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**Sex Work Legislation in Critical Comparative Perspective:  
Investigating the Relationship between Anti-Trafficking  
Discourses and Structural Inequalities Faced by Migrant  
Sex workers**

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## **Introduction**

The purpose of this research is to examine the relationship between anti-trafficking discourses and practices within the Italian and German Sex Work Legislations, and structural inequalities experienced by Migrant Sex Workers.

On a sociopolitical and legal perspective, this topic enables to question significant sociopolitical issues. The first issue is related to the different declinations of sex work's regulatory frameworks within national legislations, that is, to how they differ from one another in terms of theoretical considerations about prostitution and the role of women in society. These theoretical considerations, and the policies which lie behind them, shape the experience of sex workers every day, not only in terms of rights and obligations, but also in terms of discrimination and oppression.

The second matter of interest concerns sex work in relation to national and international immigration law and policy responses, in particular to international labour migration, human trafficking, the protection of undocumented migrant workers, and sex work decriminalization, as opposed to current regulatory frameworks.

On a third, and more critical instance, this research can be considered relevant as migrant sex workers represent a category of subalternity, that is, a marginalized group facing significant discriminations on the basis of race, gender and social class, ultimately causing a deficit in basic human rights such as health, employment and housing. This research assumes that migrant sex workers represent a particular category of subalternity within the general sex working population, as their experience of oppression and discrimination only partially overlaps with that of national sex workers.

The first chapter of this research will focus on the chosen empirical strategy. First, I will illustrate the dependent and independent variables. Secondly, I will give the justification of choice of the subject. After this, I will present the research questions and the two related hypotheses. Subsequently, I will take under scrutiny the case

selection. The following section will be concerned with the operationalization of variables. Subsequently, I will explain how data will be collected and analyzed. The last section will consider ethical challenges for sex work research.

I will devote the second chapter to the theoretical framework. In order to develop an exhaustive theoretical framework, I will analyze sex work according to four different theoretical approaches. The first section will center on the significance of an intersectional approach to sex work research. In the second section, I will examine sex work as a gendered phenomenon, and the contribution of feminist studies; in this regard, I will give particular attention to Bernstein's work on carceral feminism, and to the concept of rescue industry. The third section will illustrate sex work as a phenomenon of transnational labour migration, and the contribution of critical race theory, and (post)colonial scholarship. The last section will focus on sex work as source of social stigma and exclusion, and on the contribution of critical social theory; I will give special attention to Gramsci's concepts of subalternity and structural inequality.

The third chapter will focus on the main national legislative frameworks regulating sex work. I will present three regulatory frameworks and I will take into consideration concrete cases of national legislation. Firstly, the neo-abolitionist model will be described alongside the Swedish case. Secondly, the legalization model will be examined according to the Netherlandish and German cases. Lastly, the decriminalization model will be analyzed, taking into consideration the New Zealander and Belgian cases.

The fourth chapter will explore Italian sex work legislation and the experience of structural inequality by migrant sex workers. The first section will focus on the Italian sex work legislation. Secondly, I will investigate the characteristics of the Italian sex industry, recent legislative resolutions and proposals, and the conditions of sex workers. I will devote the third section to the phenomenon of migrant sex work, and I

will examine the conditions of migrants sex workers in Italy, particularly in relation to their experience of structural inequality. The last section will attempt to detect a conflation between anti-trafficking and sex work discourses and practices, which I will carry out through document and discourse analysis. The main research question is how sex work policies based on anti-trafficking discourses and practices affect structural inequalities experienced by migrant sex workers in Italy.

The fifth chapter will examine German sex work legislation and the experience of structural inequality by migrant sex workers. The first section will focus on the German sex work legislation. The second section will illustrate the peculiarities of the German sex work market, the condition of sex workers, and the political debate regarding the sex work legislation. Thirdly, I will investigate the phenomenon of migrant sex work in Germany, particularly paying attention to migrant sex workers' experience of structural inequality. Lastly, I will carry out document and discourse analysis in order to detect anti-trafficking discourses and practices within the German sex work legislation. The main research question is how sex work policies based on anti-trafficking discourses and practices affect structural inequalities experienced by migrant sex workers in Germany.

The sixth chapter will illustrate the main research findings and show some final considerations related to sex work research and sex workers' rights.

## **I. Empirical Strategy**

### **1. Dependent Variable: Structural Inequalities of Migrant Sex Workers**

The dependent variable of this research is Structural Inequality faced by Migrant Sex Workers. Before providing the notion of migrant sex workers, it is first necessary to define the two distinct notions of structural inequality and migrant sex workers, and subsequently describe how these two concepts interact with each other.

It is possible to define structural inequality as both a process and an individual experience, in which certain categories of people experience inequality as a result of the production and reiteration of a particular configuration of norms, behaviors, attitudes, which is “*systemically rooted in the normal operations of dominant social institution*” (United Nations Economic and Social Commission for Western Asia, 2015). I will further analyze this concept in the theoretical framework, and more specifically, considering the Gramscian perspective.

In order to explain the category of migrant sex worker, it is first necessary to clarify the definitions of sex work and of migrant work. Sex work is defined as a type of paid employment within the sex industry, including prostitution and pornography. It is also worth noticing that, although the terms sex work and prostitution are often employed as synonyms, the former denotes a more positive approach to sexual labour, and conceptualizes it as any other form of labour and advocates for its decriminalization; on the contrary, the usage of the term prostitution highlights the exploitative dimension of sexual labour (Danna et al.); in this research, the concepts of sex work and prostitution will be utilized as synonyms, without implying any particular qualitative connotation.

A report of Amnesty International on the conditions of sex workers highlights the various human rights abuses to which they are exposed to (Amnesty International, 2016). They are subjected to significant stigmatization and marginalization; they face



higher rates of physical, psychological and sexual violence compared to the general population, they are victims of police brutality and criminalization, they often lack adequate health and social services, and they are frequently denied housing.

According to The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a migrant worker is “*a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national*” (OHCHR, 2019); in this regard, the UN General Assembly reiterates the universal applicability of human rights, which has to be granted also to migrant workers. The definition of migrant sex worker is not explicitly stated within the OHCHR framework.

The Migrant Sex Workers Protect, a Canadian grassroots movement, provide an accurate definition of migrant sex worker, who is “*anyone who has left where they live to go to another place (either through formal or informal avenues) and also works in the sex industry,*” (Migrant Sex Workers Project, n.d.); the association further states that: “*Migrant sex workers are frequently racialized, poor, and working class women. They often face struggles with immigration, housing, and accessing health services and labour protections*” (Migrant Sex Workers Project, n.d.).

The human rights violations which sex workers face increase in the case of migrant sex workers, who are also exposed to other kinds of human rights abuses, as research carried out by TAMPEP suggests (TAMPEP, 2009). In fact, migrant sex workers are not only susceptible to anti-sex work legislation, but also to anti-immigration policies all around Europe. In countries where sex work legal is legal or tolerated, there is a huge discrepancy between migrant sex workers from EU countries and migrant sex workers from non-EU countries (TAMPEP, 2009). As migrants coming from outside the European Union are almost always excluded from finding a permanent legal employment and obtaining residence within the EU, a consistent number of them decides to operate within illegal (and often criminal) circuits of the sex market in order to survive; if and when they get caught, they face expulsion or deportation. Because of their illegal status, they are much more reluctant to collaborate with the police or with social services if they experience any type of violence or

discrimination. TAMPEP argues that, more often than not, “*The only form of legal protection for migrant sex workers is provided within the laws to combat trafficking*” (TAMPEP, 2009).

The conditions of migrant sex workers, and the migration flows characterizing the sex work industry, will be further investigated throughout the course of the research.

## **2. Independent Variables: Anti-Trafficking Discourses and Practices**

The independent variable of this research is the Anti-Trafficking nature of discourses, policies, and legislation on Sex Work. In analyzing structural inequalities faced by migrants sex workers in their every day’s lives, a consistent body of academic literature has associated the structural disadvantages faced by this category, and their consequent human rights deficit, with the anti-trafficking, criminalizing and stigmatizing nature of discourses on sex work legislation.

In order to explain the conflation of the terms human-trafficking and sex work, it is first crucial to delineate what is intended by human trafficking. The United Nations Office on Drugs and Crime defines human trafficking as “*the recruitment, transportation, transfer, harboring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit*” (United Nations, 2021); it further asserts that all segments of society (men, women and children) can be victims of human trafficking and that this phenomenon occurs all around the world. The UNODC further states that human traffickers “*often use violence or fraudulent employment agencies and fake promises of education and job opportunities to trick and coerce their victims*” (United Nations, 2021).

With regard to anti-trafficking legislation one of the most relevant piece of legislation on the matter is surely the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, also defined as Palermo Protocol, which was promulgated by the UN General Assembly in 2000 and has been adopted in many states, and also by the European Union, as a guideline for combating human

trafficking within national and transnational borders. The main purposes of the Protocol are preventing and combating the trafficking in persons, giving special attention to women and children, to protect and assist the victims of human trafficking, and to promote cooperation among State Parties in order to achieve the first two purposes (Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime).

The main theme of anti-trafficking discourses is that of establishing an indissoluble link between sex work intended as a matter of individual's agency and free choice, and human trafficking practices, labour and children exploitation and other related activities, ultimately failing to consider sex work as actual labour (Kotiswaran, 2021). This discursive declination of sex work significantly affects policies targeted at regulating the sex work industry within any national context. Throughout the last decades, there has been an ongoing trend towards anti-trafficking discourses on sex work, and various EU states are implementing repressive and conservative sex work policies and laws, targeted at enhancing legal barriers to the full recognition of migrant sex workers' rights (TAMPEP, 2015).

### **3. Justification of the Choice of the Subject**

This research is concerned with the comparative analysis of the structural inequalities experienced by migrant sex workers within the Italian and German national legislative contexts. There are various reasons which justify the choice of a comparative analysis between these two national sex work legislations.

The first reason is given by the fact that Italy and German present two distinct frameworks regulating prostitution. In Germany, prostitution is legal and regulated, sex work legislation is characterized by a regulamentarist framework, in which sex workers are subjected to processes of registration, control and regulation, and they are at risk of being sanctioned if they do not comply with law. The Italian legal framework on prostitution is regulated by Merlin Law 75/58, which marks the

passage from a regulamentarist to an abolitionist legal framework, making sex work in Italy tolerated but not legal (Becucci and Garosi, 2016 2016). Hence, this research will allow the comparison between the regulamentarist and the abolitionist framework on sex work legislation.

The second reason is connected to the significant size of the sex working population of migrant origin in both countries. The phenomenon of migrant sex work has become increasingly pervasive within the European Union during the last two decades, mainly as a result of globalization dynamics and increased migration flows, and also affected by transnational criminal networks.

Both in Italy and in Germany, migrant sex workers represent the majority of the sex working population, and they face peculiar kinds of structural inequality compared to national sex workers. Hence, the Italian and German case will allow a thorough investigation of the sex workers' experience of discrimination and oppression within each national context.

Lastly, this comparative analysis allows to identify the different degree of pervasiveness of anti-trafficking discourses and practices among the two national contexts. It is possible to assert that both the Italian and the German sex work legislation are characterized by anti-trafficking discourses, although degrees of variation are detectable within the two countries' legal approaches.

#### **4. Research Question and Hypotheses**

The central research question concerns the way in which anti-trafficking discourses and practices within the Italian and German sex work legislation affect structural inequalities experienced by migrant sex workers. There are two hypotheses related to the central research question, connected to the Italian and German case, respectively.

The first hypothesis is that the anti-trafficking nature of discourses and practices within the Italian sex work legislation enhances structural inequalities for migrant sex workers.

The second hypothesis is that the anti-trafficking nature of discourses and practices within the German sex work legislation enhances structural inequalities for migrant sex workers.

## **5. Case selection**

This research conceptualizes migrant sex workers as a subaltern group which is affected by structural inequality as a result of being part of that group. As their oppression and discrimination are driven by systemic factors, it is fundamental to take into account the social and collective dimension of the experience of migrant sex workers.

As this research aims to examine the experience of structural inequality in two national contexts, I will divide the group of migrant sex workers into two different groups: the group of migrant sex workers in Italy, and the group of migrant sex workers in Germany. In this way, it will be possible to test how the two groups experience different levels of structural inequality in relation to the anti-trafficking nature of discourses and practices related to sex work legislation. The nature of the comparison will be qualitative and it will focus on a limited number of cases.

For what concerns the time period, it will be relevant to consider how migrant sex workers were affected by sex work legislation in relation to the different pervasiveness of anti-trafficking discourses within German and Italian sex work legislation, respectively. Consequently, the research will be based on diachronic analysis, which will be sensitive to variations of regulatory frameworks on sex work within each national context. Significant developments within the two states sex work legislation will be taken into account, such as the passage from the regulamentarist to the abolitionist framework within the Italian legislation and the increasingly regulamentarist framework of the German legislation.

## **6. Operationalization of variables**

The concept of anti-trafficking discourses and practices can be operationalized through document analysis and discourse analysis.

In the case of document analysis, this concept can be detected through the use of certain words, such as victim, exploitation, abuse, coercion, forced, trafficked.

In the case of discourse analysis, it can be detected through certain conceptualizations of reality, or tropes; for example, it will be demonstrated that anti-trafficking discourses are based on a perspective which portrays all women who sell sexual services as passive victims of male clients and of the patriarchal structure oppressing them, regardless of the fact that some voluntarily decide to resort to sex work as a career's choice. Therefore, it is possible to identify within discourse analysis on sex work frameworks the presence of emotionally connoted narratives centered on the victimhood of sex workers, as opposed to their self-actualization.

With regard to migrant sex workers, the research will attempt to demonstrate that anti-trafficking discourses tend to consider all sex workers of migrant origin as victims of transnational crime, human-trafficking or sexual exploitation; it is assumed that third parties are trafficking migrant sex workers from one country to another, with the purpose of bringing them into the sex market and economically exploiting the services they offer. Consequently, what I will investigate and attempt to detect in this regard is a stereotyped representation of the migrant sex worker, characterized by helplessness, victimization, and stigmatization.

I will operationalize the concept of structural inequality according to different dimensions, which can have one or more indicators.

For the dimension of racial inequality experienced by migrant sex workers, it is possible to consider racial profiling by the police, ethnic violence (perpetuated by the police, clients and larger society), and the increased likelihood of police controls and surveillance.

For the dimension of gender inequality, it is possible to consider gender violence, both physical and psychological, perpetuated by clients and by the society at large.

For the dimension of class or work inequality, which related to the stigmatization around sex work, it is possible to consider the increased likelihood of police control and surveillance, the lack of housing and health rights, the lack of legal recognition, and levels of social exclusion compared to other segments of the society.

The last dimension of inequality is related to the migrant status of sex workers. I will take into consideration whether migrant sex workers legally reside in the countries where they work or not; it is essential to take into consideration the document or undocumented status of migrants, as undocumented migrant sex workers face considerably higher vulnerabilities: risk of expulsion and deportation, increased likelihood of working within criminal circuits, higher stigmatization and marginalization, increased invisibility if they are victims of trafficking or sexual exploitation.

Other indicators related to the migrant status of the sex workers are: the lack of legal recognition and of health rights, the increased likelihood of social marginalization and exclusion. Marginalization and exclusion can be declined according to: increased difficulties in accessing other jobs and the justice system, increasing likelihood of working in the illegal sector compared to national sex workers, risk of expulsion from the country where they sell sexual services.

As this research is based on a theoretical intersectional approach, it is important to consider the different dimension of structural inequality as a set of layered, intertwining processes rather than fixed or exclusive categories.

## **7. Data collection and analysis method**

In order to identify the degree and pervasiveness of anti-trafficking discourses and practices within the German and Italian sex work legislation, it is first relevant to consider the national jurisprudence in the matter. As this research is based on a diachronic analysis, both past and current legislation will be analyzed. With the regard to the Italian case, as the legislation regulating sex work dates back to 1958s, it is essential to consider current legislative proposals of amendment of such legislation. It

is also significant to consult related international jurisprudence on the matter, that is, specific policy briefs, reports and recommendations issued by multilateral organizations such as the United Nations or the European Union, both concerning sex work and anti-trafficking discourses and practices. This type of document analysis is mainly associated with textual content.

It is further essential to consider the set of anti-trafficking discourses and practices which are produced outside national legislations and other legal venues, that is, those advocated for by anti-trafficking activists, associations, feminist movements and other stakeholders. In this regard, the analysis will take into considerations briefings and dossiers produced by civil society organizations, newspaper articles, declarations of policy makers and activists. In this case, the analysis would be mainly discursive, with a focus on the role of power in language and how this affects subaltern groups and their experience of structural inequality.

## **8. Ethical Considerations for Sex Work Research**

As sex workers represent a highly marginalized and criminalized category of people, there are various challenges to take into consideration in order to develop ethical and non-exploitative research projects on sex work, which are aimed at benefiting the community of sex workers, first and foremost in the recognition of their rights and in the safeguard of their wellbeing (Shaver, 2005). Shaver articulates three main challenges connected to sex work research.

The first challenge is related to the potential bias of data regarding sex workers, which could affect the reliability and accuracy of the research process; this happens because data on sex work research are generally provided by informants such as social services agencies, healthcare agencies, and police, to which sex workers resort to when they are facing difficult or dangerous situations. It is unlikely that sex workers interact with these agencies where they are not in a moment of crisis (Shaver, 2005). This situation may produce the bias that the majority of sex workers is constantly



exposed to violence, or that they are victims of human trafficking or sexual exploitation.

The second challenge, which also relates to the accuracy of data, is the sex workers' membership within the broader category of hidden populations, meaning communities who work in highly stigmatized or illegal contexts; as a result, sex workers often face concerns regarding privacy and confidentiality when contacted by researchers or service providers. In order to protect their identity, they may refuse to cooperate with these agents, or give false or inaccurate answers (Shaver, 2005).

The last challenge is of intellectual nature, and lies in the fact that sex work tends to be "*treated as an identity category rather than revenue-generating activity*" (Shaver, 2005); this assumption enhances the risk of treating them as a fixed and homogenous community, and triggers dangerous, dichotomous associations between sex work and victimization. It is therefore important to always consider the diversified nature of the sex workers' community; even though sex workers may face similar stigmas due to the nature of their work and other declinations of systemic oppression and discrimination, researchers should never fall into the trap of generalizing on sex workers' complex identities and experiences (Shaver, 2005).

The next chapter will be concerned with the theoretical framework of this research. Firstly, the importance of an intersectional approach to sex work research will be considered. I will devote the second section to sex work research within feminist studies and on the conceptualization of sex work as a gendered phenomenon. The third section is dedicated to sex work research within critical race theory and postcolonial scholarship and to the conceptualization of sex work as a phenomenon of transnational labour migration. Lastly, I will examine how sex work with the realm of critical social theory, with reference to sex workers as a marginalized, subaltern group.

## II. Theoretical Framework

### 1. Intersectional Theory

*“White sex workers have embraced this as a form of empowerment. They cite pussy as power, a cis-sexist move to claim a place of dominance under capitalism. We are winning capitalism, I heard one wealthy white sex worker say proudly. But are we? Am I? I feel loss, but not in the sense that anti-porn and anti-trafficking proponents would hungrily grab onto and exploit. The loss is in the fact that I do not fit here. I am losing against capitalism, not as an erotic laborer, but as a Black woman mired in poverty, in racism. I am disempowered, not by my profession or side hustle, but as a victim of structural oppression.”* (West, Horn and Selena, 2021)

During the 1980s, the American jurist and activist Kimberlé Crenshaw first introduced the concept of intersectionality in order to create a new analytical structure that accurately describes the oppression experienced by Black women. In this regard, intersectionality stems from a fundamental critique of both feminist studies and black studies: there is a precise willingness in Crenshaw’s work to overcome the dichotomy of racism and gender. The single-axis, unidimensional analytical structures of sexism and racism are deemed as unsatisfactory in theoretically declining the oppression of Black women, and the power and social relations that they are subjected to, because the intersectional oppression is much more powerful and all-encompassing than the two categories alone could ever be (Crenshaw, 1989). The experience of being Black and a Woman are best understood when considered as mutually constitutive and overlapping. This dichotomous struggle is perfectly enclosed in the iconic title of the book *“All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave”* which Crenshaw uses as a point of departure on her paper about intersectionality.

The term intersectionality, or intersectional theory, has gained much popularity over the last years, both in the general public and in the academic debate, especially concerning Critical Race Theory and Marxist Feminist Studies, and has gradually

come to include other dimensions of oppression, such as class, disability, sexual orientation and gender identity, immigration status.

The definition of intersectionality that will be taken into account as a theoretical approach and analytical tool to develop this research is the following: *“the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect especially in the experiences of marginalized individuals or groups”* (Merriam Webster, 2019).

It is fundamental to adopt an intersectional approach when doing research about migrant sex workers, or the sex work industry in general. The concept of intersectionality is also essential to better understand the concept of structural inequality, to which a subsequent section will be devoted.

## **2. Sex Work as a gendered phenomenon; insights from feminist theory**

*“Sex work, like other forms of care work such as nursing, is predominantly done by women and LGBT+ people, whilst clients are predominantly men. Sex work takes place within a patriarchal society where men have more resources and power than women. However, reducing prostitution to ‘patriarchal oppression’ denies sex workers’ agency and the ability of sex workers to consent to specific sexual activities for remuneration.”* (ESWA, 2022)

*“Current discourse around prostitution forces people who work in the sex industries to identify as either passive victims of sexual slavery, or as happy and empowered sex workers. We must dismantle the imperative to squeeze women into a singular point of existence”* (West, Horn and Selena, 2021)

What we mean by “gendered labour” is a significantly unequal distribution of men and women in a certain type of work or industry sector. The Sex Work Industry is essentially a gendered industry: most people who sell sexual services are women (or

presenting as women) and most people who buy those services are men. It is estimated that 85-90% of people occupied in the sex work industry are women (Balfour, 2014).

Despite this, it is also important to consider the experiences of sex workers of different genders, such as transgender and cis-gender men, non-binary people, and people with indigenous and non western genders; as noted in the briefing paper on rights violations against Migrant Sex Workers in Europe and Central Asia, an intersectional approach is fundamental because *“Contrary to the monolithic abolitionist discourse, which portrays all sex workers as “prostituted women” without agency, our communities are diverse and resilient. Sex workers are male, female and non-binary, LGBTQ, migrants and workers. Supporting sex workers’ rights means understanding the diversity and complexity of our lives and involving sex workers from diverse communities in decision making, policy making and debates.”* (ICRSE, 2016)

Because sex work is a gendered phenomenon, the matter is extensively researched in the field of feminist studies, and ethical considerations about sex work often stems from gender equality (or inequality) theories and, more extensively, from value judgments on the role of women in society.

The main theoretical perspectives on sex work that were generated within the feminist theoretical debate are the sex work perspective and the abolitionist perspective. To each of these perspectives correspond a peculiar model of legislation on sex work, respectively the decriminalization framework and the abolitionist (or neoabolitionist) framework, which will be explained in depth in the next chapter, regarding sex work legislative regulatory frameworks.

The abolitionist feminists and scholars consider all kinds of sex work as inherently exploitative, arguing that this industry is fueled by gender inequality, thus envisaging sex work as a patriarchal and misogynist institution where women sell themselves and not their labour; prostitution is conceptualized as intrinsically degrading for all women, and its potentially empowering dimension is not taken under consideration (Benoit et al., 2018).

This theoretical perspective is mostly supported by radical and marxist feminists, who consider the sex work industry as a direct product of the patriarchal, sexist organization of both government and society. For this reason, there is a consistent body of literature where sex work, human trafficking, and sexual exploitation are treated and analyzed as the same subject-matter. Connecting prostitution to trafficking discourses, this framework ultimately calls for more repressive and restrictive policies (Gerassi, 2015).

The neo-abolitionist model of sex work legislation found its empiric declination in Sweden, where it was first established, and has subsequently developed in other Nordic countries such as Norway, Iceland, and Ireland; for this reason, the neo-abolitionist model is also called Nordic model approach to prostitution, or simply Swedish model. The first section of the next chapter will present more in depth the characteristics and peculiarities of this model of sex work's legislation.

In 2014, The European Parliament has elaborated a resolution on “Sexual exploitation and prostitution, and its impact on gender equality” clearly taking stands in favor of the abolitionist framework on prostitution, and asserting that decriminalizing sex work will only harm women and enhance the violence and exploitation they experience. In the same resolution, the gendered nature of the sex work industry is clearly stated, and considered both a cause and a consequence of gender inequality. The EU Parliament asserts that: *“prostitution and forced prostitution are gendered phenomena with a global dimension, involving 40-42 million people worldwide, with the vast majority of prostituted persons being women and under-age females, and almost all buyers being men, and whereas it is therefore both a cause and a consequence of gender inequality which it aggravates further;”* (Sexual exploitation and prostitution and its impact on gender equality)

One of the main shortcomings related to this theoretical perspective is the fact that gender equality does not seem to increase in those countries where sex work is strongly repressed and criminalized; on the contrary, data show that sex workers are

more susceptible to health-related issues and violent aggressions in those countries (Benoit et al., 2018).

In order to contrast the thesis that all kinds of sex work are exploitative and degrading for women, and that sex work always stems from gender inequality considerations on the structure of our society, I found the work of Elizabeth Bernstein and her consideration on carceral feminism to be extremely relevant.

In the early 2000s, Bernstein conceptualizes the notion of carceral feminism to denote a particular declination of the discipline which connects all forms of sexual labour with sexual trafficking; it denotes a social, cultural and political structure created by feminist advocates, where women's fight for emancipation and sexual liberation and other social justice's struggles are declined and attempted to be solved according to a carceral agenda, in other words, to a framework that promptly resorts to criminal justice (Bernstein, 2018).

Carceral feminism envisages a punitive system of surveillance and control to tackle sex work, creating various tropes such as that of the innocent victim (often underaged), or of the subhuman predator who is trying to buy sex. This is said to be very evident in contemporary anti-trafficking campaigns. The most problematic aspect of carceral feminism is, once again, the lack of an intersectional approach: a dichotomous separation which does not leave any consideration to factors of structural oppressions such as racism and poverty.

Bernstein theorizes that carceral feminism not only applies to the people involved in the sex work industry, but is broadly rooted in the neoliberal mode of governance which promotes a criminal-justice agenda.

With regard to the UN Protocol on Trafficking in Persons of 2000, Bernstein argues that it has been the most influential policy instrument "*in disseminating the trafficking discourse on a global scale*" (Bernstein, 2018). She criticizes the vagueness and ambiguity of the definition which is given to the concept of trafficking within the Protocol; according to Article 3, "*Trafficking in persons shall mean the recruitment, transportation, transfer, harboring 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.*”(Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime). She argues that it is not clearly explained whether by “exploitation of the prostitution of others” is meant a direct physical control or a mere economic profit on the activity of others, that is the Marxist conception of exploitation (Bernstein, 2018).

Another critique lies in the fact that the Palermo Protocol is not an instrument of human rights protection per se, but rather a law-enforcement instrument implemented by a law enforcement body, based on the prosecution and punishment of traffickers rather than in the protection of victims; in fact, the Protocol obliges the ratifying states to take police against traffickers, whereas the protection of victims is declined in voluntary terms (Bernstein, 2018).

In order to identify the conflation of anti-trafficking discourses and practices within the US discourse on prostitution, Bernstein employs discursive analysis; in this context, the repetition of certain words (such as victim, predator, perpetrator exploiter) and certain tropes, such as those of “*violated femininity, shattered innocence, and the victimization of women*” (Halperin, 2017) is deemed as indicative of said conflation. This methodology will also be applied in this research in order to identify the conflation of anti-trafficking discourses within sex work legislation in the Italian and German cases.

Contrasting the abolitionist perspective, the pro-sex work perspective, also defined as sex positivism, advocates for women’s rights and agency in deciding whether they want to pursue a career in the sex work industry (Gerassi, 2015). It is worth noting that while abolitionist advocates do not make a distinction between sex work and forced prostitution, pro-sex work theorists recognize the existence of forced

prostitution and trafficked persons involved in the sex work industry, but also advocate for the freedom of choice and for the agency of sex workers who choose to do be involved in sex work voluntarily.

This theoretical perspective ultimately calls for a legislative framework which decriminalizes sex work completely, meaning that sex work would be considered as any other type of work and sex workers would be guaranteed the same rights and duties of any other workers' category, such as paying taxes, being entitled to sick or maternity leave, taking out a mortgage or simply being able to rent a house legally. As of now, there are only two countries in the world that have fully decriminalized sex work: New Zealand and Belgium.

Concluding this section on sex work as a gendered phenomenon and the contribution from feminist theory, it is once again important to stress that sex work research should be committed to challenging the irreconcilable binary between passive victims of sexual slavery on one side and empowered, wealthy sex worker on the other. The sex work industry is extremely varied and diversified, sex workers present complex identities (West, Horn and Selena, 2021) and describe their experiences in the most disparate ways, therefore it is impossible and detrimental to sex work research and sex workers rights to be stuck in this dichotomy.

### **3. Sex Work as a phenomenon of transnational labour migration; insights from postcolonial theory**

With regard to sex work related migration flows within the European context, recent research has highlighted that the majority of sex workers working in European states is of migrant origin, and that migrant sex workers are increasing both in numbers and in terms of ethnic composition (Brussa, 2009).

The phenomenon of sex work is more and more globalized, susceptible to transnational migration flows, in particular female labour migration, and to immigration policies.



The sex work industry is considered especially affected by migration flows, as several factors push or force sex workers to migrate to other states, such as discriminations associated with misogyny, whorephobia, transphobia, and homophobia, and several barriers associated with the criminalization of sex work or lack of legal protection, which affect sex workers' accession to healthcare, housing and social services (TAMPEP, 2015).

With regard to migration flows from the Global South to the Global North, sex work can also be considered as part of the migratory project that individuals undertake in order to enhance their socioeconomic conditions and achieve a more fulfilling life .

The ethnic composition of sex workers of immigrant origin in Europe has gradually shifted over time. Until the 1990s, sex workers migrating to Europe were predominantly coming from South Asian, Latin American, and African countries. With the collapse of the Soviet Union in the 1990s, it was registered a significant increase of sex workers from Central and Eastern Europe migrating to Western European countries. After the European Union's enlargement in 2004 and 2007, the same shift has been registered within the communitarian borders (ICRSE, 2016).

The following sections, on migrant sex workers in the Italian context and on migrant sex workers in the German context, will more accurately illustrate the ethnic composition and demographics of sex workers in each national context, they way in which they operate in the market, and the major risks and vulnerabilities to which they are subjected.

The migration trends that have been registered in Europe during the last decades, and the subsequent increased criminalization of migration, have significantly affected the experience of Migrant Sex Workers in Europe (ICRSE, 2016).

Migrant Sex Workers are not only subjected to anti-trafficking discourses as sex workers but also to anti-immigration discourses and ethnic discrimination as migrants, thus affected by a further dimension of oppression and inequality. The criminalization of migration not only entails stricter anti-immigration laws and policies, tightened conditions of entry and increased border controls, but also the problematization of

migration as a security threat in Europe within the mainstream discourse and the widespread representation of migrants as deviants and criminals, which induces nationalistic, xenophobic and racist sentiments.

Migrant sex workers face significant struggles compared to national sex workers: they are reported to be more vulnerable to aggressions, they face severe difficulties in obtaining a legal work permit in countries where sex work is legal; they are more susceptible to social exclusion and discrimination (Brussa, 2009).

The impact of anti-immigration laws and policies on migrant sex workers, and their propensity of enhancing structural inequalities for such category of workers, will be further analyzed in the subsequent sections concerning the Italian and German case.

With regard to sex work legislation and the experience of migrant sex workers in Europe, the main contribution of Critical Race Theory and Postcolonial Studies is the establishment of a nexus between racism and anti-sex work, anti-trafficking and anti-immigration legislation in Europe. It is possible to trace back this nexus to chattel slavery and colonial times, where the sexual racialisation of non-Western people (especially women) by European and North-American powers was pervasive, as the frequent episodes of institutionalized militarized prostitution demonstrate (ESWA, 2022).

The neo-abolitionist framework on prostitution, that was conceptualized by white and wealthy radical feminists from the Global North, gained much popularity in Europe during the twentieth century and significantly influenced the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, which subsequently lead to stricter immigration laws and a stricter control on sex work (ESWA, 2022).

The neo-abolitionist turn, embedded with attitudes of patriarchal humanitarianism and white savior mentality, definitely marks the beginning of the conflation between anti-trafficking legislation in international law and prostitution legislation in national law. Radical feminists, who advocate for the neo-abolitionist model and consider all form of sex work as sexual slavery, fail to consider the complex and diversified identities of racialised sex workers and the intersectional oppression they experience, and

potentially expose them to more violence and discrimination when calling for a more punitive and criminalizing framework (ESWA, 2022).

The advocates of the decriminalization framework have heavily criticized the conflation of the two terms of anti-trafficking and sex work.

Augustín defines as Rescue Industry all the practices and discourses that assume that all migrating women are victims who are being trafficked and coerced into forced prostitution, and not individuals who are choosing to migrate to make a conscious career choice (Agustín, 2008). Because of the status of passive victims that they are automatically given, they are almost always excluded from migration studies and disqualified as travelers and workers, making research on migrant sex work even more difficult.

#### **4. Sex Work as a source of social stigma and exclusion; insights from critical social theory**

*“I am a Black, queer, nonbinary, masculine-presenting performer of color. My race and gender are not reflected in most of the stories our culture tells about sexual abuse. Sex workers are also invisible in those stories. Privilege plays a role in whose story gets a platform. [...] Destigmatizing sex work is necessary to uplifting sex worker voices. Stigma affects whether or not victims will come forward, whether their voices will be heard at all.”* (West, Horn and Selena, 2021)

I found particularly useful to employ the concepts of subalternity and structural inequality, both drawn from Gramsci’s work, to conduct my research on anti-trafficking discourses and policies shaping migrant sex workers experience.

Adopting a Gramscian theoretical perspective, the experience of inequality can be conceptualized as a complex and multifaceted relationship between the individual and its interaction with the social fabric, declined along the lines of social and discursive constructions of class, race and gender (Crehan, 2017).

It is possible to define structural inequality as both a process and an individual experience, in which certain categories of people experience inequality as a result of the production and reiteration of a particular configuration of norms, behaviors, attitudes, which is “*systemically rooted in the normal operations of dominant social institution*” (United Nations Economic and Social Commission for Western Asia, 2015).

In this research, migrant sex workers are portrayed as a category of subalternity, conceptualized by Gramsci as a marginalized and oppressed group which experiences fundamental inequalities as a result of the particular construction of reality they are situated in (Crehan, 2017).

This research conceptualizes structural inequality faced by migrant sex workers as a complex, multilayered set of intertwining processes where this marginalized group experiences discrimination and oppression through the intersected, social categories of race, gender and class, occupation and legal status, coming together to represent a particular configuration of subalternity, which allows for their individual stories to be framed within a collective narrative, contrasting that of the dominant social order and institutions.

Massari (Elia and Fantozzi) also conceptualizes migrant sex workers as a subaltern category, subaltern even to autochthonous sex workers, as they can benefit from “the privilege of citizenship” whereas migrant sex workers are subjected to a sort of social death, where they are simultaneously legally invisible, socially marginalized and subjected to (post)colonial attitudes.

Amnesty International asserts that sex workers are particularly susceptible to high levels of stigma and social exclusion, discrimination and prejudice, and that these dynamics are often fueled by considerations of illegality and immorality, which are pervasive in sex work related laws and policies (Amnesty International, 2016). It is thought that the violence that sex workers consistently face is a direct consequence on the social stigma surrounding the profession, so much that sex workers are often

shamed and blamed for violent acts perpetrated against them (Amnesty International, 2016).

The European Union's Resolution on Sexual Exploitation and Prostitution of 2014 also acknowledges that sex workers are highly exposed to be publicly ostracized and socially stigmatized, more than individuals involved in any other labour activity (Sexual exploitation and prostitution and its impact on gender equality).

A clear example of the fact that the stigma surrounding sex work is embedded into the legal system, is the significant risk that sex working mothers experience of losing their children's legal custody, even when the type of sex work they do is fully legal, such as stripping or streaming on webcam platforms (West, Horn and Selena, 2021). This situation obviously stems from a value judgment on sex work: the people who decide to pursue a career in the sex work industry are often considered morally deviant, as lacking judgment and boundaries, and generally not suitable for parenting roles. (West, Horn and Selena, 2021)

Because sex work is tremendously stigmatized, the motives and factors that push people towards this industry and professional career are significantly pathologised; the simple fact that individuals are brought to this industry to make money and economically support themselves, is overlooked more often than not (Smith and Mac, 2018). Pathologizing sex workers and dismissing the material reasons of their choice is often a deliberate choice of policy makers and abolitionist or prohibitionist activists, who consciously dismiss the experience of sex workers and their rational survival choice, in order to support the criminalization of prostitution and sex workers (Smith and Mac, 2018).

The high presence of subaltern categories practicing sex work is frequently used as a justification for the deviant and criminal nature of the industry. It is safe to assert that there is an overrepresentation of marginalized people and people victims of structural oppression among sex workers (Smith and Mac, 2018). Marginalized people, such as disabled people, drug users, undocumented migrants, or individuals belonging to the LGBTQ+ people resort to "survival sex work" because they are already excluded from other types of work. They have limited opportunities to enter other job markets

because of the discrimination they face according to various intersected dimensions. For example, migrant sex workers make up for a consistent percentage of people involved in the industry because they may face racism and xenophobia in other job places, or because their status of undocumented migrants does not enable them to get a legal job; transgender men and women often resort to sex work because xenophobic and homophobic sentiments socially exclude them from other work industries.

Mac and Smith argue that the high presence of marginalized people involved in the sex work industry, contrary to being the consequence of a morally corrupted and inherently unjust industry, it is rather a systemic failure of mainstream society in addressing structural oppression and inequalities (Smith and Mac, 2018).

The next chapter will focus on the analysis of the three main regulatory frameworks with regard to sex work legislation: the abolitionist model, the decriminalization model, and the legalization model. With regard to the abolitionist model, the Swedish case will be taken into account. With regard to the decriminalization model, the cases of New Zealand and Belgium will be considered. With regard to the legalization model, the case of the Netherlands will be considered; also the German case will be briefly mentioned, and discussed in details in chapter

### **III. Sex Work Regulatory Frameworks**

#### **1. The Neo-abolitionist model: the Swedish case**

As mentioned in the paragraph concerning feminist abolitionist perspectives on sex work, the neo-abolitionist framework on prostitution legislation was first established in Sweden during the late Nineties, and it is also defined as the Nordic model approach or Swedish model. (Danna et al.). Today, the Swedish model is established as a prostitution regulatory framework in Norway, Ireland, Iceland, France, Northern Ireland and Canada.

The Swedish model can be defined as a “*legal regime that criminalizes the purchase of sex and punishes third parties (such as managers, drivers, and landlords) while ostensibly decriminalizing those who sell sex*” (Smith and Mac, 2018). This regulatory framework’s main focus is clients, and the aim is ending the demand to purchase sex; for this reason, clients who are caught in the acts of trying to buy sex face sanctions. In 1999, the Swedish Parliament, heavily influenced by abolitionist radical feminists, passed the “Sex Purchase Act” entailing the prohibition of the purchase of sexual services; it was the first moment in history in which it was introduced a law which criminalized the purchase of sexual services, but not the selling (Dodillet and Östergren, 2011).

The Sex Purchase act is part of the Violence Against Women Act, the broader gender equality program implemented by the Swedish Government, in which feminist policy-makers conceived prostitution as a consequence of patriarchal oppression and as a form of violence against women (Dodillet and Östergren, 2011).

The legislation on the sex purchase ban is formulated in gender-neutral terms, but its model of intervention is explicitly gendered as it aims at changing men’s attitudes and actions towards women who sell sex (Holmström and Skilbrei, 2017).

Within this model, sex workers are mostly conceptualized as victims who need to be rescued; it ultimately connects all sex workers to the victims of human trafficking and all forms of sexual labour as rooted in gender inequality.

Swedish sex work policies, envisaging criminal sanctions for purchasers, illustrate how the eradication of prostitution is intended as necessary to achieve a fully democratic society where gender equality is respected (TAMPEP, 2015).

Within this framework, sex work was also generally deemed as an undesirable social phenomenon, causing harm to both individuals and society; the Swedish government further states that: “*Large-scale crime, including human trafficking for sexual purposes, assault, procuring and drug-dealing, is also commonly associated with prostitution.*” (Regeringskansliet, 2011)

Currently contained in Chapter 6, Section II of the Swedish Penal Code, the Sex Purchase Act consists of various laws and regulations; the main laws are the ones

concerning the purchase of sex, pandering, and the rented apartment and rooms for prostitution (Dodillet and Östergren, 2011).

The Sex Purchase Law makes it unlawful to obtain, or attempt to obtain, casual sexual services for compensation, which is not only monetary as also gifts, meals, alcohol or drugs may be considered as compensation. The sanction for whom infringes this law foresees one year prison (Dodillet and Östergren, 2011).

The Pandering Law prohibits pimping and procuring, meaning that it is considered unlawful to promote or exploit another person's involvement in the sex work industry. As a result, sex workers are not able to work together or recommend customers to each other, and they cannot advertise their services nor be assisted with finding clients, or employ a security guard; this law has been said to be detrimental with regard to harm reduction practices associated with sex work, such as the distribution of condoms by social services to prevent the spread of sexually transmitted infections, as they may be considered to encourage prostitution (Dodillet and Östergren, 2011). Lastly, there are several laws finalized at preventing the rental of apartment or rooms that are used for prostitution, which basically entails the impossibility to rent an apartment, room, or hotel room for sex work activities, or operate from a brothel; a landlord or tenant is entitled to end a tenancy if he suspects that the apartment or room is used for sex work purposes (Dodillet and Östergren, 2011).

With regard to the effects and consequences of the implementation of the Sex Purchase Act in the Swedish context, it can be said that it partially failed to deliver the expected results, and also produced some unexpected consequences.

The main aim of this act was first and foremost to decrease prostitution activities and people who work or benefit from the sex work industry, based on the assumption that this work is detrimental to both sex workers and society as a whole. According to many studies, it is impossible to prove that prostitution levels have decreased because of the lack of statistical evidence and reliable data (Meinefeld, 2016).

With regard to the fight against human trafficking for sexual purposes, it has not been detected any empirical correlation between the adoption of the neo-abolitionist framework and the increase in number of individuals convicted for sex trafficking in



Sweden (ESWA, 2022). Data report that the number of individuals prosecuted and convicted for sexual trafficking amounted to 13 in 2008, and to 3 in 2017. On the other hand, the number of sex trafficking case and victims detected increase from 15 cases in 2008 to 82 cases in 2017 (ESWA, 2022).

A drop in the number of clients was registered since the implementation of the law, as many previous clients were desisted from the Act. This dynamic increased the levels of competitions between sex workers, but also the potential violent behavior and the risks they were exposed to; most clients would refuse to identify themselves with their real name and contact information, as they are afraid of getting caught (Meinefeld, 2016). For this reason, sex workers that were raped or sexually assaulted by clients were not able to report them to the police.

It has also been argued that stigmatization and social exclusion experienced by sex workers have increased since the implementation of the Sex Purchase Act; on the contrary, the number of sex workers resorting to social and health services provided by the government has decreased, since they feel negatively judged and treated as victims who are sexually exploited by male clients (Meinefeld, 2016).

With regard to the condition of migrant sex workers in Sweden and their experience of structural inequalities after the implementation of the Sex Purchase Act, it is possible to assert that stigmatization and social exclusion, alongside danger and precarious living conditions, have increased since the legislation has been enforced in the country (Fuckförbundet, 2019).

Migrant women, both from and outside the European Union, represent the majority of people selling sex in Sweden, and the framework based on the criminalization of clients is considered as being particularly detrimental for them. Migrants in Sweden face many obstacles obtaining the social security number, especially those who do not have a regular job or a health insurance from their home country; for this reason, migrants sex workers are completely excluded from social benefits, such as social services, housing and childcare support, health counseling and free education (Fuckförbundet, 2019).

The Sex Purchase Act also increased the likelihood for migrants to be expelled or denied entry in Sweden, as it is partially connected to the Alien Act, which was implemented in 2005 (Fuckförbundet, 2019). The Alien Act states that aliens may be refused entry in Sweden: *“if it can be assumed that during the stay in Sweden or in some other Nordic country he or she will not support himself or herself by honest means or will engage in activities that require a work permit, without having such a permit”* (Swedish Alien Act). As prostitution is not considered an honest means by the Swedish legislation, migrant sex workers are unlikely to report crimes and seek health services as they fear deportation.

Other subaltern categories of sex workers who face intersectional discrimination, such as drug users and people belonging to the LGBTQ+ community, are also reported to have been particularly negatively affected by the Sex Purchase Act. For example, there have been cases where therapy for sex workers who use drugs has been neglected as long as they use drugs (Fuckförbundet, 2019). With regard to the LGBTQ+ community, they face significant difficulties in accessing healthcare services for sex workers because they are explicitly targeted for cisgender women; on the other hand, the healthcare facilities specialized in treating trans men and men who have sex with men are often unequipped to deal with sex workers’ needs, for example, with regard to testing and counseling (Fuckförbundet, 2019).

At the European Union level, there is no legally binding regulatory framework on prostitution, and national states retain complete control over the kind of sex work legislation they want to implement. Nevertheless, the neo-abolitionist model stemming from the Swedish experience has also been advocated for by the European Union and the Council of Europe. In 2014, the European Parliament voted in favor of a non-binding resolution, which explicitly advocates for the Swedish model; it is considered as an effective model for combating the trafficking in women for sexual exploitation and to improve gender equality (Sexual exploitation and prostitution and its impact on gender equality).

## 2. The Legalization model: the Netherlandish and German cases

*“For these people, the idea of a ‘legalized’ framework is meaningless: the state has drawn a charmed circle and they are not standing inside it. With such significant barriers to overcome, legal status is unobtainable for the vast majority of people, and in most places the amount of illegal, unregulated sex trade far exceeds that of the legal sex industry.”* (Smith and Mac, 2018)

With regard to prostitution legislative frameworks, a model based on legalization (which can be also defined as regularization or licensing) is a legal model which *“heavily regulates a legal strand of the sex industry while continuing to criminalize workers who can’t or won’t comply with various bureaucratic requirements, such as mandatory health testing, employment in certain venues, or registering publicly as a prostitute”* (Smith and Mac, 2018). This model has been adopted in many European countries, such as Austria, Hungary, Latvia, the Netherlands and Germany, and in many others around the world, such as Chile, Venezuela, Senegal, Bangladesh and some counties in the North-American State of Nevada.

It is argued that this legal framework is far from being effective in safeguarding sex workers’ rights and safety. It often stems from neoliberal assumptions of policy-makers and prostitution activists who consider the sex work industry a significantly profitable market on one hand, while on the other hand enforcing strict rules and controls as they believe it is a fundamentally deviant industry; for this reason, they apply an arbitrary logic on who, how, and in which context is entitled to sell sexual services (Smith and Mac, 2018).

Those who advocate for this regulatory framework often consider marginalized, subaltern categories of sex workers as the most problematic sides of the industry, and sex work policies based on this framework frequently target and sanction sex working migrants, disabled and queer people practicing sex work (Smith and Mac, 2018).

The introduction of new laws within the legalization framework is not intended to decrease decriminalization and ensure safety for sex workers and respect for their

human rights, but rather to formally regulate the market and the people involved (Smith and Mac, 2018).

One of the most popular example of regulatory framework declined according to a legalization perspective is the Netherlandish sex work legislation.

In the Netherlands, where prostitution is legal and regulated since 2000, sex workers are legally entitled to sell sexual services in designed spaces only; those spaces include brothels, sex clubs, street sex work zones (called “tippelzones”), red-light-district windows, sex cinemas and massage parlors. On the contrary, selling sex everywhere sex (even in private habitations) is illegal and criminally prosecuted (European Parliament, 2021).

This regulatory model is defined as decentralized, as the owners of the facilities where the selling of sexual services takes place are licensed by the different municipalities. Since legalization, more than 40% of the owners of spaces and venues where sex work could be practiced lost their license, as they did not comply with the government’s requirements in terms of safety, sanitation, health and fiscal accountability; as a consequences, sex workers in the country were left with significantly fewer places where they could work legally (European Parliament, 2021).

It has been argued that the legalization framework in the Netherlands negatively affects migrant sex workers and other subaltern groups. A sex worker’s association reported the testimony of migrant prostitute working in the Netherlands who claimed that, prior to legalization, there was a sort of “regime of tolerance” for all sex workers, whereas now that only certain groups sex workers have been fully legalized, migrant sex workers are completely criminalized creating a legal regime which regularizes and entitles to certain rights only certain categories of people only further enhances the systemic oppression experienced of those who are left out (Smith and Mac, 2018).

Another sex work regulatory framework based on legalization can be found in Germany. Before legalization in 2002, prostitution in Germany was legal but not regulated, and the German civil code considered prostitution as contrary to public

decency and morality. In 2001, a court case ruled that sex work was not to be considered an immoral activity anymore; in 2002, the Federal Prostitution Act was promulgated and the legalization regime set forth (European Parliament, 2021).

In Germany, a new sex work legislation, called Prostitutes Protection Act, was introduced in 2017 to ensure a more comprehensive regulation of sex workers across the national territory. Migrant sex workers face structural difficulties in adhering to the new legislation as they often lack a residence or work permit; being legally invisible, their marginalization and risk of violent aggressions is enhanced (PICUM, 2019). This framework will be discussed more in depth in chapter 5.

### **3. The Decriminalization model: the New Zealander and Belgian cases**

*“The focus on decriminalization within the mainstream sex workers’ rights movement necessitates positioning the work as a job like any other—necessitates a struggle for workers’ rights, as bequeathed by a legislative body.”* (Smith and Mac, 2018)

With regard to sex work legislation, full decriminalization can be defined as *“a legal model that decriminalizes the sex worker, the client, and third parties such as managers, drivers, and landlords and regulates the sex industry through labour law”* (Smith and Mac, 2018); it describes a situation where prostitution is legal as “default position”. Decriminalization advocates tend to consider sex work as first and foremost a form of labour, thus they are focused on ensuring sex workers’ rights and how to implement suitable and effective welfare conditions for them.

The term decriminalization is often confused with legalization, and the two concepts are treated as synonyms by some people joining the debate around sex work legislation. While legalizing prostitution entails precisely defining in which contexts and situations sex work legal, in the decriminalization context sex work is not a crime per se (Smith and Mac, 2018).

Decriminalizing prostitution always entails moving from a framework of criminalization, that is, overturning laws, administrative and civil order that

criminalize the various declinations of prostitution, such as street work, collective work or employed work, or activities of involvement in the sex work industry, such as advertising or renting apartments for prostitution (Smith and Mac, 2018). Therefore, criminalization consists of a shift from the criminal and punitive law framework on prostitution from a regulatory framework mostly based on commercial and labour law. Nevertheless, the purchase and facilitation of sexual services can still be considered unlawful according to various laws on coercion, exploitation, bullying, assault, and rape (which are also applicable in other contexts, both private and work related); also human trafficking and sexual slavery are acknowledged and treated as a different subject matter.

The regulatory framework based on the decriminalization of prostitution is supported by many non-governmental organizations, such as Amnesty International and Human Rights Watch, UN bodies such as UNAIDS, and international organization such as the World Health Organization (Smith and Mac, 2018) (West, Horn and Selena, 2021).

New Zealand was the first country to decriminalize sex work in 2003, with the Prostitution Reform Act. The main intents were safeguarding sex workers' human rights and preventing them from sexual exploitation, ensuring their welfare and occupational health, and prohibiting individuals under the age of 18 to prostitute themselves (Prostitution Reform Act 2003).

The legislation that decriminalized sex work in New Zealand is not applicable to migrant sex workers; there is an explicit section of the Prostitution Reform Act, entitled "Application of Immigration Act 2009", which prohibits granting visa to anyone who has provided (or intends to provide) sexual services, who has acted (or intends to act) as an operator in the sex work industry, or that has invested /or intends to invest) in the sex work industry (Prostitution Reform Act 2003). The same section provides for the deportation of individuals with temporary visas in New Zealand who are found to be working as sex workers. Because of the Immigration Reform Act, migrants sex workers who hold temporary visas can only work illegally in New

Zealand, and they are completely excluded from social benefits and protections that the other sex workers are entitled to.

With regard to the assessment of the decriminalization framework in New Zealand, Amnesty International assessed that an overall improvement of sex workers' rights and working conditions can be registered in New Zealand after the implementation of the Prostitution Reform Act (Amnesty International, 2016). Government research carried out by the New Zealand Ministry of Justice revealed that, prior to the passing of the legislation, sex workers were reluctant to disclose their occupation to healthcare workers and even to carry condoms with themselves, both for fear of criminal sanctions. After decriminalization, it has been estimated that sex workers in New Zealand are more inclined to report episodes of violence or sexual assaults perpetrated by clients, that the overall relationship between the police and the sex workers community has improved, and that sex workers experienced an improvement in the negotiation of safer sex with clients and even more freedom in refusing to see particular clients (Amnesty International, 2016).

Nevertheless, it has also been argued that the legislation is far from being perfect and some concerns and obstacles still need to be addressed. With regard to marginalized people operating in the sex work industry, it is estimated that they are not able to experience the same levels of freedom and safety as other sex workers are entitled to; subaltern categories such as Maori, trans, homeless and young people are subjected to many more police controls compared to other categories of sex workers (Smith and Mac, 2018). For this reason, GAATW, the Global Alliance Against Traffic in Women (GAATW), defines the New Zealand's decriminalization model as contradictory and urges the governments to take measures that extend sex workers' rights to migrants sex workers who hold temporary visas (Smith and Mac, 2018).

Another country which recently decriminalized sex work is Belgium. On 18 March 2022, the Belgian Federal Parliament voted in favor of law which fully decriminalizes sex work, entitles sex workers to live legally and grants them significant rights concerning health, status, and social protection. The law further states that also third

parties who support sex workers' activities will no longer be prosecuted, with an exception in case of abnormal profit of third parties (NSWP, 2022). This regulatory framework has officially entered into force on 1 June 2022, de facto making Belgium the first country in Europe that decriminalizes sex work, and the second in the world after New Zealand. The decriminalization law is part of a broader reform concerning Belgium's sexual criminal law, which also introduces the concept of consent as a central theme of this penal code's reform and enforces stricter sentences for perpetrators of rape (Times, 2022).

Section two of this reform concerns the amendments to the provisions involving adult people selling sexual services. One of the key change is that previously all third parties were criminalized: third parties who interacted with sex workers using any service (not only services directly related to their professions), such as renting a house or having a bank account, were liable to prosecution, as those parties, such as landlord and banks, were considered as financially benefitting from prostitution (Scarlett, 2022). Article 77 of Section 2 of the legislative reform states that third parties will only be sanctioned and prosecuted when it can be proved that they obtain an enormous benefit from the exploitation of sex workers' activities, or that they adopt measures to prevent one person to abandon the sex work industry (Wet houdende wijzigingen aan het Strafwetboek met betrekking tot het seksueel strafrecht).

As previously mentioned, another milestone is that from now on sex workers are entitled to a system of social protection, meaning that they have the right to access health services, to have a pension and vacations days, to access unemployment and housing benefits (Scarlett, 2022).

According to Dan Bauwens, director of Utsopi, a sex worker organization working across Belgium to promote sex workers' safety and rights, careful work and significant resources are needed to carry out effectively the phases of implementation and monitoring of the new regulatory framework (Scarlett, 2022). Despite the significant improvement in the sex work legislation, it is essential to continue fighting the stigma around the profession and mobilize resources to reach the most vulnerable categories of sex workers, such as those who operate on the streets (Scarlett, 2022).



The next chapter will focus on the Italian sex work legislation, recent legislative developments, and proposals. The conditions of sex workers will be investigated, particularly focusing on their experience of structural inequality. The phenomenon of sex work as characterized by migration flows will be analyzed, and the conditions of migrants sex workers in Italy will be examined. The last section is devoted to the detection of the conflation between anti-trafficking and sex work discourses and practices, which will be carried out through document and discourse analysis. The main research question is how sex work policies based on anti-trafficking discourses and practices affect structural inequalities experienced by migrant sex workers.

#### **IV. Sex Work Legislation in Italy and Structural Inequality Experienced by Migrant Sex Workers**

##### **1. Excursus of Sex Work Legislation in Italy: from the legalization framework to Merlin Law**

Prostitution in Italy is regulated according to an abolitionist framework, which is declined in its various aspects and dimensions in Law N.75 of 1958. This law is entitled “Law on the Abolition of the Regulation of Prostitution and the Fight Against the Exploitation of the Prostitution of Others”; it is also popularly called “Merlin Law” by the name of the Italian senator who strongly advocated for it: Lina Merlin. Before describing in details what this law entails and the characteristics of the abolitionist regime in Italy, it is first essential to illustrate the peculiarities of the previous sex work regulatory framework, which goes back to the end of the XIX and was based on a legalization perspective.

Before the promulgation and implementation of Merlin Law in 1958, sex work was regulated by a legislative framework based on legalization, in which sex workers could legally exercise their profession and paid taxes on their profit. This framework was characterized by the presence of brothels throughout the Italian territory (Becucci and Garosi, 2016).

As linguistic nuances are often indicative of the moral considerations lying behind political action, it is interesting to notice that brothels in Italy are typically referred to as “case chiuse” which means closed houses, or “case di tolleranza” which means houses of tolerance. The negative connotation of these two terms, when associated to a job market and workers, is rather explicatory of a legalization regime where sex work was never conceived as legitimate work, but rather as a gray zone market which needed to be tolerated but kept hidden from the general public, despite the fact that the government was making a significant profit from it.

A significant body of literature on Italian prostitution argues that brothels were essentially exploitative in nature, as sex workers were obliged to accept the working conditions of the brothels’ owners (Becucci and Garosi, 2016). These owners could exercise enormous power and control over sex workers, as they would establish the prices, and sex workers could neither bargain the tariff nor refuse to meet a particular client. The owners would retain a consistent part of the profit, and further subtract from the salary of the sex workers any management cost: first and foremost state taxes and room and board, but even smaller expenses such as house maintenance and medical costs (Parisi, 2018).

This previous legalization approach has been defined as old-regulamentarist, as opposed to the legalization frameworks which developed in the last decades, as it was based on the criminalization of sex workers and on the safeguard of the clients and third parties who were benefiting from the market. In fact, sex workers were obliged to register themselves at the police station, and they were subjected to mandatory periodic health checks. Parisi has defined this model as characterized by the extra-criminal stigmatization of the sex workers (Parisi, 2018). The mandatory registration of sex workers further enhanced their marginalization and created obstacles for sex workers who wanted to abandon the industry and find another job.

It is possible to argue that the new regulatory framework introduced by Merlin Law stemmed from a gender equality perspective; in fact, it is enunciated in strongly gendered terms, meaning that every article is declined according to a perspective which presupposes that women are the only individuals who sell sex (Parisi, 2018).

The main ethical principle, upon which the articles are based, is the inviolability of the intimacy of the bodies, which has to be considered as against the rule of law; in other words, women should not be subjected to the public regulation of their bodies from the part of the state, as this is offensive and detrimental to the equality and freedoms of all women, and to the society in general. The Merlin Law also aims at fighting the stigma and the social exclusion that the women selling sexual services experience (Parisi, 2018).

The main articles of the Merlin Law are art.1, which prohibits the exercise of prostitution in brothels, and art.7, which prohibits the registration of sex workers and the supply of special documents to sex workers to target them. The Merlin Law also foresees, as enunciated in art.8, the establishment of special institutions finalized at ensuring and assisting the “re-education of women” who will abandon brothels or intend to leave the sex industry, and need to be re-integrated in society (Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui).

It has been argued that this law underlines a conceptualization of sex workers as victims, regardless of the fact that she chooses to sell sexual services as a professional career or she is sexually exploited or trafficked for sexual purposes (Parisi, 2018). As mentioned in the chapter on regulatory frameworks, the neo-abolitionist perspective on sex work tend to treat all subjects who sell sex as equally passive victims who would do any other type of work, if they only had a choice. From this perspective stems the need to protect the victim and punish the client or third parties who benefit from sex workers’ activities; for this reason, the Merlin Law is much more focused on the criminalization of the client and third parties, than on the regulation of sex workers activities, on which the previous model was centered (Parisi, 2018).

Article 3 of the Law defines which acts of conduct will be considered sexual exploitation, and states that whoever will exploit or benefit from sex workers’ activities in any way will be judged guilty of sexual exploitation. Specifically, the first sections provide that whoever will continue to participate in the propriety, exercise, direction and management of a brothel, or whoever will lease the brothel to someone

else with the same aim, will be found guilty of sexual exploitation. Secondly, whoever owns a local or space open to the public, and accepts or tolerates the presence of one or more individuals who sell sexual services within that space, will be accused of the same crime. Thirdly, the crimes of pandering, solicitation, and recruitment to prostitution are enunciated. Lastly, the law states that the offense is foreseen for whoever facilitate the travel of an individual to another State in order to exercise prostitution, and to whoever is part of a national or foreign organization dedicated to facilitate, solicit, benefit from or exploit prostitution (Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui).

Since its inception in 1958, the Merlin Law has stirred many controversies and raised many critics with regard to its supposedly unconstitutional stances.

The first critique concerns Article 41 of the Italian Constitution, which is related to private economic initiative; this Article states that private economic initiative is free, but that said initiative cannot take place when found to be in conflict with social utility, or to be detrimental to public health, the environment, safety, freedom and human dignity (Art.41 Italian Constitution). Hence, the question that is being framed is whether one's sexuality can be made a source of taxable income, in other words, whether it is possible to consider your body as a tool of free economic initiative (Parisi, 2018). The contradiction lies in the fact that, while Merlin Law considers to a certain extent sex work as an economic activity and a product of self-determination, at the same time it prohibits completely and fundamentally the involvement of third parties which would possibly enhance the efficacy and profitability of the business. For example, sex workers are not entitled to hire personnel who could manage their advertising and enhance their productivity (Parisi, 2018). It has been argued that the strict prohibition of pandering and solicitation of prostitution has significantly disadvantaged the entrepreneurial business model of sex work as a private economic initiative, which is unlawfully marginalized and ghettoized compared to other typologies of independent work (Parisi, 2018). Despite the fact that sex work is

somehow tolerated within the new legislation, prostitution is not considered a completely legit economic activity, rather it is always connoted by its abusive nature with regard to women, and by its immoral and antisocial stances (Parisi, 2018).

Another controversy stems from the relationship between the Merlin Law and the right to sexual freedom and sexual self-determination. The concept of sexual self-determination can be declined according to both a positive connotation and a negative one. On positive terms, it implies the freedom of the subject to enact a desirable sexual behavior; on negative terms, it aims at protecting from the behavior of others, which could potentially endanger the sexual freedom of the subject (Parisi, 2018). The right to sexual freedom is implicitly recognized in Article 2 of the Italian Constitution, as this provision states that the Italian Republic recognizes and guarantees the inviolable rights of individuals (Art.2, Italian Constitution). The Constitutional Court has often cited this article in judgments related to sexual rights and freedoms; it has declared that sexuality is an essential declination of human expression, and that the right to sexual freedom should be considered as an absolute subjective right, to encapsulate within the inviolable rights of individuals which Article 2 is required to protect (Parisi, 2018). It has been argued that the right to sexual self-determination and sexual freedom should also entail the possibility for an individual to choose to sell sexual services, and that the facilitation of prostitution would be beneficial to the exercise and safeguard of this right. Following this line of reasoning, third parties who economically benefit from sex workers' activities would simply represent an ordinary modality of exchange between performances and services, which many people in business activities often resort to in any type of market. It is unreasonable to judge as unlawful a conduct aimed at facilitating sex workers exercising a constitutionally protected freedom, that is sexual freedom. The Merlin judges this conduct unlawful, as it is considered as the first step towards the economic exploitation of the sex worker's body; doing so, the law ignores the agency of sex workers, who choose to exploit their body in order to generate a profit (Parisi, 2018). As it is important to acknowledge that people doing sex work present complex identities and a variety of motives bringing them in this market, whether an individual's involvement in

prostitution is the product of an aware, voluntary and free choice should be the central theme of any regulatory framework. Therefore, it is further essential to distinguish between exploitation from one hand, and pandering and facilitation of prostitution. While the former should be subject to penalty and sanctions, the latter should not be considered as intrinsically offensive anymore (Parisi, 2018).

Despite the controversies related to the alleged unconstitutional provisions of the Merlin Law, with regard to Article 2 on sexual freedom and Article 41 on freedom of economic initiative of the Italian Constitution, the judgment 141/2019 of the Constitutional Court on this matter has declared that the Merlin Law has not been found to be unconstitutional (Judgement n.141, [2019]).

With regard to Article 2, the Court has declared that it is not possible to consider voluntarily prostitution as part of the inviolable rights contained in Article 2 of the Italian Constitution, among which the right to sexual self-determination is configured (Judgement n.141, [2019]). The Court claims that the offering of sexual services in exchange of payment does not represent a tool for the protection and development of the human being, but only for a particular form of economic activity, as in this context a persons' sexuality has to be considered as a tool to obtain profit; this applies even more to the circumstances in which third parties are involved in the activities of the voluntary sex worker (Judgement n.141, [2019]).

With regard to Article 41 of the Constitution on the freedom of private economic initiative, the Court reiterates that said economic initiative cannot take place if it is found to be in contrast with social utility, or to be detrimental to human safety, freedom, and dignity (Judgement n.141, [2019]). With regard to the concept of human dignity, the Court states that this has to be understood in objective terms, rather than in terms of "subjective dignity" which is conceived by the single worker or entrepreneur. The concept of objective dignity refers to the fact that the legislator, which acts as an interpreter of the common social sentiment of a specific historical moment, recognizes prostitution, even when it is a product of a voluntary choice, as an activity which degrades and devalues the individuals who do it, because it consists

in the commodification of the most intimate sphere of corporeality (Judgment 141, [2019]).

The next section will analyze the phenomenon of prostitution in Italy, regarding the different typologies of sex work, and the characteristics of the sex working population in Italy in the present moment. With regard to national sex workers, the main risks and vulnerabilities associated with the profession will also be discussed, especially with regard to human rights deficits and their experience of structural inequality. The second part of the next section will deal with recent local initiatives aimed at tackling street prostitution, and on the latest legislative proposal of amendment of the Merlin Law: the Maiorino legislative decree.

## **2. Recent Trends and Legislative Proposals**

According to recent research and surveys carried out by ISTAT, the Italian National Static Institute, and Codacons, the Italian consumers' rights associations, it is possible to estimate that the Italian sex market involves roughly three million people within the national territory. Among these people, there are about 90,000 sex workers who exercise the profession consistently and as the main source of income, and other 20,000 sex workers who are only sporadically involved in the sex industry. The individuals who only occasionally resort to sell sexual services are driven by contingent economic necessities, such as traveling, paying bills or going shopping. It is also estimated that 10% of sex workers in Italy are underaged (Codacons, 2021).

Throughout the last decades, migrant sex workers have come to represent the majority of people who sell sexual services in Italy; it is estimated that migrant sex workers predominantly come from Eastern European and African countries (Codacons, 2021). I will examine the consequences of this shift and the characteristics of migrant sex work in Italy in the next section.

It is estimated that the majority of the sex working population in Italy is female; women make up roughly the 70-80% of the sex workers, transgender people between the 15 and 20%, and men only the 2% (Codacons, 2021).

With regard to tariffs on sexual services, the prices can vary greatly, starting from a few euros for an erotic video call up to 500 euro per hour for a high-end escort's services (Codacons, 2021).

Codacons defines the sex market as a part of the black-market economy, also called the shadow economy; what is meant for shadow economy is the set of economic services which are not regularly registered and taxed by the government, but generate profit and contribute to the Gross Domestic Product. The Italian association has calculated that in 2019 the expenses for services connected to the sex market amounted to 4,7 billions euro in final consumption, and to 4 billions euro of added value. Throughout the last decades, the sex market has progressively broadened, and it has become more diversified and professionalized in certain sectors; this implies that clients now face a broader and more diverse offer (Codacons, 2021).

Within the Italian context, various typologies of sex work coexist and differ from each other in terms of tariffs, types of offered sexual services, and way of interacting with clients. First of all, it is possible to distinguish between two analytical macro-categories: street prostitution and indoor prostitution.

Street prostitution, which is estimated at the 60% in Italy (TAMPEP, 2010), is characterized by its immediately visible nature; it is argued that street sex work involves the highest number of sexual encounters per day, which can vary from 5 to 20, compared to indoor prostitution. Street prostitution involves a short time span for each client, and it implies less emotional and psychological involvement compared to other typologies of sex work (Becucci and Garosi, 2016). The category of street sex work can be further divided according to its different settings; it is estimated that 20% of sex workers in Italy can be found working on the streets within cities or towns, that another 30% work in highways outside cities or towns, and that another 10% can be found working in parks (TAMPEP, 2010).



With regard to indoor sex work, which is estimated at 40% in Italy, both the meeting with clients and the sexual encounter take place within closed spaces (TAMPEP, 2010); Garosi and Becucci argue that this category can be further divided between invisible sex work and masked sex work. The former is practiced by sex workers defined as call girls or escort, and it usually takes places within apartments or high end hotels; the latter is practiced within public or private spaces where sex workers are formally employed in other professions, such as dancer, bartender, or waitress, and for this reason is defined as masked prostitution. It is generally assumed that sex workers who exercise their profession indoors offer more diversified and professional services, which can often involve sexual niches such as sadomasochism, compared to sex workers who work on the streets (Becucci and Garosi, 2016). It is estimated that the majority of sex workers resorting to indoor prostitution (roughly the 28%) works in private habitation, whereas fewer work in places such as clubs, bars or illegal brothels, and only the 2% work with escort agencies which work through visiting services (TAMPEP, 2010).

It is essential to notice that indoor and outdoor sex work cannot be considered as mutually exclusive categories, as sex workers can decide to resort to both options during different times, also influenced by police controls or by the closure of internet websites dedicated to advertising (TAMPEP, 2010).

With regard to the situation of national sex workers and their experience of structural inequality, it is possible to identify five main factors of vulnerability: marginalization and social exclusion, alcohol and drug dependency, lack of protection from law enforcement agencies, and lack of access to healthcare and social assistance services (TAMPEP, 2010).

Media campaigns and citizens' protests against prostitution affect the stigmatization and social exclusion of sex workers in Italy. As a result, local initiatives have been implemented within the national territory, aiming at controlling and sanctioning sex workers and clients. Because of this, sex workers are gradually moving from safer zones to less protected areas of cities; this dynamic exposes sex workers to more

violence from clients, decreases their sense of trust of police and increases their reluctance to ask for government's help when they face a dangerous situation (TAMPEP, 2010).

With regard to alcohol and drug dependency, it is estimated that the level of substance abuse experienced by national sex workers is slightly higher than that of the general population. It is argued that this trend is often triggered by national sex workers' working conditions. In fact, they often meet clients who bring drugs to the sexual encounters and ask to participate in the consumption; moreover, the owners of clubs and bars where they work often encourage them to drink alcohol to ease the tensions and pressures related to sex work (TAMPEP, 2010). It is also argued that drug and alcohol consumption among sex workers is often exacerbated by the stigmatization they experience, as "*national statistics on drug dependency and alcoholism show that social marginality leads to exaggerated use and dependence on alcohol*" (TAMPEP, 2010). Even though harm reduction programs and other health and social services are available to national drug users, Italy is characterized by a prohibitionist approach concerning drugs which not only criminalizes drug dealers but also consumers; for this reason, national sex workers who are drug users often face severe difficulties in accessing support services (TAMPEP, 2010).

It is also significant to highlight that the coronavirus pandemic has further exacerbated the marginalization and vulnerability of the sex workers' community within the Italian context; as sex workers could not benefit from workers' rights during the outbreak of COVID-19, to avoid poverty and even more precarious living conditions they were forced to work even during the sanitary emergency, undoubtedly putting themselves at a consistent health risk (Bubola, 2020).

Since the promulgation of the Merlin Law in 1959, throughout the last decades the sex work debate has been characterized by numerous legislative proposals to amend the legislation. Moreover, many local initiatives have been implemented in order to tackle sex work and criminalize not only clients but also sex workers; these local initiatives stem from a generally negative conception of sex work, especially of the

more visible street prostitution, as it is considered a criminal activity which increases all other types of criminal activities and deviant behaviors within the neighborhoods where it is practiced (TAMPEP, 2010).

In many Italian municipalities, mayors have implemented anti-prostitution ordinances, aimed at tackling street work, as this activity is connected to serious dangers of public disorders; these ordinances make changes to urban police regulations, and envisage fines, which can vary from 300 euro to 500 euro, to anyone who is caught in the process of trying to buy or sell sex on the streets.

The mayor of Rimini has declared that street prostitution worsens the citizens' living conditions because it represents a source of danger and insecurity, and because the sex workers' occupations of the streets affects the freedom of movement of the other citizens and their expectations of quiet living (Ordinanza anti prostituzione giugno 2021). As a result, he provides that sex workers are prohibited from explicitly offering their sexual services on the streets; the term "explicitly" implies not only calling clients or shouting at them but also dressing in an appropriate manner. Moreover, clients are prohibited from asking for information to sex workers, for example the services they offer, and from obstructing the traffic with the cars. Whoever infringes these prohibitions will be punished with an administrative sanction, which can vary from 300 to 500 euros (Ordinanza anti prostituzione giugno 2021).

The same situation happened in the city of Brescia, when a citizen who was caught in the act of buying sexual services from a sex worker on the street was sanctioned with a fine of 500 euros. In this case, the Supreme Court of Cassation has declared with the sentence 4927 that, since sex work constitutes a lawful economic activity, it is not possible for a municipality to promulgate laws aimed at interfering with said free economic activity. The local authorities have no power to obstacle a legit economic activity, even when it is aimed at ensuring the citizens' safety; only state authorities are entitled to promulgate this type of legislation (Judgement n.4927, [2018]).

With regard to legislative proposals of amendment of the Merlin Law, numerous law drafts have been presented at the Chamber and Senate throughout the last decades.

The legislative degree 2537 is the latest proposal, currently being discussed at the Senate and significantly covered by the Italian media. The decree is also called “Maiorino Decree” as it has been proposed by the senator Alessandra Maiorino, who belongs to the Five Star Movement.

The introduction of this proposal explicitly praises the Merlin Law and the abolitionist approach by which it is characterized; however, it also asserts that the law needs to be amended since the phenomenon of prostitution has undergone significant changes throughout the last decades, becoming more brutal and violent, not only with regard to sex workers but on the society as a whole (DDL S. 2537). The legislative proposal considers the exponential growth of the sex work industry as a consequence of migratory fluxes and new technologies, further asserting the gendered nature of the phenomenon and defining sex work as a product of coercion or coercive conditions. After this statement, the decree immediately reports data examined by the United Nations concerning the number of trafficked people around the world, especially women (DDL S. 2537); this undoubtedly suggests a conflation between the anti-trafficking discourse and the sex work discourse.

Subsequently, the various regulatory national frameworks are enlisted and explained, and particular attention is given to the neo-abolitionist approach, also known as the Swedish or Nordic Model. This approach is thought to be particularly beneficial, as it aims not only at tackling sexual exploitation and human trafficking, but is also promoting the substantial equality between men and women; it is the only approach adopting a gender equality perspective on sex work. Furthermore, the Swedish model is effective because it focuses on the demand for sexual services; it is argued that this demand is so high that it could never be met exclusively through voluntarily prostitution, therefore said demand is the driving force of trafficking and sexual exploitation. The decree advocates for the adoption of the neo-abolitionist model in Italy, where men and women would ally together against the dishonoring phenomenon of prostitution, which is based on a patriarchal social system benefitting from the vulnerability of women (DDL S. 2537).

The proposal introduces 3 articles, which are intended to extend the prohibitions provided by the Merlin Law. Article 1 envisages a sanction, which can vary from 1500 euro to 5000 euro, for whoever is caught in the act of buying sexual services; if this act is committed by a person who has already violated the law within the last 5 years, said person will be punished with imprisonment, which can vary from six months up until three years, and also the sanction will increase, ranging from 5000 to 15000 euro (DDL S. 2537). Article 2 foresees the implementation of information campaigns about sex work, where this phenomenon would be framed as a form of violence against sex workers, and about clients' accountability; moreover, the article foresees "constant monitoring" of people who are or were involved in sex work, with the aim of integrating them within society. Lastly, Article 3 envisages various economic measures to support former sex workers (DDL S. 2537).

This decree has been heavily criticized by many segments of the civil society: former sex workers, sex work advocates and activists, non-governmental organizations working in closed contact with sex workers, especially of the most vulnerable and marginalized categories such as undocumented migrants or transgender people.

The first problematic aspect is the lack of a reference to sex work as a free and voluntary choice, as an act of self-determination and self-actualization, within the legislative proposal. The decree is said to be very stigmatizing, as it conceptualizes sex work as degrading, as an act which mortifies the individual and makes the body a commodity (Belotti, 2022). Secondly, it is argued that the decree is embedded in a rhetoric of pietism and victimization with regard to sex workers, as prostitution and human-trafficking are treated as the same subject matter (Belotti, 2022).

Pia Covre, former sex worker and founder of the non-profit organization "Comitato per i diritti civili delle prostitute" (Committee for the civil rights of prostitutes), has declared that this decree highly criminalizes all aspects of sex work, that it would bring to the imprisonment of thousands of people, and that it is based on the misleading assumption that the sex work industry is only composed by women, not considering the complex identities of all the people involved in the industry, such as transgender and nonbinary people (Covre, 2022).

The next section will focus on the phenomenon of migrant sex work in Italy. First, I will examine the demographics and ethnic composition of migrant sex workers in Italy. Secondly, I will investigate the ways in which migrant sex workers operate in the Italian sex market; in this context, two categories of migrant sex workers will be taken under consideration: the first one is composed by migrant sex workers who operate voluntarily within the industry, the second one is composed by migrant sex workers who operate within transnational criminal circuits, and are therefore to be considered victims of trafficking and sexual exploitation. Lastly, I will analyze the main risks and vulnerabilities associated with migrant sex work in Italy, as opposed to the ones experienced by national sex workers, with a particular focus on structural inequality.

### **3. Migrant Sex Workers in Italy: Demographics, Markets, Risks and Vulnerabilities**

As already stated in the previous sections, the sex working population in Italy is predominantly composed of people of migrant origin; by migrant sex worker is intended any sex worker who was born outside the Italian territory, including countries within the European Union (TAMPEP, 2010).

In order to estimate the demographics and ethnic composition of migrant sex workers in Italy, TAMPEP, the European Network for the Promotion of Rights and Health among Migrant Sex Workers, has carried out surveys in cooperations with various Italian NGOs working with sex workers. According to surveys carried out during 2008 and 2009, it is estimated that migrant sex workers make up roughly 90% of the total sex working population in Italy. It is also estimated that 60% of migrant sex workers exercise the profession outdoor, that is on the streets, whereas the remaining 40% practice sex work indoor, either within private habitations, in hotels or public locals such as clubs or bars (TAMPEP, 2010).

The majority of migrant sex workers come from the African continent, making up 40% of the total; sex workers from Central European countries within the EU (such as Bulgaria, Romania, Slovakia, Slovenia), represent the second largest category and make up for the 24%. The third most common provenience is Latin America and Caribbean countries, followed by Eastern European and Balkan countries. Small percentages of migrant sex workers come from Baltic countries and from the Asian Pacific area. Among migrant sex workers, the most popular nationalities are Romanian, Nigerian, Albanian, Bulgarian, and Brazilian (TAMPEP, 2010).

Garosi and Becucci distinguish between four analytical categories of migrant sex workers, based on the degree of autonomy and freedom they exercise in choosing to partake in sex work, and on whether they do sex work in indoor or outdoor spaces. The degree of autonomy of migrant sex workers is referred both to their possibility and capacity to negotiate both with clients and potential pimps or protectors; furthermore, it is argued that street prostitution is more stigmatized and dangerous compared to indoor sex work. As each of this category is not permanent, it is possible to define as upward mobility the set of processes which bring sex workers to experience a higher level of autonomy, and which make them more inclined to work indoor; on the contrary, downward mobility can be defined as the set of dynamics which bring sex workers to experience a lower degree of autonomy and to resort to street prostitution (Becucci and Garosi, 2016).

The first category is composed by migrant sex workers who work within indoor spaces and experience a high level of autonomy; their presence in the sex work industry is the product of a voluntary choice, they do not have pimps or protectors but they may have secretaries who help them in scheduling appointments and managing clients, their tariffs are non-negotiable, nor are the kind of sexual services they offer, and they usually advertise their services on dedicated platforms on the internet. They choose sex work as part of their migratory project; they are generally well-educated and aware of the profitability of this sector, and conceive sex work as a way to improve their living conditions and also as a form of empowerment. This category is

much less stigmatized than street sex workers, as they are said to offer sophisticated services, and because they are mostly invisible to the general public; their relatively privileged position often facilitates them in achieving the status of regular migrants (Becucci and Garosi, 2016).

The second category of migrant sex workers is characterized by those who work on the streets but experience a relatively high level of autonomy; it is argued that this segment of sex work in Italy is mostly represented by transexual migrant sex workers, who are predominantly from South America: first and foremost from Brazil, Colombia, Peru and Ecuador. Some of them, like the first category analyzed, conceive sex work as a migratory project driven by economic factors: they either were involved in sex work before and come to Europe to benefit from the higher profits, or they resort to sex work to afford medical expenses for sex reassignment operations or other surgeries (Becucci and Garosi, 2016). Some others decide to emigrate from their home country in order to escape the transphobia they are exposed to, as most of them have been rejected by their families and social networks. As the first category of migrant sex workers, they emigrate to Italy autonomously; they do not have pimps or protectors, and they retain a certain margin of negotiation with clients. On the contrary, as they work on the streets, they are much more vulnerable to violence and stigmatization. The Trans Murder Monitoring indicates that Italy has the infamous record of being the first European country in terms of murders of transexual people; transexual migrant sex workers are particularly exposed to violent assaults because they experience intersectional discrimination: transphobia, racism, and stigma against prostitution (Tebano, 2016). Moreover, they often face permanent precarious living conditions because they either rely on a touristic visa or reside illegally within the Italian territory (Becucci and Garosi, 2016).

The third category is represented by migrant sex workers who work on the streets and retain a low level of autonomy, or none at all, as they do not work autonomously and are brought to the industry to generate a profit for a third party; they are both highly marginalized and highly visible to the general public. In this case, the pimp or protector has a central role in the life of the migrant sex workers, and he can be



envisaged as a rational actor who intends to maximize his profit, adopting the typical strategies of the free market: decreasing the tariffs, increasing the number of women under his control and inducing them to execute as many transactions as possible in order to generate plus value. He decides the duration and the price of the services offered, and he controls the sex workers not only during their working hours but also during their free time (Becucci and Garosi, 2016). Self-determination and the possibility for negotiation are inexistent for the migrant sex workers who are involved in this sector, and they often face all kinds of violence, coercion and exploitation. This category is largely composed of migrant people who are victims of transnational criminal circuits of human trafficking. It is argued that this phenomenon has been detected on a massive scale in Italy since the Nineties, when the majority of the migrant sex workers came from Nigeria and Albania, whereas now it is possible to observe a similarly significant number of Moldavian and Romanian sex workers within this category. In terms of age, this typology of migrant sex workers is usually very young (below 25 years old) and sometimes underage. In terms of gender, the majority is women, but it is possible to detect transexual people and men. Similarly to the other two categories already taken under scrutiny, these migrant sex workers envisage sex work as part of a migratory project aimed at improving their life conditions; they chose this type of work because their condition of undocumented migrants, the lack of citizenship and social rights, completely excludes them from the circuits of formal economy (Becucci and Garosi, 2016). Unlike the other two categories, they do not migrate autonomously but rely on structured networks of facilitators, which sometimes are collocated within the circuits of human trafficking. When they leave their countries of origin, they are usually unaware of the working and living conditions they will have to face once in Italy; these include the extreme dependency from their protectors, the exhausting and sometimes inhuman working hours, the potential dangers of working on the streets, and the substantial lack of freedom. Within this category, it is possible to detect a subcategory of women who did not choose sex work but has been misled with false promises of another type of work, or who has been kidnapped or sold to human traffickers who forced them into

prostitution. In this case, the pimps or protectors use various methods to force them into prostitution, ranging from physical and psychological violence, to stealing their documents or threatening the members of their families (Becucci and Garosi, 2016).

The last category of migrant sex workers is represented by those who experience a low degree of autonomy, as they are controlled by pimps or protectors, and work indoor, usually in apartments and sometimes in night-clubs. It is argued that the majority of migrant sex workers belonging to this category comes from Eastern European countries, and a lower percentage from China (Becucci and Garosi, 2016). As the third category analyzed, their degree of freedom and self-determination is almost inexistent, and they have no margin of negotiation, especially if they are undocumented migrants. Their vulnerability is even more exacerbated by the fact that this type of sex work is completely invisible and that the subjects are frequently underage. It is argued that the appearance of this typology of sex work is relatively recent, that it was triggered by the increase of criminalizing and repressive measures with regard to street prostitution, therefore signaling the increased professionalization of criminal organizations involved in the exploitation of sex workers and in human trafficking. For these reasons, migrant sex workers belonging to this category are deemed as the most vulnerable subjects of the sex work market in Italy (Becucci and Garosi, 2016).

With regard to the transnational networks of criminal circuits operating in Italy and involved in the exploitation of migrant sex workers and in human trafficking, Garosi and Becucci identify various transnational criminal organizations: the Nigerian organizations, the Eastern European, especially Albanian, organizations, the Chinese organizations, and other foreign and Italian organizations which operate within the circuits of indoor prostitution, as in apartments and nightclubs.

It is argued that Nigerian women are particularly exposed, compared to other nationalities, to being trafficked for the purpose of sexual exploitation, and the Nigerian criminal networks are among the most widespread within the Italian territory; each of this network is characterized by the presence of a woman, defined as *madam*, at the top of the organizational structure. The beginning of the system of

coercion carried out by the madams takes place in Nigeria, where voodoo rites are practiced on the women who intend to come to Italy, in order to bind them spiritually to the agreements concluded with the criminal organizations. The binding agreements foresee that, once arrived in Italy, the Nigerian girls are obliged to pay to the organization a significant amount of money, which can vary from 50000 to 100000 euro; this debt is repaid by doing sex work on the streets and by giving all the profit to the madams. Once the debt is repaid and they are finally free from sexual exploitation, some of them decide to remain within the criminal organization and become madams themselves, through a sort of process of upward mobility which turns the exploited girls into the new exploiters, that is the madams. As the women involved in this criminal racket, do not possess legal status as migrants in Italy, they significantly fear the police and are reluctant to escape from the madams and the criminal organizations in order to seek help (Becucci and Garosi, 2016).

With regard to the risks and vulnerabilities faced by migrant sex workers in Italy, as compared to the ones of national sex workers investigated in the previous section, the most prominent factors are: the violence perpetuated by organizers of the sex industry, the lack of legal status in the country, social isolation and exclusion, police violence and harassment, and the lack of access to health and social care service (TAMPEP, 2010).

It is possible to argue that there is a stark difference, in terms of living and working conditions, between migrant sex workers who lack a legal status and are undocumented, and those migrant sex workers who are entitled to a legal status in Italy and are documented. As illustrated in the previous paragraphs, documented migrant sex workers are able to work independently, to negotiate tariffs and types of sexual services offered, and to conceive sex work as a source of self-actualization for better economic conditions. On the other hand, undocumented migrants consistently rely on transnational criminal networks and are much more exposed to sexual exploitation (TAMPEP, 2010). Nevertheless, both undocumented and documented migrant sex workers face police repression and controls at higher rates than national sex

workers; they experience more hostility from state officials and from the general public. For these reasons, migrant sex workers frequently report of being afraid of the police and are very reluctant to seek for governments' help or support, also in terms of healthcare and social services (TAMPEP, 2010). While undocumented migrants who are found to be active in sex work face a significant risk of deportation, documented migrants, such as sex workers coming from countries within the European Union, could be expelled by specific cities or municipalities.

All these aspects contribute to social exclusion and marginalization, as they struggle to integrate into society not only because of the stigma around sex work, which national sex workers also experience, but also because of racial and xenophobic discrimination, which has increased in Italy throughout the last decades. Migrant sex workers are reported to experience a significantly higher rate of violence compared to the general population and also compared to national sex workers; they face a consistent risk of experiencing robbery, sexual violence or abuse, acts of violence perpetuated by clients, strangers, and youth gangs (TAMPEP, 2010).

The next section will focus on the conflation between anti-trafficking, anti-immigration and prostitution discourses and practices in the Italian context, both within the legal regulatory framework and in the public discourse. I will discuss the hypothesis that the anti-trafficking discourse on sex work legislation enhances the structural inequality experienced by migrant sex workers; the discussion will be made both with regard to the current regulatory framework, and also with regard to legislative proposals centered on neo-abolitionist perspectives on sex work, characterized by the tropes of criminalization, victimization, and stigmatization.

#### **4. The Conflation between Anti-Trafficking and Sex Work discourses and practices**

As already anticipated in the previous sections, the pieces of legislation and legislative proposals which have been taken under scrutiny with regard to the sex

work's Italian regulatory framework contain various elements which suggest a conflation between anti-trafficking discourses and sex work related policies.

In the following paragraphs, a discourse analysis will be made with regard to the previously examined legal documents, and new ones will be taken into consideration; moreover, relevant dossiers by civil society organizations, and declarations by policymakers will be analyzed. This written material does not only regard the sex work discourse but also the phenomenon of migration in Italy and related migration policies implemented throughout the last years, since migrant sex workers are not only affected by sex work legislation but are also significantly impaired by anti-immigration policies. The document and discourse analysis will be centered on the detection of the repetition of specific terms which are dominant within the anti-trafficking discourse (such as victim, predator, perpetrator, exploiter) and on certain discursive construction such as the tropes of violated femininity, shattered innocence, and the victimization of women (Halperin, 2017). As sex work nowadays is consistently characterized by migration flows and migrant sex workers are significantly impaired by anti-immigration policies, it will be examined how the anti-trafficking and the anti-immigration discourse interact with each other.

With regard to the Merlin Law of 1958, it is possible to argue that this legislative piece is explicitly abolitionist, as the title "Abolition of the regulation of prostitution and fight against sexual exploitation" suggests.

The term "victim" is not explicitly mentioned within the articles, but at the same time, there is no reference to the fact that sex work can be the product of a deliberate and conscious choice.

With regard to sexual exploitation, sec.8 of Art.3 provides that whoever, and in whichever way, favors or exploits prostitution will be deemed complicit of sexual exploitation.

Art.8, provides for the assistance and re-education of women who intend to exit the prostitution market; it is connoted by tropes of victimization and stigmatization, not only because it implies that all former sex workers need to be re-educated to be

integrated into society, but also because it defines these women as intended to return to an “honest life” thus suggesting their previous deviant and morally despicable behavior (Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui).

Contrary to the abolitionist approach of the Merlin Law, a new legal bill was proposed by the Senate of the Republic in 2013 in order to regulate the phenomenon of prostitution. Within the bill, it is argued that the prostitution market has significantly changed throughout the last years in Italy, involving more and more migrant workers, who are often undocumented and often rely on criminal networks (DDL N.1201).

This legal bill advocates for the regulation of prostitution, and to a certain extent the recognition of sex work as work; according to Art.5 sec.b, sex workers who want to be authorized to exercise prostitution, need to present to the local health board a certificate of psychological suitability which confirms the effective willingness of the person (DDL N.1201).

This legislative proposal declares that sex work and sexual exploitation or human trafficking need to be firmly distinguished and treated differently within the legal framework; at the same time, it asserts that sex work nowadays is characterized by trafficking and exploitation of human beings, and that women involved in these activities are predominantly of migrant origin who arrive in Italy with the “illusion of a job” and found themselves to be enslaved (DDL N.1201).

There are numerous repetitions of words such as “trafficking”, “exploitation”, “victim”, especially in relation to migrant women.

The text seems to suggest a sharp analytical distinction between national sex workers, who are emancipated women who consider sex work a profitable economic activity, and migrant sex workers who are always passive victims of human trafficking. As evidenced in the previous section, most migrant sex workers consider this job as part of the migratory project aimed at better living conditions, and only some of them are unaware of the work they will have to do once in Italy (DDL N.1201 *Regolamentazione del fenomeno della prostituzione*).

It is thus possible to conclude that this legislative bill is connoted by the conflation between anti-trafficking and sex work discourses, specially in the paragraphs concerning migrant sex workers, as these are always assumed to be victims of sexual trafficked who need protection and rescue.

With regard to the latest legislative proposal of amendment of the Merlin Law, the Maiorino Decree, it is first possible to assert that this legal bill advocates for the adoption of the neo-abolitionist approach or Nordic model, thus connecting the phenomenon of prostitution to the gender inequality rooted in society. It is argued that sex work is a gendered phenomenon and activity produced by coercion or coercive conditions (DDL S. 2537).

The word “violence” is repeated 6 times, the word “victim” is repeated 12 times, the word “exploitation” is repeated 16 times, and the word “trafficking” is repeated 20 times. There are no references to the free choice and agency of sex workers who chose to exercise this profession voluntarily and autonomously. Art.2 provides for the implementation of campaigns to raise awareness on the phenomenon prostitution intended as gendered violence, thus fueling the trope of sex workers’ victimization; furthermore, Art.2 also provides for constant monitoring of sex workers or former sex workers by health and social services, thus enhancing the stigmatization surrounding the profession. These aspects suggest a conflation between anti-trafficking and sex work, and a representation of sex work as gender violence.

There are paragraphs on data concerning international human-trafficking, international convention to combat human-trafficking, and allegedly demonstrating the effectiveness of the neo-abolitionist model to combat and prevent trafficking for the purposes of sexual exploitation (DDL S. 2537). This undoubtedly signals the conflation between anti-trafficking and sex work discourses, as data on human trafficking are presented within a legislative bill aimed at regulating prostitution.

It is possible to conclude that the Maiorino Decree is characterized by anti-trafficking discourses, by the victimization and stereotyped representation of sex workers as passive, helpless subjects of sexual exploitation.

In order to support the neo-abolitionist framework, the Senator Alessandra Maiorino, during a parliamentary session which took place during November 2021, the Senator report the story of an Albanian girl who was a victim of human-trafficking and sexually exploited by an Albanian criminal network operating in Italy. During her speech, she states that in order to fight human-trafficking, it is necessary to tackle the demand for prostitution, thus punishing and criminalizing clients. She further asserts that the legislative proposals which aim at eliminating the crime of solicitation of prostitution intend to favor transnational criminal circuits of human trafficking. She concludes her speech by defining sex work as slavery (M5sParlamento, 2021). It is possible to detect a significant conflation between the anti-trafficking and the prostitution discourse in this speech, because the testimony of a victim of sexual-trafficking is used to discuss a legislative proposal on sex work. It is also possible to do detect the presence of consistent tropes of victimization and stigmatization of sex work.

There are various reports written by leading figures of civil society's organizations, where the trafficking discourse significantly conflates with that on prostitution. One of these is the dossier on trafficking and prostitution written by Elvira Reale, who is the leading figure of Center Dafne in Naples, an organization which supports women who are victims of violent acts, and author of various publications on gender-based violence. In her report, she defines sex work as a structural form of slavery; she claims that prostitution represents a social issue rather than a profession, that it is produced by patriarchal structures ingrained in society, fueled by socioeconomic disparities and difficult living conditions; she further asserts that the legalization and regulation of the sex industry constantly enhances the demand for sexual services, sexual exploitation, and human-trafficking (Reale, 2019). Moreover, she claims that there is no difference between the woman who decides to prostitute herself and the woman who is a victim of sex-trafficking. She even argues that prostitution can be



considered similar to rape, because both produce post-traumatic and dissociative disorders (Reale, 2019).

Throughout the last decades, and as a consequence of the increased securitization and criminalization of migration which has characterized the majority of the European countries, the Italian government has adopted numerous repressive migration policies, aimed at contrasting the phenomenon of illegal immigration and at preventing the entry of new migrants within the national borders; these policies also entailed the classification of illegal migration as a criminal offense. In this regard, it has been argued that anti-trafficking discourses and practices have been frequently exploited in order to justify anti-immigration policies negatively affecting migrant sex workers, especially undocumented sex workers (TAMPEP, 2010).

A heavily criticized legislative decree was that proposed by the Lega Nord Party in 2009 and subsequently approved by the Senate. The decree provides that doctors are legally required to report to state officials undocumented migrant, when these go to the hospital or seek medical services. It has been argued that this measure constitute both a human right violations and is incompatible with the Italian Constitution, as art.32 provides that the Italian Republic protects health both as an absolute individual right and as a motive of public interest (Federazione CISL Medici, 2009). In this respect, TAMPEP claims that this judicial order further enhances the structural inequality for undocumented migrant sex workers, in further alienating them from health and social services and forcing them into greater isolation and vulnerability (TAMPEP, 2010). It is thus possible to conclude that the immigration policy adopted by the Italian government enhances structural inequality for migrant sex workers, as they are denied basic health rights.

In November 2018, a general assembly of the outreach unit of the anti-trafficking platform was held in order to discuss the conflation of sex work and sexual exploitation. In this circumstance, 120 delegates from all over Italy attended the meeting and many of them acknowledged the existence of the conflation of sex work

and trafficking of migrants for sexual purposes (Comitato per i Diritti Civili delle Prostitute, 2018).

Many segments of the civil society and human rights activists have heavily criticized the conflation between anti-trafficking and sex work discourses and practices within the Italian context. The anti-trafficking platform has stated that the criminalization of prostitution is not effective in combating sexual trafficking, but causes more insecurity both for sexually exploited women and for the sex workers community as a whole (Redazione, Società Cooperative Sociale On the Road, 2018). The Italian Committee on the Civil Rights of Prostitutes has stated that this conflation completely ignores the complex experiences of migrants sex workers, who are the most susceptible to victimization and to being treated as passive subjects who need rescuing (Comitato per i Diritti Civili delle Prostitute, 2019). This conflation ultimately fails at differentiating the problematic aspects of the sex work industry, migration dynamics, and labour exploitation, directing the efforts to tackle sexual trafficking and exploitation within the realm of sex work and labour rights. Equating trafficking with sex work produces ineffective policies both for self-determined sex workers, and for the ones who are exploited, as they become increasingly difficult to find, they are more dependent on their exploiters and even more isolated. The sex workers who are the most negatively affected by this dynamic are migrant and mobile sex workers. Rather than their isolation and exclusion, the Committee urges adopting the visibility of migrant sex workers as a central approach, in order to dismantle the victimization inherently tied to their identities and raise awareness on their real daily circumstances (Comitato per i Diritti Civili delle Prostitute, 2019).

The measures adopted by the Italian government aimed at combating sexual trafficking from one hand, and at ensuring the regulation of prostitution on the other hand, have also raised concerns.

In 2011, the UN Convention on the Elimination of All Forms of Discrimination against Women has issued concerning the treatment of women in Italy. In the section regarding prostitution, the report has raised concerns about the lack of rights'

recognition for women involved in street prostitution, most of them being of migrants origin (CEDAW, 2011).

In 2014, the UN Human Rights Council has issued a report concerning the situation of human-trafficking in Italy; in this regard, it has been argued that the Italian government and civil society organizations have devoted their attention and resources almost exclusively to the problem of sexual trafficking, and it has raised concerns “*on the dangers of conflating trafficking in persons exclusively with sex trafficking and neglecting the other forms of trafficking prevalent in Italy.*” (Human Rights Council, 2014).

The next chapter will deal with the German regulatory framework on prostitution. In this context, I will examine the phenomenon of migrant sex work and the experience of structural inequality of migrant sex workers. Even in this case, the main research question relates to the way in which sex work legislation and policies based on anti-trafficking discourses affect structural inequalities experienced by migrant sex workers.

## **V. Sex Work Legislation in Germany and Structural Inequality Experienced by Migrant Sex Workers**

### **1. Excursus of Sex Work Legislation in Germany: From the 2002 Prostitution Act to the 2017 Prostitutes Protection Act**

As already mentioned in the previous sections, the German sex work legislative framework is characterized by a regulatory approach, which was officially established in 2002 with the entry into force of the Prostitution Act, promulgated by the German Federal Parliament.

Before the promulgation of the Prostitution Act, sex work in Germany was legal but, as it was considered as an antisocial and immoral activity, sex workers were not entitled to virtually any rights (Kavemann and Rabe, 2007). Sec.138 of the German

Civil Code declares that an economic transaction which violates the common moral or decency has to be considered void (Art.138 German Civil Code). As a result, in the circumstance where clients would refuse to pay them, prostitutes could not legally claim their right to remuneration as contract related to prostitution were declared to be null and void. Moreover, they could not access work-related social insurance such as health insurance or security indemnities in case of unemployment. With regard to the treatment of third parties involved in the sex work industry, both promoting and advertising prostitution, and acting as an intermediary between clients and sex workers were considered unlawful and criminalized (Kavemann and Rabe, 2007).

As stated in the explanatory memorandum to the Act, the main goals of the Prostitution Act of 2002 were the improvement of the legal status of prostitutes, the fight against stigmatization and discrimination related to sex work and consequent improvement of sex workers' social conditions, the improvement of their working conditions, to fight sexual trafficking and sexual exploitation and facilitate sex workers who want to exit the prostitution market (Kavemann and Rabe, 2007).

A significant change within the 2002 legislation was the abolition, enlisted in art.1 sec.1 of the Act, of the immorality classification of prostitution; it is declared that the sexual acts executed in exchange of economic compensation will no longer be deemed as immoral or against public decency (Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten - Prostitutionsgesetz). Therefore, contractual agreements between client and prostitute or between brothel operator and prostitute will be considered as valid. As a result, prostitutes become legally entitled to sue clients who do not provide the economic remuneration they had agreed on; secondly, sex workers are also able to stipulate employment contracts with brothel operations, meaning that they become legally entitled to social security contributions (such as social insurance) as employees (Kavemann and Rabe, 2007).

A study concerning the impact of the German 2002 Prostitution Act, commissioned by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth,

has highlighted the main limitations associated with the implementation of this regulatory framework.

With regard to the working conditions of sex workers, it was argued that the employment contracts stipulated with brothels operators were not satisfactory in terms of social protection; furthermore, the health and safety conditions which usually apply for German workplaces are not applied within the sex work market, where concerns regarding sex workers' working hours or the conditions of the buildings where they work are not subjected to careful scrutiny by the authorities in charge (Kavemann and Rabe, 2007). The main health and safety criteria which needs to be addressed in relation to sex workers' working conditions are hygienic work practices and safety measures (such as protection against infection and mandatory use of condoms), protection against violence (such as banning forced alcohol consumption with clients), standards of buildings and interiors (such as access to daylight, access to privacy in closed spaces, separation between living and working spaces).

With regard to the prosecution of subjects involved in sexual exploitation and human trafficking for sexual purposes, the study has suggested that no significant improvement was detectable since the promulgation of the Prostitution Act, mainly because of the lack of a regulatory supervising body.

With regard to the facilitation of sex workers who want to exit the sex work industry, the main problems associated with helping former prostitutes finding a new job are that employment agencies do not treat former sex workers as a separate target group, and that former sex workers often do not possess any experience in other jobs (Kavemann and Rabe, 2007).

Many policymakers and segments of the civil society defined as a failure the 2002 Prostitution Act, and many legislative bills have been proposed throughout the years in order to amend the legislation.

In 2015, the draft bill entitled Prostitutes Protection Act was presented by Manuela Schwesig; Schwesig is a German politician, a member of the Social Democratic Party of Germany (SPD), the former Federal Minister of Family Affairs, Senior Citizens, Women and Youth, and the current Minister President of Mecklenburg-Vorpommern.

She stated that her intention was to put an end to sex workers' inhuman conditions (Nanni, 2019). The draft bill is to be considered as an agreement between the SPD, the Christian Democratic Union of Germany (CDU) and the Christian Social Union in Bavaria (CSU); these political parties and other civil society's organizations advocated for the promulgation of this bill as a mean of fighting violence in prostitution, human-trafficking and sexual exploitation, arguing that is the duty of the state to protect the weakest segments of society and that only those who know their rights are really protected (Nanni, 2019).

The draft bill was approved in 2016 by the German Federal Parliament and officially entered into force in January 2017; while the former Prostitution Act only entailed three Articles, this new act comprises 8 sections and 38 Articles regulating prostitution in Germany. Characterized by a heavily regulationist approach, this piece of legislation carefully draws the boundaries of lawful prostitution-related activities, establishing various restrictions and obligations for sex workers and third parties who are involved in the sex industry. The central pillars of the Prostitutes Protection Act are the establishment of a licensing system for prostitution businesses and the obligation of registration for sex workers (Reinschmidt, 2016).

Art.2 of section 1 clarifies what is intended by sex work, sex worker and by activities associated with sex work such as a prostitution company, or facilities intended for the sale of sexual services. The German Law defines a sexual service as a "*sexual act performed by at least one person on or in front of at least one other person who is directly present for a fee, or which permits a sexual act on or in front of them for a fee*" (Gesetz zum Schutz von in der Prostitution tätigen Personen - Prostituiertenschutzgesetz).

Section 2 of the Prostitutes Protection Act contains the obligations to which sex workers have to comply and the rights to which they are entitled. All sex workers who want to work within the German territory, both as self-employed and as employed by a brothel's owner, are obliged to register themselves as sex workers at the competent authority, which subsequently issues a registration certificate. The main registration requirements are that the person is at least eighteen years old and that she is not within

the last six weeks of pregnancy. Moreover, the competent authority is entitled to not release the certificate if “*there are factual indications that the person is or should be induced into prostitution by third parties through the exploitation of a difficult situation, his helplessness associated with staying in a foreign country, or his personal or economic dependence, or that this person is a victim of exploited by third parties, or will be.*” (Gesetz zum Schutz von in der Prostitution tätigen Personen - Prostituiertenschutzgesetz). The registration certificate is valid throughout Germany and for two years after the date of issue; for sex workers under 21 years, it is only valid for one year.

Important steps of the registration process are also an informative interview and a mandatory periodic health consultation. In the informative interview sex workers are given various informations concerning their rights and duties, social security, taxes, and consulting services. In the mandatory health consultation, carried out by health offices, health advises are given to sex workers concerning protection against sexually transmitted infections and pregnancy, risk of alcohol and drug abuse. After the consultation, the local health office issues a certificate of attendance, which sex workers will need to register themselves. This health consultation must be repeated every twelve months, and sex workers under 21 years old must attend it every six months. Sex workers are required to carry both the registration certificate and the health consultation certificate with them whenever they work, as they may need to show it to brothels’ operators or police officials (Bundesministerium für Familie, Senioren, Frauen und Jugend, 2017).

Section 3 of the Act enlists the conditions for the people who wish to start a business in the sex work industry, for example, if they wish to open a brothel. The law provides that third parties involved in the prostitution industry are required to obtain the prostitution license issued by a specific authority. They are subjected to periodic checks by competent authorities, which may decide to withdraw the prostitution license if the required conditions are not met anymore (Gesetz zum Schutz von in der Prostitution tätigen Personen - Prostituiertenschutzgesetz). Art.18 also establishes minimum requirements, in terms of health and safety, for rooms used for prostitution;

some of these are that the room cannot be visible from outside, they have to contain an adequate system of emergency call, the doors can be opened at any time from inside, there are adequate hygienic services for sex workers, operators and clients. Section 6 provides for the obligation of wearing condoms during sexual encounters, stating that clients should check if sex workers comply with this regulation. This action also contains a ban on the advertising of unsafe practices; it is explicitly prohibited to advertise prostitution services which involve pregnant prostitutes, or having sex without condoms (Gesetz zum Schutz von in der Prostitution tätigen Personen - Prostituiertenschutzgesetz).

The next section will analyze the phenomenon of prostitution in Germany, regarding the characteristics of the sex working population in Germany in the present moment and the different typologies of sex work. With regard to national sex workers, the main risks and vulnerabilities associated with the profession will be discussed, especially with regard to human rights deficits and their experience of structural inequality. The second part of the next section will deal with the public debate around the Prostitutes Protection Act, the main critiques, and shortcomings that have been attributed to the adoption of this new legislative framework.

## **2. Recent Trends and Political Debates**

According to Destatis, the German Federal Statistical Office, it is estimated that at the end of 2021 there are roughly 240000 sex workers holding a valid registration certificate in accordance with the Prostitution Protection Act; among these, it is estimated that 4,509 are German citizens, whereas 19,234 are non-German sex workers. Destatis also states that there are 2,290 prostitution businesses operating in Germany and holding a licensing permit. It is possible to observe a stark decrease in the number of sex workers holding a valid registration certificate, as at the end of 2019, there were roughly 40,000 registered prostitutes (Destatis, 2022). This sharp drop was probably triggered by the global pandemic, which exacerbated throughout



2020; as authorities imposed the shutting down of brothels, many sex workers may have decided to resort to illegal prostitution as their only survival option (AP News, 2021).

According to TAMPEP, whose estimates are based on different data provided by sex workers' organization operating within the national territory, public health care providers and other NGOs, there are approximately 400,000 sex workers in Germany working either in a full or part-time basis, and 65% of these are of migrant origin, mostly from Central European countries and Thailand (TAMPEP, 2010). According to TAMPEP, 90% of sex workers in Germany are female, 7% are male and 3% are transgender. These data suggest that there is an enormous percentage of sex workers working illegally across Germany, that is not holding a valid registration certificate.

With regard to the different typologies of sex work, which were defined and described in the Italian chapter, it is estimated that 87% of sex workers work within indoor spaces and that 13% of them work outdoors. Among those working indoors, the majority of them work in brothels or clubs, a consistent percentage work in apartments or windows, and only a small percentage resort to escort agencies which use visiting services (TAMPEP, 2010). Among those working outdoors, most of them work on the streets within urban centers and only a very small percentage work in highways or in parks. As for the Italian case, the German sex market is very heterogeneous and characterized by diversity in terms of types of services offered, tariffs and modalities of interaction with clients and third parties (TAMPEP, 2010).

Indoor prostitution is predominant because, contrary to the Italian case, places such as brothels and open-door establishments are considered legal by the law. A brothel can be defined as "*facility that has a contact room in which sex workers introduce themselves to clients*" (Czarnecki et al., 2014) and where the sex worker disposes of a private, rented room to interact with clients. An open-door establishment (called *Laufhaus* in German) is a facility where sex workers wait in their designed rented, spaces room, which can be either rooms or ground-floor windows. The main benefits associated with these facilities are their relative safety from clients' assaults and the possibility for sex workers to use services within these facilities, such as restrooms or

leisure spaces. The main disadvantages are the high costs of rent and other fees (such as cleaning or maintenance services), which may lead to debt, and the limited flexibility in managing working hours (Czarnecki et al., 2014).

Another space which is peculiar to the German context is the caravan or mobile home, usually rented by sex workers and located outside urban centers, which enables flexible planning and independent work; at the same time, in these work spaces sex workers are much more exposed to violence from clients and cannot benefit from anonymity.

Street prostitution, which is the most dangerous and visible typology of sex work, is not as widespread as in the Italian context and almost exclusively practiced by migrant sex workers, whose possibilities are limited by not knowing the German language, thus being left out by typologies of sex work where communication is essential (such as escort services or prostitution in private apartment), or do not hold the legal status to register themselves (Czarnecki et al., 2014). Prostitution in Germany, and street prostitution in particular, is also subjected to exclusion zone ordinances; this means that municipalities have the right to autonomously decide where it is illegal to carry out sex work (TAMPEP, 2010).

Considering the reasons leading people into the German sex market, the economic motive represents the predominant one, as in the Italian case. There is a consistent number of sex workers who choose this job among a variety of others, educated individuals who may already have been involved in other career path but envision sex work as a gateway from ordinary jobs and the routine that these entail. At the same time, there is a similarly high portion of sex workers who had no other option but that of sex work, because they lack necessary skills or, in the case of migrant, the legal status to be employable in other sectors (Czarnecki et al., 2014).

As sex work is frequently considered capable of generating consistent revenue in a short amount of time, people who are facing debts are also likely to resort to sex work and expect to exit this industry as soon as the debt is repaid. Many sex workers consider sex work as a temporary job, which they will abandon once their socioeconomic conditions have improved, and not as a permanent career path.

Moreover, it is argued that women entering the market are generally of young age and that they are often suggested to try this type of work by female friends or acquaintances who are already in the business (Czarnecki et al., 2014).

The main risks and vulnerabilities experienced by national sex workers in Germany are related to financial concerns, such as incurring in debt, becoming unemployed or homeless, being poor. The second risk factor is determined by physical violence and abuse, perpetuated not only by clients, but also by police, business owners, pimps and by the society at large. The third factor of vulnerability is represented by lack of self-confidence around a professional sex worker identity, which frequently leads sex workers to have double lives or struggle with self-worth issues. Another dimension of vulnerability is determined by the stigmatization around sex work and the social exclusion and marginalization that this brings (TAMPEP, 2010).

The Prostitutes Protection Act implemented in 2018 stirred many controversies within the German political debate, as it is considered to be particularly discriminatory and criminalizing towards sex workers, and not very effective in ensuring that their rights are protected and adequate working conditions ensured.

During the political debates which preceded the promulgation of the Act, the advocating parties stressed the urgent need to adopt a mandatory registration system for prostitutes, as they argued that being unregistered and invisible makes sex workers more likely to be victims of sexual trafficking (Nanni, 2019). On the other hand, parties such as The Green and The Left firmly rejected the bill because they considered the draft as characterized by a paternalistic attitude which does not take into account sex workers' self-determination and enhances their stigmatization; they deemed mandatory registration and health counseling as a tool of control and repression by state authority, and stressed the importance of anonymity as a means of protecting sex workers from discrimination and violence (Nanni, 2019). Nevertheless, these parties were in favor of enhancing regulation for the prostitution market, such as implementing better working conditions and more supervision of prostitution managers and their facilities.

The National Coordination Group against Trafficking in Human Beings was also skeptical with regard to the new regulatory framework, stating that the main goal of sex work legislation should be the welfare of sex workers and not the adoption of coercive and criminalizing measures (Nanni, 2019). The German AIDS Service Organization further argues that compulsory health advice enhances the status of illegality for many people involved in prostitution, whereas it is much more likely that sex workers' accept voluntary health advice (Nanni, 2019).

In a Shadow Report to CEDAW, the Sex-Worker Forum has criticized several aspects of the new law. It is argued that there is no scientific evidence to prove that mandatory registration is beneficial to end or prevent human trafficking, sexual exploitation, or other abuses. This obligation introduces serious concerns with regard to data protection and privacy: brothels owners who can access the data may unlawfully distribute them, data may be stolen and sex workers exposed to blackmail, risking enhanced stigmatization (Sex-Worker Forum, 2017). Secondly, the Sex-Worker Forum argues that the obligation of health counseling fundamentally violates the sex workers' right to health, as they are forced to disclose the most intimate aspects of their sexual life and health. Moreover, sex workers may be subjected to mandatory health checks or HIV testing; as clients are not obliged to comply with the same health requirements, it is argued that this attitude is strongly discriminatory against women in sex work (Sex-Worker Forum, 2017).

Hydra e.V., a nonprofit organization founded in 1980 as the first association concerned with the protection of sex workers' rights and active throughout the Germany territory, and BesD e.V., the professional association for erotic and sexual services, stressed the need of a non-obligatory version of health counseling (BesD e.V and Hydra e.V, 2019). The associations assert that highly traumatized individuals who are victims of trafficking or sexual exploitation are much more likely to collaborate with public authorities on a voluntary basis, within an adequate setting which allows them to establish trust. They further assert that a health counseling service which is operated by former sex workers or people who are experienced with sex work would be much more beneficial, as mandatory health counseling by non-sex workers is

perceived as patronizing and humiliating, based on the assumption that sex workers are not capable of checking their own health or seek help when needed (BesD e.V and Hydra e.V, 2019). With regard to the obligation to carry the registration certificate, it is argued that this risks to enhance sex workers' stigmatization and isolation as they may lose their second job (if they have on), sex workers may be abandoned by their family and their social circle, they may be evicted by landlords and be pressured by their partner to quit sex work, their children may be bullied at school by other pupils (BesD e.V and Hydra e.V, 2019). Another cause of isolation is given by the fact that, since the implementation of the Act, many more sex workers who do not want to register decide to work alone and to advertise their services on internet platforms, whereas previously they used to work in brothels with other sex workers; as a result, sex workers do not interact with colleagues anymore, they are less accessible for peer education, and less likely to be reached by social operators. Since the introduction of the new Prostitutes Protection Act, it is estimated that an increased number of sex workers experience physical and sexual violence and reports being stalked; sex workers who are not registered also experience financial violence, as they client refuse to pay them based on the assumption that they will not be reported as sex workers are not officially registered (BesD e.V and Hydra e.V, 2019).

The next section will focus on the phenomenon of migrant sex work in Germany. First, the demographics and ethnic composition of migrant sex workers in Germany will be examined. Secondly, the ways in which migrant sex workers operate in the German sex market will be investigated; in this context, two categories of migrant sex workers will be taken under consideration: the first one is composed by migrant sex workers who operate voluntarily within the industry, the second one is composed by migrant sex workers who operate within transnational criminal circuits, and are therefore to be considered victims of trafficking and sexual exploitation. Lastly, the main risks and vulnerabilities associated with migrant sex work in Germany, as opposed to the ones experienced by national sex workers, will be analyzed, with a particular focus on structural inequality.

### **3. Migrant Sex Workers in Germany: Demographics, Markets, Risks and Vulnerabilities**

*“I have no official address, no health insurance and often no place to sleep. Now I should get registered? How should that work?” (ICRSE, 2017)*

As in the Italian case, the sex market in Germany is significantly affected by migration flows and migrants represent a consistent percentage of the sex working population within the national territory. Czarnecki and others argue that it is difficult to estimate correctly the numbers and characteristics of migrant sex workers in Germany, as statistics institutes are unable to examine the dynamics and mobility patterns of undocumented migrants (Czarnecki et al., 2014). Nevertheless, it is safe to assert that more than half of the sex working population is of migrant origin. TAMPEP estimates that 67% of the total sex working population in Germany is of migrant origin (TAMPEP, 2010). Until the 1990s, migrant sex workers predominantly came from non-EU countries such as Latin American, African, and Asian countries. During the 1990s, women from Poland and Ukraine came to represent a significant portion of the migrant sex working population in Germany. In concomitance with the European Union’s enlargement process towards Eastern and Central Europe, which took place in 2004 and 2007, and the consequent increase in female labour migration from these countries, it is possible to witness a further gradual shift of the migrant sex working population in Germany, with more and more sex workers coming from southeastern EU countries, such as Romania and Bulgaria (Czarnecki et al., 2014). Sex workers coming from Central European countries represent the majority of migrant sex workers in Germany nowadays; migrant sex workers from Eastern European countries not belonging to EU (such as Moldova and Ukraine) and from Central Asian countries form the second biggest group of migrant sex workers in Germany (TAMPEP, 2010). The third most dense group is composed of migrant sex workers from Asia Pacific countries, almost exclusively from Thailand. A smaller

percentage is composed of migrant sex workers from the Latin American and Caribbean area and from the Baltic countries, respectively. It is interesting to notice that, while the predominant origin of migrant sex workers is Central or Eastern Europe, the most popular nationality among migrant sex workers in Germany is Thai, whereas the most dislocated throughout the territory is the Polish one (TAMPEP, 2010).

The significant number of sex workers from Southeastern and Central EU countries, which dramatically increased during the early 2000s, can be partially attributed to the 2-3-2 regulation introduced by the European Union within the context of the enlargement process, which aimed at restricting the free movement of labour and at imposing barriers to access employment for migrant workers, as a way of safeguarding the rights of domestic workers (Staiger, 2022). This rule states that for a limited number of years, specifically until 2013, citizens from these countries could only work in Germany as freelancers, thus not being granted the various social benefits that the other workers were entitled to, and that they could remain within the national territory as long as they were able to financially maintain themselves. In this regard, sex work represented one of the opportunities which “*did not require language skills or formal degree certificates and was lucrative enough to maintain the required minimum earnings.*” (Staiger, 2022).

With regard to sex workers coming from Eastern Europe, it is argued that they are particularly susceptible to be victims of human trafficking and sexual exploitation, as they experience both personal and structural disempowerment, in concomitance with being subjects of transnational migration. Migrant sex workers from Eastern Europe, where this profession is still significantly stigmatized, do not generally hold a positive view of their profession, compared to German sex workers who often consider it as a form of self-actualization. Eastern European sex workers see sex work as a highly remunerative, temporary profession which they use to support their families back home, and which they plan to abandon once they have earned enough money to comfortably return to their countries of origin (Staiger, 2022).

With regard to the space where the sex work activity is conducted, the majority of migrant prostitutes (roughly 90%) work within indoor spaces, as national sex workers; only 10% of them are reported to work within outdoor spaces, such as on the streets or within parks. The majority of migrant sex workers working indoors can be found in brothels and clubs, and at a slightly lower percentage within private habitations, such as apartments (TAMPEP, 2010). It is argued that sometimes Romanian and Bulgarian sex workers who work within clubs declare to have another nationality, such as Italian or Greek, as the significantly high presence of their nationalities could make them seem less appealing to clients (Staiger, 2022).

With regard to human trafficking and sexual exploitation, there have been various trials in Germany which investigated pimps and brothels' owners in relations to these crimes. One of this court trials found guilty two men at the top of a structured criminal organization involving the trafficking of dozens of women, and composed by various actors, such as "*recruiters, drivers, financial managers, legal strawmen, and enforcers, sometimes fellow sex worker.*" (Staiger, 2022). Another trafficking trial investigated the issues of "loverboys", which is a term coined to describe the predatory behavior of men who deceive young girls and pretend to be their boyfriends, and then sexually exploit them using coercive instruments. It has been argued that loverboys are frequently of migrant origin; the Romanian scholarship working on trafficking has documented this strategy (Staiger, 2022).

With regard to risks associated to migrant sex work and vulnerabilities experienced by migrant sex workers in Germany, as opposed to national sex workers, the first factor of risk and vulnerability is represented by their legal status and the impact of repressive, anti-immigration policies (TAMPEP, 2010). Migrant sex workers who are undocumented, lack residence or work permit are not capable of registering themselves as sex workers, thus they will be pushed further into illegal circuits of prostitution and will be more exposed to criminalization and violence (ICRSE, 2017). It has been pointed out that migrant sex workers often have to deal with unsafe working conditions and low prices because of the lack of a registration certificate. It is



also argued that the new Prostitutes Protection Act based on mandatory registration may enhance the risk of trafficking and sexual exploitation for migrant sex workers; a sex worker has declared: *“My boyfriend is handling the bureaucracy for me. I try to understand what he does, so that I won’t be too dependent on him, but I haven’t succeeded yet. Due to the increased complexity of having to register under the Prostitutes Protection Act, I will understand things even less, and those of my colleagues who work with pimps will become even more dependent on them.”* (ICRSE, 2017)

Another factor of vulnerability is represented by financial concerns, such as the worry of becoming or being poor, becoming homeless, and so on, which national sex workers also experience (TAMPEP, 2010). A third dimension of vulnerability is represented by the lack or little knowledge of the German language (TAMPEP, 2010). It is argued that language skills are quite important within the German sex market, because brothels or apartments’ owners usually prefer sex workers who can speak German, or at least English, as these kind of services are addressed towards a wealthy clientele which expects to interact and have fluent conversations with sex workers (Staiger, 2022). As a result, sex workers of migrant background who do not possess these language skills often resort to street prostitution, which does not require advanced language skills but significantly enhances their exposure to violence and criminalization (Czarnecki et al., 2014).

Another dimension of risk and vulnerability is represented by acts of violence and abuse perpetrated by clients, police and prostitution organizers (TAMPEP, 2010). It is reported that both national and migrant sex workers experience higher levels of violence compared to the general population, and that migrant sex workers experience a slightly higher level of violence compared to national sex workers. This happens partially because national sex workers benefit from a more legal security, speak German and understand better the legal and social system; as a result, national sex workers are able to negotiate better working conditions and safe sex practices. Furthermore, migrant sex workers experience more violence because of general

negative attitudes towards migrants and because of lack of recognition for their legal rights (TAMPEP, 2010).

The last dimension of vulnerability is represented by social isolation and exclusion, which national sex workers also experience due to the stigmatization around sex work (TAMPEP, 2010). Furthermore, migrant sex workers are much more likely to be victimized and treated as victims of human trafficking compared to national sex workers. It is argued that the portrayal of the majority of migrant sex workers as victims of poverty and sexual exploitation is frequently employed to fuel xenophobic sentiments and justify anti-immigration policies (Hydra e.V., 2015). Moreover, it is asserted that the frequent conflation between anti-trafficking and sex work in the case of migrant sex work gives a biased perception of the different, complex experiences of migrant sex workers and hinders the recognition of their labour rights and the protection of their human rights (Hydra e.V., 2015). This dynamic will be illustrated in a more detailed manner in the following section.

Another matter of serious concerns with regard to registered migrant sex workers is the risk of facing repressions or violent repercussion in their countries of origin; as the 2017 Prostitution Protection Act enables the disclosure of sex workers' private data, a data theft may occur in the process of official data exchange between national authorities, which potentially expose migrant sex workers to be blackmailed, outed or to face other severe consequences (ICRSE, 2017).

The next section will focus on the conflation between anti-trafficking, anti-immigration, and prostitution discourses and practices in the German context, both within the legal regulatory framework and in the public discourse. The hypothesis that the anti-trafficking discourse on sex work legislation enhances the structural inequality experienced by migrant sex workers will be discussed. The hypothesis will be discussed both with regard to the current regulatory framework and the current mainstream debate about sex work in Germany. These discursive analyses will shed light on the tropes of criminalization, victimization, and stigmatization.

#### **4. The Conflation between Anti-Trafficking and Sex Work discourses and practices**

*“The Prostitutes Protection Act, however, in the form that it will come into effect on July 1, 2017, only pretends to be a law for the protection of sex workers, and the regulations provided therein fail to support both sex workers and trafficked persons. Instead, the law will force sex workers into illegality, especially those working together at apartments as well as migrant, trans, and otherwise particularly vulnerable individuals in sex work. What is labelled as protection is in large parts simply a law aimed at repressing sex work.” (ICRSE, 2017)*

As already anticipated in the previous sections, the legislative documents which have been taken under scrutiny with regard to the sex work’s German regulatory framework contain various elements which suggest a conflation between anti-trafficking discourses and sex work related policies. In the following paragraphs, a discourse analysis will be made with regard to the already examined legal documents, and new ones will be taken into consideration; moreover, relevant dossiers and declaration by policymakers will be analyzed. This written material does not only regard the sex work discourse but also the phenomenon of migration in Germany and related migration policies implemented throughout the last years, since migrant sex workers are not only affected by sex work legislation but are also significantly impaired by anti-immigration policies. With regard to sex work related documents, the discourse analysis will be centered on the detection of the repetition of specific terms which are dominant within the anti-trafficking discourse (such as victim, predator, perpetrator, exploiter) and on certain discursive construction such as the tropes of violated femininity, shattered innocence, and the victimization of women (Halperin, 2017).

With regard to the 2002 Prostitution Act, it is possible to assert that there are no words or tropes which suggest a conflation between anti-trafficking and sex work discourses.

In fact, this piece of legislation is only composed by three articles focusing on the lawfulness of contracts between sex workers and clients, which were previously deemed as null and void because sex work was considered an immoral activity (Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten - Prostitutionsgesetz). The promulgation of the Prostitution Act meant that brothel owners and operators of prostitution could not be charged with the crimes of pimping and trafficking anymore for offering good working conditions and a pleasant work environment; before the passing of this legislation, these services were considered as sexual exploitation because they were deemed as an incentive to continue doing sex work (Staiger, 2022). The promulgation and implementation of the 2002 Prostitution Act entailed the insurgence of many critics of the legalization paradigm; many scholars, activists and policy-markers asserted that the new regulatory framework was fueling criminal circuits of sexual trafficking and exploitation, and that these laws turned the state into a pimp (Staiger, 2022). Many international and German newspapers published articles concerning the growing numbers of trafficked persons and criminal circuits involved in sexual exploitation in Germany. In many newspapers articles and television programs, the country was commonly referred to as the brothel of Europe, to denote the significantly growing population of migrant sex workers in Germany, which steadily increase starting from the 1990s (Staiger, 2022).

In 2007, Ursula von der Leyen, who was at the time the minister for Family Affairs, openly took stances against the Prostitution Act, addressing its inability to tackle sexual trafficking and sexual exploitation, and to provide support and resources to sex workers who wish to abandon the profession (Bundesministerium für Familie, Senioren, Frauen und Jugend, 2007). She claims that assuming that sex workers are voluntarily participating in sex work creates a biased perception of this industry, as there are many sex workers who desire to leave prostitution as they are forced to work in inhuman and unhealthy conditions. She further asserts that this is especially true for migrant sex working women and other marginalized and vulnerable categories of women. For these reasons, von der Leyen argues that sex work cannot be considered

as any other form of work or as a reasonable option to earn a living, and that exiting prostitution should be the purpose of every sex work legislation (Bundesministerium für Familie, Senioren, Frauen und Jugend, 2007).

It is possible to argue that these statements are connoted by the tropes of victimization, as particular emphasis is placed on exploited sex workers, and stigmatization, as it is explicitly asserted that prostitution cannot be considered as a normal professional and that ending it is the ultimate goal.

In an article entitled "How Legalizing Prostitution Has Failed" published in 2013 by *der Spiegel*, the author explains how the sex work industry conflates with that of human-trafficking in the German case, proceeding with the narration of stories of migrant sex workers who have been victims of trafficking and sexual exploitation in the country, and asserting that the boundaries between voluntary and forced are very hard to define (Sultan, 2013).

The author claims the existence of a narrative, on which the German government thrives, which turns trafficked and exploited migrant sex workers into self-determined business women; he argues that said narrative: *"becomes a statement that transforms women like Alina into autonomous prostitutes, businesswomen who have chosen their profession freely and to whom Germany now wishes to offer good working conditions in the sex sector of the service industry. That's the 'respectable whore' image politicians seem in thrall of: free to do as they like, covered under the social insurance system, doing work they enjoy and holding an account at the local savings bank. Social scientists have a name for them: "migrant sex workers," ambitious service providers who are taking advantage of opportunities they now enjoy in an increasingly unified Europe"* (Sultan, 2013).

The article overall suggests that there is a false perception of the migrant sex working population in Germany, and that female labour migration with the purpose of sex work in the country is always characterized by exploitative and coercive conditions. The word "victim" can be detected within the article 10 times, the word "trafficking"

or “traffickers” can be detected 30 times, the word “exploitation” or “exploited” can be detected 12 times.

It is possible to conclude that there is a conflation between sex work and anti-trafficking, and that the article suggests a certain depiction of migrant sex workers, based on victimization and helplessness.

With regard to the Prostitution Protection Act implemented in 2017, the political parties which strongly advocated for its adoption, namely the SPD and the CDU/CSU, envisioned mandatory registration and health mandatory counseling as a way of identifying sex workers who are victims of trafficking and sexual exploitation (Staiger, 2022). The words “exploitation” “exploited” and “exploiters” can be detected 5 times within the Prostitution Protection Act.

Schwesig declares that mandatory registration is not aimed at impairing self-determined sex workers, but at protecting sex workers who are lured into Germany, disappear within brothels, and are generally invisible (Hausding, 2016). This statement suggests that the law intends to protect migrant sex workers and establishes a divide between self-determined sex workers and migrant sex workers who need protection. It is possible to assert that this statement is connoted by the trope of victimization with regard to sex workers and in their representation as passive subjects. Schön, representative of the CDU/CSU, similarly affirms that, without mandatory registration, women in sex work are completely invisible and the perfect prey for human traffickers (Hausding, 2016).

It has been argued that the 2017 Prostitute Protection Law “*seems to be based more on political arguments, moral assessments of prostitution, and a vocal anti-trafficking campaign than on evidence-based research*” (Staiger, 2022). Within the German debate on trafficking and sex work, the advocates of anti-trafficking campaigns, rather than relying on scientific literature, tend to present their considerations and justifications for action in a rather fictional way, where pimps, traffickers and victims of exploitation are presented as caricatural characters within emotionally charged narratives (Staiger, 2022).

No empirical correlation has been detected between mandatory registration and the tackling of human trafficking, or increased capability of identifying victims of abuse among sex workers; on the other hand, as illustrated in the previous sections, these two mandatory measures are discriminatory with regard to sex workers, and may produce maltreatment and exploitation in the work place (Sex-Worker Forum, 2017). They may further enhance the risks and vulnerabilities of marginalized sex workers such as migrant sex workers, and especially undocumented ones. Hence, it is possible to conclude that the conflation between anti-trafficking and sex work discourses and practices within the context of the 2017 Prostitutes Protection Act has been detrimental to sex workers and their experience of structural inequality, and even more so for marginalized categories such as migrant sex workers.

It is further possible to observe the conflation between anti-trafficking and sex discourses and practices in faith-based and civil society organizations operating within the German territory, which ultimately advocate for the neo-abolitionist paradigm as a regulatory framework for the sex work industry (Staiger, 2022). Solwodi, which is an NGO, centered on offering support to migrant women who are victims of distress in Germany, such as victims of violence and abuses, of human-trafficking, sexual exploitation or who are involved in prostitution. This association has stated that sex work is inexorably tied to violence; it is argued that it is an act of gender violence which degrades women through the purchase of their sexual services, and that it is fundamentally incompatible with human rights (SOLWODI, 2017). Solwodi further asserts that, since the adoption of the 2017 Prostitutes Protection Act, there have not been significant improvements as the violence which is inherent to sex work has not been recognized by this neoliberal paradigm. Also in this case, sex work is connoted by stigmatization and victimization of sex workers, and the neo-abolitionist model based on criminalization is called for (SOLWODI, 2017).

In order to conclude this section on the conflation between sex work and anti-trafficking, it is important to notice that concerns around this conflation have already been raised by various segments of the civil society.

In their Shadow Report to CEDAW, BesD and Hydra e.V. highlight that the German anti-trafficking legislation was modified in 2016, and that its name changed from “trafficking for the purpose of sexual exploitation” to “forced prostitution”. The two associations have firmly condemned the name of a political buzzword into the reframing of this law (BesD e.V and Hydra e.V, 2019). They further argue that the existing laws against human-trafficking, sexual violence and the exploitation of labour force are sufficient in order to investigate and condemn traffickers and exploiters (BesD e.V and Hydra e.V, 2019).

In another report, Hydra e.V further criticizes the prevalence of this conflation, stating that there is a willingness, fueled by racist and xenophobic sentiments, to portray migrant sex workers as victims of trafficking, to tighten the conditions of entry in the market for non national sex workers, in order to make sex work inaccessible and undesirable for migrants (Hydra e.V., 2015).

In an overview of the German Prostitutes Protection Act, the International Committee on the Rights of Sex Workers in Europe has similarly condemned the conflation between anti-trafficking and sex work discourses and practices within the legislation. It is claimed that victims of sexual-trafficking and sexual exploitation have been exploited in order to implement the obligatory provisions which sex workers have to comply with, namely mandatory registration and mandatory health counseling (ICRSE, 2017). The Committee advocates nationwide voluntary and anonymous support services to help sex workers facing difficulties, and also to identify victims of human trafficking. The report also states the necessity to grant resident permits and exemption from punishment for people affected by human trafficking who are willing to testify (ICRSE, 2017).

The next and final chapter will focus on the conclusion of this research project. The conclusive consideration for the Italian and German case will be first presented separately. Subsequently, a comparison will be made with regard to the main difference and similarities of the two national legislations, particularly those affecting



the experience of migrant sex workers. A final paragraph will be devoted to future perspectives on the fight for sex workers' rights and sex work research.

## **VI. Conclusion**

### **1. The Italian Case**

The Italian sex work legislation is based on Merlin Law, which dates back to 1958 and has never been amended, although many legislative proposals have been introduced by various political parties throughout the years. As a result, the Italian sex work regulatory framework does not take into account the significant shifts in the sex work industry which have occurred in the last decades; one of the most important is the growing predominance of migrant people operating in the market. The legislation is characterized by certain tropes of sex workers' victimization and stigmatization, but the conflation between sex work and anti-trafficking discourse has not emerged in a significant manner. The lack of evidence is probably determined by the fact that anti-trafficking discourses and practices around sex work have emerged around the end of the last century, and the Merlin Law belongs to a different historical and sociopolitical context. Migrant sex workers in Italy face significant structural inequalities, both compared to the general population and to national sex workers. The most salient dimension of structural inequality to which they are exposed is related to their status of migrants, which is significantly affected by anti-immigration policies and by the criminalization of migration. Undocumented migrants are the most vulnerable category of migrant sex workers, and they are the most likely to fall into transnational criminal circuits of sexual trafficking or to resort dangerous types of sex work such as street prostitution. The latest legislative proposal to amend the Merlin Law is represented by the Maiorino Decree, which presents strongly neo-abolitionist stances and configures sex work as a product of gender-based violence. Document and discourse analysis have illustrated that this legal bill is connoted by tropes of victimization and stigmatization of sex workers, who are portrayed as passive victims

of exploitation and sexual trafficking. This analysis has also proved that the discourse on sex work heavily conflates with that of anti-trafficking within the Decree. The law has not been approved yet, but Italian sex workers' organizations have raised serious concerns about the criminalizing and stigmatizing nature of this legislative bill, which would enhance structural inequalities for sex workers, especially for the most marginalized such as migrant sex workers. The Italian legislative decree is significantly influenced by the Swedish neo-abolitionist model, whose implementation has been said to enhance structural inequalities for sex workers, in particular for migrant and undocumented sex workers. For this reason, it is plausible to assert that, if the Maiorino Decree will be implemented, the subaltern group of migrant sex workers in Italy will experience enhanced structural inequalities.

## **2. The German Case**

The conflation between anti-trafficking and sex work discourses and practices has been detected in a significant manner within the current German sex work legislation and public discourse. The Prostitutes Protection Act stems from the precise willingness to protect sex workers from inhuman and unhealthy conditions, combating human trafficking and sexual exploitation. The main provisions contained in the Act, obligatory registration and mandatory health counseling, have been introduced in order to increase the likelihood of identifying victims of sexual-trafficking and sexual exploitation. No empirical correlation has been said to exist between the two mandatory provisions and the reduction in crimes related to human-trafficking and sexual exploitation. On the other hand, these two mandatory practices have been considered as human rights violations, which heavily enhance structural inequality experienced by sex workers. Migrant sex workers, and undocumented sex workers in particular, are incapable of complying with the provisions which do not take into account their structural disadvantage, such as the lack of work and residence permits. The declarations made by the policy-makers who advocated for the adoption of the new legislative framework are strongly connoted by narratives of victimization,

stigmatization, and criminalization of sex work and sex workers. It is therefore possible to conclude that the anti-trafficking nature of discourses and practices around sex work has enhanced structural inequality experienced by migrant sex workers in the German context.

### **3. Differences and Similarities**

This research project has allowed a comparison between two diametrically opposed prostitution's regulatory frameworks. The Italian sex work legislation is explicitly aimed at not regulating prostitution, but only at criminalizing and punishing those who exploit sex workers or benefit from their economic activity. In stark contrast, the German sex work legislation is characterized by a strongly regulationist approach which seeks to define and limit every aspect of sex work-related activities, and establishes stringent mandatory provisions for whoever intends to do sex work or operate in the sex work industry. This analytical difference undoubtedly affects the experience of sex workers within each national context. Sex workers in Italy have to operate within a sort of legal vacuum, which does not grant them any sort of social benefit or labour right. In Italy, street prostitution is much more widespread compared to the German case, where the legislation allows sex workers to operate within safer and more controlled settings. The downfall of the German regulatory approach is that of establishing mandatory, discriminatory practices to regulate sex work, and criminalizing sex workers who are not able to comply with the provisions. In Germany, migrant sex workers who are undocumented or lack essential skills to operate within safe and controlled facilities are much more likely to experience structural inequalities. In both the Italian and the German context the most subaltern categories of the sex workers' community, such as migrant sex workers, are significantly penalized, victimized and stigmatized. With regard to the degree of pervasiveness of anti-trafficking discourses and practices within the two national legislation, it is possible to assert that the conflation between anti-trafficking and sex

work is much more detectable within the German Prostitutes Protection Act than in the Italian Merlin Law, whereas the Prostitutes Protection Act and the Maiorino Decree present the same level of conflation.

#### **4. Final Considerations**

This research has shed light on the diversified and complex of the sex work industry and of the subjects by which it is composed. There are various categories of migrant sex workers which emerged throughout the analysis of the German and Italian case and, although it is false to assume that they are all passive victims of human-trafficking and sexual exploitation, they are united by the fact of belonging to a subaltern group which experiences various declinations of structural inequality. The intersectional approach is the most valuable in conducting sex work research and the most effective in developing and implementing sex workers' rights. The most vulnerable segments of our societies need laws and social services which recognize the diversified layers of oppression and discrimination they experience, which are able to understand the complexity of their personal and collective narratives, and place value on their self-determination and self-actualization, rather than assuming false stereotypes which victimize, stigmatize and criminalize them.

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## Summary

The purpose of this research is to examine the relationship between anti-trafficking discourses and practices within the Italian and German Sex Work Legislations, and structural inequalities experienced by Migrant Sex Workers.

The central research question concerns the way in which anti-trafficking discourses and practices within the Italian and German sex work legislation affect structural inequalities experienced by migrant sex workers. There are two hypotheses related to the central research question, connected to the Italian and German case, respectively. The first hypothesis is that the anti-trafficking nature of discourses and practices within the Italian sex work legislation enhances structural inequalities for migrant sex workers. The second hypothesis is that the anti-trafficking nature of discourses and practices within the German sex work legislation enhances structural inequalities for migrant sex workers.

On a sociopolitical and legal perspective, this topic enables to question significant sociopolitical issues. The first issue is related to the different declinations of sex work's regulatory frameworks within national legislations, that is, to how they differ from each other in terms of theoretical considerations about prostitution and the role of women in society. These theoretical considerations, and the policies which lie behind them, shape the experience of sex workers every day, not only in terms of rights and obligations, but also in terms of discrimination and oppression.

The second matter of interest concerns sex work in relation to national and international immigration law and policy responses, in particular to international labour migration, human trafficking, the protection of undocumented migrant workers, and sex work decriminalization, as opposed to current regulatory frameworks. On a third, and more critical instance, this research can be considered relevant as migrant sex workers represent a category of subalternity, that is, a marginalized group facing significant discriminations on the basis of race, gender and social class, ultimately causing a deficit in basic human rights such as health, employment and housing. This research assumes that migrant sex workers represent a

particular category of subalternity within the general sex working population, as their experience of oppression and discrimination only partially overlaps with that of national sex workers.

Both in Italy and in Germany, migrant sex workers represent the majority of the sex working population. The phenomenon of sex work is more and more globalized, susceptible to transnational migration flows, in particular female labour migration, and to immigration policies. Migrant sex workers face significant struggles compared to national sex workers: they are reported to be more vulnerable to aggressions, they face severe difficulties in obtaining a legal work permit in countries where sex work is legal; they are more susceptible to social exclusion and discrimination. Migrant sex workers are not only susceptible to anti-sex work legislation, but also to anti-immigration policies all around Europe. In countries where sex work legal is legal or tolerated, there is a huge discrepancy between migrant sex workers from EU countries and migrant sex workers from non-EU countries. As migrants coming from outside the European Union are almost always excluded from finding a permanent legal employment and obtaining a residence permit within the EU, a consistent number of them decides to operate within illegal (and often criminal) circuits of the sex market in order to survive; if and when they get caught, they face expulsion or deportation. Because of their illegal status, undocumented sex workers are much more reluctant to collaborate with the police or with social services if they experience any type of violence or discrimination.

In analyzing structural inequalities faced by migrants sex workers in their every day's lives, a consistent body of academic literature has associated the structural disadvantages faced by this category, and their consequent human rights deficit, with the anti-trafficking, criminalizing and stigmatizing nature of discourses on sex work legislation. The main theme of anti-trafficking discourses is that of establishing an indissoluble link between sex work intended as a matter of individual's agency and free choice, and human trafficking practices, labour and children exploitation and other related activities, ultimately failing to consider sex work as actual labour. This discursive declination of sex work significantly affects policies targeted at regulating

the sex work industry within any national context. Throughout the last decades, there has been an ongoing trend towards anti-trafficking discourses on sex work, and various EU states are implementing repressive and conservative sex work policies and laws, targeted at enhancing legal barriers to the full recognition of sex workers' rights. The neo-abolitionist sex work regulatory framework, embedded with attitudes of patriarchal humanitarianism and white savior mentality, definitely marks the beginning of the conflation between anti-trafficking legislation in international law and prostitution legislation in national law. The neo-abolitionist framework on prostitution legislation was first established in Sweden during the late Nineties, and it is also defined as the Nordic model approach or Swedish model. The Swedish Sex Purchase Act is part of the Violence Against Women Act, the broader gender equality program implemented by the Swedish Government, in which feminist policy-makers conceived prostitution as a consequence of patriarchal oppression and as a form of violence against women. Within this model, sex workers are mostly conceptualized as victims who need to be rescued; it ultimately connects all sex workers to the victims of human trafficking and all forms of sexual labour as rooted in gender inequality. Swedish sex work policies, envisaging criminal sanctions for purchasers, illustrate how the eradication of prostitution is intended as necessary to achieve a fully democratic society where gender equality is respected. Radical feminists, who advocate for the neo-abolitionist model and consider all form of sex work as sexual slavery, fail to consider the complex and diversified identities of racialised sex workers and the intersectional oppression they experience, and potentially expose them to more violence and discrimination when calling for a more punitive and criminalizing framework. Migrant women, both from and outside the European Union, represent the majority of people selling sex in Sweden, and the framework based on the criminalization of clients is considered as being particularly detrimental for them.

In order to contrast the thesis that all kinds of sex work are exploitative and degrading for women, and that sex work always stems from gender inequality considerations on the structure of our society, I found the work of the sociologist Elizabeth Bernstein

and her consideration on carceral feminism to be extremely relevant. In the early 2000s, Bernstein conceptualizes the notion of carceral feminism to denote a particular declination of the discipline which connects all forms of sexual labour with sexual trafficking; it denotes a social, cultural and political structure created by feminist advocates, where women's fight for emancipation and sexual liberation and other social justice's struggles are declined and attempted to be solved according to a carceral agenda, in other words, to a framework that promptly resorts to criminal justice. In order to detect the conflation between anti-trafficking and sex work discourses, the sociologist Bernstein employs document and discourse analysis. The repetition of certain words (such as victim, predator, perpetrator, exploiter) and certain tropes, such as those of "violated femininity, shattered innocence, and the victimization of women" is deemed as indicative of said conflation. This methodology will also be applied in this research in order to identify the conflation of anti-trafficking discourses within the German and Italian sex work legislations.

Prostitution in Italy is regulated according to an abolitionist framework, which is declined in its various aspects and dimensions in Law N.75 of 1958; it is also popularly called "Merlin Law" by the name of the Italian senator who strongly advocated for it: Lina Merlin. This legislative piece is explicitly abolitionist, as the title "Abolition of the regulation of prostitution and fight against sexual exploitation" suggests. The term "victim" is not explicitly mentioned within the articles, but at the same time, there is no reference to the fact that sex work can be the product of a deliberate and conscious choice. The legislation is characterized by certain tropes of sex workers' victimization and stigmatization, but the conflation between sex work and anti-trafficking discourse has not emerged in a significant manner. The lack of evidence is probably determined by the fact that anti-trafficking discourses and practices around sex work have emerged around the end of the last century, and the Merlin Law belongs to a different historical and sociopolitical context.

The Italian sex work regulatory framework does not take into account the significant shifts in the sex work industry which have occurred in the last decades; one of the most important is the growing predominance of migrant people operating in the



market. Migrant sex workers in Italy face significant structural inequalities, both compared to the general population and to national sex workers. The most salient dimension of structural inequality to which they are exposed is related to their status of migrants, which is significantly affected by anti-immigration policies and by the criminalization of migration. Undocumented migrants are the most vulnerable category of migrant sex workers, and they are the most likely to fall into transnational criminal circuits of sexual trafficking or to resort dangerous types of sex work such as street prostitution.

The latest legislative proposal of amendment of the Merlin Law is the Maiorino Decree. The decree advocates for the adoption of the neo-abolitionist model in Italy, where men and women would ally together against the dishonoring phenomenon of prostitution, which is based on a patriarchal social system benefitting from the vulnerability of women. It is argued that sex work is a gendered phenomenon and activity produced by coercion or coercive conditions. Document and discourse analysis have illustrated that this legal bill is connoted by tropes of victimization and stigmatization of sex workers, who are portrayed as passive victims of exploitation and sexual trafficking. This analysis has also proved that the discourse on sex work heavily conflates with that of anti-trafficking within the Decree.

This decree has been heavily criticized by many segments of the civil society: former sex workers, sex work advocates and activists, non-governmental organizations working in closed contact with sex workers, especially of the most vulnerable and marginalized categories such as undocumented migrants or transgender people. The first problematic aspect is the lack of a reference to sex work as a free and voluntary choice, as an act of self-determination and self-actualization. The decree is said to be very stigmatizing, as it conceptualizes sex work as degrading, as an act which mortifies the individual and makes the body a commodity. Secondly, it is argued that the decree is embedded in a rhetoric of pietism and victimization with regard to sex workers, as prostitution and human-trafficking are treated as the same subject matter. The Italian legislative decree is significantly influenced by the Swedish neo-abolitionist model, whose implementation has been said to enhance structural

inequalities for sex workers, in particular for migrant and undocumented sex workers. For this reason, it is plausible to assert that, if the Maiorino Decree will be implemented, the subaltern group of migrant sex workers in Italy will experience enhanced structural inequalities.

In Germany, prostitution is regulated by the Prostitutes Protection Act implemented in 2017. Characterized by a heavily regulationist approach, this piece of legislation carefully draws the boundaries of lawful prostitution-related activities, establishing various restrictions and obligations for sex workers and third parties who are involved in the sex industry. The central pillars of the Prostitutes Protection Act are the establishment of a licensing system for prostitution businesses, mandatory registration and mandatory health counseling for sex workers. In the mandatory health consultation, carried out by health offices, health advises are given to sex workers concerning the protection against sexually transmitted infections and pregnancy, risk of alcohol and drug abuse. These two mandatory provisions stirred many controversies within the German political debate, as they are considered particularly discriminatory and criminalizing towards sex workers, and not very effective in ensuring that their rights are protected and adequate working conditions ensured. During the political debates which preceded the promulgation of the Act, the advocating parties stressed the urgent need to adopt a mandatory registration system for prostitutes, as they argued that being unregistered and invisible makes sex workers more likely to be victims of sexual trafficking. The opponents of this perspective argue that the legislation is characterized by a paternalistic attitude which does not take into account sex workers' self-determination and enhances their stigmatization; they deemed mandatory registration and health counseling as a tool of control and repression by state authority, and stressed the importance of anonymity as a means of protecting sex workers from discrimination and violence. No empirical correlation has been detected between mandatory registration and the tackling of human trafficking, or increased capability of identifying victims of abuse among sex workers. On the other hand, these two mandatory practices have been considered as human rights violations, which heavily enhance structural inequality experienced by sex workers.

Migrant sex workers, and undocumented sex workers in particular, are incapable of complying with the provisions which do not take into account their structural disadvantage, such as the lack of work and residence permits. The declarations made by the policy-makers who advocated for the adoption of the new legislative framework are strongly connoted by narratives of victimization, stigmatization, and criminalization of sex work and sex workers. It is therefore possible to conclude that the anti-trafficking nature of discourses and practices around sex work has enhanced structural inequality experienced by migrant sex workers in the German context.

This research project allows a comparison between two diametrically opposed prostitution's regulatory frameworks. The Italian sex work legislation is explicitly aimed at not regulating prostitution, but only at criminalizing and punishing those who exploit sex workers or benefit from their economic activity. In stark contrast, the German sex work legislation is characterized by a strongly regulationist approach which seeks to define and limit every aspect of sex work-related activities, and establishes stringent mandatory provisions for whoever intends to do sex work or operate in the sex work industry. This analytical difference undoubtedly affects the experience of sex workers within each national context. Sex workers in Italy have to operate within a sort of legal vacuum, which does not grant them any sort of social benefit or labour right. In Italy, street prostitution is much more widespread compared to the German case, where the legislation allows sex workers to operate within safer and more controlled settings. The downfall of the German regulatory approach is that of establishing mandatory, discriminatory practices to regulate sex work, and criminalizing sex workers who are not able to comply with the provisions. In Germany, migrant sex workers who are undocumented or lack essential skills to operate within safe and controlled facilities are much more likely to experience structural inequalities. In both the Italian and the German context the most subaltern categories of the sex workers' community, such as migrant sex workers, are significantly penalized, victimized and stigmatized.

This research has shed light on the diversified and complex of the sex work industry and of the subjects by which it is composed. There are various categories of migrant

sex workers which emerged throughout the analysis of the German and Italian case and, although it is false to assume that they are all passive victims of human-trafficking and sexual exploitation, they are united by the fact of belonging to a subaltern group which experiences various declinations of structural inequality. The intersectional approach is the most valuable in conducting sex work research and the most effective in developing and implementing sex workers' rights. The most vulnerable segments of our societies need laws and social services which recognize the diversified layers of oppression and discrimination they experience, which are able to understand the complexity of their personal and collective narratives, and place value on their self-determination and self-actualization, rather than assuming false stereotypes which victimize, stigmatize and criminalize them.

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