid (n 169), p. 52; interview, Gruppo Somaschi cooperative, 23/05/2022; interview, Jobel cooperative, 08/11/2022

<sup>279</sup> Ibid (n 172), p. 10

<sup>280</sup> Ibid (n 146), p. 122

<sup>281</sup> Ibid (n 146), p. 129

<sup>282</sup> Ibid (n 3), p. 52; Ibid (n 176), p. 90

<sup>283</sup> Ibid (n 3), p. 53

<sup>284</sup> Ibid (n 146), p. 129

<sup>285</sup> Ibid (n 3), p. 53; Ibid (n 172), p. 11

<sup>286</sup> Ibid (n 169), p. 81

<sup>287</sup> Interview, Gruppo Somaschi cooperative, 23/05/2022; interview, Tampep cooperative, 05/10/2022

<sup>288</sup> Ibid (n 169), p. 81, Ibid (n 172), p. 8

<sup>289</sup> Ibid (n 172), p. 10



containers or paper or plastic cups to collect the money.<sup>290</sup> Their attitude aims to create a sense of pity in the observer's perception. For example, they kneel, show posters describing the difficult condition in which they live, expose physical impairments etc.<sup>291</sup> With respect to this latter 'strategy', many NGOs report cases of disabled Eastern European beggars.<sup>292</sup> This reality seems to exist in Northern and Central Italy but not in the South.<sup>293</sup> A contractual kind of begging has been observed as well. It is the case of window cleaners who use the activity to request a bid from cars stopped at traffic lights.<sup>294</sup> Concerning the places where Roma and Eastern European beggars are, it is important to highlight that they have retreated to the less remunerative areas, where the Nigerian community is absent. Their presence is reported on public transport, especially trains, around places of worship, and in midtown.<sup>295</sup> Cabiria street unit has noticed them also near parking machines.<sup>296</sup> Unlikely in the past, the presence of minors alone practising begging is no more registered. The disappearance of minors from the streets is attributed to the entry into force in 2009 of Article 600-*octies* of the Penal Code. This latter punishes the use of minors for begging, a phenomenon that mainly concerned Roma children.<sup>297</sup> As a concrete example of this, Cabiria street unit reports that, in the city of Perugia, Roma families used to employ their children in the activity. However, in 2010, a police operation resulted in the arrest of those responsible for the exploitation. This episode has represented a turning point since, from that moment, no other minor was seen begging.<sup>298</sup> Nevertheless, some differences relating to the presence of minors in the streets exist between Northern and Southern Italy. In the South of the country, a culture condemning the presence of children while begging is not yet well established. Indeed, it is still possible to observe women who beg with babies.<sup>299</sup>

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<sup>290</sup> Ibid (n 169), p. 81

<sup>291</sup> Ibid (n 169), p. 87

<sup>292</sup> Interview, Gruppo Somaschi cooperative, 23/05/2022; interview, Tampep cooperative, 05/10/2022; intervista; interview, Jobel cooperative, 08/11/2022; interview, Comunità Papa Giovanni XXIII association, 10/05/2022

<sup>293</sup> Interview, Dedalus cooperative, 28/09/2022; Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>294</sup> Ibid (n 172), p. 10

<sup>295</sup> Interview, Gianfranco Bonesso and Michela Semprebon, 10/05/2022

<sup>296</sup> Interview, Cabiria street unit (project Free life), 05/05/2022

<sup>297</sup> Ibid (n 169), p. 88

<sup>298</sup> Interview, Cabiria street unit (project Free life), 05/05/2022

<sup>299</sup> Interview, social-legal operator of N.A.V.I.G.A.Re project: Giuseppina Di Bari, 10/08/2022

In the case, of Eastern European beggars, with special regard to members of the Roma community, the practice of begging is considered a so recurrent traditional activity as to be ascribed to the cultural traits characterising this group.<sup>300</sup> *Mangel* is the specific term indicating Roma's begging. Besides being the result of necessity, it also originates from the impossibility to solve the conflict between nomadic and sedentary culture, which translates into the difficulty for some groups to integrate into the hosting society, and into the inability to make a living with traditional Roma trades. However, the progressive process of sedentarisation of this community has led to the development of a begging context which despite reproducing a nomadic lifestyle has no longer to do with it.<sup>301</sup> Although in this context begging is often a subsistence strategy or cultural practice, the existence of organisations exploiting the activity is still possible and proven. Until 2014/2015 the most travelled route by victims of THB for exploitative begging was the Eastern European one.<sup>302</sup> For example, in the past, it was the case of minors who were recruited from countries of Former Yugoslavia by fellow countrymen. These latter used to promise families to take care of their children and to find them good jobs.<sup>303</sup> Now that child beggars have disappeared, anti-trafficking bodies agree on the fact that human trafficking and exploitation of begging continue to affect many vulnerable subjects such as beggars with disabilities and physical impairments and older individuals. Conversely from the Nigerians' case, Roma organizations are smaller and often family-based.<sup>304</sup> To suggest the coercive and organised nature of certain realities is the fact that they tend to appear during festivities.<sup>305</sup> They need someone to accompany them in the morning in the street and bring them in the evening due to both physical inability and scarce knowledge of the city.<sup>306</sup> Indeed, they could hardly engage in begging independently, in national contexts other than their native one, without someone creating the conditions for these people to arrive in a destination country and thus provide them with support, logistics and 'protection'.<sup>307</sup> In some instances, it

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<sup>300</sup> Dario Sciutteri, *La Repressione Penale della Mendicizia, tra Solidarietà e Multiculturalismo*, in Archivio penale, 1 (2022), p. 20, available at: <https://archiviopenale.it/la-repressione-penale-della-mendicita-tra-solidarita-e-multiculturalismo/articoli/33286>

<sup>301</sup> Ibid (n 3), p. 14

<sup>302</sup> Ibid (n 106), p. 59

<sup>303</sup> Ibid (n 3), p. 15

<sup>304</sup> Interview, Comunità Papa Giovanni XXIII association, 10/05/2022

<sup>305</sup> Interview, Jobel cooperative, 08/11/2022

<sup>306</sup> Ibid (n 176), p. 91

<sup>307</sup> Ibid (n 146), p. 54

happens to see vans retrieving beggars from their placement. In Bologna, some shopkeepers affirm to have witnessed the preparation of the begging place by groups of Eastern European individuals. After choosing the location, they put some rubbish in the place and leave there a person with handicaps or a woman. Another shopkeeper tells he often sees a young man with burnt hands who is taken by another person in the place where he will then beg for the rest of the day.<sup>308</sup> These subjects seem to be controlled also during the activity. For example, in the little town of Brunico, a Romanian female beggar with ecchymosis on the face was subject to a suspicious state of control by a man not far away.<sup>309</sup> A similar case was reported in Venice, where some anti-trafficking operators tried repeatedly and in vain to approach a Roma woman with a large birthmark on her face. However, every attempt was followed by the transfer of the woman to another place.<sup>310</sup>

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<sup>308</sup> Ibid (n 172), p. 42

<sup>309</sup> Ibid (n 146), p. 127

<sup>310</sup> Interview, social-legal operator of N.A.V.I.G.A.Re project: Giuseppina Di Bari, 10/08/2022

## CHAPTER III

### Italian Legislation

#### III.1 Italian legal framework on THB and severe exploitation

Since 1998, Italian legislation has been active in the fight against trafficking in human beings and the protection of victims, both children and adults. The Italian model, which is still considered a best practice in this field, is based on the principle that an effective anti-trafficking strategy should adopt a multi-agency, human rights and victim-centred kind of approach.<sup>311</sup> Moreover, the Italian System conforms to and promotes the international guiding principles on THB.<sup>312</sup> Indeed, the national regulation of human trafficking is mainly the result of the implementation of EU-derived legislation and other international conventions.<sup>313</sup>

##### *III.1.1 Legislative precursors of national THB laws*

Before the enactment of contemporary Italian legislation contrasting the phenomena of exploitation and human trafficking, the Penal Code (*Codice Rocco*) already contemplated slavery in the section on crimes against the individual. This concept was not defined by the Italian legislator but its interpretation derived from the definition of slavery that was expressed in Article 1 of the Geneva Convention of 1926. According to the Covenant ‘Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.<sup>314</sup> Until the 1980s, jurisprudence tended to interpret the concept of slavery as exclusively referring to an - outdated - legal situation, which produced an effective reification of the person through

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<sup>311</sup> Dipartimento per le Pari Opportunità, Trafficking in human beings (2020), p. 2, available at: [https://www.cuhd.org/wp-content/uploads/2020/03/26.1\\_Italy-trafficking\\_in\\_human\\_beings\\_italy.pdf](https://www.cuhd.org/wp-content/uploads/2020/03/26.1_Italy-trafficking_in_human_beings_italy.pdf)

<sup>312</sup> Osservatorio Interventi Tratta, Human Trafficking in Italy (2018), available at: [https://www.osservatoriointerventitratta.it/human-trafficking-in-italy/#:~:text=The%20Italian%20legislation%20to%20combat,of%201998%20\(Immigration%20law\).](https://www.osservatoriointerventitratta.it/human-trafficking-in-italy/#:~:text=The%20Italian%20legislation%20to%20combat,of%201998%20(Immigration%20law).)

<sup>313</sup> Camera dei Deputati, La Tratta di Esseri Umani: Quadro normativo (2018), available at: [https://temi.camera.it/leg17/post/la-tratta-di-esseri-umani-quadro-normativo-e-statistiche.html?tema=temi/tutela-delle-vittime-dei-reati#:~:text=La%20tratta%20di%20esseri%20umani%20%C3%A8%20esspressamente%20punita%20nel%20nostro,600%2C%20601%20e%20602\)](https://temi.camera.it/leg17/post/la-tratta-di-esseri-umani-quadro-normativo-e-statistiche.html?tema=temi/tutela-delle-vittime-dei-reati#:~:text=La%20tratta%20di%20esseri%20umani%20%C3%A8%20esspressamente%20punita%20nel%20nostro,600%2C%20601%20e%20602)

<sup>314</sup> League of Nations, *Slavery Convention Geneva September 25th 1926*, Geneva: League of Nations. (1926), p. 1, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>

the denial of its status *libertatis*. This interpretation then affected the scope of application of Article 601 and 602 of the Penal Code (respectively entitled ‘Trafficking and trade in slaves’ and ‘Alienation, purchase and possession of slaves’), which referred to the same concept.<sup>315</sup> In order to guarantee protection and justice to victims of *de facto* situations of slavery, the drafter introduced the offence of ‘manipulation’ (in Italian *plagio*) through Article 603. However, the provision was rarely applied and because of its vagueness, it was declared illegitimate. It was thanks to the Geneva Supplementary Convention of 1956 that the legal protection offered by Article 600 started being gradually extended beyond the definition of slavery as a legal status in the strict sense. Despite this step forward, the provisions could barely adapt to the new forms of slavery and servitude. For example, the jurisprudence was reluctant to accept the idea that a free, adult individual could be kept in a state of physical and/or psychological subjection that was sufficiently intense to be considered as a condition analogous to slavery.<sup>316</sup> An even more controversial issue was to define to what extent it could be accepted that a margin of autonomy and self-determination remained in the hands of the victim, despite his submission.<sup>317</sup> What emerged was the necessity to furtherly emancipate from the outdated concept of slavery, not only by diluting the traditional meaning of the word but also by referring to the specific and more contemporary offences that needed to be covered by the provisions.<sup>318</sup> Together with the slavery-related articles of the Penal Code, Law Merlin of 1958 on ‘the abolition of the regulation of prostitution and the fight against the exploitation of the prostitution of others’ represents a further important precursor of today’s anti-trafficking laws. Particularly, in Article 3 of the Act, the concept of human trafficking (in this case for the purpose of sexual exploitation) made one of its first actual appearances in Italian legislation. The Article condemned ‘anyone who induces a person to go to the territory of another State or in any case to a place other than that of his habitual residence, with the aim of practising prostitution or interferes to facilitate her departure’ and ‘anyone who carries out an activity in national or foreign organizations that are dedicated to the recruitment of people for the purpose of prostitution or the exploitation of prostitution,

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<sup>315</sup> Ibid (n 195), p. 32

<sup>316</sup> Ibid (n 195), p. 35

<sup>317</sup> Ibid (n 195), p. 36

<sup>318</sup> Ibid (n 195), p. 37

or in any form and by any means facilitates or favours the action or the aims of the aforementioned organizations'.<sup>319</sup> Finally, Law 269/1998 'Rules against the exploitation of prostitution, pornography, sexual tourism to the detriment of minors, as new forms of slavery' constitutes the last enactment referring to the phenomenon of THB before the reformation of the Italian anti-trafficking system. Article 9 (Child Trafficking) of the Law amended Article 601 of the Penal Code by adding that 'Whoever commits trafficking or trading in minors under the age of eighteen to induce them to prostitution is punished with imprisonment from six to twenty years'.<sup>320</sup>

### *III.1.2 Article 18 of the Consolidated Immigration Act*

Although Italy's anti-trafficking legislation has generally resulted from the continuous adjustment of national regulations to international ones, Article 18 of the Legislative Decree n. 286/98, Consolidated Act of Measures Governing Immigration and Norms on the Condition of Foreign Citizens, constitutes a positive pioneering exception. At the time of its adoption, the international scene had very little to teach on the phenomenon of trafficking, especially in terms of the protection of trafficked persons. Two more years would have passed before the adoption of the Palermo Protocol, and another five years before the enactment of the Council of Europe Anti-Trafficking Convention. Although it did not act in a *vacuum*, as trafficking in human beings had increasingly become a priority in the international and European policy agendas since the beginning of the 1990s, Italy was among the first countries to adopt an instrument of protection for victims of THB. This provision was regarded as one of the most advanced protection measures against trafficking in human beings at the European, if not global, level.

Since 1998, Article 18 provides the possibility to grant a temporary residence permit to victims of violence or severe exploitation, including trafficked persons.<sup>321</sup> Paragraph 1 of the article reports that an important precondition for the granting of the permit is that

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<sup>319</sup> Art. 3 Legge 20 febbraio 1958, n. 75 (1958), available at: [https://www.osservatoriointerventitratta.it/wp-content/uploads/2018/03/art.3\\_Legge\\_Merlin.pdf](https://www.osservatoriointerventitratta.it/wp-content/uploads/2018/03/art.3_Legge_Merlin.pdf)

<sup>320</sup> Legge 3 Agosto 1998, n. 269, Norme Contro lo Sfruttamento della Prostituzione, della Pornografia, del Turismo Sessuale in Danno di Minori, quali Nuove Forme di Riduzione in Schiavitù, available at: [https://www.osservatoriointerventitratta.it/wp-content/uploads/2018/03/art.3\\_Legge\\_Merlin.pdf](https://www.osservatoriointerventitratta.it/wp-content/uploads/2018/03/art.3_Legge_Merlin.pdf)

<sup>321</sup> Noemi Magugliani, *Trafficked adult men, gendered constructions of vulnerability, and access to protection*, NUI Galway (2021), p. 104, available at: <https://aran.library.nuigalway.ie/handle/10379/16804>

the person is in serious and imminent danger as a result of either trying to escape traffickers or having made statements during preliminary trial investigations.<sup>322</sup> This residence permit represents an exception to the general principle contained in the Consolidated Immigration Act for which permanence on the national territory is granted only in the presence of a regular entry. Indeed, Article 18 applies also to migrants who entered the Italian territory irregularly. More recently, the Legislative Decree n. 24 of 2014 introduced a further subsection in the article to remove any doubts about who was entitled to the permit.<sup>323</sup> Subsection 3-bis reads: ‘For foreigners and citizens referred to in paragraph 6-bis of this article (EU citizens), victims of the crimes provided for in articles 600 and 601 of the Penal Code, or who are in the conditions referred to in paragraph 1 of this article applies,[...] a program of emergence, assistance and social integration which guarantees, on a transitional basis, adequate conditions of accommodation, food and health care, pursuant to article 13 of law no.228 of 2003 and, subsequently, the continuation of the assistance and integration, under paragraph 1 referred to in this article’.<sup>324</sup> The initial period of residence is six months, which can then be extended by a further 12 months if this is considered to be necessary. During this period, the victim must agree to receive assistance from one of the assigned NGOs in the field. Upon expiry of the permit, which can be prolonged up to 18 months, the victim can seek to change the residence permit into a work or study permit. This latter can then be granted for up to two years at a time and presupposes that victims can document that they have regular work or are admitted into a learning institution.<sup>325</sup> Article 18 programme depends on the Italian Department for Equal Opportunities, which technically manages and finances it through annual calls. The projects of assistance and social integration, which include empowerment strategies for social and labour inclusion, accommodation, vocational and training courses, language classes,

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<sup>322</sup> Anette Brunovskis, *Balancing protection and prosecution in anti-trafficking policies: A comparative analysis of reflection periods and related temporary residence permits for victims of trafficking in the Nordic countries, Belgium and Italy*, Copenhagen: Nordic Council of Ministers (2013), p. 43, available at: <http://norden.diva-portal.org/smash/record.jsf?pid=diva2%3A701729&dswid=-1970>

<sup>323</sup> Carlo Vettori, *La protezione delle vittime*. In particolare: lo speciale permesso di soggiorno rilasciato ai sensi dell'articolo 18 del D.lgs. 286/98 (T.U. sull'immigrazione) in *La tratta degli esseri umani. Evoluzione normativa e aspetti sociologici*, Adir- L'altro diritto (2014), available at: <http://www.adir.unifi.it/rivista/2014/vettori/>

<sup>324</sup> Testo unico sull'immigrazione. Decreto legislativo, testo coordinato, 25/07/1998 n° 286, G.U. 18/08/1998, p. 20, available at: <https://www.altalex.com/documents/codici-altalex/2014/04/09/testo-unico-sull-immigrazione>

<sup>325</sup> Ibid (n 322), p. 43

access to social services, legal advice and psychological follow-up, are realised by certified NGOs and associations.

According to the Legislative Decree n. 286/1998 there are two distinct ways to obtain the permit: a judicial procedure (the judicial path) and a social procedure (the social path). Both of them have represented a novelty in the Italian system. The judicial path has allowed victims to remain in the country also after the trial (through the conversion of the humanitarian permit into a work or study one).<sup>326</sup> This specific procedure is activated by a public prosecutor. More specifically, the presumed victim files a complaint against the exploiter or trafficker. At this point, the prosecutor verifies the requirements for issuing the residence permit, especially whether the victim has been subjected to violence or danger. The residence permit is then issued by the *questore* (a police commissioner) upon the request of the prosecutor.<sup>327</sup> The social path is considered the greatest innovation. For the first time, the fundamental right of the victim to be heard, protected and hosted aside from his/her willingness to activate and /or participate in a legal proceeding is recognised.<sup>328</sup> This means that the protection of victims' rights becomes a priority, which cannot be subordinated to the fight against criminal organisations. Indeed, it is activated when accredited Article 18 associations and/or NGOs verify the existence of a situation of exploitation and/or violence. In these cases, the association files a request for the residence permit to the competent *questore*. The social path does not envisage victims' cooperation in criminal investigations. However, special emphasis is put on the cooperation between the public (law enforcement) and private actors (NGOs) working in the area of trafficking, considered an essential element for the effectiveness of anti-trafficking interventions.<sup>329</sup>

### *III.1.3 Law 228/2003*

The Italian repressive system against slavery has been profoundly modified in the last twenty years, following repeated adjustments of the internal regulations to international and European standards. The system renewal has occurred initially through Law n.

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<sup>326</sup> Ibid (n 106), p. 106

<sup>327</sup> Letizia Palumbo, *Protection of trafficked people in Italy: policies, limits and challenges*, Journal of Money Laundering Control, vol. 18 no. 1 (2015), p. 56, available at: <http://www.emeraldinsight.com/1368-5201.htm>

<sup>328</sup> Ibid (n 106), p. 107

<sup>329</sup> Ibid (n 327), p. 57



228/2003 ‘Measures against trafficking in persons’, which implemented the EU framework decision 2002/629/GAI. More recently, the Legislative Decree n. 24 of the 4<sup>th</sup> March 2014 ‘Prevention and Suppression of Trafficking in Human Beings and Protection of Victims’, representing the implementation of Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, added new amendments to the same provisions.<sup>330</sup> Although on the one hand the reforms were determined by the duty of the Italian legal system to comply with the international instruments on the subject, on the other it was necessary to move from the generic and indeterminate notions of slavery, servitude and trafficking that were typical of the previous legislation to a more precise characterization of the elements of the offences, so as to make their application easier.<sup>331</sup> Indeed, the original regulation posed significant interpretative problems, above all because the hypothesis of the condition analogous to slavery was not always easy to identify. The concept of slavery, in the historical sense of the term, has basically disappeared and today it would be more difficult to witness (at least in the Italian case) a traditional kind of enslavement.<sup>332</sup> The main core of the reformed law is represented by the modification of articles 600, 601 and 602 of the Penal Code, concerning respectively the crimes of ‘Placing or holding a person in conditions of slavery or servitude’, ‘trafficking in persons and ‘purchase and sale of slaves’.<sup>333</sup> For these offences, the law establishes harsh penalties ranging from eight to twenty years imprisonment, with an increase of one-third to half when the victims are minors, or when enslavement aims at sexual exploitation or removal of organs.<sup>334</sup>

- *Article 600 of the Penal Code*:<sup>335</sup> it constitutes the reference standard against the various forms of serious exploitation since it provides a definition of the

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<sup>330</sup> Federica Urban, *La legislazione penale italiana quale modello di attuazione della normativa sovranazionale e internazionale anti-smuggling e anti-trafficking*, in *Dir. pen. cont. Riv. trim.*, 1 (2018), p. 126, available at: <https://archiviodpc.dirittopenaleuomo.org/>

<sup>331</sup> Diana Genovese, *Capitolo III: Difficoltà applicative nell'ordinamento italiano. Il quadro giuridico-repressivo in materia di schiavitù, tratta di esseri umani e sfruttamento lavorativo: quali prospettive?*, in *La direttiva europea sulla tratta di esseri umani Problematiche applicative nell'ordinamento italiano*, Adir-L'Altro Diritto (2015), available at: <http://www.adir.unifi.it/rivista/2015/genovese/cap3.htm>

<sup>332</sup> LIREA, *Trafficking in human beings in European and international law: the contribution of the partners of the LIREA project* (2021), p. 5, available at: [https://en.uniss.it/sites/sten/files/d\\_2.2\\_article\\_for\\_the\\_armonisation\\_of\\_the\\_legal\\_system\\_.pdf](https://en.uniss.it/sites/sten/files/d_2.2_article_for_the_armonisation_of_the_legal_system_.pdf)

<sup>333</sup> Ibid (n 313)

<sup>334</sup> Ibid (n 311), p. 4

<sup>335</sup> Article No. 600

concepts of slavery and servitude, which also recur in Articles 601 and 602. The reformed version of Article 600 addresses ‘whoever exerts on any other person powers and rights corresponding to ownership’. The second form of conduct referred to by Article 600 concerns ‘whoever places or holds any other person in conditions of continuous enslavement, sexually exploiting such person, imposing coerced labour or forcing the said person into begging, or exploiting him/her in any other way’.<sup>336</sup> In addition to that, the Legislative Decree n. 24 of 2014 has introduced coercion to carry out illegal activities and the removal of organs as new possible forms of exploitation.<sup>337</sup> Unlike in the UN Protocol, the exploitation of begging is explicitly mentioned in Italian legislation. According to the prevailing jurisprudence, an absolute and continuous annihilation of the personality of the victims does not seem to be required to integrate Article 600. Enslavement must allow an exploitative activity and thus spaces and moments of ‘pseudo-freedom’ are necessary for the victim to carry out a productive performance. It follows that enslavement could occur even if the subjugation is temporarily loosened.<sup>338</sup> The regulation also specifies the methods of enslavement of the victim as occurring ‘through violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question’.<sup>339</sup> To these methods, the 2014 reform has added the means of ‘taking advantage of a situation of vulnerability’.<sup>340</sup>

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Placing or holding a person in conditions of slavery or servitude.

Whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing the said person into begging, or exploiting him/her in any other way, shall be punished with imprisonment from eight to twenty years. Placement or maintenance in a position of slavery occur when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question. CODICE PENALE, *Testo coordinato ed aggiornato del Regio Decreto 19 ottobre 1930, n. 1398*, p. 229

<sup>336</sup> Ibid (n 330)

<sup>337</sup> Ibid (n 313)

<sup>338</sup> Ibid (n 323)

<sup>339</sup> Ibid (n 330), p. 127

<sup>340</sup> Ibid (n 313)

- *Article 601 of the Penal Code:*<sup>341</sup> It represents the main anti-trafficking provision in the Italian legal system since it specifically addresses human trafficking. According to the doctrine, the crime of THB includes two distinct types of offence. The first type concerns trafficking in persons who are already enslaved and exploited while the second one refers to human trafficking aiming at the enslavement of free individuals. It follows that the crime referred to by Article 601 will never concur with that of Article 600 because the status of slavery/ servitude is always present. In the first type of offence (trafficking in slaves), it constitutes a prerequisite in the structure of the crime; in the second type of offence (trafficking for enslavement), the condition of slavery represents the ultimate purpose.<sup>342</sup> Before 2014, Law 228/2003 exclusively incriminated trafficking without really specifying the meaning of the term. Only thanks to Legislative Decree n. 24, a description of the conduct that is punishable as ‘THB’ has been introduced. The crime addressed by the current Article 601 consists in ‘recruiting, introducing into the State, moving out of the State, yielding authority, hosting people who are in the conditions of slavery defined by Article 600 of the Penal Code, or carrying out the same conduct on one or more people, through deception, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, physical, mental inferiority or necessity, or by promising or giving money or other benefits to the person who has authority over the victim/s, in order to induce or force them to the exploitation of labour, sexual services or begging or in any case to carry out illegal activities that involve their exploitation or to undergo the removal of

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<sup>341</sup> Article No. 601

Trafficking in persons.

1. Whoever recruits, introduces into the territory of the State or transfers outside of it, carries, transfers authority over the person, or hosts one or more persons who find themselves in the conditions referred to in Article 600 or carries out the same conduct on one or more persons through deception, violence, threat, abuse of authority or advantage of a situation of vulnerability, of physical or psychological inferiority, or of necessity, or by promising or giving money or other advantages to the person who has authority over it, in order to induce them or force them to perform work, sex or begging or otherwise illegal activities that involve exploitation or organ harvesting, shall be punished with imprisonment from eight to twenty years.

2. The same punishment shall be imposed on any person who, even outside the modalities set out in the first paragraph carries out the conduct referred to therein against a person under the age of 18. Ibid (n 335), p. 234

<sup>342</sup> Ibid (n 323)

organs’.<sup>343</sup> The introduction of a precise definition of THB has clarified some interpretative controversies which were determined by the initial semantic breadth of the term. In addition to that, the clearer articulation of THB has made the Italian anti-trafficking provision more compliant with European and international standards.<sup>344</sup>

- *Article 602 of the Penal Code*<sup>345</sup>: This provision results as residual since it regulates the hypothesis already covered by Article 601 on human trafficking. The objective element of the offence regards the purchase and sale of a person in a condition of slavery or servitude.<sup>346</sup>

Law 228/2003 includes also some articles concerning the prevention of human trafficking and the assistance of its victims.<sup>347</sup> Article 12 establishes the compulsory confiscation of profits resulting from trafficking and provides the Anti-Trafficking Measures Fund to the Chairmanship of the Council of Ministers. The fund is established for the financing of assistance and social integration programs in favour of the victims, as well as other social protection objectives provided by Article 18 of the Consolidated Immigration Act. In particular, Article 13 of Law 228/2003 designates a special programme of temporary assistance which lasts three months and can be extended for another three months. It is thought to provide first immediate assistance and support to Italian, communitarian and foreign victims of slavery, servitude and human trafficking. It ensures adequate accommodation, social assistance and health care services. Article 13 programme is what is closest to the concept of ‘reflection period’. This latter, besides being used by most countries to favour the cooperation of the presumed victim with police, is often used as a pragmatic means for NGOs or other authorities to buy some time to assess the situation of a person who may or may not be a victim of THB.<sup>348</sup> Once Article 13 programme is terminated, EU and non-EU citizens can obtain

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<sup>343</sup> Ibid (n 335) p. 234

<sup>344</sup> Ibid (n 330), p. 128

<sup>345</sup> Article No. 602

Purchase and sale of slaves.

1. Whoever, outside the cases indicated in Article 601, purchases or sells a person who is in one of the conditions referred to in Article 600 shall be punished by imprisonment of from eight to twenty years. Ibid (n 335), p. 235

<sup>346</sup> Ibid (n 313)

<sup>347</sup> Ibid (n 313)

<sup>348</sup> Ibid (n 322), p. 43

protection and support according to Article 18 of the Legislative Decree n. 286/98.<sup>349</sup> The strengthening of prevention of THB is addressed by Article 14. Indeed, it provides for special cooperation policies towards victims' countries of origin. The Ministry of Foreign Affairs has the responsibility to organise international meetings and information campaigns also within the aforementioned states.<sup>350</sup>

#### *III.1.4 Law 108/2010*

This law represents further evidence of the internationally-derived nature of the Italian anti-trafficking legislation. Indeed, with the entry into force of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 (Warsaw Convention), the national legislative framework has undergone further changes.<sup>351</sup> Particularly, Law n. 108/2010 has led to further amendments to the Penal Code. It has repealed the single aggravating circumstances provided for in Articles 600, 601 and 602, introducing a new article (Article 602-*ter*) in the Penal Code. It is entitled 'Aggravating Circumstances'.<sup>352</sup> The provision confirms the increase from one-third to half in the penalty in the cases already provided for by the previous rules (offence perpetrated against a person under 18 years of age and acts directed towards the exploitation of prostitution or in order to subject the injured person to organ harvesting), adding a further aggravating circumstance for the case in which the act results in serious danger to the life or physical or psychological integrity of the offended person. Law 108/2010 also followed up on Article 20 of the Warsaw Convention, which commits the parties to criminalise the following acts as committed intentionally to enable trafficking in human beings: fabricating a false travel or identity document; procuring or providing such a document; possessing, removing, altering, damaging or destroying a travel or identity document of another person.<sup>353</sup> The law, however, does not contain new, specific provisions that could contribute to strengthening the system of protection for the victims in full compliance with the Council of Europe Trafficking Convention. It is limited to giving 'full and entire execution' to the Convention itself, a wording that appears as vague as problematic. Indeed, the law did not transpose the clear obligation

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<sup>349</sup> Ibid (n 321), p. 56

<sup>350</sup> Ibid (n 313)

<sup>351</sup> Ibid (n 321), p. 109

<sup>352</sup> Ibid (n 313)

<sup>353</sup> Ibid (n 313)

of identification flowing from Article 10<sup>354</sup> of the Convention, nor did it transpose the obligation to provide trafficked persons with a reflection and recovery period and to respect the non-punishment provision.<sup>355</sup>

### *III.1.5 A focus on Legislative Decree n. 24/2014*

The gaps in Directive 2002/629/GAI, as well as the persistence of exploitation, led the European institutions to newly intervene in order to achieve more rigorous prevention and repression of trafficking in human beings while ensuring more effective protection of victims' rights. The result of the efforts has been Directive 2011/36 / EU.<sup>356</sup> The directive represents a critical step in addressing human trafficking with a comprehensive approach. Indeed, it acknowledges that THB is both a crime and a human rights violation.<sup>357</sup> On the 28<sup>th</sup> March 2014, Legislative Decree No 24 of 4 March 2014 established the implementation in the national system of the new directive. In addition to the previously mentioned refinements to Articles 600 and 601 of the Penal Code (the extension of the definition of the crime of human trafficking, the addition of further possible typologies of exploitation and the introduction of the position of vulnerability),

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<sup>354</sup> 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 a victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as a 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. Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, CETS 197 (2005)

<sup>355</sup> Ibid (n 321), p. 110

<sup>356</sup> Università di Roma LUMSA, *Commento alle modifiche apportate al codice penale dal d.lgs. 4 marzo 2014 n. 24 di «attuazione della direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime»* (2014), p. 9, available at: [https://www.lumsa.it/sites/default/files/UTENTI/u%5Btoken\\_custom\\_uid%5D/D.%20lgs.%204%20marzo%202014%2C%20n.%2024.docx](https://www.lumsa.it/sites/default/files/UTENTI/u%5Btoken_custom_uid%5D/D.%20lgs.%204%20marzo%202014%2C%20n.%2024.docx)

<sup>357</sup> Konrad-Adenauer Stiftung, East Asian Institute, European Policy Centre and European Union Centre in Singapore, *Trafficking in human beings: learning from Asian and European experiences*, Singapore (2014), p. 131, available at: [https://www.academia.edu/12074410/A\\_Non\\_Traditional\\_Security\\_Threat\\_Cyberspace\\_and\\_Human\\_Trafficking](https://www.academia.edu/12074410/A_Non_Traditional_Security_Threat_Cyberspace_and_Human_Trafficking)

one of the main innovations introduced by the Decree is the recognition of the victims' right to compensation. This compensation, which amounts to 1,500 Euros for each victim, shall be paid in accordance with the terms established by the Decree under the Annual Fund for Anti-Trafficking Measures.<sup>358</sup> The Decree clarifies that the right to compensation is recognised also in cases where the offender is unknown. Although today the problem of the absence of a compensation system has been solved, some doubts remain regarding its actual functioning and efficiency.<sup>359</sup> Besides the reform intervened in the rights of unaccompanied minors who are victims of trafficking by providing that the minor must be informed of his/ her rights and his/ her possible access to international protection. Moreover, the new legislation laid down that the training pathways provided by the competent administrations shall include, for the concerned public officials, specific training modules on issues concerning trafficking in persons. Furthermore, the Single Programme of Emersion, Assistance and Integration in favour of foreigners was established. The 2016 Decree by the President of the Cabinet gave shape to the programme by uniting the programme of assistance and social integration according to Article 18, of the Consolidated Immigration Law and the temporary assistance program for victims of trafficking as per Article 13 of Law 228/2003. Through the realization of projects at the territorial level, the current system aims to guarantee not only reception and protection during the preliminary phase of verification of the victim's conditions but also the necessary instruments to achieve autonomy.<sup>360</sup> Finally, the Decree introduced the obligation to adopt, within three months from the date of its entry into force, the first National Action Plan against Trafficking in and Serious Exploitation of Human Beings, to identify multiannual intervention strategies for the prevention and fight against these phenomena, as well as measures to increase public awareness, social prevention, emergence and social integration of victims.<sup>361</sup>

### *III.1.6 National Action Plan against Trafficking in Human Beings*

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<sup>358</sup> Ibid (n 311), p. 8

<sup>359</sup> Ibid (n 106), p. 126

<sup>360</sup> Ministero del Lavoro e delle Politiche Sociali, Vittime di tratta o grave sfruttamento, quando si ha diritto al permesso di soggiorno? (2022), available at: <https://integrazionemigranti.gov.it/>

<sup>361</sup> Ibid (n 311), p. 8

In February 2016, Italy adopted the National Action Plan against Trafficking and Serious Exploitation of Human Beings 2016-2018 to implement the EU Directive 2011/36. The Plan was thought to define multi-year strategies promoting the prevention and repression of the phenomenon, as well as the protection of victims.<sup>362</sup> It is structured according to the five priorities identified by the EU Strategy: 1) Identify, protect and assist victims of THB; 2) Intensify prevention of THB; 3) Strengthen prosecution against traffickers; 4) Improve the coordination between the main actors working on the phenomenon and enhance coherent policies; 5) Grow awareness on emerging problematics concerning all forms of THB.<sup>363</sup> Some concrete, relevant measures to comply with these priorities were designed. It is the case of the multidisciplinary training of the subjects that may meet victims of trafficking (law enforcement agencies, border police, social operators, magistrates, legal operators etc.);<sup>364</sup> the creation of guidelines regarding the possible indicators of the different forms of human trafficking, in order to facilitate the correct identification of victims; the establishment of the National Mechanism of referral, which includes a detailed set of standard operative procedures aiming at adequate assistance of victims in the phases of identification, first assistance, long-term assistance and social inclusion, repatriation and legal proceedings.<sup>365</sup> Finally, great attention has been paid to unaccompanied minors and child victims of THB, by implementing specific measures prioritising the best interest of the child.<sup>366</sup>

### *III.1.7 Connections with the international protection system*

Victims of THB and asylum seekers are not always two distinct and separate categories. Over the past few years, the focus at the EU level has increasingly been on strengthening the link between the international protection system and that dedicated to

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<sup>362</sup> Piano Nazionale d'Azione contro la Tratta e il Grave Sfruttamento 2016-2018 (2016), p. 5, available at: <https://www.pariopportunita.gov.it/materiale/piano-dazione-contro-la-tratta-e-il-grave-sfruttamento/>

<sup>363</sup> Ibid (n 362), p. 8

<sup>364</sup> Ibid (n 362), p. 18

<sup>365</sup> Dipartimento per le Pari Opportunità, Meccanismo Nazionale di Referral per le Persone Trafficate in Italia (2016), p. 5, available at: <https://www.pariopportunita.gov.it/materiale/piano-dazione-contro-la-tratta-e-il-grave-sfruttamento/>

<sup>366</sup> Ibid (n 362)



trafficked victims to enhance the convergence or cooperation between the two.<sup>367</sup> Specifically, Directive 2011/36/EU has highlighted for the first time the necessity, at the national level, to provide for provisions aiming to connect the instruments for the protection of THB victims with those directed to refugees.<sup>368</sup> In Italy, Article 17 of Legislative Decree 142/2005 ('Reception Decree') considers trafficked people as a category of vulnerable persons and therefore among those possibly entitled to access asylum.<sup>369</sup> This means that victims can benefit from specific THB programmes (i.e. Article 18 permit) without precluding them from the asylum. In order to adapt to EU standards, Legislative Decree 24/2014 introduced some instructions.<sup>370</sup> For example, the decree stipulates that those identified as victims of trafficking shall receive adequate information in a language that they understand about their rights regarding asylum.<sup>371</sup> Moreover, the legislative reform adopted a specific provision aiming to improve coordination between the administrative authorities in the field of international protection and those dealing with the assistance of victims of THB.<sup>372</sup> Article 10 (3) of the decree amended Article 32 of the Procedure Decree (Legislative Decree 25/2008) and established that territorial commissions should inform the *questura* if, during the assessment of the asylum application, there are reasons to believe that the applicant has been a victim of trafficking or exploitation (Article 32, 3-bis). Finally, the cooperation between the two systems is enhanced by the territorial commissions' use of the Guidelines for the Identification of Victims of Trafficking and Referral.<sup>373</sup>

### III.2 Italian legal framework on begging

Since the unification of Italy, the country's legislation has regulated the practice of begging, sometimes in an aggressive way while in other phases through more discreet and tolerant instruments. What the persistent and continuous attention to the phenomenon indicates is that begging has never represented a 'neutrally-perceived' kind

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<sup>367</sup> Sabrina Marchetti and Letizia Palumbo, *Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices*, VULNER Research Report1 (2021), p. 47, available at: <https://www.vulner.eu/>

<sup>368</sup> Ibid (n 106), p. 147

<sup>369</sup> Ibid (n 367), p. 38

<sup>370</sup> Ibid (n 106), p. 148

<sup>371</sup> Ibid (n 367), p. 47

<sup>372</sup> Ibid (n 106), p. 148

<sup>373</sup> Ibid (n 367), p. 48

of activity. In order to have a clear idea of Italy's current provisions on begging, it is important to know their origins and the evolution from which they derive.

### *III.2.1 A past made of repression*

Far from being a recently emerged phenomenon, begging represents an ever-present practice within Western societies, and Italy is no exception. In the country, the impressive growth in the phenomenon and the presence of large groups of beggars was perceived as a potential factor of social disorder, generating the ancient and enduring juxtaposition between begging and deviance. Consequently, beggars started being included among the recipients of the preventive and corrective measures of the punitive police law.<sup>374</sup> The first relevant legal text to be taken into consideration is the Sardinian Penal Code of 1859, a pre-unification code which was extended to the whole Kingdom of Italy in 1865.<sup>375</sup> This Code regulated the practice of begging within the section denominated as 'idlers, vagrants, beggars and other suspicious people'. More precisely, in the autonomous subsection on beggars, Article 442 punished those who begged publicly with imprisonment for up to one month. The penalty became harsher in cases of habitual or non-disabled beggars.<sup>376</sup> Other aggravating circumstances concerned the simulation of injuries or infirmity and situations where panhandling was performed in a group.<sup>377</sup> The law of Public Security contributed to the regulation of the practice. Indeed, it envisaged the possibility to release authorisation to beg to those persons unable to work (due to disabilities), with no means of livelihood and living in places lacking care facilities.<sup>378</sup>

In 1889, the Italian Government enacted a new Penal Code, the so-called *Codice Zanardelli*.<sup>379</sup> Begging continued to be considered an offence but, in this case, it was classified in the offences relating to public order. Moreover, the practice was punished by a shorter imprisonment. The distinction between disabled and non-disabled beggars was still present in the Zanardelli Code, which, besides appearing more tolerant towards

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<sup>374</sup> Ibid (n 300), pp. 2-3

<sup>375</sup> Eleonora Innocenti, *Il Diritto e i Mendicanti: Le Qualificazioni Giuridiche dell'Accattonaggio, Problemi Vecchi e Nuovi tra Civil Law e Common Law*, Dottorato Di Ricerca In Scienze Giuridiche Indirizzo Diritto Comparato, Università Degli Studi Di Firenze (2013), p. 130

<sup>376</sup> Ibid (n 375), p. 131

<sup>377</sup> Ibid (n 375), p. 132

<sup>378</sup> Ibid (n 375), p. 134

<sup>379</sup> Ibid (n 375), p. 134

people unable to work, abolished the ‘begging license’ that was provided for by the previous code. Public security authorities were now required to send invalid beggars to shelter facilities.<sup>380</sup>

The fascist era determined the writing of a new Penal Code. This latter entered into force in 1930 under the name of *Codice Rocco*. Compared to the previous ones, it was characterised by an even more repressive kind of attitude towards beggars.<sup>381</sup> As part of the offences concerning public order and public tranquillity, Article 670 of *Codice Rocco* provided in its first paragraph for the arrest of up to three months for: 'anyone who begs in a public place or a place open to the public'. In the second paragraph, the penalty of imprisonment was from one to six months in case the act was 'committed in a repugnant or vexatious manner or by simulating deformity or illness or using other fraudulent means to arouse the pity of others'. In addition to that, the regulations contained in Article 154 (under the title of ‘People dangerous to society’) of the Consolidated Law on Public Security was approved by royal decree only a year after the Code came into force and reiterated the unlawfulness of the begging conduct. In the first paragraph, it stated that: 'begging in a public place or a place open to the public is prohibited'.<sup>382</sup> In addition to longer detention, the fascist Code abandoned the traditional distinction on the punishability of disabled and non-disabled subjects.<sup>383</sup> *Codice Rocco* remained also after the fall of the dictatorship. Indeed, the entry into force of the Constitutional Charter contributed - at an early stage - to reinforce the need to protect the legal assets of public order and tranquillity, specifically in the form of public decorum and absence of causes of harassment. This occurred by leveraging the centrality of work as a founding element of order and, at the same time, as a duty that every citizen is required to fulfil to contribute to the material or spiritual progress of society. They were also times when begging was automatically associated with forms of delinquency, representing a danger to public safety.<sup>384</sup>

### *III.2.2 The process of decriminalization of adult begging*

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<sup>380</sup> Ibid (n 375), p. 137

<sup>381</sup> Ibid (n 375), p. 139

<sup>382</sup> Francesca Curi, *Il reato di accattonaggio: “A volte ritornano”*, in *Diritto Penale Contemporaneo* (2019), p. 3, available at: <https://archiviodpc.dirittopenaleuomo.org/d/6437-il-reato-di-accattonaggio-a-volte-ritornano>

<sup>383</sup> Ibid (n 300), p. 5

<sup>384</sup> Ibid (n 382), p. 4

Over time, it became increasingly evident that the absolute intransigence towards the phenomenon of begging was not based on an objectively unlawful material fact but on a way of life that was perceived as dissonant and dangerous. Indeed, the entire regulatory system dating back to the 30s clashed with the contemporary sensitivity and also with constitutional principles.<sup>385</sup> It was the case of the principle of solidarity that is expressly mentioned in Article 2 of the Italian Constitution. In the first place, this value translated into the freedom of private assistance under Article 38 of the Constitution. Article 670 of the Criminal Code appeared constitutionally illegitimate because this provision, by penalising the request for private assistance through begging, indirectly restricted the above-mentioned freedom.<sup>386</sup> Through this reasoning, in 1959, the constitutionality of the 'begging article' was questioned for the first time in the Constitutional Court. However, the Court's sentence declared unfounded the argument, by noting the absolute heterogeneity between the legal asset safeguarded by the norm (public tranquillity and public order), and the free assistance of the needy.<sup>387</sup>

In the '70s, the legitimacy of Article 670 was newly questioned. This time, the offence of begging was criticised in relation to Article 4, paragraph 2 of the Constitution, namely the duty to work.<sup>388</sup> The unconstitutionality of the provision was identified in the infringement of the principle of equality and of the duty to work in accordance with one's possibilities and choice. By prohibiting a priori and indiscriminately the practice of begging, Article 670 imposed a duty to work that could go beyond personal choice and possibilities. For example, the norm penalised indigent beggars that were unable to work because of disabilities. An additional argumentation considered Article 670 in breach of the freedom of the individual to choose a particular lifestyle and reject the work obligation.<sup>389</sup> Once again, a 1975 sentence by the Constitutional Court dismissed the attacks on the provision. Precisely, in response to the above-mentioned reasoning, the existence of any 'freedom to beg' or violation of the principle of equality was

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<sup>385</sup> Ibid (n 300), p. 9

<sup>386</sup> Ibid (n 300), p. 11

<sup>387</sup> Ibid (n 375), p. 142

<sup>388</sup> Ibid (n 300), p. 13

<sup>389</sup> Ibid (n 375), p. 143

denied. Consequently, no fundamental right was violated through the repression of the practice.<sup>390</sup>

The slow process of elimination of the crime of begging concluded in two distinct moments. On the 28<sup>th</sup> of December 1995, the Constitutional Court reversed its previous judgements to affirm the unconstitutionality of the begging provision. Nevertheless, the Court made a distinction between the two conducts constituting Article 670. In this occasion, the ruling considered illegitimate only the first paragraph, which, according to the judge, punished ‘non-invasive begging that results in a simple request for help’. On the contrary, the issue of legitimacy regarding the second paragraph, which was defined as ‘invasive begging polluting the important legal asset of the spontaneous fulfilment of the duty of solidarity’, was not supported.<sup>391</sup> Four years later, Article 18 of Law 205/1999, delegating to the Government the decriminalisation of minor offences and amending to the penal system, provided for the repeal of the entire Article 670 of the Penal Code.<sup>392</sup>

### *III.2.3 Current provisions on begging*

This paragraph will briefly and objectively present the contemporary regulation regarding the practice of begging. In Chapter V, the same provisions will be discussed more in-depth also with reference to penal populism. As demonstrated by some legislative novelties dating back to the years immediately following 1999 depenalisation of begging, the practice would have not remained legally uncovered for long. In 2000, the Consolidated Law on Local Authorities (Legislative Decree 267/2000) was approved. Article 50 provided mayors, as local authorities, with the power to issue contingent and urgent ordinances in the event of health or public hygiene emergencies of an exclusively local nature. In addition, Article 54 assigned them the power to adopt measures, also contingent and urgent, with justified reasoning and in compliance with

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<sup>390</sup> Ibid (n 375), p. 144

<sup>391</sup> Nicola Colaianni, Sentenza 28 dicembre 1995, n. 519 (Gazzetta ufficiale, 1 a serie speciale, 3 gennaio 1996, n. 1); Pres. Ferri, Est. Guizzi; Rufat e altri. Ord. Pret. Firenze 11 novembre 1994 (G.U., 1 a s.s., n. 5 del 1995); Pret. Modena-Carpi 21 ottobre 1994 (G.U., 1 a s.s., n. 7 del 1995); Pret. Firenze 3 febbraio 1995 (G.U., 1 a s.s., n. 23 del 1995) Il Foro Italiano, 119(4) (1996), p. 1148

<sup>392</sup> Senato della Repubblica, Disegno Di Legge n. 3620: Modifiche al codice penale in materia di sfruttamento dell'accattonaggio (2005), p. 2, available at: <https://www.parlamento.it/service/PDF/PDFServer/DF/158986.pdf>

the general principles of the legal system, in order to prevent and eliminate serious dangers that threaten the security of citizens.

A few years later, Law No. 125/2008 (converting Decree-Law No. 92 of 2008) replaced 'the security of citizens' with 'the public security' and included 'urban security' among the prerequisites for issuing this particular type of act.<sup>393</sup> The definition of this latter notion, which was delegated to a subsequent ministerial decree, expressly includes the activity of begging among the phenomena to be prevented and countered.<sup>394</sup> However, a 2011 decision by the Constitutional Court declared a partial unconstitutionality of the fourth paragraph of Article 54 (the word 'also' was removed).<sup>395</sup>

In 2017, the so-called Minniti Decree on urgent provisions for urban security was approved.<sup>396</sup> The decree amends the above-mentioned Article 50 by considerably extending the mayor's power to issue contingent and urgent ordinances. Before 2017, such measures could only be adopted for 'health or public hygiene emergencies of an exclusively local nature', whereas the decree added that they may also be issued 'in relation to the urgent need for action to overcome situations of serious neglect or degradation of the territory or impairment of the decorum and urban liveability, with particular reference to the need to protect the tranquillity and rest of the residents'. Begging is considered part of those conducts that can disturb public spaces.<sup>397</sup>

To conclude, the most recent entry concerning begging was established by the so-called Salvini Decree on security and immigration (Legislative Decree No. 113/2018 then converted into Law 132/2018). Article 669-bis of the 'safety package' reintroduced in the Penal Code the well-known criminal conduct of invasive begging. The article reads 'unless the act constitutes a more serious offence, anyone who exercises begging in a vexatious manner or by simulating deformity or illness or through the use of fraudulent means to arouse the pity of others shall be punished by imprisonment from three to six

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<sup>393</sup> Ibid (n 382), p. 6

<sup>394</sup> Ibid (n 300), p. 23

<sup>395</sup> Ibid (n 375), p. 55

<sup>396</sup> Corinna Forte, *Il Decreto Minniti: sicurezza integrata e "D.A.SPO urbano"*, in *Diritto Penale Contemporaneo* (2017), p. 175, available at: <https://archiviodypc.dirittopenaleuomo.org/d/5424-il-decreto-minniti-sicurezza-integrata-e-daspo-urbano>

<sup>397</sup> Ibid (n 396), p. 176

months and a fine from Euro 3,000 to Euro 6.000. The seizure of the things that were used or intended to commit the offence is always ordered'.<sup>398</sup>

#### *III.2.4 Minors and forced begging*

Italian legislation does not only contain regulations relating to the simple practice of begging but it also includes a specific provision on the exploitation of child begging. This offence has a long history in the country's criminal law. Indeed, it was already provided for in the Sardinian-Italian Code and in the Zanardelli one. More precisely, Article 445 of the first code punished parents or guardians who allowed others to use their children or pupils to beg.<sup>399</sup> Later, Article 456 of the subsequent code punished those who allowed a minor of fourteen years of age (who was subject to their parental authority or entrusted to their custody or supervision) to beg, or that a third party took advantage of the minor to beg. With the arrival of the Rocco Code, the offence remained and underwent an increase in the penalty.<sup>400</sup> It was now provided for in Article 671 of the Penal Code, which read 'Whoever makes use, for the purpose of begging, of a person under the age of fourteen years, or in any case, not chargeable, who is under his authority or entrusted to his custody or supervision, or allows that person to beg, or allows others to make use of him for the purpose of begging, shall be punished by imprisonment from three months to one year. If the offence is committed by the parent or guardian, the conviction shall entail suspension from exercising parental authority or from the office of guardian'.<sup>401</sup> Although it was part of the section relating to the crimes affecting public order (as Article 670 was), the forced begging provision was not seen as conduct detrimental to urban tranquillity. Actually, it was placed primarily to protect a superior legal asset, namely the defence of the child and, in particular, the prevention of possible exploitation.<sup>402</sup>

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<sup>398</sup> Mariangela Telesca, *La "riesumazione" dell'accattonaggio (art. 669- bis c.p. dopo la l.n. 132/2018). Ovvero il continuum tra legislazione fascista e "pacchetti sicurezza"* in *Costituzionalismo.it* (2019), p. 44, available at: <https://www.costituzionalismo.it/la-riesumazione-dellaccattonaggio-art-669-bis-c-p-dopo-la-l-n-132-2018-ovvero-il-continuum-tra-legislazione-fascista-e-pacchetti-sicurezza/>

<sup>399</sup> *Ibid* (n 375), p. 151

<sup>400</sup> *Ibid* (n 375), p. 152

<sup>401</sup> Melissa Miedico, *Commento all'art. 600-octies c.p. (Impiego di minori nell'accattonaggio) in Codice penale commentato*, eds. Dolcini E.; Gatta G. (2015), p. 272, available at: <http://hdl.handle.net/11565/3985485>

<sup>402</sup> *Ibid* (n 300), p. 26

Over time, Article 671 started appearing inadequate for the new protection requirements.<sup>403</sup> In 2009, Law No. 94 on security measures repealed this provision and at the same time introduced the offence referred to in Article 600-*octies*<sup>404</sup> of the Penal Code. This latter proposes almost the same contents, but provides for a harsher penalty treatment (arrest from three months to one year is replaced by imprisonment of up to three years).<sup>405</sup> A further novelty deriving from the reform is the fact that the offence was positioned together with crimes against individual personality, thus marking the difference with the repealed contravention, which was instead formally placed to protect public morality and public decency. Moreover, the 2009 Law generated a broadening of the possible active subjects in the offence. The new provision constitutes a *reato comune* (common offence), at least with regard to the first hypothesis, which punishes a person who uses a minor for begging. Indeed, it is no longer provided that the exploited child is subject to the authority or entrusted to the custody or supervision of the offender as was the case in Article 671. This means that the reform has increased the possible active subjects of the offence. Today, the conduct of the offence can occur in three ways: that of one who avails himself/ herself of the non-chargeable person to beg, that of one who allows the non-chargeable person to beg, and that of one who allows others to avail themselves of the non-chargeable person to beg.<sup>406</sup> To conclude, Salvini Decree (Law No. 132/2018) intervened on Article 600-*octies* by modifying the title of the offence. It now reads ‘Use of minors in begging. The organisation of begging’. In addition, a second paragraph provides for imprisonment from one to three years for ‘Whoever organises the begging of others, takes advantage of it or otherwise facilitates it for profit’.<sup>407</sup>

### III.3 Italy’s adhesion to international standards on THB and forced begging

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<sup>403</sup> Ibid (n 300), p. 29

<sup>404</sup> Article 600-*octies*

Use of Minors in Begging

Unless the act constitutes a more serious offence, anyone who uses a person under the age of fourteen years or, in any case, not chargeable or allows that person, when subject to his/her authority or under his custody or supervision, to beg, or that others use the minor for begging, shall be punished by imprisonment of up to three years, Ibid (n 335), p. 233

<sup>405</sup> Ibid (n 401), p. 269

<sup>406</sup> Ibid (n 401), p. 270

<sup>407</sup> Ibid (n 382), p. 11



Italy can be considered in line with international and European standards aiming to fight THB and the exploitation of begging, at least from a theoretical and formal point of view. In 1978, the country ratified the International Covenant on Civil and Political Rights, which covers slave trade, compulsory labour, and servitude in Article 8, and the International Covenant on Economic, Social and Cultural Rights, whose Article 6 affirms the right to freely choose work.<sup>408</sup> Since 1985, it is part of the Convention on the Elimination of All Forms of Discrimination against Women, whose Article 6 explicitly condemns ‘all forms of traffic in women and exploitation of prostitution’.<sup>409</sup> Furthermore, Italy is a ratifier of the Convention on the Rights of the Child (since 1991) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (since 2002). The CRC is widely considered the main instrument that addresses child trafficking.<sup>410</sup> In 2006, the state ratified the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (‘Palermo Protocol’). If begging is assumed to be a form of forced labour, ILO Conventions Numbers 29 and 105 regarding forced and compulsory labour are instrumental. ILO Conventions Number 138 on the Minimum Age for Admission to Employment and Number 182 on the Worst Forms of Child Labour provide additional protection. Together with CRC, the latter instrument is the broadest international convention covering the exploitation of children. The worst forms of child labour do not explicitly include begging but refer to larger categories (i.e. trafficking of children, forced or compulsory labour, procuring or offering of a child for illicit activities, or work likely to harm the health, safety or morals of children) that could encompass it.<sup>411</sup> At the regional level, Italy endorsed the Council of Europe Convention on Action against Trafficking in Human Beings. The state transposed at the national level Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of THB or who were subject of an action to facilitate illegal immigration, and who co-operate with the competent

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<sup>408</sup> OHCHR, Ratification Status for Italy, available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en); *ibid* (n 2), p. 49

<sup>409</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (1979) United Nations, Treaty Series, vol. 1249, p. 6, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

<sup>410</sup> *Ibid* (n 2), p. 50

<sup>411</sup> *Ibid* (n 2), p. 51

authorities; Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims; Directive 2012/29/EU of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of the crime.<sup>412</sup>

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<sup>412</sup> Ibid (n 332), p. 7

## **CHAPTER IV**

### **National Jurisprudence on Forced Begging and Begging**

When analysing Italian case law concerning the phenomenon of begging, one of the first remarks regards the difficulty in retrieving material. This was both a result of the limited possibilities I had to access legal databases for consultation, with the consequence that the retrieved data might be partial, and the particular scarcity of recent cases. This latter aspect is indicative of the poor attention that is paid to the phenomenon. Despite all difficulties, it has been possible to identify some macro-areas having as subjects different categories of people, who, depending on the case, are judged as victims or sanctioned.

#### **IV.1 Cases of THB and exploitation of begging**

In 2021, investigations under Articles 600, 601 and 602 amounted to 214, 121 suspects were prosecuted and 204 traffickers were convicted by trial and appellate courts. The average sentence for convicted traffickers was approximately 9 years. Compared to 2019, a general decrease in the government and courts' commitment to countering human trafficking and exploitation has been registered. Indeed, the pandemic weakened the capacity of law enforcement to conduct trafficking investigations, and courts reported a delay in judicial proceedings because of the increased workload connected to pandemic-related infractions. A major element of difficulty in understanding the juridical emergence of cases of THB and exploitation for the purpose of begging results from the indeterminateness of the national data collection system. Italy does not have a consolidated database on the investigations, prosecutions, convictions and sentences of traffickers or their victims. Moreover, it does not disaggregate data between distinct typologies of exploitation for investigations, prosecutions and convictions for Articles 600, 601 or 602. Consequently, the extent of the phenomenon of forced begging at the juridical level remains vague and indeterminate.<sup>413</sup> Despite the above-mentioned obstacles to an actual and overall view of forced begging at the judicial level, what emerges from the observation of legal databases is that existing sentences and proceedings mainly concern individuals of a specific origin, the Eastern European one.

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<sup>413</sup> Ibid (n 132)

For example, by inserting the keyword *accattonaggio* ('begging') in the archive of Court of Cassation judgments, out of 31 results only 5 are relevant with respect to trafficking and exploitation of begging. All of them have as subject individuals from Eastern Europe. In the rest of the cases the word *accattonaggio* appears in sentences quoting Articles 600 and 601, but specifically dealing with other forms of exploitation (i.e. sexual exploitation), or in judgements criminalising the practice.<sup>414</sup>

#### *IV.1.1 Minors*

The category in respect of which Italian jurisprudence has been most active in addressing exploitative begging is that of Eastern European minors belonging especially to the Roma community. Such greater commitment derives also from the fact that the early manifestations of the phenomenon (in the 90s) concerned especially these subjects. Over time, different legislative instruments have been used, depending on the case, by the judiciary in order to stop the use of children in the practice. Before the introduction of Article 600-*octies*, judges could make use of the now-repealed Article 671. In addition to that, child begging has often been considered in relation to other offences, which provided for more severe punishment. More precisely, it has been referred to the offence of ill-treatment in the family towards children (Article 572 of the Penal Code), or even to the offence of enslavement (Article 600 of the Penal Code) when the minor exploitation was systematic and implemented through threat or abuse.<sup>415</sup> With respect to Article 572, judges started applying this legislative instrument when Article 671 (protecting the legal good of social decorum) began to appear inadequate to sanction conducts increasingly more perceived as detrimental to the psycho-physical integrity of the minor.<sup>416</sup> In particular, the application of this article occurred when minors were precluded from carrying out normal activities such as attending school or playing to go begging, and infants were kept on the street in the cold weather, all without proper care such as supervision and feeding. However, it has been clarified that a person who merely holds an infant while begging does not commit the offence in question. Even after the reform implemented by Article 600-*octies*, the Court

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<sup>414</sup> Corte Suprema di Cassazione, available at: <https://www.italgiure.giustizia.it/sncass/>

<sup>415</sup> Ibid (n 375), p. 156

<sup>416</sup> Marco Scoletta, Nuovo delitto di impiego di minori nell'accattonaggio; Sequestro di persona: nuove circostanza aggravanti e attenuanti (2009), p. 129, available at: <https://hdl.handle.net/2434/156280>

of Cassation emphasised that the mere presence of a minor does not constitute in itself the offence, but the child must be already capable of perceiving the negative stimuli deriving from the activity in which he/ she is involuntarily involved and that his/ her presence constitutes an incentive to the charitable offering of money.<sup>417</sup> Although the tendency to apply Article 572 was meritorious in its aims of protecting minors from odious cases of exploitation, it risked at the same time to excessively expanding the offence of maltreatment to cases in which no objective physical damages or psychological suffering (since the social and cultural context in which the child was used to live did not ascribe a negative sense to the practice) were caused to the minor.<sup>418</sup> While recognising the still subsidiary nature of Article 600-*octies* (in that it can only be committed where there is no basis for a more serious offence), the fact that it focuses on the protection of the individual rather than of urban decorum made it more appropriate and proportionate, thus stemming the surrogate offer provided by the too elastic typicality of Article 572.<sup>419</sup> In other cases, the ‘maltreatments’ article has been employed as a substitute for more serious offences. In 2008, a Supreme Court’s decision overturned a sentence of the Court of Appeal concerning a Roma woman begging with her children by changing the charge from ‘enslavement’ (Article 600) to the milder one of ‘maltreatment’. This judgement was achieved by partly relying on the ‘cultural argument’, which emphasised the ‘traditional’ character of the practice within the Roma community to lessen the criminalisation of such behaviour.<sup>420</sup> Although in this particular case the judges used this reasoning to prevent the mother from losing parental rights, the fact that even within the Supreme Court the cultural justification was supported was indicative of an overall tendency to legitimising a problematic phenomenon based on traditional customs.<sup>421</sup> Indeed, in the past, prejudices and cultural bias of begging as a ‘traditional Roma practice’ lowered the threshold of alertness to possible exploitation or trafficking of children and led to the incoherent application of

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<sup>417</sup> Giulia Rossitto, *Impiego dei minori nell'accattonaggio*, Associazione Fight for Children’s Rights Network (2018), available at: <https://www.f4crnetwork.com/diritto-giurisprudenza/impiego-dei-minori-nellaccattonaggio/>

<sup>418</sup> Ibid (n 416), p. 130

<sup>419</sup> Ibid (n 416), p. 131; Ibid (n 417)

<sup>420</sup> Ilenia Ruggiu, *Is Begging a Roma Cultural Practice? Answers from the Italian Legal System and Anthropology*, *Romani Studies*, 26(1) (2016), p.33, available at: <https://doi.org/10.3828/rs.2016.2>

<sup>421</sup> Ibid (n 420), p. 34

the law with sentences that were not always in the best interests of the child.<sup>422</sup> Over time, however, Italian jurisprudence refuted the validity of the cultural argument. In 2012, the Court of Cassation was called upon to judge the following case. A 10-year-old minor of Roma ethnicity was forced to beg by her mother's partner. He made use of serious threats and violence against the victim, as well as of his position of authority and her position of vulnerability, making her spend all day begging and then forcing her to hand earnings over to him. The defendant tried to limit his criminal responsibility by claiming that Roma traditions consider begging a legitimate way of making a living. Consequently, his behaviour should be judged only as ill-treatment of a family member (Article 572). In the decision, the Court expressly ruled out that cultural traditions regarding begging can be considered a mitigating factor and found the defendant guilty of the offence under Article 600. The Court stated that the offence of keeping in slavery is committed when someone keeps under a continuous state of subjection a person and the cultural tradition cannot be considered as excluding the psychological element of the crime. Moreover, when parents exploit their children for the purpose of begging, it is not possible to refer to Roma traditions, since a tradition can be a mitigating factor only when referred to by law, according to the principle of hierarchy of the sources of law.<sup>423</sup> Article 601 represents a further legislative instrument that appears (less frequently than the others) in case law on child begging. The offence of human trafficking was recognised, for example, in cases concerning Albanian children who were trafficked to Italy in the late 90s and early 2000s.<sup>424</sup> In recent times, cases of child trafficking for begging have become extremely rare if not absent. A 2013 newspaper article retrieved from the national anti-trafficking observatory website reports one of the last instances

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<sup>422</sup> Center for the Study of Democracy, *Child Trafficking Among Vulnerable Roma Communities* (2015), p. 8, available at: <https://csd.bg/publications/publication/policy-brief-no-54-child-trafficking-among-vulnerable-roma-communities/>; European Commission, Report for the Study on Typology and Policy Responses to Child Begging in the EU (2012), p. 200, available at: <https://documentation.lastradainternational.org/lisidocs/3067-child%20begging%20publication%20downlaoded%20June%202013.pdf>

<sup>423</sup> Corte di Cassazione Penale, sez. V, 28 settembre 2012, sentenza n. 37638, available at: [https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/ita/2012/cass\\_pen\\_sez\\_v\\_sent\\_n\\_37638.html?lng=en&tmpl=sherloc](https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/ita/2012/cass_pen_sez_v_sent_n_37638.html?lng=en&tmpl=sherloc)

<sup>424</sup> Corte di Assise di Milano, 21 gennaio 2008, sentenza n. 90008, available at: <https://www.foroplus.it/search.php>; Corte di Cassazione Penale, sez. V, 14 giugno 2018, sentenza n. 27434, available at: <https://www.foroplus.it/search.php>

where a minor was presumably involved in trafficking for begging. The news makes public that the preliminary investigation judge of the Tribunal of Naples ordered the arrest of four people. These latter were accused of the offence of trafficking and enslavement to the detriment of a Serbian little girl, who was sold by her family to the criminal group. She was forced to beg and kept in degrading conditions. It was not possible to find the judiciary development concerning the case.<sup>425</sup>

#### *IV.1.2 Disabled victims*

As reported in Chapter II, disabled people normally with Eastern-European origins represent a further category of beggars in Italian cities. Although national jurisprudence has reserved less attention to these individuals in comparison with minors, cases where such vulnerable persons have turned out to be victims of forced begging have emerged in the courts. Some most relevant examples are shown below. In 2013, the Court of Cassation was called to decide on a case concerning an individual that was provisionally charged by the Tribunal of Turin with the offences of enslavement and trafficking in persons. The man, in conspiracy with other fellowmen belonging to the same family, was thought to have trafficked and then exploited four physically handicapped Moldovans for begging. The tribunal came to this conclusion by considering different elements. Earnings deriving from the activity were fully handed over to the exploiters, victims were particularly vulnerable (physical conditions, extreme poverty, lack of any kind of support, irregular stay, homelessness, illiteracy) and their exploitation occurred by taking advantage of such situation of vulnerability and without considering whether victims' basic living needs were met (they were fed and housed in two vehicles). The defendant appealed, claiming misapplication of the criminal law in terms of recognition of the lack of freedom of self-determination on the part of the offended persons, who, instead, had declared the voluntary nature of the choice to engage in begging in order to benefit financially from their own disabilities by pooling the proceeds to meet everyone's needs. According to the accused, this was confirmed by the fact that the four beggars, who were Roma individuals that used to live on the street, had refused hospitalisation in a public facility. The Court of Cassation declared the appeal

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<sup>425</sup> Il Mattino, Napoli, bimba comprata e messa in strada, denuncia gli aguzzini: uno è minorenne (2013), available at: <https://www.osservatoriointerventitratta.it/napoli-bimba-comprata-e-messa-in-strada-denuncia-gli-aguzzini-uno-e-minorenne/>

unfounded. The exploiter's conduct was in line with what is described by Article 600 of the Penal Code since victims were kept in a state of subjection by taking advantage of their physical inferiority and situation of necessity. Furthermore, the aforementioned vulnerabilities inevitably excluded the victims' freedom of self-determination, as they had no real alternative but to accept the conditions imposed by their exploiters. The fact that the exploited subjects were Roma people who were accustomed to begging was not sufficient to presume that they freely and consciously consented to their subjection.<sup>426</sup> In 2018, another case involving people with disabilities was brought to the Court of Cassation. An Eastern-European individual was accused of the crimes of enslavement and human trafficking committed to the detriment of seven Bulgarian citizens suffering from severe physical and mental impairments, who were purchased in the country of origin and taken to Bari. Here, they were reduced to the condition of objects of property, subjected to corporal punishment and forced to beg. The seven Bulgarian citizens were initially recognised by the Court of First Instance as victims of THB. After that, a reversal of the judgement happened because the offended persons did not testify during the trial of the appeal (all of them had previously expressed the will to leave Italy to come back to Bulgaria). Nevertheless, the Court of Cassation cancelled the decision of 'overturning' and confirmed the sentence previously pronounced in the first instance. It did so on the grounds of findings concerning the incorrect application of the rules of assessment of the declarative sources, consisting of the minutes of victims' statements during the preliminary investigation, a complaint that was submitted by one of the offended persons, the testimonies of the members of the voluntary associations that had provided assistance and relief to the offended persons before and during the investigation. Article 601 was finally applied.<sup>427</sup> A 2019 sentence by the Court of Cassation newly dealt with the issue of THB affecting disabled beggars. A group of individuals of Romanian nationality belonging to the Roma community were charged with the offences of enslavement (Article 600), human trafficking (Article 601) and sale and purchase of slaves (Article 602) by the Court of Appeal of Milan. The criminal

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<sup>426</sup> Corte di Cassazione Penale, sez. V, 15 maggio 2013, sentenza n. 21023, available at: <https://www.foroplus.it/search.php>

<sup>427</sup> Corte di Cassazione Penale, sez. V, 2 ottobre 2018, sentenza n. 43596, available at: <https://www.foroplus.it/search.php>



organisation was active from 2009 to 2012 and exploited several subjects, including people with disabilities (i.e. a man with foot mutilation) in the activity of begging and windscreen cleaning. Every component of the group had a specific role, ranging from the transport of the victims from Romania to Italy to the activity of control in the place of exploitation. Psychological and physical violence together with threats to the families in the country of origin represented the main means of coercion. The defendants' appeal to the Court of Cassation complained about the misapplication of Articles 600 and 601. Nevertheless, the court confirmed the previous decision. The offence of enslavement was recognised since all the existing elements (continuous control, seizure of documents and profit, taking advantage of victims' extreme vulnerability etc.) revealed the impossibility for the victims to exercise free and autonomous choices. Similarly, evidence on the recruitment of the victims in Romania and their consequent transportation to Italy did not leave any doubt on the accusation of trafficking.<sup>428</sup> What emerges from the observation of these three cases is that human trafficking, rather than mere exploitation, is the main reality affecting this category of victims. Once identified, alleged traffickers are correctly prosecuted during juridical proceedings. Some problems may lie in the previous stage, that of emersion. Indeed, albeit some instances of trafficked disabled beggars reached the judiciary, they are not many when considering that the entire national territory and two decades of jurisprudence have been taken into account.

#### *IV.1.3 Nigerian victims*

As described in Chapter II, the most recent years have seen young Nigerian men as the main, and sometimes exclusive, category of beggars in Italian cities. Strong indicators of trafficking or at least exploitation have been widely detected by anti-trafficking NGOs. However, national jurisprudence bears almost no trace of these people with respect to Articles 600, 601 and 602 of the Penal Code. On the contrary, as will be shown later, Nigerian men often appear in cases that criminalise their conduct while begging. What has emerged from my research is that, at present, only two individuals from Nigeria have been recognised as victims of trafficking for the purpose of begging

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<sup>428</sup> Corte di Cassazione Penale, sez. V, 13 marzo 2019, sentenza n. 11202, available at: <https://www.foroplus.it/search.php>

in the entire national territory. Despite such a low number, both cases play great importance in proving the existence of the phenomenon affecting this category.

### *Case I*

The first case has been identified by the Assize Court of Catania in 2021. In a sentence of first instance, a Nigerian woman and a Nigerian man were judged guilty under Article 601 for having trafficked three Nigerian girls for the purpose of sexual exploitation and a Nigerian young man for begging.<sup>429</sup> This judgement was confirmed by the Court of Appeal of Catania. Concerning the male victim, the new decision reformed the aforementioned judgment only in the sense of the exclusion of the aggravating circumstances relating to Article 602-ter, which are applied when the victim is a minor or is trafficked for sexual exploitation or organ harvesting.<sup>430</sup> Turning to the description of the male victim's case, what is valuable to underline is that it emerged only in a later stage thanks to some wiretappings. Indeed, the investigation had started exclusively with regard to the three girls.<sup>431</sup> According to the courts' sentences, the telephone conversations provided an exhaustive evidentiary picture for the integration of all the constituent elements of the crime of trafficking against him.<sup>432</sup> First of all, the individual was trafficked by means of a threat enacted through the performance of the esoteric religious rite of *Ju-Ju*, which is thought (in the Nigerian culture) to be a determiner of death and other misfortunes in the event of non-fulfilment of the obligations undertaken with it.<sup>433</sup> In addition to that, traffickers recruited the individual by taking advantage of a situation of vulnerability and need deriving from the conditions of extreme poverty, the lack of knowledge of the Italian language and the low level of education. The female trafficker organised and financed the transfer of the young man from Nigeria to Italy. Once arrived, the victim was supposed to practice begging to pay back the debt, which far exceeded the actual cost of the journey.<sup>434</sup> The male trafficker was identified as the person entitled to control the victim's activity.

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<sup>429</sup> Corte di Assise di Catania, 19 luglio 2021, sentenza n.14938, pp. 2-3

<sup>430</sup> Corte di Assise di Appello di Catania, 6 giugno 2022, sentenza n.14938, p. 182

<sup>431</sup> Ibid (n 429), p. 10

<sup>432</sup> Ibid (n 429), p. 73

<sup>433</sup> Ibid (n 429), p. 3

<sup>434</sup> Ibid (n 429), p. 75

Indeed, he personally arranged for the young man to join him in the city of Trent to keep the victim under close observation and manage his earnings more easily.<sup>435</sup>

### *Case II*

The second case emerged from a decision by the Territorial Commission of Naples on the recognition of refugee status to a Nigerian young man in 2022. The Neapolitan cooperative Dedalus supported the individual in the reiteration of the asylum application on the assumption that the applicant was a victim of the offences of enslavement and trafficking in persons (specifically for the purpose of begging) provided for under Articles 600 and 601 of the Penal Code.<sup>436</sup> The first time the Nigerian man applied for asylum such important elements had not emerged and consequently the status was denied.<sup>437</sup> However, a reiterated application for international protection is admissible if it is based on different grounds than the first one.<sup>438</sup> During the new asylum hearing, the individual told that before leaving his country of origin, his family and he were in a difficult economic situation. For this reason, he decided to meet a man, who was able to advance the money needed to finance his expatriation. However, the lender, who later turned out to be a trafficker, demanded a pact sealed through a juju ritual, in which the young man promised to pay back the debt once he arrived in Europe.<sup>439</sup> The trafficker did not specify the type of job that the young man was supposed to do but reassured him by saying that in Europe it was easy to earn a lot and quickly.<sup>440</sup> After that, the young man left and reached Niger and later Libya, where he was subjected to violence and forced labour.<sup>441</sup> In 2016, he finally reached Italy. He was immediately transferred to a CAS in the Campania region.<sup>442</sup> Shortly after, the trafficker managed to contact him. He informed the victim that another Nigerian man, who was in Naples, would give him indications on the modalities through which he could repay the debt.<sup>443</sup> The young man was told to have two alternatives: drug dealing or begging outside supermarkets. He

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<sup>435</sup> Ibid (n 429), p. 76

<sup>436</sup> Dedalus Cooperativa Sociale, Memoria integrativa allegata alla nuova domanda di asilo (prot. N. 1598 del 09/11/2021) (2021), p. 2

<sup>437</sup> Ibid (n 436), p. 2

<sup>438</sup> Corte di Cassazione Civile, sez. VI, 15 marzo 2015, sentenza n. 4255

<sup>439</sup> Commissione Territoriale per il Riconoscimento della Protezione internazionale di Salerno: Sezione di Napoli, Decisione del 23 febbraio 2022, p. 2

<sup>440</sup> Ibid (n 436), p. 7

<sup>441</sup> Ibid (n 439)

<sup>442</sup> Ibid (n 436), p. 8

<sup>443</sup> Ibid (n 439)

chose to beg as the lesser of the evils. He was then accompanied to the place that was assigned to him to practice the activity. He was given instructions on the shifts he had to cover (every day except on Sunday) and on the recipients of his profit.<sup>444</sup> Part of the earnings was to be sent to the Nigerian trafficker to settle the debt while the other part was to go to the exploiter he met in Italy for the ‘rent’ of the place where he used to beg (the payment of the ‘joint’).<sup>445</sup> This latter played the role of controller since he monitored the young man during the day, also threatening him in case he did not collect enough money. For this reason, on some occasions, he used the pocket money he received from the reception centre or the tips he obtained from some odd jobs to reach the required sum of money.<sup>446</sup> In 2020, during the period of lockdown due to Covid-19, the young man definitively interrupted the activity since there was no longer any profit. Following the interruption, the victim’s mother, who was in Nigeria, started receiving continuous threats from the son’s trafficker. The asylum application stemmed from the fact that in the event of repatriation, the young man feared that the trafficker might have killed, tortured or kidnapped him since he had not repaid his debt yet.<sup>447</sup> The Territorial Commission of Naples considered the applicant’s declarations plausible and coherent, consequently recognising him as a victim of human trafficking for the purpose of begging.<sup>448</sup> In addition to that, the commission found a well-founded fear of persecution within the meaning of Article 1 of the Geneva Convention relating to the Status of Refugee. As a person belonging to the social group of victims of trafficking, if returned to Nigeria, the applicant would have run serious risks to his safety by the same persons who trafficked him.<sup>449</sup> The commission decided to grant the status of refugee to the young man.<sup>450</sup>

## **IV.2 Cases of criminalisation of begging**

Chapter III on Italian legislation gave a clear idea of how begging does not emerge only in relation to the exploitation of the activity, but it is also conceived as a troublesome kind of practice, which needs to be regulated and even sanctioned when necessary.

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<sup>444</sup> Ibid (n 436), p. 10

<sup>445</sup> Ibid (n 439)

<sup>446</sup> Ibid (n 436), p. 10

<sup>447</sup> Ibid (n 439)

<sup>448</sup> Ibid (n 439), p. 4

<sup>449</sup> Ibid (n 439), p. 5

<sup>450</sup> Ibid (n 439), p. 6

Evidence of the presence of such a conception is not confined to the legislative level but also materialises at the judicial one. In the online archive of the Court of Cassation sentences, four judgements regarding Eastern European adults deal with the topic of harassing begging.<sup>451</sup> Moreover, when consulting the Regional Administrative Tribunals (TAR) portal, at least 21 sentences appear since 2015 deciding on the legitimacy of penalties that were issued against people practising begging. They mainly concern Nigerian men.<sup>452</sup> The types of sanction that are contested in the proceedings are expulsion orders and revocations of reception measures, which are normally issued by local police, police headquarters (*questure*) and prefectures.

Concerning the expulsion order, it prevents the addressee of that measure from returning to the municipality from which he/she was removed for a period not exceeding three years. The prerequisites for its application are those laid down for all preventive measures, namely the social dangerousness of the person and the existence of criminal evidence against him or her.<sup>453</sup> As previously mentioned, courts and tribunals were called on several occasions to decide on the validity of such orders with respect to people practising begging. For instance, it was the case of the Tuscany TAR in 2017. The claimant was a male Nigerian asylum seeker who filed an appeal against the expulsion order that was issued by the police commissioner of Arezzo prohibiting the applicant from returning to the municipality for a period of three years. The man was sanctioned after two municipal police officers had stopped and accused him of violating the mayor's ordinance prohibiting invasive begging. The TAR judged the appeal well-founded and annulled the sanction. Judges came to this conclusion by

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<sup>451</sup> Corte di Cassazione Penale, sez. I, 5 dicembre 2018, sentenza n. 2365, available at: [https://www.cortedicassazione.it/corte-di-cassazione/it/servizi\\_online.page](https://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page); Corte di Cassazione Penale, sez. I, 03 giugno 2019, sentenza n. 36653, available at: [https://www.cortedicassazione.it/corte-di-cassazione/it/servizi\\_online.page](https://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page); Corte di Cassazione Penale, sez. I, 30 ottobre 2019, sentenza n. 13723, available at: [https://www.cortedicassazione.it/corte-di-cassazione/it/servizi\\_online.page](https://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page); Corte di Cassazione Penale, sez. I, 27 aprile 2022, sentenza n. 38812, available at: [https://www.cortedicassazione.it/corte-di-cassazione/it/servizi\\_online.page](https://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page)

<sup>452</sup> Giustizia Amministrativa Consiglio di Stato Tribunali Amministrativi Regionali, available at: [https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p\\_p\\_id=GaSearch\\_INSTANCE\\_2NDgCF3zWBwk&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&GaSearch\\_INSTANCE\\_2NDgCF3zWBwk\\_javax.portlet.action=searchProvvedimenti&p\\_auth=7oqwE0lq](https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&p_auth=7oqwE0lq)

<sup>453</sup> La Legge per Tutti: Informazioni e Consulenza legale, Cos'è il foglio di via obbligatorio? (2021), available at: [https://www.laleggepertutti.it/466236\\_cose-il-foglio-di-via-obbligatorio](https://www.laleggepertutti.it/466236_cose-il-foglio-di-via-obbligatorio)

noticing the general vagueness characterising the accusation. When looking at the documents submitted by the police, nothing led to the presumption of potential danger on the part of the sanctioned person. Indeed, the municipal police report did not describe the concrete manner in which the applicant's behaviour had taken place. The 'harassing' nature of the practice itself was devoid of any indication of the modalities that would have characterised the disputed episode. Consequently, being non-invasive begging in no way a threat to public tranquillity and public order the expulsion order was considered illegitimate.<sup>454</sup> In other cases, the TAR confirmed the validity of the preventive measure. In 2018, the Tribunal of Calabria rejected the request by a Nigerian man for the annulment of the expulsion order that was issued by the local police against him. Conversely from the assumption made by the applicant, the tribunal considered that, in support of the legitimacy of the sanction, all the necessary elements on the basis of which the assessment of dangerousness was conducted were reported. The police minutes made reference to repeated episodes of begging in an invasive manner in a parking area. Although no further details were given, the grounds for the sanction were considered sufficient.<sup>455</sup>

About the revocation of reception measures, it is normally determined by the voluntary departure of the person from the reception facility. However, many revocations appear to be linked to violations of the reception centres' regulations, the particularity of which is that they are established by individual prefectures. What follows is that rules are very varied and patchy throughout the country. Among the existing forbidden conducts, the practice of begging is often present.<sup>456</sup> In 2018, Liguria TAR decided on a case of this type. A Nigerian man asked for the cancellation of the revocation of reception measures that had been ordered by the local prefecture against him. The reason for the withdrawal

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<sup>454</sup> T.A.R. Toscana, sez. II, 22 dicembre 2017, sentenza n. 1666, available at: [https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p\\_p\\_id=GaSearch\\_INSTANCE\\_2NDgCF3zWBwk&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&GaSearch\\_INSTANCE\\_2NDgCF3zWBwk\\_javax.portlet.action=searchProvvedimenti&p\\_auth=7oqwE0lq](https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&p_auth=7oqwE0lq)

<sup>455</sup> T.A.R. Calabria, sez. I, 12 giugno 2018, sentenza n.1185 available at: [https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p\\_p\\_id=GaSearch\\_INSTANCE\\_2NDgCF3zWBwk&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&GaSearch\\_INSTANCE\\_2NDgCF3zWBwk\\_javax.portlet.action=searchProvvedimenti&p\\_auth=7oqwE0lq](https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&p_auth=7oqwE0lq)

<sup>456</sup> Elena Fiorini, Le misure di accoglienza ai richiedenti la protezione internazionale e la loro revoca, ASGI (2020), available at: <https://www.asgi.it/notizie/le-misure-di-accoglienza-ai-richiedenti-la-protezione-internazionale-e-la-loro-revoca/>

was that the individual was caught while begging by some police officers in a train station. This punitive measure was based on a local decree of the prefecture ordering the revocation of reception measures in the event of a serious or repeated breach of the rules of the facilities where asylum seekers are hosted (e.g. seriously violent behaviour). This regulatory provision postulates that the conduct of begging is relevant for the purposes of the revocation measure when it is carried out repeatedly, or, in any case, in coexistence with other violations of the rules protecting public safety and security. What emerged from the judges' examination of the case is that the prefecture issued the revocation based on a single and isolated incident of begging. That being so, the tribunal considered the applicant's conduct not constituting a 'serious or repeated' breach of the rules of the centre. Therefore, the sentence expressed that the contested measure was illegitimate on the ground of excess of power in terms of breach of the canons of proportionality and adequacy of administrative action.<sup>457</sup> The same tribunal for a similar case rejected the appeal. Again, the applicant was a Nigerian man, who had been sanctioned by the local law enforcement for begging. After that, he saw his right to reception measures revoked. The reasons given by the judges to declare the appeal unfounded are the following. Among the rules of the reception centre, a ban on begging was present and also emphasised. Moreover, the tribunal recognised the proportionality of the sanction as legitimate by stating that 'the practice of begging constitutes a conduct of unquestionable gravity that is likely to give rise to situations of tension and conflict with the resident population'.<sup>458</sup>

The reported cases are exemplificative of the general orientations that have been adopted by the Italian administrative justice when dealing with begging. When judges did not find concrete elements that could justify the sanction to the beggar (e.g. invasive modalities, the reiteration of the conduct etc.), they underlined that the mere practice of begging could not be criminalised. Conversely, when judiciary authorities considered the justifications given by the law enforcement agency as sufficient to prove the

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<sup>457</sup> T.A.R. Liguria, sez. II, 19 settembre 2018, sentenza n. 708 available at: [https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p\\_p\\_id=GaSearch\\_INSTANCE\\_2NDgCF3zWBwk&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&GaSearch\\_INSTANCE\\_2NDgCF3zWBwk\\_javax.portlet.action=searchProvvedimenti&p\\_auth=7oqwE0lq](https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&p_auth=7oqwE0lq)

<sup>458</sup> T.A.R. Liguria, sez. II, 27 novembre 2017, sentenza n. 871 available at: [https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p\\_p\\_id=GaSearch\\_INSTANCE\\_2NDgCF3zWBwk&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&GaSearch\\_INSTANCE\\_2NDgCF3zWBwk\\_javax.portlet.action=searchProvvedimenti&p\\_auth=7oqwE0lq](https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&p_auth=7oqwE0lq)

dangerousness of the sanctioned individual, punitive measures were confirmed and supported. As it has been possible to observe from sentences declaring expulsion orders and revocations of reception measures illegitimate, law enforcement agents often demonstrate excessive discretion in issuing unjustified punitive measures. A tendency towards easy sanctioning is particularly visible. In addition, judges' decisions are sometimes discordant in very similar cases. However, another consideration emerges in an even more evident and worrying way. Neither on the part of police nor by tribunal's authorities scrutinising the cases, no effort or attempt has been made to ensure that the sanctioned beggars were not exploited while practising the activity. Regardless of judges' final verdicts concerning the legitimacy of the penalties imposed on the indicted persons, the possibility that these individuals could not be punished as victims of trafficking or exploitation seems to have been consistently ignored.



## CHAPTER V

### Between Challenges and Possible Adjustments

The previous chapters have demonstrated that human trafficking and serious exploitation of begging existed and continue to be present in Italy. Chapter II has reported the main indicators proving the current realities of coercion and control behind the practice. Moreover, the reference to the exploitation of begging in the national anti-trafficking legislative instrument represents another important evidence of its existence on the Italian territory. Even if to a limited extent, especially for some categories of victims, Italian jurisprudence has confirmed the suspect that cases of THB for the purpose of begging were, and still are, taking place. Despite all these elements, data concerning the emersion of trafficked individuals portray this form of THB as an extremely residual phenomenon, compared to other types of exploitation (i.e. sexual and labour exploitation) that appear much more widespread. This scenario supports the general assumption that considers forced begging a hidden phenomenon of difficult emergence. Such belief is shared not only among anti-trafficking NGOs observing worrying dynamics but it has represented the main push factor behind the most recent reports and studies focusing on begging.<sup>459</sup> These latter have recognised the highly plausible connections of the activity with trafficking in persons and serious exploitation while emphasising the fact that, however, the phenomenon remains very much under the radar, little studied and consequently poorly understood. This is particularly true for specific categories of victims more than others.

With regard to the exploitation of child begging, much attention has been paid to combating the phenomenon and positive results are clearly visible. Children's disappearance from the streets is not reported exclusively by contact unit operators but find confirmation also in other reliable sources. What can be observed from the latest reports by Save the Children *Piccoli Schiavi Invisibili* is that begging no longer appears among the forms of exploitation and trafficking of minors in Italy.<sup>460</sup> In addition to that,

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<sup>459</sup> See *Progetto Stop for Beg: report finale* (2013), *Third sector against pushed begging. Prevention and fight against crime* (2015), *La pratica dell'accattonaggio, tra libertà di scelta, sfruttamento, tratta e connessioni con la criminalità organizzata. Focus sulle persone nigeriane* (2021)

<sup>460</sup> Save the Children, *Piccoli Schiavi Invisibili XI Edizione, fuori dall'ombra: le vite sospese dei figli delle vittime di sfruttamento*, Save the Children Italia (2021), available at: <https://www.savethechildren.it/cosa-facciamo/pubblicazioni/piccoli-schiavi-invisibili-2021>; Ibid (n 125)

information from the most recent study on the phenomenon confirms the absence of children who beg alone while noticing only isolated cases of women begging with a baby in their arms.<sup>461</sup> The transition from a past reality where children represented a sizeable component in the begging community to a situation in which minors are the exception has been possible thanks to an effort made at different levels. As particularly vulnerable subjects, a specific provision prohibiting their exploitation in the activity has always been present. National jurisprudence as well has strived to fight the phenomenon by resorting to several legislative instruments. However, the decisive turning point occurred through the adoption of Article 600-*octies*, which, besides providing for a harsher penalty and broadening the possible offenders, finally recognised it as a crime against the individual personality rather than against public decency. The presence of a lesser offence than that of enslavement or trafficking, which criminalises, in almost every case, those responsible for a child found begging seems to have acted as a strong deterrent to the exploitation of minors in any circumstance (from the case of the Roma family using the child in the practice as a subsistence economy to the actual situation of trafficking). All these elements, together with a consequent greater vigilance on the part of law enforcement and a more aware social consciousness, have made children less attractive to traffickers.

While exploitation is always assumed in the case of child begging, the same does not apply to adult beggars, who may even beg by voluntary choice. Although adult begging is now the prevalent form, it is given very little consideration, especially in relation to possible situations of trafficking and exploitation. This is evident by consulting the web section of the National Anti-Trafficking Observatory collecting articles and news on specific issues. Concerning forced begging, to appear are mainly cases (not even recent) involving children and, only to a lesser extent, disabled persons.<sup>462</sup> All this suggests that some obstacles to its effective emergence might be present.

## **V.1 Obstacles to the emersion of the phenomenon**

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<sup>461</sup> Ibid (n 169), p. 56, p. 58, p. 83, p. 88

<sup>462</sup> Osservatorio Interventi Tratta, Rassegna stampa accattonaggio, available at: <https://www.osservatoriointerventitratta.it/tag/accattonaggio/page/6/>

### *V.1.1 Penal populism and victims' criminalisation*

The concept of penal populism refers to the use, for political purposes, of diffused punitive instances and as an expressive political orientation promising quick, exemplary and definite intervention for the reassuring of the citizens against a perceived common enemy.<sup>463</sup> Consensus is thus obtained through the manipulation of security and criminal issues in a broader sense. Political forces that make use of penal populism are not interested in conveying what reality is, but they rather feed a deformed perception of crime in public opinion while normalising xenophobic attitudes. In addition to the enactment of laws and ordinances, they do so through a discursive style and other strategies, such as the spectacularisation of crime (i.e. the media overexposure of facts in which violence and fear are amplified), reasoning based on commonplaces and stereotypes etc. It is systematically socially marginalised groups that fall under the label of persons deemed dangerous.<sup>464</sup> Beggars are part of this group and consequently are often victims of penal populism. Although adult begging was officially decriminalised by the 1999 Constitutional Court's decision, what actually emerges seems quite something else. The image of the beggar keeps being criminalised in different ways.

Starting from the most recently-introduced measure aimed at strengthening the criminalisation of begging, Article 669-*bis* brought back the offence of invasive begging in the Penal Code. This provision is part of a larger right-wing reform (Law 132/2018 also known as Salvini security package), which essentially revolves around the lexical pair 'immigration' and 'public security'. The combination of the two concepts unequivocally indicates a precise legal political strategy. The phenomenon of migration is reduced to a public order issue, making it necessary to provide measures to curb its expansion.<sup>465</sup> This is in response to the society's general feeling of uncertainty for its future, and thus in need to find new enemies to whom to ascribe the crisis. These

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<sup>463</sup> Marta Minetti, *The Facilitators Package, penal populism and the Rule of Law: Lessons from Italy*, New Journal of European Criminal Law, vol. 11 no. 3 (2020), p. 341, available at: <https://qmro.qmul.ac.uk/xmlui/handle/123456789/67190p.341>

<sup>464</sup> Carolina Antonucci, *Una prospettiva italiana del populismo penale*, in Studi sulla questione criminale, vol. 3 (2016), p. 78, available at: <https://www.rivisteweb.it/doi/10.7383/86396>

<sup>465</sup> Ibid (n 382), p. 2

latter are identified among migrants, beggars, Roma people, and petty criminals.<sup>466</sup> Moving to closely observe the anti-begging article, a first consideration could be a linguistic one. Instead of *mendicità*, which was the term used to express the offence in the previous disciplinary rule (the now repealed Article 670), Salvini Decree opted for the more slang and pejorative word *accattonaggio*. From a juridical point of view, the simple expression *richiesta di elemosina* would have appeared more neutral and appropriate.<sup>467</sup> In addition, several elements suggest that the penal instrument was introduced merely to criminalise rather than to solve a real problem. Strong perplexities arise both concerning the disproportionate extent of the fine, which would be difficult to be paid from a beggar, and with regard to the measure of seizure of the things used to commit the offence.<sup>468</sup> Seizure is normally applied in serious offences (e.g. terrorism or subversion of the democratic order). In this case, it would concern the saucer or hat for the collection of pennies.<sup>469</sup> Further perplexities come from the phrase 'simulating illness', since proving that a beggar does not suffer from a real illness will often require medical consultants and experts. From this perspective, the costs of the new offence would outweigh the benefits.<sup>470</sup> Also raising a sense of ambiguity is the modification by Salvini Decree to Article 600-*octies* title, to which the part 'the organisation of begging' was added. Despite the topographical placement in the corpus of an article that expressly refers to the begging of minors, the amendment seems to penalise the organisation of begging in general, and not only that which makes use of children.<sup>471</sup> Even though Article 669-*bis* is emblematic of the harsh attitude of repression towards begging, in practice, more than using this criminal law provision, beggars are penalised through municipal decrees and the so-called *Daspo urbano*.<sup>472</sup> Municipal decrees are a

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<sup>466</sup> Maria Elena Cassano, *Il decreto Salvini, tra istanze preventive e modelli repressivi*, in *Questione Giustizia* (2019), available at: [https://www.questionegiustizia.it/articolo/il-decreto-salvini-tra-istanze-preventive-e-modelli-repressivi\\_29-10-2019.php](https://www.questionegiustizia.it/articolo/il-decreto-salvini-tra-istanze-preventive-e-modelli-repressivi_29-10-2019.php)

<sup>467</sup> Ibid (n 382), p. 10

<sup>468</sup> Ibid (n 466)

<sup>469</sup> Ibid (n 382), p. 10

<sup>470</sup> Simone Ferrari, *L'accattonaggio alla luce del "decreto sicurezza"*, LAIC (2019), available at: <http://www.associazionelaic.it/laccattonaggio-alla-luce-del-decreto-sicurezza>

<sup>471</sup> Ibid (n 466)

<sup>472</sup> Anna Kompatscher, *Begging as a human right? – challenging the penalisation of begging in the EU in light of the recent Lăcătuș v. Switzerland case*, Housing Rights Watch (2021), available at: <https://www.housingrightswatch.org/content/begging-human-right-%E2%80%93-challenging-penalisation-begging-eu-light-recent-l%C4%83c%C4%83tu%C5%9F-v-switzerland>

direct result of the already discussed Article 54 of the Consolidated Law on Local Authorities, which provides mayors with the power to adopt measures preventing and eliminating dangers to public security. The issue of invasive begging represents one of the most recurrent topics of the decrees. In the name of ‘urban security’, local authorities have tried to define invasive begging through fanciful formulas and in any case demonstrating of ignoring any thoughtful analysis of the phenomenon and often overriding the principle of proportionality.<sup>473</sup> It is possible to classify municipal decrees into three main typologies. Situational ordinances are measures concerning specific places in the city or events. In all these cases, the instrument of the ordinance is used in a circumscribed and punctual manner to address and prevent the occurrence of specific critical situations. Behavioural ordinances are those that include prohibitions imposed on behaviours that may annoy other citizens and prohibitions concerning public decorum. Reinforcing ordinances extend the possibility of action to the municipal police forces by allowing them immediate sanctioning. In any case, the violation of the ordinance determines administrative sanctions.<sup>474</sup> Although in most cases the prohibition of begging is restricted to certain places (e.g. hospitals, crossroads, public car parks, stations, markets, places of worship, etc.) or in view of the ways in which it is practised (more or less invasive), some municipalities have instead ordered a tout court and general ban on the activity throughout the entire municipal territory. In addition to financial penalties, many ordinances provide for the precautionary seizure of the money collected and the equipment used in the begging activity as an ancillary sanction.<sup>475</sup> The *Daspo urbano* is an administrative measure that was originally intended to combat the phenomenon of violence in sports venues by giving the police the possibility to order the removal of the offender and the imposition of a fine.<sup>476</sup> In 2017, the approval of the already mentioned Minniti Decree extended the use of this measure to public places with a consistent flow of people or tourists, such as train stations, airports, but also

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<sup>473</sup> Vincenzo Castelli, *Legislazione, ordinanze e dispositivi comunali sull'accattonaggio. Le strategie locali per una sicurezza partecipata e per la mediazione dei conflitti* (2020)

<sup>474</sup> ANCI, *Oltre le Ordinanze: i Sindaci e la Sicurezza Urbana*, Roma (2009), p. 34, p. 35, p. 36

<sup>475</sup> Ibid (n 474), p. 34

<sup>476</sup> Ibid (n 472)

museums and public gardens.<sup>477</sup> Even though the provision does not specifically cite beggars, the *Daspo* has been often used to remove beggars from train stations or city centres.<sup>478</sup> Moreover, it can take two forms. The first is the competence of the mayor. The order lasts 48 hours and establishes a sanction ranging from €100 up to €300. The second one is the competence of the *questore* (high police commissioner), and it can last up to two years.<sup>479</sup> If subjected to judicial review, fines, local police's conduct and regulations and the same anti-begging provisions are likely to be considered illegitimate.<sup>480</sup> However, it should be noted that beggars typically have limited resources and seldom present a statement of defence against the sanctions imposed by the police or local authorities.<sup>481</sup> This is indicative of the fact that if referring exclusively to case law, the number of sanctions against beggars would be hugely underestimated. In addition to all the above-mentioned anti-begging measures, the criminalisation of adult begging transpires from media language as well. When surfing the net, innumerable articles, especially by local newspapers, describe and comment on cases of 'invasive' begging. Often, journalists do not use a neutral kind of language to report the facts but produce a text which is biased and oriented to convey a distorted image of the beggar. For example, it happens that the sanctioned person is presented exclusively by listing some negatively-perceived features (e.g. a subject already known to the police, without a regular status, recipient of other expulsion orders etc.).<sup>482</sup> In other instances, the description of the event takes on characteristics that are grotesque, in which the behaviour of the sanctioned beggar is exaggerated.<sup>483</sup>

The previous paragraph has shown how penal populism concretely materialises to the detriment of beggars in Italy. As in all instances where these repressive political and

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<sup>477</sup> FEANTSA, *FEANTSA's input for the call on Decriminalization of homelessness and extreme poverty* (2022), p. 6, available at: <https://www.ohchr.org/sites/default/files/2022-03/FEANTSA.docx>

<sup>478</sup> Ibid (n 472)

<sup>479</sup> Ibid (n 477), p. 6

<sup>480</sup> Giacomo Pailli and Alessandro Simoni, *Begging for Due Process: Defending the Rights of Urban Outcasts in an Italian Town*, Seattle University Law Review, vol. 39 (2016), p. 1321, available at: <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=2350&context=sulr>

<sup>481</sup> Ibid (n 480), p. 1322

<sup>482</sup> Sky TG24, Casale Monferrato, chiede l'elemosina in modo insistente: denunciato (2019), available at: <https://tg24.sky.it/torino/2019/06/26/casale-monferrato-chiede-elemosina-denunciato>

<sup>483</sup> Genova Today, Molesta i cittadini chiedendo l'elemosina e aggredisce violentemente i poliziotti: arrestato (2017), available at: <https://www.genovatoday.it/cronaca/elemosina-molesta-aggredisce-polizia.html>

legal dynamics become established, the punitive action intervenes to sanction a lifestyle or a specific social group more than a fact.<sup>484</sup> The combination between municipal decrees and *Daspo*-inspired expulsion orders contribute to moving beggars out of respectable citizens' sight, giving the illusion that the problem has been solved.<sup>485</sup> About the penal instrument provided by Article 669-*bis*, the impression is that its creation must be attributed to the desire to stigmatise the figure of the beggar rather than to the will actually solve possible problematic situations. The state, not being able and willing to solve this social issue, chooses to symbolically neutralise people that are considered a problem through preventive and punitive measures.<sup>486</sup> By doing so, it proves indifferent to multiple constitutional principles (e.g. the principle of proportionality of punishment) and the traditional limiting function played by penal law in liberal societies.<sup>487</sup> Therefore, penal populism offers shortcuts that criminalise poverty to approach a phenomenon whose complexity would require, instead, equally complex strategies to solve the problem upstream. In addition to these serious shortcomings, the persistent tendency in presenting the adult beggar as a potential offender may lead to forgetting that the same person could be a victim of trafficking, with the consequent risk of the individual being blamed for his /her victimisation and ostracised.<sup>488</sup> Even worse, trafficked victims may be criminalised (both through administrative and penal measures) for the begging activity in which they are exploited. More in general, it has been internationally recognised that human trafficking victims often incur criminalisation. In countries of transit and destination, trafficked individuals are often sanctioned, arrested, detained, charged and even prosecuted with the accusation of illegal entry or other unlawful activities.<sup>489</sup> The risk of criminal offending is especially high since victims are less familiar with local laws and customs and are

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<sup>484</sup> Ugo Annona, *Punire i poveri: le ordinanze sulla sicurezza urbana come strumento di controllo sociale* (2019), p. 36

<sup>485</sup> Ibid (n 382), p. 9

<sup>486</sup> Ibid (n 484), p. 36

<sup>487</sup> Ibid (n 466)

<sup>488</sup> Christana Gregoriou and Isle Ras, *Representations of Transnational Human Trafficking: A Critical Review*, In: Gregoriou, C. (eds) *Representations of Transnational Human Trafficking*, Palgrave Pivot (2018), p. 11, available at: [https://link.springer.com/chapter/10.1007/978-3-319-78214-0\\_1#citeas](https://link.springer.com/chapter/10.1007/978-3-319-78214-0_1#citeas)

<sup>489</sup> Ibid (n 86), p. 129

thus at the even greater mercy of their traffickers.<sup>490</sup> In addition, the exploitative activities demanded of a trafficked person (such as prostitution, begging, drug dealing etc.) may be subject to regulations or even illegal in the state of destination.<sup>491</sup> Forcing others to undertake them represents a lucrative and low-risk enterprise for traffickers. If caught it will often be the victim, as the direct perpetrator of the crime, to be punished for the criminal act. Because of the fear instilled in them by their trafficker about the potential repercussions to them or their family, often coupled with a fear of the authorities, trafficked people are often reluctant to speak out about those who forced them to commit crimes.<sup>492</sup> Furthermore, victims of trafficking may commit criminal offences in an attempt to escape the trafficking situation or might be penalised for unlawful or unauthorised departure by their country of origin.<sup>493</sup> The phenomenon of criminalization is of critical importance since it is often tied to a failure on the part of the state to identify victims and afford them the rights to which they are legally entitled under national and international law (e.g. the right of access to an effective remedy).<sup>494</sup> Moreover treating victims of trafficking as criminals rather than protecting them, perpetuates the crime and guarantees impunity for traffickers. It also reinforces any existing fear victims may have of the authorities and reduces the likelihood that they will assist in further investigations. All in all, ensuring they are not punished is an essential element of a human rights approach.<sup>495</sup> Returning to focus specifically on the phenomenon of begging in Italy, it is not possible to claim that all the foreign people sanctioned because of their begging conduct were trafficked to perform the activity. However, existing evidence, especially related to Nigerian nationals, suggests that there is a strong likelihood that at least some of them might have been subject to secondary victimisation. This time, however, by state-initiated measures. Even if concrete cases of criminalisation (fines, expulsion orders, revocation of reception measures etc.) were not so widespread, the rampant penal populism attacking begging should not be considered

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<sup>490</sup> Andreas Schloenhardt and Rebekkah Markey-Towler, *Non-Criminalisation of Victims of Trafficking in Persons — Principles, Promises, and Perspectives*, Groningen Journal of International Law, vol. 4 no. 1 (2016), p. 13, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2810148](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2810148)

<sup>491</sup> Ibid (n 86), p. 129

<sup>492</sup> Anti-Slavery International, *Victim or Criminal? Trafficking for Forced Criminal Exploitation in Europe. UK chapter* (2014), p. 17, available at: <https://www.antislavery.org/wp-content/uploads/2017/01/Criminal-or-victim-UK.pdf>

<sup>493</sup> Ibid (n 86), p. 13; Ibid (n 86), p. 129

<sup>494</sup> Ibid (n 86), p. 129

<sup>495</sup> Ibid (n 492), p. 22



harmless. Taking the Nigerian men's begging as an example, it tends to be practised in a non-harassing manner and therefore it is difficult to sanction.<sup>496</sup> Even in the absence of violations, the ongoing populist narrative of the beggar as a possible offender only hinders the more than plausible juxtaposition of beggar and victim of trafficking or severe exploitation, thus impeding the emersion of the phenomenon.

The issue of criminalisation of victims is inevitably connected to the 'non-punishment principle'. The elaboration of the idea that a person should not be punished as a consequence of the activities in which he/she was exploited has occurred over many years as a result of the ever-increasing awareness of the risk of secondary victimisation for trafficked persons.<sup>497</sup> The Palermo Protocol, the first comprehensive international instrument devoted to human trafficking, does not contain an explicit reference to the principle.<sup>498</sup> However, one of the purposes of that instrument is to protect and assist the victims, with full respect for their human rights.<sup>499</sup> In 2009, the Working Group on Trafficking in Persons, a body established to make recommendations on the effective implementation of the UN Protocol, emphasised the importance of the principle. A provision introducing the principle of non-punishment of THB victims first appeared in the Council of Europe Anti-Trafficking Convention (Article 26), followed by the EU Anti-Trafficking Directive (Directive 2011/36/EU).<sup>500</sup> The non-punishment principle is rooted in a human rights-based approach that recognizes the liberty and dignity of trafficked persons.<sup>501</sup> It does not only refer to penal prosecution but also includes administrative sanctions and limitations on freedom of movement.<sup>502</sup> Despite Italy's implementation of the EU Directive 2011/36, the principle of non-punishment for THB victims has not been transposed into the national legal system. The consequence is a not

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<sup>496</sup> Ibid (n 169), p. 14

<sup>497</sup> ICAT, *Issue Brief: Non-Punishment of Victims of Trafficking* (2020), p. 2, available at: [https://icat.un.org/sites/g/files/tmzbd1461/files/publications/19-10800\\_icat\\_issue\\_brief\\_8\\_ebook\\_final.pdf](https://icat.un.org/sites/g/files/tmzbd1461/files/publications/19-10800_icat_issue_brief_8_ebook_final.pdf)

<sup>498</sup> Marjia Jovanović, *The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance*, *Journal of Trafficking and Human Exploitation*, vol. 1 no. 1 (2017), p. 46, available at: [https://www.uitgeverijparis.nl/scripts/read\\_article\\_pdf.php?id=1001296261](https://www.uitgeverijparis.nl/scripts/read_article_pdf.php?id=1001296261)

<sup>499</sup> Ryszard Wilson Piotrowicz and Liliana Sorrentino, *Human Trafficking and the Emergence of the Non-Punishment Principle*, *Human Rights Law Review* 16(4) (2016), p. 6, available at: <https://www.onlinelibrary.iihl.org/wp-content/uploads/2020/05/2016-P1.pdf>

<sup>500</sup> Ibid (n 498), p. 46

<sup>501</sup> Ibid (n 497), p. 2

<sup>502</sup> Ibid (n 499), p. 15

insignificant regulatory vacuum.<sup>503</sup> In the absence of a specific provision in the current legal system, the only instrument that could be used is that of the 'state of necessity' provided for in Article 54 of the Penal Code.<sup>504</sup> Although the possibility of relying on already existing instruments of non-punishment (not specifically designed for trafficked persons) has been recognised, the above-mentioned article often appears inadequate for THB cases because of a number of factors.<sup>505</sup> These include the fact that the terms of Article 54 are narrow and difficult to demonstrate, the failure to identify in time the elements indicating the exploitative condition, the absence, in some cases, of the 'threat' as a means to force the trafficked person to commit an offence, or the presence of a certain margin of self-determination.<sup>506</sup> To connect this topic to the phenomenon analysed in this research, it could be argued that the lack of attention paid by the Italian system to the non-punishment principle may represent a further obstacle to the emergence of trafficking and exploitation for begging. Indeed, those who may be possible victims keep being sanctioned and criminalised.

Although representing some of the main obstacles, the difficult emergence of THB and serious exploitation of begging cannot be ascribed exclusively to populist laws and instruments, to the criminalisation of the image of beggars and the absence of an adequate non-punishment provision. Indeed, many other factors contribute to hindering the phenomenon from coming to light.

### *V.1.2 A phenomenon difficult to frame*

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<sup>503</sup> David Mancini, *Il principio di non punibilità delle vittime di tratta. Sfida per l'effettività dei diritti e logica dell'intervento penale*, Diritto Immigrazione e Cittadinanza, fascicolo no. 2 (2022), p. 288, available at: <https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-2-2022/970-il-principio-di-non-punibilita-delle-vittime-di-tratta-sfida-per-l-effettivita-dei-diritti-e-logica-dell-intervento-penale>

<sup>504</sup> Article No. 54

State of necessity

1. A person shall not be liable to punishment if he/she has committed the act as a result of being compelled to do so by the necessity of saving himself or others from the actual danger of serious personal injury, which danger was not voluntarily caused by him/her, nor otherwise avoidable, provided that the act is proportionate to the danger.

2. This provision shall not apply to a person who has a special legal duty to expose himself to danger.

3. The first part of this Article shall also apply if the state of necessity is caused by the threat of another person; but in such a case, the person who forced him to commit it shall be liable for the act committed by the person threatened. Ibid (n 335); Ibid (n 503), p. 289

<sup>505</sup> Ibid (503), p. 295, p. 299

<sup>506</sup> Ibid (503), p. 299; Valeria Frascaro, *Vittime di tratta e illeciti: cause di non punibilità*, Piuculture (2022), available at: <https://www.piuculture.it/2022/02/vittime-di-tratta-e-illeciti-cause-di-non-punibilita/>

A major obstacle is constituted by the complex and not univocal nature of begging. As it could be possible to understand from Chapter II, begging is a diverse phenomenon that cuts across different categories of individuals and social situations, such as migration, housing deprivation, poverty, deviance, etc.<sup>507</sup> Such a variety makes it more arduous to distinguish between cases where the practice is voluntary and simply dictated by necessity and instances where, instead, a reality of coercion is present. Focusing now exclusively on forced begging, a further complicating element is that the activity is often a manifestation of a multifaceted kind of exploitation. Indeed, it is common to see begging combined with other exploitative dimensions such as prostitution and involvement in illegal economies, namely shoplifting, pickpocketing and drug dealing.<sup>508</sup> The use of beggars in other activities affects both the Roma and Nigerian categories. Concerning the first one, a past Court of Cassation sentence demonstrates the possible multifarious exploitation of beggars. The case concerned a group of Romanian men that were declared guilty of the enslavement of some young boys, who were forced to beg and steal.<sup>509</sup> There is evidence that Nigerian beggars as well might be exploited to commit illegal activities. This assumption derives from the highly suspected connection of begging with Nigerian cults. The latter are mafia-type organisations that became established in Italy by creating operational cells deriving from the mother body in Nigeria.<sup>510</sup> Investigations have shown that some reception centres for asylum seekers have unfortunately proved to be an ideal context for the development of Cults, due to the tendency to host homogeneous groups in terms of nationality.<sup>511</sup> These organisations appear to be mainly dedicated to the control of drug dealing, and more marginally to the exploitation of prostitution.<sup>512</sup> However, some

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<sup>507</sup> Ibid (n 146), p. 55

<sup>508</sup> Vincenzo Castelli, *Dallo sfruttamento lavorativo all'accattonaggio: due facce della stessa medaglia* (2017), available at: <http://www.vincenzocastelli.org/2017/11/dallo-sfruttamento-lavorativo-allaccattonaggio-due-facce-della-stessa-medaglia/>, Ibid (n 106), p. 58; Ibid (n 11), p. 43

<sup>509</sup> Corte di Cassazione Penale, sez. V, 16 giugno 2011 n. 24390, available at: <https://www.foroplus.it/home.php>

<sup>510</sup> Comune di Bologna, *Dalla tratta di esseri umani allo sfruttamento. Report nella città di Bologna* (2020), p. 14, available at: <http://www.comune.bologna.it/osservatorio-legalitaprostituzione-documentazione/>

<sup>511</sup> Ibid (n 169), p. 68

<sup>512</sup> Fiamma Terenghi, *Gruppi criminali nigeriani in Italia. Focus Ferrara e Emilia Romagna* (2021), p. 18, available at: [https://www.cronacomune.it/media/uploads/allegati/44/report\\_gruppi\\_criminali\\_nigeriani\\_-nazionale-regionale-locale\\_23ott2021.pdf](https://www.cronacomune.it/media/uploads/allegati/44/report_gruppi_criminali_nigeriani_-nazionale-regionale-locale_23ott2021.pdf)

investigations by the Anti-mafia Investigation Directorate and the Criminal Police Central Directorate and a Court of Cassation sentence as well emphasise that also exploitative begging can be traced back to some Nigerian criminal groups, like the Vikings, Buccaneers and Black Axe.<sup>513</sup> As highlighted by the report *Gruppi Criminali Nigeriani in Italia*, it happens that young Nigerian men are exploited both in the sale of drugs and begging.<sup>514</sup> Others suggest that begging may represent the alternative for those unwilling to enter drug dealing but who still have to repay the debt for the journey to Italy (it was the case of the young man who obtained refugee status in Chapter IV).<sup>515</sup> Magistrate Stefano Orsi speculated that Nigerian beggars might play the role of custodians of the drugs for sale. The latter would be delivered a little at a time to the dealer who, in this way, does not have to keep large quantities with him. Always with the aim of favouring drug dealing, beggars could have the function of supervising the territory.<sup>516</sup> In addition to illicit activities, anti-trafficking NGOs report that Nigerian beggars are likely to be victims of labour exploitation (e.g. in agriculture) as well.<sup>517</sup> Such a multifarious reality determines two main consequences with respect to begging. In the case of a beggar who is used to committing illegal acts, this second form of exploitation might have the effect of furtherly criminalising an individual that is already subject to stigmatisation. Secondly, when combined with the more common sexual and labour exploitation, the consideration of begging risks being reduced to that of ‘secondary’ exploitation, and thus neglected. In so doing, the phenomenon of coerced begging cannot certainly emerge.

### *V.1.3 Deficiencies of Italy’s anti-trafficking system*

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<sup>513</sup> Corte di Cassazione Penale, sez. V, 15 marzo 2021, sentenza n. 15935, available at: [https://www.cortedicassazione.it/corte-di-cassazione/it/servizi\\_online.page](https://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page) ; Dipartimento della Pubblica sicurezza - Direzione centrale della Polizia criminale - Servizio analisi criminale, *La mafia nigeriana in Italia*, Roma (2020), p. 17 available at: [https://www.poliziadistato.it/statics/41/focus\\_la\\_mafia\\_nigeriana\\_in\\_italia\\_dicembre\\_2020.pdf](https://www.poliziadistato.it/statics/41/focus_la_mafia_nigeriana_in_italia_dicembre_2020.pdf) ; Ibid (n 169), p. 73

<sup>514</sup> Ibid (n 512)

<sup>515</sup> Ibid (n 169), p. 13

<sup>516</sup> Maurizio Papa, Mafie, a Bologna “i nigeriani controllano il territorio con l’elemosina” , Dire (2022), available at: <https://www.dire.it/25-02-2022/710986-mafie-a-bologna-i-nigeriani-controllano-il-territorio-con-lelemosina/>

<sup>517</sup> Interview, Cabiria street unit (project Free life), 05/05/2022

Another major challenge for the emergence of the phenomenon is attributable to the anti-trafficking system itself, which, for various reasons, prevents the proper identification of victims and leaves them invisible.

First of all, the Italian system is deeply focused on the area of sexual exploitation. This is understandable considering that the first manifestations of THB in the country (in the early 90s) occurred in the form of forced prostitution.<sup>518</sup> The centrality of sex trafficking is not only observable in the prevalent use of anti-trafficking instruments in the context of sexual exploitation but also in the structuring of projects, in the expectations of those that could be victims' characteristics and needs, as well as in the grounded expertise and professional intervention capacity.<sup>519</sup> Nonetheless, in the last few years, THB for labour exploitation has received a lot of attention. This resulted, for example, in the development of a three-year plan to combat the phenomenon. Such greater awareness and knowledge have allowed the emersion of victims.<sup>520</sup> Conversely, other forms of trafficking and serious exploitation, like begging, still do not receive enough attention, thus remaining unexplored and with evident competence and protection gaps.<sup>521</sup> The scarce interest in exploitative begging is demonstrated, for instance, by the fact that only a portion of Italian anti-trafficking NGOs is familiar with the topic. Indeed, data report that 90% of national anti-trafficking entities regularly work on the issue of sexual exploitation, 65% of them daily engage with labour exploitation while less than half deal with forced begging.<sup>522</sup> Furthermore, projects attempting to approach the issue are very rare and for the time being, no specific initiative on the part of institutions has been detected. In addition, territorial commissions seem to lack the necessary tools for effective recognition of these THB victims' typology. Indeed, the latest guidelines issued for the identification of trafficked people among asylum seekers completely omit which indicators could be relevant to suggest the presence of trafficked beggars. The document only contains indicators useful for identifying victims of THB for sexual and labour exploitation and child victims of trafficking.<sup>523</sup> The ignorance about the

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<sup>518</sup> Ibid (n 106), p. 24

<sup>519</sup> Ibid (n 111), p. 160

<sup>520</sup> Ibid (n 118), p. 10

<sup>521</sup> Ibid (n 111), p. 160

<sup>522</sup> Ibid (n 321), p. 102

<sup>523</sup> Commissione Nazionale per il Diritto d'Asilo and UNHCR, *L'identificazione delle vittime di Tratta tra i richiedenti protezione internazionale e procedure di referral. Linee Guida per le Commissioni*

phenomenon is particularly present within another fundamental component of the anti-trafficking system, law enforcement agencies. Such assertion finds confirmation in the low number of investigations concerning cases of coerced begging. Indeed, the main focus of Italian police is on prostitution and the drug trade, two phenomena that create a higher social alarm.<sup>524</sup> The disregard for the possible correlation between beggars and THB is especially true with regard to adult begging and in particular for individuals without disabilities. Indeed, when considering the only two cases of Nigerian beggars officially recognised as victims of THB, the first one emerged as a consequence of an investigation into sex trafficking and the second only thanks to the victim's will and courage to reveal his story. Law enforcement's shortcomings may be due both to a lack of education about the phenomenon and to poor functioning of the multi-agency mechanism. This latter aspect is evident, for example, when the municipal police sanction a beggar without firstly consulting anti-trafficking NGOs to avoid the risk of secondary victimisation. As a result, police may fail to fulfil their crucial role in the phase of early identification, leading to fewer warnings and consequently scarcer emersions.

What follows from the particular focus of the Italian system on sex trafficking is major attention towards female victims. Over the years, the effort in the fight against THB has been financially supported and oriented by the Department of Equal Opportunities, which has among its main objectives the work on gender-related issues.<sup>525</sup> When considering the international scenario, Italy's highly gendered perception of human trafficking is not the exception but the rule. Generally, THB is described as a gendered crime, meaning that women are more likely than men to become trafficked.<sup>526</sup> While female migrants are easily perceived as trafficked, male migrants are either perceived as traffickers or as voluntarily smuggled but rarely as THB victims.<sup>527</sup> This conception may represent a further obstacle to the emergence of the phenomenon under

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*Territoriali per il riconoscimento della protezione internazionale* (2021), pp. 52-55, available at: [https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali\\_identificazione-vittime-di-tratta.pdf](https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali_identificazione-vittime-di-tratta.pdf)

<sup>524</sup> Ibid (n 169), p. 13

<sup>525</sup> Ibid (n 106), p. 82

<sup>526</sup> ITUC, CCME, Anti-Slavery International, Lefö-IBF, La Strada CZ, PAM, MRCI, Carital LT, AIDrom, UGT, *Trafficking for labour exploitation- gender* (2015), p. 5, available at: [https://www.ituc-csi.org/IMG/pdf/labour\\_exploitation\\_the\\_role\\_of\\_gender\\_en.pdf](https://www.ituc-csi.org/IMG/pdf/labour_exploitation_the_role_of_gender_en.pdf)

<sup>527</sup> Ibid (n 488), p. 14

investigation. Indeed, as reported in Chapter II, the begging community in Italy is mainly composed of male individuals. Categories such as the Nigerian one, whose connection with trafficking is highly suspected, are even exclusively constituted of men. Leading national NGOs in the anti-trafficking sector confirm that the identification of trafficked persons suffers from the existence of a stereotyped image of the ‘victim’, which is young, female and trafficked for sexual exploitation.<sup>528</sup> Indeed, while 90% of organisations work regularly with women, less than half engage with men. When they do, the majority report male subjects being less than 5% of the assisted persons.<sup>529</sup> Most identified male victims are trafficked for the purpose of labour exploitation. Even though it is increasingly acknowledged that men are vulnerable to many other forms of trafficking (e.g. forced begging), if these typologies are not attended to, it is highly unlikely for trafficked men to be recognised.<sup>530</sup> Gender stereotypes can undermine the ability to correctly identify male trafficking victims and thus preventing them from receiving the necessary assistance and protection.<sup>531</sup> The problem with this stereotyping is that it creates a victim hierarchy, resulting in many non-ideal, but real, victims being denied services and rights.<sup>532</sup> Italy’s (unofficial) construction and perpetuation of a hierarchy of victimhood – and of forms of exploitation – together with the lack of sufficient services (accommodation, psychological support etc.) available for trafficked males do nothing but hinder the recognition of possible THB victims among beggars.<sup>533</sup>

A further problem of the Italian anti-trafficking system concerns the absolute neglect of the social path provided for by Article 18 of the Immigration Consolidated Act. The introduction of a social path responded to the precise need of granting victims of trafficking and exploitation the possibility to access social protection without the need to file a formal complaint.<sup>534</sup> Indeed, the proposal for the issue of the permit, attesting to the condition of violence or serious exploitation of the foreigner, is expected to come

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<sup>528</sup> Ibid (n 321), p. 101

<sup>529</sup> Ibid (n 321), p. 102

<sup>530</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying gender-sensitive approaches in combating trafficking in human beings*, Vienna (2021), p. 28, available at: <https://www.osce.org/cthb/486700>

<sup>531</sup> ICAT, *The gender dimension of human trafficking* (2017), p. 2, available at: <https://icat.un.org/sites/g/files/tmzbd1461/files/publications/icat-ib-04-v.1.pdf>

<sup>532</sup> Ibid (n 488), p. 13

<sup>533</sup> Ibid (n 321), p. 281

<sup>534</sup> Ibid (n 323)

exclusively from the NGO, thus saving the victim from the obligation to initiate and actively participate in the penal proceeding.<sup>535</sup> Despite such a considerable advantage, some factors have inhibited the success of this protection channel while determining authorities' persistent tendency to favour the judicial path. On the one hand, individual police headquarters reserve the right of wide margins of discretion in evaluating the prerequisites provided for by the law, so much so that they often reject applications in the absence of the foreigner's formal complaint against his exploiters.<sup>536</sup> At best, the application is considered on condition that the foreigner is interviewed at the police station.<sup>537</sup> On the other, the uncertainties on the suitability of the evaluation basis consisting of social services/associations' communications and the difficulties in verifying their reliability represent a further obstacle.<sup>538</sup> The problem goes back to the ontological weakness of the organizations, which are rarely equipped with the support of structured legal offices capable of mediating on points of law.<sup>539</sup> Naturally, Article 18 deficiency negatively impacts all THB victims regardless of the activity in which they are exploited. Nevertheless, it is also true that the lesser-known forms of trafficking are probably more severely affected than the more investigated typologies. Indeed, in the case of trafficking for the purpose of begging, NGOs seem to be the only anti-trafficking actors really aware of the existence of an exploitative situation behind many beggars. This awareness appears to be much less present, or simply ignored, at the level of law enforcement and the judiciary, which are also the two main actors in the judiciary path. Consequently, the current exclusive reliance on the judicial procedure does nothing but furtherly hamper the emergence of cases of trafficked or exploited beggars. What happens is that the identification of a situation of trafficking or severe exploitation gets stuck at the level of social assessment without the possibility of progressing towards official recognition.

#### *V.1.4 Victims' limitations*

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<sup>535</sup> Ibid (n 323); Ibid (n 106), p. 107

<sup>536</sup> ASGI, *La legislazione italiana a tutela delle vittime di tratta in relazione al recepimento della convenzione del consiglio d' Europa del 16.05.05* (2015), p. 6, available at: [https://www.asgi.it/wp-content/uploads/2015/04/doc\\_GRETA.pdf](https://www.asgi.it/wp-content/uploads/2015/04/doc_GRETA.pdf)

<sup>537</sup> Ibid (n 323)

<sup>538</sup> Ibid (n 323)

<sup>539</sup> Ibid (n 106), p. 109



All the above-mentioned obstacles are shortcomings of the system and its actors, which do not allow effective identification of victims of forced begging. In addition to these external challenges, however, some limitations to the emersion of the phenomenon might be determined by the victims themselves. Related to this is the critical issue of self-identification as a trafficking victim. Most THB victims do not self-identify as victims of human trafficking. They may be unaware of the elements of the crime or the penal paradigm designed to protect them. Moreover, over long periods of enduring severe levels of trauma, physical abuse, and psychological manipulation, victims tend to develop coping mechanisms that normalise the abuse in their minds. Therefore, they start experiencing exploitation as a normal part of everyday life.<sup>540</sup> In addition, victims' lack of awareness of their exploitative condition may be entrenched also because of the belief that what they are doing is necessary to pay off a debt. Consequently, they struggle to see that they are being treated as slaves. Furthermore, many victims come from difficult backgrounds. They might have fled persecution, conflict or simply precarious conditions in their homeland. Relatively, their current situation may seem an improvement and they may fear being sent back to danger.<sup>541</sup> For example, in the case of people trafficked for labour exploitation, they might not perceive the circumstances under which they work as worse than what they were used to in their country of origin.<sup>542</sup>

All these dynamics may affect trafficked beggars as well, thus contributing to hindering the state's already almost non-existent efforts to properly identify them. As demonstrated by the poor attention paid to the phenomenon compared to other forms of THB, begging seems to be perceived as a less serious type of exploitation. This distorted perception may not be limited to the anti-trafficking system but is likely to extend to victims themselves. As suggested by Nicola Pirani, coordinator of the Emilian Project *Oltre la*

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<sup>540</sup> Polaris Project, *In their shoes: Understanding victims' mindsets and common barriers to victim identification* (2010), available at: <https://www.centerffs.org/sites/default/files/Understanding%20Victims%27%20Mindsets.pdf>

<sup>541</sup> Migrant Help, *How can victims of slavery be identified* (2020), available at: <https://www.migranthehelpuk.org/news/how-can-victims-of-slavery-be-identified>

<sup>542</sup> Masja van Meeteren, *Are you a victim? The low self-identification of victims of labour exploitation*, Leiden Law Blog (2016), available at: <https://www.leidenlawblog.nl/articles/are-you-a-victim-the-low-self-identification-of-victims-of-labour-exploitation>

*Strada*, “there are people among the beggars who do not always realise they are being exploited because it is a 'lighter' form of control than that exercised, for example, in prostitution. Yet, there is no shortage of events with dramatic implications”.<sup>543</sup> Concerning Nigerian beggars, the highly probable connection with cults would furtherly obstacle victims' self-identification as exploited/trafficked subjects. As mafia-like organisations, Nigerian cults are characterised by a tendency to loyalise people under their control.<sup>544</sup> This process may make Nigerian men feel more like debtors than victims. According to Sandro Lapenna, coordinator of Project *Incipit*, the underestimation of their exploitative situation could be because the practice is not perceived as humiliating as other activities (e.g. prostitution). If this were not the case, the coordinator states he is sure that the women would have been there instead.<sup>545</sup> The male prevalence among beggars leads to further consideration regarding victims' self-perception. Stereotypical constructions of masculinity may result in men's reluctance to acknowledge that they are trafficked and/or to identify themselves as victims, as this would constitute in their eyes a form of weakness normally attributed to women.<sup>546</sup> In the case of Roma beggars, especially those with disabilities, the difficulty in self-identifying as trafficking victim could be linked to the strong cultural value that is attached to the practice, the frequent organisation of exploitation at the family level<sup>547</sup> and the fact that these individuals, given their condition of vulnerability, might have always been exploited in that context, thus coming to normalise the abuse. To conclude, in addition to the difficulties connected to self-perceiving as trafficked or exploited, the general atmosphere of criminalisation towards beggars only discourages possible victims from reporting their exploiters/traffickers. Conversely, it generates fear in the authorities.

## **V.2 Recommendations for a more effective emersion**

Despite some merits in the fight against THB and serious exploitation for begging (e.g. the inclusion of begging in Articles 600 and 601 and the introduction of Article 600-*octies*), evidence suggests that the effort made so far is insufficient to allow effective

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<sup>543</sup> Ibid (n 516)

<sup>544</sup> Claudio Cordova, Dai riti voodoo alla tratta delle donne: la mafia nigeriana è sbarcata a Reggio, I Calabresi (2022), available at: <https://icalabresi.it/fatti/mafia-nigeriana-approdo-calabria-riti-voodoo-tratta-donne/>

<sup>545</sup> Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

<sup>546</sup> Ibid (n 531)

<sup>547</sup> Ibid (n 176), p. 44

emergence of the phenomenon. Below are some recommendations and possible good practices that seek to address existing obstacles to ensure better identification of victims.

First of all, a change of mindset towards the practice of begging is essential. Any provision or strategy penalising the activity cannot eradicate the problem but simply push the people targeted by these measures further into poverty and social marginalisation.<sup>548</sup> In this respect, it is relevant to point out a recent sentence of the European Court of Human Rights (*Lăcătuș v. Switzerland*), in which begging is considered a human rights issue for the first time.<sup>549</sup> As already said, a further risk of the current approach to the activity is that of criminalising THB victims as well. It follows that a shift of focus away from a punitive logic to a more victims-centred approach is needed.<sup>550</sup> Another important reform should concern the non-punishment principle when dealing with trafficking victims. At the moment, EU Directive 2011/36 cannot be considered fully implemented in Italian legislation and the anti-trafficking system. Indeed, Article 8 of the Directive (on the non-punishment provision) has not found an adequate transposition into national law yet. Indeed, also the newly-released Anti-Trafficking Plan 2022-2025 fails to properly address the issue. The introduction of a specifically-designed non-punishment provision would lead to greater caution in penalising groups that show suspicious indicators of trafficking. Such a measure would not benefit only trafficked beggars but also people exploited in other activities (i.e. unlawful acts).

Moreover, it is fundamental to take seriously that begging represents a possible form of trafficking or severe exploitation, thus giving it all the attention it deserves. For this to happen, the Italian anti-trafficking system must deviate from its current favoured, and sometimes exclusive, focus on sex trafficking, which results in a univocal and fragmented approach to THB in all its declinations. Specific and diversified strategies for the other forms of exploitation urge to be established. Concerning the begging target group, it becomes crucial structuring proximity services that offer diversified solutions such as legal consulting, support to obtain residence permits for humanitarian reasons,

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<sup>548</sup> Ibid (n 472)

<sup>549</sup> Ibid (n 472)

<sup>550</sup> Ibid (n 2), p. 50

the correlation between the issues of trafficking and international protection, healthcare consulting, information on the area and its services, on the places where it is possible to access to low threshold areas (canteen, dormitory, laundry, showers, etc.).<sup>551</sup> Furthermore, it is essential to provide begging victims with a valid alternative to their exploitative condition, so that these people are more willing to exit the criminal network. Therefore, personalised reception spaces and vocational training should be on the agenda. Toward affecting change, there is also the necessity to better understand and appreciate THB gender dimensions. Equally important is to be increasingly aware of the differences concerning how men and women experience trafficking and their post-trafficking lives.<sup>552</sup> Besides, the multifaceted nature of begging requires moving away from a compartmentalised kind of analysis of the phenomenon to get an overall view. Especially in the case of exploitative begging, more nuanced prototypes of victims are needed in order to encompass more complex and varied profiles (e.g. the person exploited in begging who during the summer could be a victim of *caporalato* for tomato picking, the beggar forced to commit thefts or drug dealing, etc.). Human trafficking for the purpose of begging should be read as much as possible in its complexity, trying to shed light on potential connections with other forms of exploitation.

For the phenomenon to emerge, a great investment is needed in research and monitoring. From this point of view, till now, the effort has been insufficient to comprehend the ongoing dynamics. To have a clearer picture of how exploitation is perpetrated, further studies analysing the ways in which the phenomenon materialises across Italy should be promoted and financially supported by the state. Besides, structured observation through the study of maps, the building of contacts and the establishment of trust with presumed victims would help to interpret the phenomenon in its transversal and complex aspects.<sup>553</sup> A model to take inspiration from is that of participatory mapping, which was used by Campana in his study on contemporary begging in Italy. It can be defined as the systematic collection of data on a social

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<sup>551</sup> Ibid (n 176), p. 99

<sup>552</sup> Rebecca Surtees., *Trafficked Men as Unwilling Victims*, St Antony's International Review vol. 4, no. 1 (2008), p. 29, available at: <https://www.jstor.org/action/doBasicSearch?Query=Trafficked+Men+as+Unwilling+Victims+Author%28s%29%3A+Rebecca+Surtees>

<sup>553</sup> Ibid (n 176), p. 96

phenomenon pertaining to the world of the street and carried out by several actor-observers –usually not involved in monitoring the phenomenon– whose cooperation arouses attention and reflection on the object of investigation. In the above-mentioned research, shopkeepers were involved in monitoring.<sup>554</sup> Together with communication campaigns spreading knowledge and instructions on correct behaviours to adopt (e.g. donation of food instead of money), this approach is a valuable means of raising awareness. Indeed, it allows ordinary citizens to look at beggars from a different and less superficial perspective.

The strengthening of the multi-agency dimension could represent a turning point for the identification of victims. Indeed, it is important that all the professional profiles dealing more or less directly with the phenomenon of begging (social and healthcare workers, local authorities, law enforcement and municipal police, territorial commissions, and the judiciary) are aware of the risk of trafficking and exploitation associated with the practice and therefore cooperate, each using their own skills, to ensure that any situation of coercion comes to light. Since, at present, awareness of the phenomenon is scarce, or even absent, for the majority of the actors, a multi-agency strategy should begin with education. Being anti-trafficking NGOs the most knowledgeable in this case, they should play a central role in the development of capacity building and training activities for the other relevant actors of the anti-trafficking system. For instance, local organisations could provide the municipal police (the public body that is normally the first to deal with beggars) with important tips on elements that could point to an exploitative situation, to both enable greater identification of victims and prevent them from being sanctioned. Another important action of renovation where NGOs should actively participate concerns the relevant indicators regarding THB for the purpose of begging. Current guidelines for the identification of trafficking victims prove often to be partial and outdated when coming to begging. For example, they tend to exclusively refer to children or disabled people as possible victims while disregarding adult migrants.<sup>555</sup> In other cases, forced begging is simply mentioned, but no detailed

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<sup>554</sup> Ibid (n 146), p. 100

<sup>555</sup> Osservatorio Interventi Tratta, *Linee guida per la definizione di un meccanismo di rapida identificazione delle vittime di tratta e grave sfruttamento* (2018), available at: <https://www.osservatoriointerventitratta.it/wp-content/uploads/2018/01/allegato-2-linee-guida-rapida-identificazione.pdf>

description of possible warning signals is given.<sup>556</sup> Furthermore, it is crucial to continue to promote the consolidation of the referral system to ensure the protection of potential victims of trafficking and serious exploitation within the context of international protection. Indeed, it has been possible to observe that one of the main categories of beggars (Nigerian men) consists of asylum seekers.<sup>557</sup> Multi-agency should be promoted also by organising inter-institutional territorial round tables between social workers and the police forces with the aim to observe and analyse the phenomenon of begging and the characteristics of its subjects. Equally useful would be the arrangement of operational protocols coordinating social and police action on the emergence, identification and protection of persons trafficked or seriously exploited for begging purposes.<sup>558</sup> Finally, competent authorities should allow the social procedure under Article 18 to be pursued, not only because it is recognised by law, but it would also ensure that THB identifications that occur through the social assessment would come to light.

To conclude, the effort to promote the emersion of the phenomenon should not be limited to the national dimension. Transnational projects need to be established with the institutions and civil society of at-risk subjects' countries of origin (Nigeria and Eastern European countries). These projects must focus on prevention through the elimination of factors that favour the organisation of begging markets; on assistance and social inclusion as well as on the voluntary and assisted return of persons involved in exploitative begging; on judicial cooperation to prosecute members of criminal networks dedicated to the exploitation of begging and to prevent the proceeds from being invested in other criminal activities.<sup>559</sup> Besides, international agreement on the definition of begging and forced begging is necessary to address the multifaceted problem, including its transnational aspects. Organized begging is not only a domestic jurisdiction problem; it is a human rights violation and a transitional crime issue. In this light, it is relevant to call for drafting an international convention on begging in general,

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<sup>556</sup> See *L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di Referral. Linee Guida per le Commissioni Territoriali per il riconoscimento della protezione internazionale*

<sup>557</sup> Ibid (n 169), p. 89

<sup>558</sup> Ibid (n 3), p. 64

<sup>559</sup> Ibid (n 3), p. 66

or alternatively, an additional protocol to the already existing international and regional instruments.<sup>560</sup>

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<sup>560</sup> Ibid (n 2), p. 50

## CONCLUSION

This study has attempted to demonstrate that what emerges from the ‘officially recognised’ reality does not always reflect truthfully and completely what is happening, especially when the investigated phenomenon is widely ignored.

The main causes of begging can certainly be ascribed, at least originally, to factors such as poverty and vulnerability. Increasingly less, however, the practice can be traced back to the satisfaction of subsistence needs but rather to the development of an organised economy of exploitation often with transnational connotations. Already from the beginning, it has been shown that human trafficking for the purpose of begging not only exists but is present all over the world. Despite being geographically widespread, the general impression is that little attention is paid to forced begging. The typical victim’s profile is characterised by a pronounced vulnerability. Indeed, children and disabled people are referred to as the prevalent targets. Less considered but still relevant is the category of migrants.

Focusing now on Italy, it must be admitted that the state’s expertise in the fight against human trafficking is remarkable. Unfortunately, when it comes to exploitative begging, the scarcity of material, knowledge and experience on the phenomenon is the first thing to leap out. On the surface, this form of trafficking and serious exploitation is extremely residual. Nevertheless, the few studies and projects on the issue, together with the valuable assessment of some anti-trafficking NGOs, suggest that we are in front of a highly under-the-radar phenomenon. Many worrying THB indicators are proof of this. In the Italian case, the categories of people that seem to be more impacted are those of adult male migrants (specifically Nigerian and less frequently other Sub-Saharan nationals) and Roma/ Eastern-European vulnerable subjects (adult disabled individuals, old persons etc.).

From the legislative framework point of view, discordant trends can be discerned towards begging. On the one hand, national human trafficking-related laws consider the practice a possible form of THB. A specific provision has even been enacted to punish the exploitation of child begging. Moreover, the existing legal instruments have assimilated a human rights and victim-centred kind of approach. On the other hand,



begging has always been a favourite target of populist laws, which have led to the insidious stigmatisation and criminalisation of the image of the beggar. The influence this second tendency exercises on the first one is not insignificant. On the contrary, it hinders the enforcement of existing rules aimed at protecting possible trafficked beggars by obscuring and making people forget the fact that situations of coercion might be hidden behind the activity. The criminalising trend affects especially those individuals that are perceived as 'less vulnerable'. Children, as vulnerable subjects par excellence, do not suffer the impact of penal populism. On the contrary, minors are the only category towards which appropriate attention has been paid to combating exploitative begging. This has resulted in their disappearance from the streets. Conversely, a category like that of young Nigerian men is mainly perceived as annoying or even dangerous rather than as exposed to possible exploitation. Indeed, the jurisprudence analysed not only provides valid proof of the existence of THB among adult beggars but also demonstrates how populist tendencies prevail over less superficial ones that are more attentive to the human rights of those concerned. As long as the prevailing orientation towards begging is to sweep the issue under the rug without really understanding the phenomenon to better approach it, the problematic attitudes targeted by populist measures (i.e. invasive begging) will not be resolved, and more importantly, people exploited in the activity will continue to go unnoticed or even criminalised.

The difficult emergence of trafficking for the purpose of begging cannot be blamed solely on penal populism and its deterrent effect on the enforcement of THB provisions. Indeed, it would be incomprehensible why even cases involving vulnerable individuals such as persons with disabilities are rarely officially recognised. The reality is that the phenomenon attracts scarce interest due to both a general ignorance of the possible realities of coercion behind the practice and the widespread impression of it as a less serious kind of exploitation. What follows is a lack of willingness to approach it as it should, which materialises in the absence of funding to initiate projects, studies and research, in the inexistent education on the issue for anti-trafficking actors, in the poor functioning of multi-agency when dealing with highly suspect cases, in the disregard of third sector organisations that are familiar with the phenomenon etc. The complex and varied nature of begging does not contribute to making things easier. The fact that, in exploitative begging, the boundaries between trafficking and smuggling often appear

even more blurred than in other types of exploitation is not an incentive for further investigation.

Although this research has mainly focused on the Italian dimension of the phenomenon and on the difficulties of the state in tackling it, there is an important reflection to be made that goes beyond national borders and considers the role that multi-level governance has played in approaching the issue so far. The Italian anti-trafficking system and regulations are mostly the result of a continuous adaptation to the guidelines established at regional and international levels. Apart from a few exceptions (e.g. the poor reception of the non-punishment principle), Italy has always been in line with the standards dictated from above. It follows that the mediocre results obtained at the national level are also partly attributable to an insufficient interest and effort on the part of European and international institutions to combat this form of trafficking.

In conclusion, as it has been possible to observe, a seemingly advanced anti-trafficking system does not always turn out to be as efficient as one would expect from the requisites it proves to have. Exploitative begging is not a new phenomenon in Italy. It has changed modalities and subjects but has always been neglected, thus often leaving its victims in the shadows. Unless adequate measures are taken in the future, it will continue –in different forms and more or less intensively depending on the period– to occur almost undisturbed. A shift from the partial, and to some extent outdated, prototype of the victim as a child or extremely vulnerable individual is needed to include today's at-risk subjects (such as young healthy men). Although the number of trafficked beggars certainly does not exceed or equal that of people exploited in prostitution and labour (begging is a less profitable activity), this does not mean that fewer victims are not worthy of receiving the same attention as other types of exploitation. As was the case initially with THB for prostitution and then, more recently, with the exploitation of labour, the time has come to also properly address the phenomenon of trafficking and the serious exploitation of begging so that its victims can finally come to light.

## APPENDIX

Interview, On the Road cooperative, 27/04/2022

Interview, Cabiria street unit (project Free life), 05/05/2022

Interview, Comunità Papa Giovanni XXIII association, 10/05/2022

Interview, Gianfranco Bonesso and Michela Semprebon (authors of *La pratica dell'accattonaggio, tra libertà di scelta, sfruttamento, tratta e connessioni con la criminalità organizzata. Focus sulle persone nigeriane*), 10/05/2022

Interview, Free Life project manager in Terni: Laura Pelle, 29/04/2022

Interview, Gruppo Somaschi cooperative, 23/05/2022

Interview, social-legal operator of N.A.V.I.G.A.Re project: Giuseppina Di Bari, 10/08/2022

Interview, President of On the Road cooperative: Vincenzo Castelli, 15/09/2022

Interview, Dedalus cooperative, 28/09/2022

Interview, Tampep cooperative, 05/10/2022

Interview, Anti-trafficking Hotline operator: Dario Fava, 07/10/2022

Interview, contact person of project Incipit: Sandro Lapenna, 03/11/2022

Interview, Jobel cooperative, 08/11/2022

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## RINGRAZIAMENTI

Scrivo questi ringraziamenti del tutto incredula di aver terminato il lavoro di tesi e, in generale, il mio percorso di studi. Sono stati anni intensi e pieni di sfide che mi hanno permesso di conoscere meglio me stessa. Svariate volte mi è sembrato di non potercela fare, di aver esaurito le energie, di non essere all'altezza. Nonostante ciò, ho sempre avuto intorno persone che mi hanno incoraggiata a perseguire i miei obiettivi. A queste persone devo un grazie immenso, perché è anche per il loro supporto se oggi posso dire di aver conseguito l'ultimo traguardo.

Innanzitutto, vorrei ringraziare la mia relatrice, la Professoressa Sara Pennicino, la quale, proponendomi di partecipare a una ricerca OSCE, mi ha permesso di venire a conoscenza di fenomeni ancora troppo poco trattati e che in parte ho deciso di approfondire attraverso il mio lavoro. La ringrazio per essersi sempre dimostrata disponibile nell'aiutarmi e consigliarmi. In particolare, ho apprezzato molto il suo incoraggiamento nell'intraprendere una ricerca che potesse indagare un tema tanto ignorato.

Devo ora ringraziare tutta la mia famiglia, il cui supporto è stato fondamentale nel raggiungimento di questo obiettivo. Grazie alla mia mamma, che più d'ogni altro, con infinita pazienza, si è fatta carico delle mie insicurezze spronandomi ad andare avanti nei momenti più difficili del mio percorso. Grazie al mio papà, per gli abbracci e le parole semplici, in grado di trasmettere però ciò che conta davvero. Grazie a mia sorella, per essere diventata lei la maggiore quando lo sconforto mi assaliva. Grazie al mio ragazzo, che in questi due anni, e in particolar modo negli ultimi mesi, mi è stato sempre vicino, sostenendomi, cercando di capirmi anche quando era più difficile e riuscendo a rendermi, come nessun altro, più serena e leggera. Grazie a mia nonna, per essere stata presente e partecipe nel mio percorso scolastico e universitario dalla prima elementare fino alla conclusione degli studi. Grazie a zia Anna per avermi ascoltata. Grazie ai miei animali, Tupi e Marvin, che senza saperlo hanno alleviato i sentimenti più negativi.

Per finire voglio rivolgere un caloroso ringraziamento a tutti i miei amici e alle belle persone che ho potuto conoscere durante questo percorso. In particolar modo, grazie a

Chiara, che con il suo spirito spensierato mi ha aiutata a ritornare con i piedi per terra quando tutto mi sembrava degenerare. Grazie a Giulia, per i discorsi motivazionali e per esserci sempre stata nonostante la distanza. Grazie a Rachele, per le giornate in biblioteca, i caffè decaffeinati offerti ma soprattutto per le troppe risate e avventure che in questi due anni hanno rappresentato la miglior valvola di sfogo. Grazie a Lucrezia, Lulli e Anna.

Un sincero e sentito grazie a tutti voi per aver creduto in me più di quanto l'abbia fatto io!