LUISS Guido Carli
LIBERA UNIVERSITÀ INTERNAZIONALE DEGLI STUDI SOCIALI

Department of International Relations

Chair of International Organizations and Human Rights

The Criminalization of Human Trafficking between International and National Law

Prof. Francesco Cherubini
SUPERVISOR

Prof. Donato Greco
CO-SUPERVISOR

Nina Goracci
CANDIDATE

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LIST OF ABBREVIATIONS AND ACRONYMS

ATC	Anti-Trafficking Coordinator
CATW	Coalition against Trafficking in Women
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFSP	Common Foreign and Security Policy
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GLO.ACT	Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants
GPAT	Global Program Against Trafficking in Human Beings
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICAT	Inter-Agency Coordination Group against Trafficking in Persons
ICC	International Criminal Court
ILO	International Labour Organization
IOM	International Organization for Migration
JHA	Justice and Home Affairs
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
SDGs	Sustainable Development Goals
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office against Drugs and Organized Crime
UNTOC	United Nations Convention against Transnational Organized Crime

INTRODUCTION

Human trafficking represents one of the most severe human rights violations which affects millions of individuals each year. Such phenomenon involves the recruitment or movement of people by the use of threat, force, fraud or abuse of vulnerability for exploitation which may include, but is not limited to, sexual exploitation, forced labor, organ removal, criminal exploitation and forced begging.

While human trafficking is often referred to as 'modern slavery', the two are distinct phenomena. Modern slavery is indeed an umbrella term which is used to cover a number of human right abuses among which human trafficking. The latter, on the other hand, represents a specific legal concept, defined under international law, which, as we will see later, is characterized by three core elements: the act, the means, and the purpose.

Given the hidden nature of human trafficking, it is often difficult to obtain accurate data about it. The quality and quantity of data available are further hindered by difficulties in identifying individual victims, gaps in the accuracy of the data and obstacles for what concerns the sharing of information between countries.

Victim identification remains one of the main problems as victims are often afraid or unwilling to report their situation or cooperate with law enforcement officials due to fear of reprisals or deportation and lack of trust. In many cases then authorities are not properly trained to recognized trafficking victims and often misidentify them as irregular migrants, criminal offenders or sex workers, thereby failing to provide the necessary protection.

Moreover, not all countries have trafficking legislation and where they do, it often differs in definition, scope and enforcement. A common problem in this regard is the fact that human trafficking is often confused with or classified as other related, but distinct offences such as prostitution, illegal immigration or labor violations. Such misclassification leads to significant underreporting and obstructs efforts to comprehensively grasp the extent and dynamics of trafficking. Where action is taken and data are collected, there is often no centralized agency responsible of assembling and analyzing the different figures and the gathering of statics is frequently left to NGOs which in many cases lack the financial resources to do so.

Despite these challenges, some data have been collected by international organizations such as the International Labour Organization in collaboration with the Walk Free Foundation, according to which in 2021 almost 50 million people were living in modern slavery[1].

[1] Report of the International Labor Organization, Walk Free and the International Organization for Migration, 2022, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage.*

According to the United Nations Office on Drugs and Crime, the illicit profits from human trafficking are estimated to reach as high as $150 billion annually making it the world's third largest crime industry after illicit drug and arms trafficking.

Human trafficking thrives on people's vulnerabilities as traffickers target individuals with limited access to resources through deceptive and coercive means. Contemporary migratory dynamics, socioeconomic inequality, armed conflicts and climate change are all factors that increase people's vulnerability, often leading to their displacement and the consequent breakdown of safety nets which can make them easy targets for traffickers.

According to the United Nations women and girls constitute the largest proportion of identified victims globally, representing 61% of the total in 2022[2]. At the same time, the number of children among identified victims has risen alarmingly, now constituting 38% of detected victims, of which 22% is represented by young girls[3].

Concerning it purposes, while for many decades sexual exploitation constituted the main expression of human trafficking, targeting women in particular, in 2022 the number of victims trafficked for forced labor rose by 47% becoming the most prevalent form of exploitation[4]. The latter now affects especially men in sectors as diverse as agriculture, construction, hospitality and fisheries.

Migrant workers, particularly those entering a country through irregular channels or without proper documentarian, are especially vulnerable in this context. Desperate and in search of better living conditions migrants are indeed more likely to fall into the hands of traffickers who, taking advantage of their vulnerabilities, trap them into exploitative and coercive practices or debt bondage often by offering false employment or false promises of safe travel and by using threats of denunciation and deportations.

Such practices are then facilitated by the increasing complexity and fragmentation of supply chains which makes it difficult to track and ensure ethical labor practices as well as by the continuously growing demand for cheap labor. Women are also victims of trafficking for labour exploitation, often in the more isolated setting of domestic work.

Other forms of exploitation include forced marriage, organ removal, forced begging and forced criminality.

Human trafficking is often perceived as a transnational crime as it frequently involves the movement of individuals across international borders; traffickers exploit gaps in security measures, as well as differences in legal systems and enforcement capacities to carry out their operations in multiple countries. In reality however, the majority of victims are detected domestically, but in the last years trafficking in persons has become increasingly global and transnational. Whether transnational or domestic, trafficking networks are often controlled or facilitated by organized criminal groups.

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[2] Report of the United Nations Office on Drug and Crimes, 2024, *Global Report on Trafficking in Persons 2024*.

[3] *Ibid*.

[4] *Ibid*.

According to the UNODC Global Report on Trafficking in Persons 2024, nearly 74% of analyzed cases were linked to organized crime groups[5].
These groups often operate with a high degree of coordination which enables them to manage complex trafficking chains, often as part of a boarder portfolio of illicit activities, including drug smuggling, arms trafficking, and money laundering, allowing them to diversify risk and maximize profits. Corruption, weak institutional oversight, and limited national and international cooperation then enable organized crime to flourish creating a mutually reinforcing cycle that threatens global and national security and undermines human rights. Individuals and associations of traffickers are also present, albeit in smaller numbers.
Beyond such structures, human trafficking is an ever-changing phenomenon. The advent of the digital revolution has for example radically transformed both the methods of recruitment and exploitation, allowing traffickers to operate anonymously, to reach a broader audience as well as to control victims from a distance, making the phenomenon even harder to detect and tackle. It appears therefore evident the necessity of an integrated and multidisciplinary approach which combines expertise from criminal justice, migration policy, labor regulation and social protection as well as international cooperation across borders necessary not only to identify and support victims, but also to prevent trafficking, disrupt networks, and address the root causes that allow it to flourish.
The present thesis has the objective of analyzing the historical and legal development of the notion of human trafficking, tracing its evolution from early international instruments to the modern definition. It further aims at analyzing the current international and European legal frameworks and identifying strengths and weaknesses. A detailed focus will then be placed on the Italian legal system, exploring relevant legislation and ongoing challenges.
The first chapter offers a historical reconstruction of the concept of human trafficking, starting from the transatlantic slave trade and the subsequent emergence of the so-called 'White slavery' narrative. In particular, it examines how the concern about the sexual exploitation of white women and girls in the nineteenth century brought about a moral panic concerning racialized migration and the movement of poor European women into cities, eventually leading to the first international legal instruments specifically addressing trafficking: the 1904 International Agreement for the Suppression of the White Slave Traffic and the 1910 International Convention. These early treaties, subsequently updated and complemented by other international instruments, were limited in scope, both in terms of their gendered focus and their emphasis on prostitution-related forms of exploitation.
The second chapter explores the emergence of the contemporary notion of human trafficking as defined by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. It analyzes the constitutive elements of human trafficking as well as the difference

[5] *Ibid*.

with migrant smuggling, a distinction that remains frequently misunderstood in both legal and practical contexts, in part due to the fact that the two phenomena are often interrelated and may overlap. The chapter also analyzes the so called '3P' paradigm of prosecution, prevention and protection which should give international and national efforts on human trafficking but that, in practice, is not always applied. In doing so, it will become evident how the current international framework is still too focused on criminalization, at the expense of victim protection and prevention.

The potential role of the International Criminal Court in fighting human trafficking will then be taken into account, considering the different interpretation of the Rome Statute and the possible inclusion of trafficking within the crimes against humanity.

Chapter III delves into the European legal framework examining the instruments of both the European Union and of the Council of Europe. The first section in particular is dedicated to the evolution of EU legislation from the first decisions until the more comphrensive Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. In this regard, the chapter highlights the enhanced level of protection granted by the Directive through a series of measures aimed at supporting and assisting victims independently of whether they cooperate or not with the authorities.

The chapter also considers other relevant EU legal instruments, including the Victims' Rights Directive and the Residence Permit Directive, which contribute to shaping the Union's approach to victim assistance and protection. In addition to legislative tools, attention is given to the role of institutional mechanisms, such as the EU Anti-Trafficking Coordinator and the 2021–2025 EU Strategy on Combating Trafficking in Human Beings.

The second part of the chapter then focuses on the Council of Europe's tools to combat human trafficking starting with the European Convention on Human Rights and, in particular, Article 4, which prohibits slavery and forced labour. Key jurisprudence is discussed here including the landmark cases of *Rantsev v. Cyprus and Russia* where the European Court of Human Rights recognized for the first time human trafficking as falling within the scope of Article 4 and Siliadin v. France in which the Court acknowledged the positive obligations imposed on States. The chapter also analyzes the 2005 Council of Europe Convention on Action against Trafficking in Human Beings which represents one of the most comprehensive legal instruments on trafficking. With a strong human rights approach the Convention focuses support and assistance to victims by introducing measures for their identification and protection including for example the core non-punishment principle according to which victims shall not be punished for unlawful acts they were compelled to commit as a result of being trafficked.

Moreover, the monitoring role of GRETA is examined as a key element in ensuring implementation and accountability across member states.

Finally, the last chapter focuses on the Italian legal framework. It begins by providing an overview of the national context, highlighting key data and characteristics of the phenomenon. A historical entry point is offered by the

Merlin Law, which abolished the regulation of prostitution and closed state-run brothels in Italy. Although not directly part of the contemporary anti-trafficking framework, the law marked an important turning point in Italy's approach to sexual exploitation.

The chapter then analyzes some norms of the Consolidated Immigration Act, particularly Article 12 addressing the facilitation of illegal immigration and Article 18 concerning the residence permit for victims of trafficking and severe exploitation.

Relevant laws of the Criminal Code are then examined, particularly Article 600 and 601, assessing their relationship and how they have been amended throughout time first through Law 288/2003 and subsequently by Legislative Decree 24/2014 implementing Directive 2011/36/EU. Attention is also given to the recent legislative innovations aimed at combating labor exploitation, in particular through the introduction of Article 603-bis of the Criminal Code and the related residence permit established under Article 18-ter.

While the chapter highlights the significant innovation introduced by the Italian legal system, which has developed a broad legal framework to combat trafficking in all forms, it also critically examines the shortcomings and inconsistencies. Recent restrictive migration policies and increase criminalization of irregular entry and stay indeed risk undermining victim identification and consequently hamper both protection and prosecution.

Finally, the National Action Plan against Trafficking and Severe Exploitation (2022–2025) is discussed.

The chapter concludes with a reflection on the challenges and future perspectives of combating human trafficking, highlighting the need for increased cooperation among border control agents, law enforcement authorities, criminal judges and civil society organization as well as the necessity for a more integrated, human rights-centered approach.

CHAPTER I
HUMAN TRAFFICKING: A DYNAMIC NOTION

1. The historical development of the human trafficking notion

Human trafficking has been going on for decades, but the current internationally accepted notion was developed only in 2000 with the entry into force of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Although the contemporary definition of human trafficking involves elements such as recruitment, coercion and exploitation among others, human trafficking intended as exploitation of individuals for labor, sexual or other purposes, has always existed to the point that some authors, define it as a form of modern slavery, highlighting its enduring nature despite changing contexts. Whether this definition is right or wrong, something that we will not be discussing here, it is without doubt that the two have been historically linked, at least until the above-mentioned Trafficking Protocol allowed to separate them by defining slavery as only one of the possible forms of exploitation included in the offence of trafficking. With this in mind, the first legal instruments addressing human trafficking emerged from efforts to tackle the slave trade, particularly what was referred to as the white slave trade. As I will explain in greater detail below, the white slave trade was a term used to describe the forced movement of women, primarily European descent, into prostitution. Early international efforts were thus focused on protecting women and children from such abuses.

Over time, the definition of trafficking has then been expanded to include new and alternative forms of exploitation. This transformation highlights the dynamic nature of the concept, which constantly requires a shift in response to emerging technologies, transforming recruitment tactics, and new patterns of violence. Understanding this evolving element is thus crucial to develop adequate responses to human trafficking, keeping in mind not only the changing methods of traffickers but also the victim's vulnerabilities and needs.

1.1. The Transatlantic slave trade and the rise of White slavery

Slavery has been a part of human history since the earliest recorded times. Recognized as one of the most extreme forms of domination, slavery seems to have been present in virtually every society, as evidenced by numerous records of Mesopotamian civilization. The Hammurabi Code, considered to be the earliest known codified legal code, contained rules on the ownership and sales of slaves[6]. In both Ancient Greece and the Roman Empire slavery was a widespread common practice. In the Middle Ages, wartime prisoners were often used as slaves. The expansion of trade across the Mediterranean

[6] NEWMAN (2022: 34).

and Atlantic coastline brought African slaves to Italy, Spain, southern France, and Portugal centuries earlier than the discovery of the Americas in 1492. From the eight century onwards, an Arab-dominated slave trade also flourished mainly centered in active in West Asia and North and Southeast Africa. Forms of slavery also existed in African societies, practiced in several different forms including debt bondage[7], military slavery and sexual slavery. Although widespread, slaves constituted in ancient times only a small percentage of the total population[8].

Around 1500, slavery had largely disappeared in Europe but remained pervasive in other parts of the world. Particularly during colonial times, from the 16th to the 19th century, slavery took on a dimension never witnessed before. It is estimated that, over a period of 400 years, approximately 12 million men were removed from West Africa and forcibly transported to the Americas to work mainly in plantations and mines.

Driven by the search for cheap and abundant labor, a huge intercontinental system of exploitation was soon developed by European settlers, operating through a triangular model: African men, women and children of all ages were sold as slaves in exchange for European manufactured products such as arms, textiles and weapons. Then the slaves were transferred to the Americas in what was known as the Middle Passage[9]. Survivors of the voyage were shipped primarily to Brazil or the Caribbean Islands but part of them also reached Central and North America. Here they were employed mainly within plantations to produce goods such as sugar, coffee, tobacco and cotton which would then be sold in Europe, fueling industrial expansion.

The rise of capitalism across Europe and the Americas was therefore made possible through the abuse of unfree labor of persons deemed exploitable by colonialists for a variety of reasons[10].

Initially developed in continuity with the existence of slavery across Africa and Europe for economic purposes, as the scale and profitability of the transatlantic slave trade grew, the necessity to justify and institutionalize it started to emerge. Christianity provided the first justification: colonizers and religious leaders framed slavery as a path to evangelization and spiritual redemption. Poverty and inequality were understood in this sense as God's Will and owning slaves as God's blessing. Over time such arguments were supplanted by racialized ideas of African inferiority. Legal, social and political systems emerged

[7] As defined by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, Article 1(a) debt bondage means "the status or condition arising from a pledge by a debtor of his personal service or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".

[8] NEWMAN (2022: 40).

[9] The Middle Passage was that stage of the Atlantic Slave Trade during which enslaves Africans were carried across the Atlantic to the Caribbean and Americas. The duration of the voyage varied from one to six months depending on the weather during which captives were packed and chained together below deck in horrific conditions.

[10] WILKINS (2020: 4).

codifying a racial hierarchy and ideas of white supremacy. Slavery was not anymore merely an economic system but a racial caste system; permanent and hereditary it was defined by pseudo-scientific ideas that laid the groundwork for the systemic racism and inequality that persisted for decades even after its formal abolition.

Notions of slavery started to shift around the 18th century when the abolitionist movement began to emerge. For a series of reasons that I will not delve into here, in little more than a century, the United Kingdom went from being the biggest slave-trading nation to being a leading force in the abolitionist movement eventually putting an end to the transatlantic slave trade. Through the adoption of a series of instruments, most notably the British Slave Trade act of 1807 and the US ban in 1808 slavery became progressively associated with backwardness and abolition was interpreted as progress and as a manifestation of civilized behavior[11]. Nonetheless systems of forced labor continued to persist across Europe, the Americas as well as Africa and South-east Asia. It was only in 1926 that the international treaty aimed at thoroughly eliminating slavery was signed. Created under the auspices of the League of Nations, the Convention to Suppress the Slave Trade and Slavery not only prohibited the slave trade and slavery in all forms but also provided the first international definition of slavery, described as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"

By the late 19h century, international attention shifted towards a new phenomenon: the so-called White Slavery, a term used to refer to the coercion of white women into prostitution, often through deception, abduction, or force. The 'moral panic' around the white slave trade originated from the Victorian Paternalism of the nineteenth century[12]: as the industrial revolution allowed women to travel more freely, concerns about migration for prostitution purposes started to develop. Such phenomenon became increasingly concerning during the second half of the century when mass prostitution campaigns were organized "to serve the needs of colonial troops"[13]. As a consequence, starting from the 1890s the number of white women involved within sex work in foreign countries and overseas colonies increased dramatically, accompanied by growing alarm about their potential exploitation. Key in bringing attention to the issue was a scandal erupted in Brussels in 1880 when it was made public that several underage girls (ten of which were from the United Kingdom) had been admitted into brothels with falsified documents despite clear discrepancies between their declared age and appearance[14]. In addition, the consent of at least one appears to have been falsified[15].

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[11] WILKINS (2020: 8).
[12] ALLAIN (2017a: 6).
[13] REANDA (1991: 207).
[14] ALLAIN (2017b: 3).
[15] Louisa Hennessey was promised a job as a receptionist in Paris, instead she was brought to Bruxelles where she was forced, with the consent of the police who provided the necessary certification, within a brothel.

Within this context, fueled by sensationalist journalism, and racial anxieties, the idea of white slavery, developed. With little evidence[16] stories about young white women abducted and forced to work within brothels spread around European and American societies and served as a tool to restrict women's choices and their bodies. White women engaging in sex work were so portrayed as innocent victims easily deceived or coerced, rather than as agents capable of making choices, however constrained by the economic and social reality of the time. These fears then became a powerful tool for regulating women's bodies and restricting their choices.

This growing moral panic culminated in a broader movement not just against sexual slavery, but against prostitution itself. The push to protect white women's chastity and uphold moral order, coupled with concerns over the spread of venereal disease, led to calls for the abolition of both state-regulated brothels and colonial licensing systems. Such efforts will eventually result in the development of the first international instruments to combat human trafficking, laying the groundwork for the modern legal framework[17].

Notably, one of the reasons why white slavery attracted so much attention was because it highlighted the existence of a type of slavery which was radically different from the trade and exploitation of Black people from the 18th century, and which subverted accepted racial norms and ideas about white supremacy[18]. Unlike the Atlantic Slave trade, which was based on ideas of African inferiority, the narrative around white slavery was thus framed as a moral crisis that threatened European womanhood and identity.

1.2. The 1904 International Agreement for the Suppression of the White Slave Traffic and the 1910 International Convention for the Suppression of White Slave Traffic

In 1899, the National Vigilance Association (NVA), a British organization founded in 1855 with the aim of enforcing and improving the laws for the repression of vice and immorality, promoted in London the first International Congress on the White Slave Trade.

The focus of the congress was the development of a common action to combat trafficking and the creation of a common proposal upon which governments would be willing to act[19].

As a result of the conference and in order to raise awareness about white slavery, the NVA founded an international investigative organization: the International Bureau for the Suppression of the Traffic in Women and Children. Its tasks included establishing committees responsible for addressing issues related to trafficking as well as lobbying for an international agreement on the matter, considering it operated in a period in which international law was still at an embryonic stage. The International Bureau was also tasked with promoting

[16] DOEZEMA (1999).
[17] ALLAIN (2017a: 6).
[18] ARMSTRONG (2020: 46).
[19] National Vigilance Association (1899), *Transactions of the International Congress on the White Slave Trade, held in London on 21–23 of June 1899*.

cooperation among the different civil society organizations with the aim of sharing information about the arrival of women suspected of prostitution and taking measures to protect them.

In 1902, recognizing the need for anti-trafficking initiatives, an International Conference was held in Paris. Bringing together representatives from various European nations[20], the conference's purpose was fourfold:

1. To punish the act of "procuring of women and girls by violence, fraud, abuse of authority, or any other method of constraint, to give themselves to debauchery"
2. To develop a system of cooperation between states and to conduct simultaneous investigations with other contracting parties when the elements of the crime occur in different countries.
3. To determine the place of trial as well as the appropriate punishment for accused individuals in order to avoid possible conflicts.
4. To provide for the extradition of accused individuals[21].

The conference raised several points of discussion including about the term "white slave traffic", considered by some unsatisfactory[22].

Beyond terminology, the conference addressed the broader challenges of regulating and combating trafficking and recognized the need for a definition of what constitutes white slave traffic. It was agreed, as a result, that a Draft Convention had to be prepared which would then be approved or rejected by the single states. In order to do so, delegates were divided into four commissions, related to legislative, administrative, juridical and procedural matters as well as a drafting commission. Each of these had to prepare a report containing their deliberations on the various aspects of the white slave traffic.

The Report of the Legislative Commission would eventually constitute the core of the Draft Convention. Given the nature of international law and disagreements over certain aspects, the Draft Convention was however left in a limbo for eight years before it came into force. In the meantime, an alternative measure, the Draft Arrangement, originally intended to provide administrative support for the Convention, was instead adopted, effectively coming into force before the Convention itself[23].

In 1904 the first International Agreement to Combat White Slavery was thus signed in Paris on 18 May 1904 and entered into force on 18 July 1905. Twelve states namely Belgium, Denmark, France, Germany, Italy, The Netherlands, Portugal, Russia, Spain, Sweden and Norway, Switzerland and the United

[20] Brazil was the only non-European country.

[21] ALLAIN (2017b: 4).

[22] As ALLAIN (2017b) reports, the Italian Delegate Palucci de Calboli, argued that "the words "white slave traffic" appeared to be improper. The word "white" does not apply to the generality of women, yellow, black, etc. As for "slave traffic" this also indicated the notions of import and export, characteristics which do not always appear the violation in question which, as a result of the discussion on which the delegates are unanimous, are not aiming to deal only with an international violation".

[23] ALLAIN (2017b: 1).

Kingdom ratified it. Nine more states[24] acceded to it while a series of other states will later become parties due to their accession to the subsequent 1910 Convention.

Concerning its content, the Agreement did not define "White Slave Traffic", merely referring, in Article 1, to the "procuring of women or girls for immoral purposes abroad". While not explicitly mentioned it is obvious how the agreement applied only to white women, as can be inferred from the title. Additionally, the term abroad confined the treaty to cases of trafficking with a transnational dimension, ignoring therefore the possibility that women and girls could be forced into prostitution within their own countries.

The purpose of the Agreement was primarily that of establishing a system of cooperation between Contracting States, to this end, each state party was required to establish a national authority tasked with coordinating relevant information on trafficking which would be empowered to contact and exchange information with the similar department established in each of the other Contracting States. Governments were also required to monitor train stations, ports and transit points for traffickers as well as to properly train officials in identifying potential victims.

Additional provisions called on States to provide assistance, even if minimal, to identified victims such as offering the "necessary security"[25], "exercise supervision, as far as possible, over the offices or agencies engaged in finding employment for women or girls abroad"[26] as well as providing assistance with repatriation for those who desired it.

It must be noted, however, that the agreement did not mandate neither the criminalization of procurement nor the creation of a specific offence for it[27]. As a result, and because of its racialized character which only targeted the exploitation of white women, its effects will be rather limited.

Recognizing these gaps, and the need for a criminal justice response to White slave traffic, in 1910 the International Convention for the Suppression of the White Slave Traffic was signed in Paris and came into force on 5 July 1920. A total of 41 states ratified it.

In stark contrast with the Agreement, the Convention provided for the duty of Member States to punish those responsible for trafficking, creating the first international definition on the matter.

Article 1 of the Convention in particular establishes that:

> "Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries".

In the same manner, Article 2 establishes that:

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[24] Austria-Hungary, Brazil, Bulgaria, Colombia, Czechoslovakia, Lebanon, Luxembourg, Poland, United States of America.

[25] *International Agreement for the Suppression of White Slave Traffic*, 1904, Art. 3.

[26] *International Agreement for the Suppression of White Slave Traffic*, 1904, Art. 8.

[27] LAMMASNIEMI (2020: 71).

> "Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries".

While limited to the offence of sexual exploitation, it is possible to draw a parallel between such articles and the modern definition of international trafficking contained in Article 3 of the Palermo Protocol. Both instruments indeed establish that, for the act to be punishable, at least three elements must be present namely the act (procured, enticed or led away), the means (fraud, means of violence, threats, abuse of authority or compulsion) and finally the purpose, here defined as immoral aimed at gratifying the passions of another.
The single terms, however, are not defined, even though clarifications about them can be found in the 1902 Report. According to the latter, in particular, to "procure" means to invite or lead the woman to become a prostitute, to "entice" means to take her away or persuade her to follow while to "lead astray" would mean to remove her from her surroundings[28]. The report also argued that the offence is characterized by a continuity during which the human body is treated as merchandise, thus noting its resemblance to slavery and the exploitation inherent in the transatlantic slave trade.
Moving on to the difference between the two articles, as evident from Article 1 in the case of women under age the crime occurs "even with the consent" of the victim irrespective of the means used, reflecting the idea that minors are unable to give valid consent in such a situation, a principle still present in today's instruments dealing with human trafficking[29]. Such an exception is, on the other hand, not included in Article 2 dealing with adult women, making compulsion a necessary element for the act to be punishable. Under Paragraph B of the Final Protocol, it is then clarified that "woman or girl under age" refers to a woman or girl of twenty years of age or younger. States are nevertheless free to establish a more advanced age protection, provided that it is the same for all.
In departure from the previous agreement, the 1910 Convention highlights how the act is to be criminalized "notwithstanding that the various acts constituting the offence may have been committed in different countries", thus recognizing also the possibility of internal trafficking.
The case of women or girls forcibly detained in brothels was however excluded from the Convention as a matter of exclusively national legislation[30].
The subsequent articles focus mainly on criminalization and cooperative aspects. Article 3 requires States to "take the necessary steps to punish these offences", Article 4 calls on Parties to communicate with each other about the

[28] ALLAIN (2017b: 9).
[29] In particular art. 3(c) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.*
[30] *Final Protocol to the International Convention for the Suppression of the White Slave Traffic*, 1910, Paragraph D.

laws passed on the object of the convention while Articles 5 and 6 include trafficking within the offences for which extradition may be provided, in accordance with existing agreements between Contracting Parties, and regulate extradition procedures.
It should be noted, as a final remark, that while both accords were approved with the aim of protecting women, they contained little if none provisions regarding their assistance. Additionally, while focusing on the recruitment or procurement of women for "immoral purposes", prostitution itself and the presence of state-regulated brothels were not tackled as considered issues of internal jurisdiction[31].

1.3 The 1921 International Convention for the Suppression of Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age

Following WWI, the question of traffic was resumed and considered of such importance that it was included in the covenant of the League of Nations. Article 23(C) indeed that "Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: [...] will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children." In order to carry out its work the League established a series of committees, organized various international conferences and conducted occasional inquiries[32].
Eventually the League adopted two key instruments, the first of which was the 1921 International Convention to Combat the Traffic in Women and Children. Building upon earlier agreements, notably the 1904 Agreement and the 1910 Convention, the 1921 Convention sought to expand and strengthen them in an attempt to ensure greater protection for victims.
Among the key innovations introduced by the 1921 Convention, perhaps the most important lies in the fact that the term "White slavery" was replaced with the more neutral "Traffic in Women and Children", marking a departure from the racialized framework of earlier treaties. In addition, by requiring State parties to "take all measures to discover and prosecute persons who are engaged in the trafficking of children of both sexes" male children were included among potential victims in need of protection[33]. Notably, the 1921 Convention amended the previous provisions, raising the age of protection, and thus the definition of children to include individuals of twenty one years of age or younger instead of twenty as defined by the 1910 Convention[34].
The 1921 Convention also required State Parties to punish, as stated in Article 2, not just the actual offence of trafficking but also "to secure the punishment

[31] LAMMASNIEMI (2020: 75).
[32] REANDA (1991: 208).
[33] Convention of the League of Nations, 30 September 1921, *International Convention for the Suppression of the Traffic in Women and Children*, Art. 2.
[34] Convention of the League of Nations, 30 September 1921, *International Convention for the Suppression of the Traffic in Women and Children*, Art. 5.

of attempts to commit, and, within legal limits, of acts preparatory to the commission" of the latter. In order to support its work, the League of Nations established in the same year The Advisory Committee on Traffic in Women and Children, the first permanent committee of the League aimed at tackling sexual trafficking. While it had no legislative powers, the Committee could propose legislation and reforms to the Assembly, contributing to the development of international legal standards and policies to combat human trafficking.

In 1933, yet another treaty was signed: the International Convention for the Suppression of the Traffic in Women of Full Age. The main difference between this and the previous instruments lies in the fact that the 1933 Convention defines trafficking as the procurement, enticement, or leading away of a woman or girl of full age for immoral purposes to be carried out in another country, regardless of her consent. This definition removes the means element, which was previously required for women of full age, thus making trafficking punishable regardless of whether fraud or coercion are employed. On the other hand, here the sex of the victim becomes relevant again, being the convention directed only at women of full age and at acts carried out in another country[35], again excluding cases of internal trafficking.

Despite the difference amongst them, it is clear how through these instruments a gendered definition of trafficking developed. While male children were included among potential victims in the 1921 Convention, the main focus remained on women throughout. Additionally, these Conventions explicitly tied trafficking to prostitution, thereby ignoring other possible forms of exploitation. Moreover, all of the early treaties limited their focus to the process of recruitment rather than on prostitution or abuse itself[36], which remained a matter to be dealt with domestically.

As a result, an anti-immigration agenda gradually took shape. Fueled by a post-war xenophobia, several measures aimed at restricting the movement of foreign-born women were adopted in the name of combating human trafficking.[37] Among these were for example the prohibition for foreign women to work in state regulated brothels as well as proposals for their compulsory repatriation. Numerous abolitionist movements however went further, arguing that the very existence of state-regulated brothels was among the main factors contributing to the expansion of trafficking.

Recognizing this, in 1937 the League of Nations prepared a draft convention aimed at abolishing the so-called licensed houses, establishments where prostitution was permitted and overseen by government authorities, and at punishing any persons managing brothels or exploiting the prostitution of others.

However, the outbreak of World War II in 1939 diverted international attention and resources away from social and legal reforms, paralyzing efforts to combat

[35] Convention of the League of Nations, 11 October 1933, *International Convention for the Suppression of the Traffic in Women of Full Age*, Art. 1.
[36] STOYANOVA (2017: 20).
[37] LAMMASNIEMI (2020: 75).

human trafficking. Accordingly, the draft convention will never see the light of the day.

1.4 The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others

Following the end of World War II, the newly established United Nations ('UN') took on the task of addressing human rights violations, including the issue of human trafficking and exploitation of prostitution. Within this context, the Economic and Social Council, through resolution 43 (IV) of 29 March 1947, requested the United Nations to tackle the issue of prostitution and in particular to resume the work of the 1937 draft convention. As a result, in 1949 the UN adopted the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others in its resolution 317 (IV) of 2 December. The Convention, which was signed on 21 March 1950, entered into force on 25 July 1951, eventually counting 81 state parties. The Convention consolidated and superseded the 1904, 1910, 1921 and 1933 international agreements, leading to their termination once all parties thereto joined the new Convention[38].

The 1949 Convention is fundamentally different from the previous anti-trafficking instruments. First of all, the Convention adopts a gender-neutral perspective, focusing not just on women and girls but also on male individuals regardless of their age.

Article 1, indeed, establishes that:

> "The Parties to the present Convention agree to punish any person who, to gratify the passions of another:
> 1. Procures, entices or leads away, for purposes of prostitution, *another person* (emphasis added), even with the consent of that person;
> 2. Exploits the prostitution of *another person* (emphasis added), even with the consent of that person"

By using the more general term 'person', the Convention acknowledged that trafficking and sexual exploitation were not affecting just women. This was a significant shift, as previous instruments had largely ignored the possibility that men could also be victims of sexual exploitation. However, despite broader legal recognition, much of the practical focus remained on women.

Secondly, the Convention focuses not only on the process of procurement, entitlement or leading away but also on exploitation itself, an aspect which was largely ignored by previous instruments. The Convention does not specifically define exploitation, however, if the four earlier conventions focused on a broader set of intentions framed as immoral purposes, the 1949 Convention limits itself to cases of prostitution without distinguishing between forced or voluntary involvement.

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[38] Convention of the League of Nations, 2 December 1949, No. 1342, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, Art. 28.

As stated in the preamble, prostitution was indeed seen as an "(...) evil incompatible with the dignity and worth of the human person which endangers the welfare of the individual, the family and the community" from which trafficking is necessarily derived. In line with the narratives that developed before WWII, the Convention adopted therefore an abolitionist stance, equating prostitution and all-related activities with trafficking, irrespectively of the individual consent[39], automatically classifying all women in the sex industry as victims. To this end, the Convention requires States to punish anyone who keeps, manages or finances a brothel, as well as those knowingly renting buildings for the purpose of prostitution of others[40]. Additionally, States undertake the obligation to abolish regulated prostitution by "repeal[ing] any law, regulation, or administrative provision that subjects individuals engaged in or suspected of engaging in prostitution to special registration, mandatory documentation, or exceptional supervision and notification requirements"[41].

Another notable aspect of the Convention lies in the fact that it does not just require States to criminalize trafficking but also to undertake broader preventive measures within the field of migration control[42]. Accordingly, States are mandated to take measures to check the traffic in persons for the purpose of prostitution. In particular they are required to:

1. Implement regulations necessary for the protection of immigrants and emigrants;
2. Raise public awareness about the dangers of trafficking;
3. Supervise key transit point such as railway stations, airports and seaports to prevent trafficking;
4. Ensure that authorities are informed of the arrival of suspected traffickers and victims upon their arrival.

Additionally, States are asked to collect information from foreign nationals engaged in prostitution with the aim of determining their identity and the circumstances that led them to migrate.

Victims' protection also became an important aspect. Article 16 mandates States to "take measures for the rehabilitation and social adjustment of the victims of prostitution" while Article 19 requires States to provide victims with temporary care and maintenance pending repatriation.

Importantly, contracting parties are required to cooperate with each other by establishing or maintaining specialized services responsible for coordinating and centralizing information on trafficking-related offences and by exchanging such information with their counterparts in other countries[43].

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[39] KAYE, MILLAR, O'DOHERTY (2020: 611).

[40] Convention of the League of Nations, 2 December 1949, No. 1342, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, Art. 2.

[41] Convention of the League of Nations, 2 December 1949, No. 1342, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, Art. 6.

[42] STOYANOVA (2017: 22).

[43] Including for example descriptions of the offenders, their fingerprints, photographs and methods of operation.

As for what concerns enforcement, parties are expected to communicate to the Secretary General of the UN the laws and regulations promulgated on the subject of the Convention as well as measures taken for their implementation. However, no treaty body was established to oversee the application of the Convention, and as a result, inconsistencies in enforcement and gaps in accountability represented significant challenges.

Ultimately, while the 1949 Convention marked a shift from previous instruments, it remains nonetheless limited in scope. The exclusive focus on prostitution rather than on trafficking as a broader phenomenon does not protect victims of other forms of exploitation. Additionally, by ignoring the difference between compulsory and voluntary prostitution the Convention fails to treat women as rational actors and rather treats them as innocent victims in need of salvation, even though the actual protection it offers remains quite limited.

The Convention's impact is further weakened by relatively low international support: to date only 53 states have ratified or acceded to it.

As a consequence, the Convention remains largely ineffective. Although it was the only universal international legal instrument specifically dedicated to human trafficking until the 2000s, it was never truly implemented and soon became obsolete.

CHAPTER II
THE INTERNATIONAL FRAMEWORK

1. The contemporary definition of human trafficking

With the onset of the Cold War, trafficking gradually faded from the public scene. The tightening of relations between the United States and the Soviet Union led to a sharp decline in cross-border migration and, as a consequence, to a reduced attention to trafficking. National security interest and geopolitical rivalries became the primary concern, shifting the focus of global powers away from transnational challenges. As a result, although trafficking likely persisted in other regions, it went largely unnoticed.

Towards the end of the 1970s a series of gender-related events shed light on the issue again. The first UN women's conference, held in Mexico City, proclaimed the UN Decade for Women to begin in 1976. Adopted on 15 December 1975 by United Nations General Assembly Resolution 31/136, the Decade aimed to promote gender equality, improve women's socio-economic conditions, and combat discrimination. As an outcome of such period, the UN adopted, in 1979, the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'). As reported by the UN: "the Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights". The Convention touched upon several areas including women's political participation, reproductive, economic and social rights as well as the issue of trafficking. Article 6 of the CEDAW in particular establishes that "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

The 1980s saw therefore a resurgence of global attention to human trafficking and the issue gained recognition at some major international conferences including the 1993 Vienna International Conference on Human Rights and the 1995 Beijing International Conference on Women in which it was argued that: "The effective suppression of trafficking in women and girls for the sex trade is a matter of pressing international concern".

Key in bringing attention to the matter was the outbreak of AIDS which, as women started to move more freely in search of better job opportunities, led to fears about instances of migration for sexual purposes and the consequent transmission of the virus. Importantly, the identity of victims changed, from primarily white European women to non-white individuals from developing countries. Despite this shift, media and public narratives continued to focus on the victimization of white women, especially as women from former communist countries began arriving at Europe's borders. The collapse of the USSR, and the consequent emergence of newly independent states in Central and Eastern

Europe led indeed to a rise in cross-border exploitation of women and girls[44], as the political and economic stability of the post-Soviet states made people more vulnerable.
Since then, human trafficking has continuously evolved, both in quantity, marked by a sharp increase in the number of victims and the consequent profits and in complexity; increasingly dominated by organized criminal networks operating both within and across borders, trafficking has expanded beyond the sex industry, highlighting the need for new international instruments capable of tackling its diverse forms[45].

1.1 The United Nations Convention Against National Crime and its Protocols

As noted above, the 1990s marked an important period in the fight against human trafficking. The opening of borders following the end of the Cold War, combined with fears about the spread of venereal diseases like HIV, brought the issue to the forefront of global attention, supported by a series of conferences and instruments focusing on women and women's rights. At the same time, the advent of globalization and the increasing interconnectedness among states led to a rise in organized crime, no longer confined within single countries, but rather expanding on a global scale.
Within this context, the link between human trafficking and transnational organized crime started to emerge as criminal groups took advantage of open borders and advances in technology to expand their businesses. Human trafficking became increasingly profitable together with other activities such as drug trafficking, money laundering and arms smuggling. As a result, the need for a coordinated international response arose.
To this end, in November 1994 the World Ministerial Conference on Transnational Crime was organized in Naples. Attended by 142 states as well as a number of intergovernmental and nongovernmental organizations, the conference centered on the worldwide growth of organized crime and the consequent development of countermeasures together with the need of a more effective international cooperation on the matter. The objectives of the conference in particular were:

> "(a) To examine the problems and dangers posed by organized transnational crime in the various regions of the world;
> (b) To consider national legislation and to evaluate its adequacy to deal with the various forms of organized transnational crime and to identify appropriate guidelines for legislative and other measures to be taken at the national level;

[44] While trafficking likely occurred in the Soviet Union during the Cold War it largely remained unreported as it was considered internal migration. With the fall of the USSR and the emergence of newly independent states however, what was previously considered internal exploitation transformed into cross-border trafficking, thus becoming more apparent to the international community.
[45] ANNONI (2013).

> (c) To identify the most effective forms of international cooperation for the prevention and control of organized transnational crime at the investigative, prosecutorial and judicial levels;
> (d) To consider appropriate modalities and guidelines for the prevention and control of organized transnational crime at the regional and international levels;
> (e) To consider whether it would be feasible to elaborate international instruments, including conventions, against organized transnational crime"[46].

The Conference marked a significant step towards establishing a comprehensive framework to tackle transnational organized crime, including human trafficking. While it lacked detailed proposals, the conference highlighted the growing consensus among states on the need for shared strategies and standardized legal approaches to effectively combat such issues.
A series of follow-up meetings were then held in Buenos Aires, Dakar and Manila to discuss the implementation of the conference's recommendations.
In 1999, through Resolution 53/11, the UN decided to establish an *ad hoc* committee responsible for the elaboration of an international convention against transnational organized crime as well as eventual other instruments to address "trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, […] and illegal trafficking in and transporting of migrants, including by sea".
In November 2000, after numerous conferences held in Vienna, the United Nations Convention against Transnational Organized Crime ('UNTOC') was finally approved by the UN General Assembly in its resolution 55/25. A High Level Political Conference was then held in Palermo, Sicily[47] for the purpose of signing the Convention, which officially entered into force on 29 September 2003. To date, the Convention counts 192 parties including the European Union ('EU'), figuring among the world's most ratified international treaties.
For what concerns its content, the Convention's purpose is, as stated in Article 1, "to promote cooperation to prevent and combat transnational organized crime more effectively".
The scope of application of the Convention is, on the other hand, defined in Article 3 according to which, for the Convention to apply, three criteria must be fulfilled: first, the offence must constitute a serious crime[48], second the offence must be transnational in nature[49], and third it must involve an organized criminal

[46] Resolution of the Economic and Social Council, 27 July 1993, 1993/29, *World Ministerial Conference on Organized Transnational Crime.*
[47] For this reason, the Convention and the Trafficking Protocol are sometimes referred to as the Palermo Convention and the Palermo Protocol.
[48] Resolution of the UN General Assembly of 15 November 2000, A /RES/55/25, *Convention Against Transnational Organized Crime* Art. 2(b), specifies that: "serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.
[49] *Ibid.*, Art. 3(2) specifies that: an offence is transnational in nature if: (a) It is committed in more than one State; (b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) it is committed in one State but has substantial effects in another State.

group[50]. While all three elements are defined within the convention, their extensiveness endows States with sufficient flexibility to address a wide range of criminal activities and to adapt to changing needs and circumstances.

Concerning States' obligations, the core of the treaty lies in the criminalization of a series of offences namely participation in an organized criminal group, money laundering, corruption and obstruction of justice. With this aim, contracting parties are required to adopt the necessary measures to establish such acts as criminal offences within their national systems, provided that they are committed intentionally. Importantly, as stated in Article 34, the offences stated above must be criminalized in the national legislation of each state regardless of their transnational nature or the involvement of an organized criminal group.

Other provisions of the Convention concern interstate cooperation. States are encouraged to cooperate for the purpose of confiscation[51], to provide each other with mutual legal assistance[52] including for example taking evidence or statements from persons, executing searches and seizures and providing information, evidentiary items and expert evaluations. In addition, States are encouraged to establish joint investigation[53] and to facilitate extradition procedures where applicable[54].

The Convention also dedicates some provisions to victims' protection. Victims must be able to present their views and concerns at appropriate stages of criminal proceedings and must have access to compensation and restitution[55]. Furthermore, witnesses must be protected from potential retaliation or intimidation[56].

Finally, the Convention establishes, in Article 32, a monitoring mechanism, namely the Conference of the Parties. The latter not only promotes and reviews the implementation of the Convention but also helps Contracting Parties in developing their capacity to combat transnational organized crime for example by facilitating the exchange of information among them and through cooperation with relevant international, regional organizations and non-governmental organizations.

The Convention is then supplemented by three protocols namely the Protocol against the Smuggling of Migrants by Land, Sea and Air, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition. Article 1 of each Protocol governs their relationship with the parent Convention by establishing

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[50] *Ibid.*, Art. 2(a) specifies that: "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

[51] *Ibid.*, Art. 13.

[52] *Ibid*., Art. 18.

[53] *Ibid.*, Art 19.

[54] *Ibid.*, Art. 16.

[55] *Ibid.*, Art. 25.

[56] *Ibid.*, Art. 24.

that: (i) the protocols supplement the UNOTC and need to be interpreted together with it, (ii) the provisions of the Convention shall apply, *mutatis mutandis*, to the Protocols unless provided otherwise, (iii) the offences established in accordance with the Protocols shall be regarded as offences established in accordance with UNTOC.

1.2 The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons and the international definition of human trafficking

In November 2000, the UN General Assembly adopted the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, also known as the Trafficking Protocol[57]. Unlike earlier instruments, the Protocol aims to tackle trafficking in persons in all its forms, irrespective of the purpose of exploitation or the age and gender of the victims. However, as can be inferred from the title, it acknowledges that women and children are disproportionately impacted. With 182 state parties, the Trafficking Protocol took two years of negotiations before entering into force.

The drafting process was characterized by an unprecedented level of civil society participation; NGOs in particular were concerned with the issue of prostitution and the definition of trafficking[58]. While the Human Rights Caucus advocated for an inclusive definition that would cover slavery, forced labor but leaving outside non-coercive prostitution, the Coalition Against Trafficking in Women ('CATW') viewed prostitution itself as a human rights violation and as a form of trafficking, regardless of whether it was consensual or not[59]. As a consequence, the CATW sought to include all prostitution within the definition of trafficking. Ultimately, this definition was rejected in favor of a more specific reference to "exploitation of the prostitution of others".

Negotiations were also marked by a significant involvement of a group of intergovernmental organizations and specialized agencies including the UN High Commissioner for Human Rights, the United Nations Children's Fund ('UNICEF'), the International Organization for Migration ('IOM') and the UN High Commissioner for Refugees ('UNHCR')[60], whose purpose was to ensure respect for human rights throughout the drafting process. Discussions also addressed the scope of protection offered by the Protocol, focusing on which individuals should be protected. The first drafts indeed limited their application to trafficking in women and children, eventually however, as evidenced by the *Travaux Préparatoires:* "Almost all countries expressed their preference for it to address all persons rather than only women and children, although particular attention should be given to the protection of women and children".

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[57] Treaty of the UN General Assembly, 15 November 2000*, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime.*

[58] GALLAGHER (2017: 25).

[59] GOŹDZIAK (2021: 16).

[60] GALLAGHER (2017: 25).

Moving on to its content, the Trafficking Protocol is divided in four parts: the General Provisions, defining key concepts and scope; Protection of Victims of Trafficking in Persons; Prevention, Cooperation, and Other Measures and Final Provisions regarding the settlement of disputes, amendments and entry into force. The purpose of the Trafficking Protocol is, as stated in Article 2, threefold:

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

While the protection of victims figures among the objectives, the Trafficking Protocol is not a human rights treaty but rather a law enforcement instrument for the prevention, suppression, and punishment of trafficking. This perspective is reflected in the strong emphasis placed on criminal justice measures, which are binding for States parties, contrary to those addressing the rights and assistance needs of trafficking victims, which are instead expressed in weaker, optional language.
One of the most significant achievements of the Trafficking Protocol lies in the adoption of the first internationally recognized definition of human trafficking. Article 3(a) defines trafficking as:

> "[...] 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs".

The definition compromises three fundamental elements: the act (recruitment, transportation, transfer, harboring or receipt of persons), the means (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) and the purpose (exploitation), each of which will be examined thoroughly in the next sections. All three elements must necessarily be present for the act to be legally classified as trafficking and for the consequent application of the Protocol[61]. This means that the single elements themselves, without one another, cannot be considered as trafficking.
Article 3(b) then deals with the consent of the victim, an issue which was hotly debated during the drafting procedure. Some states indeed argued that

[61] The only exception is for children for whom the means element is not required.

trafficking occurred "irrespectively of the consent of the victim" and supported the inclusion of such a phrase within the definition of traffickers in order to ensure that any supposed consent of the victim could not be used as a defense in court. Others, however, argued that this phrase was unnecessary because the definition of trafficking already involves consent-nullifying methods such as force, abduction, fraud, or deception. Eventually the phrase was discarded in favor of a paragraph arguing that consent is irrelevant where any of the above stated elements have been used[62].
Article 4 then deals with the scope of application of the Protocol. Specifically, it argues that:

> "This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences".

On a first reading it would seem that the article imposes very precise limits requiring States to criminalize trafficking only in cases of transnational offences and with the involvement of an organized criminal group. Such an interpretation however is contradicted both by Art. 34 of the Organized Crime Convention[63] as well as by the Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, elaborated by the United Nations Office on Drugs and Crime ('UNODC'). The latter indeed argues that "these requirements are not part of the definition of trafficking in persons, nor are they required elements for an offence enacted in domestic law"[64]. In other words, transnationality and the presence of an organized criminal group are not necessary for criminalization purposes but only for what concerns interstate cooperation.
As a result, States are required to apply the Protocol and the related offences regardless of whether the case occurs in more than one state or is purely domestic and regardless of whether the offence is committed by an individual associated with a criminal organization or not.
The obligation to criminalize trafficking is contained in Article 5 which requires States to punish not just trafficking but also attempts to commit such an offence as well as participation as an accomplice and organizing or directing others to commit it. It must be kept in mind however, that since the provisions of the Convention apply *mutatis mutandis* to the Protocol, States are compelled to

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[62] GALLAGHER (2009).
[63] According to which: "The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party 36 independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group".
[64] Publication of the United Nations Office on Drugs and Crime, 2020, *Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.*

further criminalize and prosecute a series of additional behaviors. These include, among others, the laundering of proceeds derived from trafficking, the confiscation of assets obtained through trafficking, implementing victim and witness protection measures and providing training and technical assistance to strengthen anti-trafficking efforts[65].

Part Two of the Protocol deals with victims' protection measures. As noted above, however, there are few obligations in this area. States need to protect the identity and privacy of victims and ensure that they receive information on relevant court and administrative proceedings together with assistance to enable their views to be presented and considered during criminal proceedings. Such obligations, however, are not absolute but apply only in "appropriate cases" and to the extent permitted by domestic law. Additionally, States have to ensure that victims have access to compensation procedures for the damage suffered. On the other hand, States are not *required* (emphasis added) but rather they shall just *consider* (emphasis added) adopting measures to support the physical, psychological, and social recovery of victims providing them for example with housing, counseling, education etc. This means that, whether the state decides not to provide any of the above mentioned, it will not be in breach of the Trafficking Protocol. States shall also consider adopting measures allowing victims to remain in their territory either permanently or temporarily, giving "appropriate consideration to humanitarian and compassionate factors"[66]. Importantly, the States required to implement such provisions are those in whose territory victims are located[67] and not their state of nationality or residence.

Article 8 then deals with repatriation, emphasizing that returns should be carried out safely, without unnecessary delays, and *preferably* (emphasis added) on a voluntary basis. Such a provision is of course, as stated also in the Legislative Guide, without prejudice "to the existing rights, obligations or responsibilities of States Parties under other international instruments", most notably the principle of *non-refoulement* and the rights afforded by the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

Part III deals with prevention and cooperation measures. State parties need to establish policies and programmes to prevent trafficking and to protect victims from re-victimization. Prevention strategies may include awareness campaigns as well as measures aimed at reducing the vulnerability of persons as well as demand that fosters exploitation[68].

Finally, States are required to implement a series of border control measures aimed at detecting potential victims of trafficking and to cooperate with one another to exchange information on both traffickers and victims.

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[65] *Ibid.*

[66] Treaty *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, Art. 7.

[67] Provided of course that they have ratified the Trafficking Protocol.

[68] Treaty *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, Art. 10.

1.2.1 The action element

The action constitutes the first of three elements characterizing trafficking. As stated in Art. 3 of the Trafficking Protocol, the action includes, but is not limited to "the recruitment, transportation, transfer, harboring, or receipt". None of the elements are defined by the Trafficking Protocol and they must be understood "in their natural meaning"[69].

The UNODC Legislative Guide, however, provides some help on the meaning of such terms. According to the latter, "recruitment" refers to the act of attracting a person into a process which could become exploitative. It means looking for people and encouraging or persuading them to join an activity[70] through various means including orally but also online advertisements or recruitment agencies. "Transportation" and "transfer" involve facilitating the victim's movement, whether by land, sea, or air, using any means of transport. Importantly, such movement must not necessarily be transnational but can occur also within a single country. Differently from transportation, however, transfer can also refer to "the handing over of effective control over a person to another"[71]. The inclusion of this latter element was made necessary by the presence of certain cultural contexts in which effective control over individuals can be transferred to others[72]. This is most evident in the case of forced and child marriages or debt bondage as certain families may transfer their children or other relatives to creditors as a form of debt repayment. "Harboring" may refer to accommodating, receiving or hosting a person, including at the point of departure, transit, or destination either before or at the place of exploitation. Finally, "receipt" refers to receiving victims where exploitation will take place, but it can also include meeting people at an agreed place or into employment[73]. This last aspect in particular highlights the fact that the action element is not synonymous with movement as an individual can even be trafficked within the same house he lives in without ever crossing a border or changing locations[74].

The inclusion of elements such as harboring or receipt in addition brings into the definition of trafficking not just the process of recruiting or transferring an individual for exploitative purposes but also the end situation, namely maintaining an individual into an exploitative situation[75]. As a consequence, not only recruiters, brokers, and transporters but also owners, managers, supervisors, and those overseeing places of exploitation can be held accountable for trafficking[76], provided of course, that they are aware of or knowingly participate in such activities and that the two other elements of the definition are met.

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[69] Publication *Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.*
[70] STOYANOVA (2017: 34).
[71] Publication *Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.*
[72] *Ibid.*
[73] *Ibid.*
[74] BURKE *et al.* (2022: 5).
[75] GALLAGHER (2010: 30).
[76] *Ibid.*

1.2.2 The means element

The second element within the definition of trafficking is the means which refers to the methods used to commit the action and draw the victim into exploitation:

> "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"[77].

The definition covers both direct means such as threat or use of force and abduction and less direct ones such as fraud or deception or abuse of a position of vulnerability.

State Parties to the Trafficking Protocol are however free to recognize other means than those included in the definition and can recognize new forms of coercion[78], highlighting the dynamic nature of human trafficking.

It is important to highlight however that the means element of trafficking needs to be present, for it to be criminalized, only in cases of trafficking in adults. Article 3(c) of the Trafficking Protocol indeed establishes that:

> "The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article".

This is due to the fact that children, intended as any person under eighteen years of age, are seen as lacking the capacity to consent to their own exploitation, irrespectively of whether they have been coerced, deceived or otherwise influenced. While such means may still be employed in order to carry out one of the acts listed above, their presence is not a required element for a case to be classified as trafficking when the victim is a child. On the other hand, in the case of adults it is necessary for all three elements to be proved.

As in the case of the action element, the single means are not defined, leading to some confusion about what actually constitutes coercion. While terms such as threat or use of force, abduction, fraud and deception are relatively straightforward, others in particular "abuse of a position of vulnerability" and "abuse of powers" are somehow more ambiguous and require an explanation.

The first drafts of the Trafficking Protocol did not include either of the two, rather there was just a general reference to "abuse of authority". As reported by the *Travaux Préparatoires*, the meaning of the word "authority" was highly debated even though it was agreed that it "should be understood to include the power that male family members might have over female family members in

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[77] Treaty *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, Art. 3.

[78] Publication *Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.*

some legal systems and the power that parents might have over their children"[79]. Eventually, however, such term was abandoned in favor of "abuse of power". Nonetheless, the notes in the Travaux Préparatoires can still provide valuable insight into the types of situations where this means element may be applicable.
The notion of "abuse of a position of vulnerability" is on the other hand more complicated, being unique to the Trafficking Protocol. According to the Legislative Guide, vulnerability can be defined as a condition deriving from the complex interaction of social, cultural, economic, political and environmental factors. Because such elements vary over time, vulnerability is not static but changes according to both the context as well as to the individual's capacity to adapt to it. The existence of vulnerability is therefore a highly subjective element, to be assessed on a case-by-case basis. Abuse of a position of vulnerability then occurs when an individual's personal situation is intentionally exploited.
The 2013 UNODC Issue Paper on Abuse of a position of vulnerability and other means within the definition of trafficking in persons suggests that such element was intentionally left ambiguous in order to allow State Parties a certain degree of flexibility as to capture all the ways in which an individual can be placed or kept in an exploitative situation[80]. An interpretative note to Art.3 states that: "The reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved". The note, however, does not define what a real and acceptable alternative is, thus leading to some confusion and to different interpretations in its application.
Useful here appears to be the Explanatory Report to the Council of Europe Convention on Action against Trafficking which argues that:

> "the vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's immigration status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce"[81].

It is important to highlight, when considering his definition, that vulnerability here is not to be understood as an element increasing susceptibility to trafficking but rather a way through which trafficking is perpetrated[82]. Consequently, the

[79] Publication of the United Nations Office on Drugs and Crime, 2006, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.*
[80] Issue paper of the United Nations Office on Drugs and Crime, 2013, A*buse of a position of vulnerability and other "means" within the definition of trafficking in persons.*
[81] Report of the Council of Europe, 16 May 2005, no. 197, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 83.

mere existence of a vulnerability is not enough to prove the means element of trafficking rather, it is necessary that such vulnerability is intentionally abused. The UNODC Model Trafficking Law, developed under request of the General Assembly to assist States in implementing the provisions contained in the Trafficking Protocol, provides a series of circumstances that may make an individual vulnerable and which may be taken advantage of. These include but are not limited to:

> "(i) Having entered the country illegally or without proper documentation;
> (ii) Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance; or
> (iii) Reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical or mental disability; or
> (iv) Promises or giving sums of money or other advantages to those having authority over a person; or
> (v) Being in a precarious situation from the standpoint of social survival; or
> (vi) Other relevant factors"[83].

Such a list is in no way exhaustive, and many other definitions are possible. Countries are therefore encouraged to develop their own list as well as a definition of such crime as its absence may contrast with the principle of legality, an aspect which will be analyzed in greater detail in the next subsection. Similarly ambiguous appears to be the term "the giving or receiving of payments or benefits to achieve the consent of a person having control over another person", for which no clarification is provided. As a consequence, it is not clear whether such term covers only legal control or also *de facto* control[84]. Finally, it should be noted that certain countries have removed the means element including Argentina, Belgium, Bulgaria, France and Luxembourg among others. While such choice could be viewed in a positive light as a way to remove the uncertainty characterizing the terms discussed above and to enhance victim's protection, at the same time the omission of such element could be problematic with reference to the harmonization of the definition of trafficking for cooperation purposes as well as for distinguishing human trafficking with other related but distinct practices such as slavery and forced labor.

1.2.3 The purpose element

The last element in the definition of human trafficking is the purpose for which acts are carried out, defined as:

> "[. . .] exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs"[85].

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[83] Publication of the United Nations Office on Drugs and Crime, 2009, *Model Law against Trafficking in Persons.*
[84] BREWER, SOUTHWELL (2020: 8).
[85] Treaty *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, Art. 3.

Exploitation represents the *mens rea* aspect of trafficking. Trafficking indeed occurs when an individual engages in the acts described above with the *intention* (emphasis added) to exploit the victim. This means that exploitation does not necessarily need to happen, but it is enough that the first two elements, namely the act and the means (or only the act in the case of children) were carried out with the with the deliberate aim of exploiting the victim[86]. Because of this human trafficking is defined as a *dolus specialis.* It follows that the accused needs not to be the one who directly exploits the victim but also recruiters or brokers may be persecuted if they knowingly participate in the trafficking process.

Art. 3 of the Trafficking Protocol again does not define exploitation but only provides a series of examples that may be characterized as such. These include "at minimum" exploitation of the prostitution of others, other forms of sexual exploitation, forced labor, slavery and related practices, servitude and removal of organs. The single elements are not defined within the Protocol, however, references to some of them can be found in other international instruments. The definition of forced labor can for instance be found in the International Labor Organization ('ILO') Forced Labor Convention of 1930 according to which "forced or compulsory labor shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"[87]. At the same time, the definition of slavery can be found in the 1926 Slavery Convention according to which it "is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"[88].

Additionally, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery provides a series of practices similar to slavery incorporating into the definition of exploitation also debt bondage, serfdom, servile marriage and child exploitation.

For what concerns the "exploitation of the prostitution of others or other forms of sexual exploitation", these were perhaps the terms that received the greatest attention due to the fact that, as explained in Chapter I, the first instruments of trafficking developed as a response to the preoccupation concerning the exploitation of women and children for sexual purposes. As a result, both terms became the subject of significant debate. During the drafting process, some sought indeed to establish a clear definition for "sexual exploitation," while others advocated for its removal, arguing that the term was open to varying interpretations and thus could complicate cooperation efforts[89]. Eventually however the term "exploitation of the prostitution of others or other forms of

[86] BREWER, SOUTHWELL (2020: 8).
[87] *Forced Labour Convention* no. 29, 1930, Art. 2.
[88] *Slavery Convention*, 1926, Art. 1.
[89] Publication of the United Nations Office on Drugs and Crime, 2006, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, p.334.

sexual exploitation" was adopted, reflecting a more liberal understanding which presupposes that prostitution may be a voluntary activity that can be carried out without necessarily being exploitative[90].

Even so, it is important to highlight, as stated in an Interpretative note to Art. 3 of the Trafficking protocol, that such issues are addressed exclusively within the context of trafficking, meaning that States are free to choose how to regulate prostitution within their respective domestic laws. As a consequence, there is no obligation to criminalize prostitution as such.

The last example, namely "removal of organs", provides a unique example in that it is not inherently unlawful or exploitative. Depending on the circumstances, and, provided that it does not occur under any of the means explained above, removal of organs may be lawful. In the same way, as reported in the interpretative notes, the removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation.

Within this context, is essential to distinguish between organ trafficking and trafficking in persons for the purpose of organ removal, as only the latter falls within the definition of human trafficking. The Commission on Crime Prevention and Criminal Justice has indeed noted that: "[t]he Trafficking in Persons Protocol does not take into full consideration trafficking in human organs alone; trafficking in organs only occurs if an individual is transported for the purpose of organ removal"[91].

Despite the presence of such examples, ultimately the concept of "exploitation" remains undefined providing only a non-exhaustive list of possible practices. Such open-ended definition allows States to exercise a certain degree of discretion and to include within their respective legal system different practices intended as exploitative. At the same time, the uncertainty surrounding "exploitation" can create challenges for transnational law enforcement, particularly in meeting the double criminality requirements necessary for extradition[92].

Such an ambiguous formulation may also conflict with the principle of legality, according to which no one should be prosecuted for an act that was not clearly established as a crime at the time it was committed (*nullum crimen sine lege*). For legal certainty to be upheld, an offence must be clearly articulated in law, allowing individuals to understand what actions or omissions could result in criminal liability[93]. Within the context of trafficking, the lack of a clear definition can undermine legal certainty by blurring the distinctions between forced labor, trafficking, and slavery, concepts that, while interconnected, have distinct legal meanings and require different responses.

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[90] SILLER (2019: 200).

[91] Publication of the United Nations Economic and Social Council, Commission on Crime Prevention and Criminal Justice, 21 February 2006, E/CN/15/2006/10, *Preventing, combating and punishing trafficking in human organs.*

[92] O' NEILL (2023: 40).

[93] STOYANOVA (2017: 336).

It should be kept in mind however that international law allows the progressive development of criminal law through judicial interpretation and judicial law-making. Excessive rigidity would indeed prevent States from adapting to evolving circumstances and emerging challenges in combating crime[94]. The role of the courts and judiciary is therefore crucial in determining the practical application of trafficking laws.

1.3 The difference between trafficking and smuggling

In daily discourse, human trafficking is often confused with migrant smuggling. While the two increasingly overlap and merge with one another, making it increasingly difficult to recognize smuggled migrants and victims of human trafficking, there are significant legal and conceptual differences between them. As defined by the UNODC Protocol Against the Smuggling of Migrants by Land, Sea and Air smuggling means: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident". In other words, migrant smuggling involves making a financial gain by assisting a person to enter a country without the legal authorization to do so. The first element of the offence differing from human trafficking lies in the consent of the individual. Unlike trafficked victims, who neither have consented nor have been deceived or coerced to do so, migrants voluntarily participate in the smuggling process, even though such consent may be influenced by their vulnerable circumstances or desperation. Within this context, an exchange of benefits takes place between the smuggler and the migrant, both of which profit from such a conduct: the former obtains a financial or material gain while the latter's benefit lies in the illegal entry into a state where they are not a citizen or permanent resident[95]. The migrant here is not a victim of the conduct prohibited by international law but rather a participant in it[96]. As a result, while human trafficking is a crime against the individual, migrant smuggling is a crime against the state.

Importantly, migrant smuggling by its very nature necessarily involves a transnational element. In contrast, as we have seen, human trafficking may occur within a single territory. Additionally, while trafficking is characterized by an ongoing exploitation of the victim, smuggling often ends once the migrant arrives at the country of destination.

In practice, however, it is often difficult to distinguish between the two. Many trafficked individuals start as smuggled individuals and then, for one reason or another, end up in severely exploitative situations which in some cases meet the definition of trafficking[97]. The difference between the two phenomena is further distorted by the strict focus on immigration and border control measures. As victims of trafficking often do not recognize themselves as such or avoid talking to authorities due to fear of being reported, and because law enforcement

[94] *Ibid.*
[95] PALMISANO (2010: 481).
[96] *Ibid*.
[97] GOŹDZIAK (2021: 19).

personnel are often not properly trained to identify them, it frequently occurs that victims remain undetected, preventing them from accessing the support and protection they need.

At the core of this problem lies the criminalization approach to both human trafficking and migrant smuggling. Migrant smuggling indeed arises and thrives due to the increasing restrictive barriers to mobility and the low availability of legal entries which force migrants to rely on clandestine mechanisms. In a world characterized by an enormous inequality in both opportunities and resources it is not feasible to imagine that illegal immigration can be stopped without providing sufficient alternatives for the entry of low-skilled but hardworking individuals in sectors where their labor is clearly needed[98]. The strengthening of border controls, when combined with a persistent demand for migration and harsher penalties for smugglers, ultimately drives up the prices that the latter charge[99]. As a consequence, smuggling becomes an attractive business for organized criminal groups, defeating the very purpose of both the Convention and its Protocols. Even more tragically, those who are determined to cross but cannot afford the rising costs become increasingly vulnerable to exploitation and may find themselves trapped in situations of forced labor or post-crossing servitude as a means of repaying their smuggling debts[100].

While tackling smuggling also means combating human trafficking, as it becomes more difficult for criminal networks to exploit the vulnerable situation of undocumented migrants[101], the risk is that the focus on immigration flows may overshadow the fact that undocumented migrants may be victims of trafficking. In other words, there is a risk that states, seeking to curb immigration, may prefer to view individuals as illegal migrants rather than as trafficking victims, thus being able to implement stricter measures such as deportation, detention, or other penalties while avoiding the legal and moral obligations to protect and assist trafficking victims[102]. Under the Smuggling Protocol, indeed States are not required to take into account the safety of individuals in the repatriation process, nor to grant them any special protection in relation to their physical and psychological well-being[103].

It is thus necessary to consider the two phenomena as a continuum, focusing not just on criminalization and state security but also, and perhaps most importantly, on human rights.

1.4 Causes and vulnerability factors

When analyzing the causes and vulnerability factors of human trafficking, one must necessarily understand them within the context of globalization.

The global exchange of products among different countries, while offering significant benefits such as increased access to goods, economic growth, and

[98] HATHAWAY (2008: 32).
[99] HATHAWAY (2008: 33).
[100] *Ibid*.
[101] PALMISANO (2010: 486).
[102] *Ibid.*
[103] GALLAGHER (2010: 279).

technological advancements, has also created 'winners and losers', leading to a continuously widening gap among richest and poorest nations, as well as between rich and poor individuals within countries[104]. At the same time, the division of labor and levels of specialization have become more complex. In developed nations, the workforce now includes highly skilled, high-paying, stable positions, while the lower-skilled, lower-paying, and less stable jobs have often shifted to developing countries, where labor costs are lower.

In this new economy, what once where the European colonial empires continue to operate through institutions such as multinational corporations, international financial institutions and foreign aid agencies, engaging in new forms of exploitation and economic dominance[105]. At the heart of these dynamics lies the growing demand for cheap labor, driven by persistently high unemployment rates and the rapid expansion of the informal economy which creates a precarious environment marked by economic instability and limited access to formal job opportunities. In response to such situation, an unprecedented flow of people, seeking better life conditions and employment opportunities, has surged across borders.

Such movements have, however, due to the increasing securitization of migration and the enhancement of barriers to mobility aimed at curbing illegal immigration, exposed migrants to rising vulnerability, coercion, and precarious working conditions. As a result, human trafficking often represents a tragic failure of labor migration in the globalized economy.

Addressing this issue requires therefore a deep understanding of the global 'push' and 'pull' factors driving emigration and increasing individual vulnerability, examining both the forces that attract individuals and entire communities to wealthier nations and the restrictive immigration policies that limit legal pathways.

Among the most prevalent push factors driving migration are poverty, armed conflict, natural disasters, and unemployment. Conversely, pull factors typically include higher living standards, better employment prospects, political stability, and security. Additional pull factors may involve more affordable and accessible transportation, well-established migration routes and networks as well as the active involvement of recruiters who facilitate job placements or travel arrangements[106].

Building on this push and pull dynamic, traffickers take advantage of individuals' aspirations by offering false promises of a better future and greater opportunities, ultimately fostering unrealistic expectations to make a profit.

Corruption then allows traffickers to operate with impunity either through bribing public officials or through direct collaboration with authorities providing various forms of protection to traffickers.

As argued above however it is important to recognize that it is not migration in itself that causes trafficking and vulnerability, but rather strict border control

[104] CHUANG (2006: 138); SWAUGER *et al.* (2022: 137).
[105] *Ibid.*
[106] CHUANG (2006: 145).

coupled with the absence of institutional mechanisms for the protection of migrants and labor rights. Despite an increasing dependence on migrant labor, exacerbated by the increasing ageing trend characterizing many Western societies destination countries have indeed promoted, particularly after the events of 9/11, progressively restrictive immigration policies. These measures, largely driven by false myths about the negative impact of immigration on employment, national security and welfare systems, have led to a securitization of migration whereby migratory flows are treated as an existential security concern which requires and justifies emergency measures outside the boundaries of ordinary politics. Migrants are thus increasingly seen as a threat, relegated to an inferior position, which increases their vulnerability.

Notwithstanding a growing awareness of the need to protect migrant's and trafficking victim's human rights, current strategies continue to prioritize criminalization and law enforcement measures only. Such policies, coupled with the failure to distinguish between smuggling and trafficking, lead to an ineffective protection system, revictimization of trafficked individuals as well as their deportation. This in turn, not only increases their vulnerability to further harm, including the possibility of being retrafficked, but deprives them of access to justice, weakening government efforts to prosecute the traffickers[107].

At the same time, even though the majority of trafficked victims are foreigners in the country of detection, it is important to recognize that internal trafficking is also a significant phenomenon. Key drivers here include lack of support systems, health vulnerabilities, as well as racial and ethnic discrimination. In some societies deeply rooted social and cultural norms and expectation can also contribute to human trafficking by reinforcing gender inequality and making women, as a result of their limited access to resources and opportunities, more vulnerable to exploitation. In some cases, parents may knowingly subject their daughters to trafficking, for example through child marriages, viewing it as a means of financial relief or social mobility.

At the heart of human trafficking then lies its enormous profitability coupled with its relatively low risk for traffickers. Despite millions of people falling victim to trafficking each year, prosecutions indeed remain alarmingly low due to a variety of factors, including the complexity of human trafficking networks, the clandestine nature of these operations, and the often-insufficient resources and training available to law enforcement agencies.

An efficient long-term strategy must thus focus on addressing the deeper systemic issues that have been so far avoided including the economic drivers of migration, the politically motivated restrictions to mobility as well the pervasive socio-economic inequalities, taking into consideration the gender aspect of human trafficking and the traditionally disadvantaged groups.

2. The '3P' Approach

The current approach to human trafficking is based on the so called '3P' paradigm. Originally developed by the Clinton Administration with the entry

[107] CHUANG (2006: 151).

into force of the US Trafficking Victims Protection Act this framework focuses on Prevention, Protection, and Prosecution of trafficking. Since its initial development, it has since been adopted internationally, forming the foundation of many global anti-trafficking policies, including the United Nations Palermo Protocol.

2.1 Prevention Strategies

Prevention is the first pillar of the 3P approach to combating human trafficking, focusing on addressing the underlying factors that make individuals vulnerable to exploitation. Both the Trafficking Protocol, and the Organized Crime Convention, require States parties to adopt a comprehensive prevention strategy.

Article 31 of the Organized Crime Convention, in particular, mandates States to undertake a series of measures, also through cooperation among state parties and among states and international and regional organizations, aimed at preventing transnational organized crime and reducing the possibility for organized criminal group to participate in lawful markets. More specific obligations are then set out in Article 9 of the Trafficking Protocol. Recognizing that trafficking needs to be tackled on both the demand and supply side, Article 9 requires States to tackle the factors that make individuals "vulnerable to trafficking such as poverty, underdevelopment and lack of equal opportunity" as well as to undertake measures to "discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking".

States are also asked to establish information campaigns aimed at preventing human trafficking also in cooperation with non-governmental and civil society organizations. Such campaigns should focus on making people aware that human trafficking is a crime punishable by law, while also emphasizing that victims have rights and can and must seek justice. Additionally, such initiatives should educate communities about the different forms of human trafficking, including forced labor, sexual exploitation and trafficking for organ removal as well as highlight the common tactics used by traffickers.

More often than not, however, such campaigns focus exclusively on making individuals aware of the risks of trafficking and the dangers of traveling or working abroad irregularly. In regions such as Central and Eastern Europe, most campaigns target young women, warning them of the risk of being lured into job offers abroad which may lead to forced sexual exploitation, often by using slogans such as "Are you sure you know what's waiting for you?" or "The return home won't be easy"[108].

While such an approach may be effective, it is largely based on the assumption that if people leave, it is because they do not have correct and precise information about destination countries and that, providing in such information, will discourage them from leaving in the first place[109].

[108] NIEUWENHUYS, PÉCOUD (2007: 290).
[109] NIEUWENHUYS, PÉCOUD (2007: 29).

Within this context, migration and trafficking are seen as inherently interconnected, reinforcing a predominantly negative view of migration. This perspective, aimed at encouraging people to stay in their own countries, not only risks victim blaming but also fails to acknowledge that trafficking can also occur domestically.
Subsequent articles of the Trafficking Protocol deal indeed mainly with border control measures. Article 11 requires States Parties to enhance border controls to prevent and detect human trafficking, including imposing obligations on commercial carriers and considering visa denials for traffickers. Article 12 then mandates measures to ensure the security and integrity of travel and identity documents to prevent forgery and misuse for trafficking purposes. Very few provisions on the other hand concern the prevention of internal trafficking which is mostly left to Member States' discretion despite the fact that, according to the 2020 UNODC Global Report on Trafficking in Persons the share of detected victims domestically trafficked has increased over the last few years.
Neither is enough attention given to the need to tackle the root causes of trafficking including discrimination, structural poverty, lack of opportunities as well as to the demand factors that perpetuate exploitation.
A prevention-focused approach to human trafficking must go beyond merely addressing vulnerabilities and should focus on systemic changes. This includes expanding affordable housing and providing comprehensive support for at-risk groups. Tackling the broader economic conditions that drive trafficking, such as the demand for cheap labor, is a vital step in this process. Immigration reform, including the implementation of safer guestworker programmes, can also help curb labor-related exploitation and trafficking. Finally, involving trafficking survivors in the development of policies ensures that solutions are more effective and community driven.

2.2. Protection of victims and the Non-Punishment Principle

The protection of victims, as already said above, is largely framed in optional terms. While the Organized Crime Convention establishes that States shall "take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation"[110], the Trafficking Protocol merely asks States to consider the implementation of assistance measures earlier described.
Nonetheless, because human trafficking is particularly difficult to detect and prosecute, ensuring strong protection for victims is not only a matter of upholding their fundamental human rights but also a crucial step towards the prosecution of traffickers. However, because victims often face intimidation, both from traffickers seeking to silence them and from law enforcement authorities who may lack proper training to identify them, it frequently happens that trafficked individuals are misidentified as undocumented migrants or criminals, leading to further victimization rather than protection.

[110] Treaty *Convention Against Transnational Organized Crime*, Art. 25.

Identification of victims is thus the first crucial step towards guaranteeing their rights. Yet, the Trafficking Protocol together with other international instruments on the matter do not impose on State Parties an obligation to take measures for the identification of individuals who have been trafficked. As a consequence, protection measures are further weakened, hampering efforts to provide appropriate assistance to those in need as well as to prosecute traffickers.

Further complicating the issue is the fact that many victims of trafficking do not self-identify as such and may struggle in getting in touch with law enforcement authorities. This may be due to a variety of reasons including, for example, a codependent relationship with their traffickers, shame, trauma or fear of being stigmatized as well as language barriers. Additionally, professionals within this field too often lack specialized training required to recognize the warning signs of human trafficking. This is due to the fact that there is a common stereotyped and gendered image among both professionals and the general public according to which trafficked victims are almost exclusively women and girls from foreign countries exploited for sexual purposes, overlooking other victim categories and forms of exploitation.

Establishing a well-defined protocol for identifying and certifying victims is thus essential for effectively addressing human trafficking. To this end, some states have created specialized units responsible for detecting and investigating trafficking.

Once identified, victims must be given assistance in their recovery and rehabilitation, not only in order to reduce the harm and suffering experienced by them but also because providing them with support, shelter and protection increases the likelihood that they will cooperate with investigators and prosecutors in holding traffickers accountable[111]. It is important, however, that such assistance is not made conditional on cooperation with authorities, a practice that, unfortunately, persists in some states. An excessive focus on criminal justice may indeed undermine what should be the primary goal of victim protection and rehabilitation, as it risks prioritizing legal proceedings over the immediate well-being and recovery of the individual. This approach could then discourage victims from seeking help or reporting traffickers due to fear of criminalization or further victimization.

Fundamental in victims' protection is also the non-punishment principle. When individuals are trafficked, it frequently happens that they get involved in illicit activities including holding false documents, theft, drug dealing, etc. Such strategy allows traffickers to pursue their activities with minimal risk of getting caught, while gaining even more control over victims who become afraid of seeking help. This stems from the fact that trafficked persons, either because they are not identified as such or due to the inadequate protection granted to them, often face criminal persecution for offences committed while they were

[111] Publication of the United Nations Office on Drugs and Crime, 2008, *Toolkit to Combat Trafficking in Persons*, p. 41.

trafficked. As a result, victims become afraid of coming forward and cooperating with law enforcement while traffickers remain unpunished.
The non-punishment principle therefore argues that "trafficked persons should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked"[112]. The rationale behind such principle is based on the fact that trafficked individuals, where threatened, coerced, deceived or subject to any other of the means described above, cannot be considered as free agents.
As a consequence, rather than criminals, they should be treated as victims of crime[113]. Indeed, as argued by the Organization for Security and Cooperation in Europe ('OSCE'):

> "The punishment of victims of trafficking for crimes directly related to their trafficking is a violation of their fundamental dignity. It constitutes a serious denial of reality and of justice. Such punishment blames victims for the crimes of their traffickers, for crimes that, but for their status as trafficked persons, they would not have perpetrated. The criminalization of trafficked victims […] fails to recognize trafficked persons as victims and witnesses of those serious crimes and exacerbates their victimization and/or trauma by imposing on such persons State-imposed, unjust punishment. […] This practice furthermore promotes trafficking in human beings by failing to confront the real offenders, by dissuading trafficked victims from giving evidence against their traffickers and by enabling traffickers to exert even further control over their victims by threatening exposure to punishment by the State"[114].

Despite the importance of such principle, the Trafficking Protocol does not contain any provision granting victims of trafficking immunity from persecution. Nonetheless, some soft law instruments provide reference to it.
The Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the UN Office of the High Commissioner for Human rights ('OHCHR') for example provide that: "Trafficked persons shall not be detained, charged or prosecuted […] for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons"[115] and call on States to enact appropriate legislation in line with these principles.
This approach was embraced within Europe both by the Council of Europe Convention on Action against Trafficking in Human Beings and by Directive

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[112] Issue Brief, Inter-Agency Coordination Group against Trafficking in Persons (ICAT), 2019, No. 8, *Non-Punishment of Victims of Trafficking in Persons.*
[113] PIOTROWICZ, SORRENTINO (2016).
[114] Publication of the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013*, Policy and Legislative Recommendations towards the Effective Implementation of the Non-Punishment Provision with Regard to Victims of Trafficking*, para. 4.
[115] Addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Office of the High Commissioner for Human Rights, 2002, E/2002/68/Add.1, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Principle 7.

2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. Similar provisions can be found in other regional instruments and documents such as the Association of Southeast Asian Nations Convention against Trafficking in Persons, especially Women and Children, of 2015.

In Italy, even though the Italian legal system does not explicitly establish a non-punishment principle for victims of human trafficking, such a principle can be inferred through an interpretation, in line with Council of Europe Conventions and EU legislation, of Article 54 of the Penal Code. The latter indeed establishes that a person is not criminally liable for an act committed out of necessity to protect themselves or others from an imminent danger of serious harm, provided that the danger was not voluntarily caused, could not have been avoided otherwise, and the act was proportionate to the threat.

Such a reading was then confirmed by the Court of Cassation in judgment no. 2319 of 2024, where it held that the justification of necessity, contained in Article 54 of the Penal Code, is applicable to victims of human trafficking for crimes committed as a consequence of the situation in which they were forced to live or in case of conditions of vulnerability and subjugation which prevented them from escaping or seeking protection from the authorities[116].

Despite the existence of such provisions, their application is limited by the necessity that the person under investigation be effectively recognized as a victim, an occurrence which, as mentioned above, is still relatively rare.

Nonetheless victims' protection remains a crucial element in combating trafficking, especially because criminal prosecution, highly dependent on victim's testimonies, are more often successful within a supportive environment, where human rights are taken into account.

Special protection is then afforded for underage victims. In this regard, the Trafficking Protocol establishes in Article 6(4) that, when providing assistance and protection to trafficking victims, special attention must be given to the needs of children. Beyond this, the UNODC Toolkit to Combat Trafficking in Person also recommends state parties the adoption of additional measures including: (i) appointing a guardian to accompany the child through the process, (ii) avoiding contact between the child and the suspected traffickers, (iii) providing appropriate shelters, (iiii) establishing appropriate training programmes aimed at ensuring that those responsible for child victims understand and prioritize their needs. Moreover, at every stage of the process, child victims should not be subjected to criminal proceedings or sanctions for offences committed as a direct consequence of their trafficking situation and the best interests of the child must be taken into account and treated as a primary consideration at all stages.

2.3. Prosecution and International Cooperation

[116] Judgment of the Court of Cassation, 18 January 2024, Case no. 2319, *O.M v. O.L.*

The final of the three 'P's is prosecution. Prosecution refers to the legal process through which individuals accused of human trafficking are investigated, charged, brough to trial and eventually held criminally accountable.
Prosecution serves as both a deterrent and a mechanism of justice. It is essential for dismantling trafficking operations and punishing perpetrators.
Despite the central role of prosecutions within both international and national frameworks to combat trafficking, the number of successful prosecutions worldwide remains disproportionately low compared to the scale of the crime. Trafficking offences are indeed notoriously difficult to prosecute as their successful adjudication largely depends on a comprehensive legal framework, the proper identification of victims, and the existence of an efficient judicial system. Furthermore, the transnational nature of the crime often makes prosecution conditional on the collection of evidence abroad, thus requiring timely and coordinated intra-state cooperation. Additional barriers include the need for interpreters, the risk of corruption and the lack of a uniform definition of coercion or exploitation which can hinder the consistent application of the law and undermine the successful prosecution of trafficking offences[117].
Article 5 of the Trafficking Protocol requires States to adopt measures necessary to criminalize human trafficking as well as participation as an accomplice and the organization or direction of other persons to human trafficking. The Protocol does not prescribe a minimum or maximum sentence, nonetheless, the Organized Crime Convention provides, in Article 2(b) that trafficking, reaching the threshold of a serious crime shall be punishable by "a maximum deprivation of liberty of at least four years or a more serious penalty"[118]. States are of course free to establish a higher threshold as well as to impose additional penalties for human trafficking in aggravating circumstances. The UNODC Model Law provides a range of such factors that states may choose to incorporate into their national legislation. These are divided into three groups namely: (i) aggravating circumstances pertaining to the offender which include, among others, membership in a criminal organization, being in a position of responsibility or trust in relation to the victim, being a public official, having a previous conviction for a similar offence, or intending to cause serious harm; (ii) those pertaining to the victim among which we can find cases where the offence has endangered the victim's life, caused their death or suicide, inflicted serious harm or bodily injuries, or led to psychological or physical diseases. Additional aggravating circumstances include the involvement of particular categories of victims such as children, pregnant women, or persons with physical or mental disabilities; (iii) and, finally, those pertaining to the act of trafficking itself such as situation in which the offender uses cruelty or brutality, the offence is committed across borders and involves a multiplicity of victims or cases in which weapons, drugs or medication are used in the commission of the offence or in which a child is adopted for the purpose of human trafficking.

[117] Publication of the United Nations Office on Drugs and Crime, 2008, *Toolkit to Combat Trafficking in Persons*, p. xxi.
[118] Treaty *Convention Against Transnational Organized Crime*, Art. 2(b).

In addition to such aggravating factors, some states have implemented measures to penalize those who knowingly use the services of trafficking victims. Some jurisdictions have further broadened the scope by holding individuals accountable even if it can be proven that they 'should have known' the person was trafficked[119]. A key challenge in these cases, however, is proving the *mens rea* element, meaning the knowledge that the person providing the service was a victim of trafficking. This is further complicated by limited case law on the issue and insufficient resources to support effective prosecution.

The first step towards prosecution is investigation which can be either proactive, when the inquiry is initiated on the basis of intelligence, surveillance, or patterns of suspicious activity, often before a formal complaint is made, reactive, when it is triggered by victim's complaints or disruptive which focuses on dismantling trafficking at early stages for example through administrative or financial measures, even before sufficient evidence is gathered for full prosecution.

Given that human trafficking is often, even though not exclusively, transnational in nature fundamental for the effective prosecution of traffickers is intra-state cooperation. As previously discussed, the Organized Crime Convention provides a framework for international cooperation in several areas including mutual legal assistance, joint investigations and extradition.

In the area of mutual legal assistance the Convention, building on previous global and regional initiatives, calls for the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings. This may concern, for example, the collection of evidence or statements from persons, the execution of searches and seizures, the provision of information, copies of relevant documents and records.

Extradition is another key aspect of international cooperation. Given that human traffickers may conduct their activities across multiple jurisdictions or move between states to avoid prosecution, extradition becomes a vital mechanism for securing their presence in the prosecuting state. The Organized Crime Convention requires that extradition be permitted for offences that are punishable under the domestic laws of both the requesting and the requested State (principle of dual criminality). If a state refuses extradition solely because the offender is its national, then it must prosecute the individual domestically[120]. Importantly throughout the whole extradition procedure, the accused must be guaranteed fair treatment and the application of all rights and guarantees provided by the domestic law of the State Party requesting the extradition.

Effectively tackling human trafficking also requires the seizure of assets and the confiscation of the proceeds of crime. Indeed, even if arrested or convicted offenders may still be able to enjoy their profits and maintain their operations. In this regard, the Organized Crime Convention obliges States Parties to adopt appropriate legal and institutional measures to enable the identification, freezing, and confiscation of proceeds derived from organized criminal activity.

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[119] Policy Paper of La Strada International, 2022, *The Impact of Criminalising the 'Knowing Use' on Human Trafficking.*

[120] Treaty *Convention Against Transnational Organized Crime*, Art. 16.

For this purpose, States may request information from other Parties and must ensure that judicial or other competent authorities are able to access bank records and other relevant documents.
Given the above, it is thus necessary that prosecution and law enforcement responses follow a holistic approach which takes into consideration a wide range of issues interconnected with one another including identification of victims, protection of witnesses, cooperation between state parties and seizure of illicit assets.

2.4. Partnership

In recent years, a fourth 'P', representing partnership, has been added to the original paradigm. This new dimension recognizes the importance of collaborating not only among governments but also with non-governmental organizations and civil society, the private sector and different agencies within countries in tackling human trafficking.
NGOs and civil societies organizations indeed often find themselves at the forefront of the fight against human trafficking as well as in the provision of victim services. They frequently serve as the first point of contact for trafficked persons, particularly in contexts where victims are unwilling or unable to approach formal institutions due to fear, trauma, or mistrust of authorities. In such cases, NGOs play a critical bridging role between victims and the state. Additionally, NGOs often act as advocates, interpreters or advisors for victims, helping them navigate national laws and regulations, understand their legal rights, and access available resources such as shelter, medical care, psychosocial support, and legal aid.
Beyond immediate assistance, many NGOs also carry out awareness raising activities and implement long-term support programmes that focus on social and economic development to tackle the root causes of trafficking as well as reintegration programmes. Others are involved in research and policy work, contributing essential data and analysis that inform national strategies.
In some cases, NGOs may also act as watchdogs, monitoring state compliance with international instruments and human rights standards in the context of trafficking. Given their wide-ranging involvement, cooperation with NGOs is therefore essential. Art. 6 of the Trafficking Protocol argues, in this regard, that each state, in implementing measures for the protection of victims, shall consider cooperating with NGOs and civil society organizations.
Other than NGOs also the private sector plays a key role in combating human trafficking. Businesses can indeed act both as facilitators of human trafficking, in the case of poor regulation, lack of due diligence or weak labor protection which can expose individuals to exploitative conditions, but also and most importantly as preventers of trafficking through the implementation of responsible corporate practices and supply chain transparency. Businesses and private sector companies dispose indeed of a wide range of instruments that can support states anti-trafficking initiatives: private companies can identify cases of exploitation in their operations, banks can facilitate investigation to trace the

profits of trafficking activities and technology companies can assist in detecting and disrupting online recruitment and exploitation networks.
Recognizing the importance of improving partnership between the public and private sector and in order to help States in implementing the Trafficking Protocol in 2020, the UNODC has launched a project called "Public-Private Partnerships: Fostering Engagement with the Private Sector on the Implementation of the UN Convention against Transnational Organized Crime and its Trafficking in Persons Protocol" ('PPP Project'). As an outcome of such project several Regional Expert Group Meetings were organized which brought together numerous public and private sector stakeholders to discuss the issue of trafficking, raise awareness and knowledge on the UNOTC and the Trafficking Convention and gather insights on how partnerships can serve to develop a coordinated response to human trafficking.
It is thus clear that combating human trafficking requires the expertise, resources, and efforts of several entities which must be both law-enforcement oriented and victims oriented. Creating a positive impact requires partnerships among all these entities which can bring together diverse experiences and voices. In order to do so, however, it is necessary to foster sustained dialogue and trust-building between actors from different sectors. Effective cooperation indeed depends on the mutual recognition of each party's roles and contributions; while governments possess legal authority and the power to effectively prosecute traffickers, NGOs and private sector entities often possess on-the-ground knowledge, resources, and access to vulnerable populations or supply chains that the state might lack.

3. Soft law and additional instruments

Beyond the Organized Crime Convention and the Trafficking Protocol, throughout the years a series of soft laws and additional instruments, including programmes of actions and coordination initiatives, have been developed by the UN, sometimes in collaboration with other international and regional organizations including the European Union.
Several bodies and agencies including the UN General Assembly, the Human Rights Council, the OHCHR but also UNICEF, and UN Women have adopted various resolutions and decisions and introduced guidelines and coordinating mechanisms to combat trafficking and protect the human rights of trafficked persons. These include among others General Assembly A/RES/78/228 on improving the coordination of efforts against trafficking in persons as well as A/RES/77/194 on trafficking in women and girls.
Human trafficking has also been included among the Sustainable Development Goals ('SDGs') set by the UN 2030 Agenda. In particular, SDG 8.7 aims to "take immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking […]". In addition, SDG 5.2 and 16.2 tackle respectively trafficking and exploitation against women and abuse, exploitation and trafficking against children.

Such instruments, while not legally binding, play a crucial role in guiding state actions, encouraging best practices, and fostering international cooperation, ultimately broadening the toolkit available for addressing human trafficking.

3.1 UNHCR Recommended Principles and Guidelines on Human Rights and Human Trafficking

In May 2002, the UNHCR issued the Recommended Principles and Guidelines on Human Rights and Human Trafficking. Included as an addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council E/2002/68, the principles and guidelines have been developed to offer practical, rights-based policy guidance aimed at preventing trafficking and protecting its victims. Their goal is to encourage and support the incorporation of a human rights approach into anti-trafficking laws, policies, and measures at the national, regional, and international levels.

The primacy of human rights can be inferred from the first three principles which establish that "the human rights of trafficked persons shall be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims" and that "anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers".

The principles then address the 3Ps discussed above:

(i) Prevention, by underlining the importance of tackling the root causes of trafficking including inequality, poverty and discrimination and by calling on States to exercise due diligence and investigate eventual public sector complicity in trafficking;

(ii) Protection by establishing the non-punishment principle of victims of trafficking and by arguing that their physical and psychological care must not be made conditional on cooperation with the authorities. They also recognize the importance of giving special protection to child victims and of taking into account their best interest at all times;
and finally

(iii) Prosecution. Here the Principles call for the effective investigation, prosecution and adjudication of trafficking and related conduct. They argue that effective and proportionate sanctions need to be applied to individuals guilty of trafficking and that confiscated assets shall be used to compensate victims who must be given access to appropriate remedies.

The Guidelines then reiterate the importance of adopting a human rights approach and of ensuring an adequate legal framework and law enforcement response. Interestingly, Guideline 3 recognizes the importance of research, analysis, evaluation and dissemination of data on human trafficking. This is an important point as statistics on trafficking vary enormously among regions and countries, often due to different identification and prosecution mechanisms as well as the lack of a common definition of exploitation. Guideline 3 also

emphasizes the role of the media in "increasing public understanding of the trafficking phenomenon by providing accurate information in accordance with professional ethical standards".
Guideline 10 then provides obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel, recognizing their critical role in contexts of increased vulnerability, particularly in conflict and post-conflict areas where trafficking can thrive. The Guideline thus calls for pre- and post-deployment training programmes and for the development of specific regulations and codes of conduct as well as for the establishment of mechanisms to investigate trafficking allegations involving such personnel. Importantly, in the case of trafficking by individuals employed in the context of peacekeeping, peacebuilding, humanitarian or diplomatic missions "privileges and immunities attached to the status of an employee should not be invoked in order to shield that person from sanctions for serious crimes […]". Unlike the Protocol, which pertains to the actions of States parties or governments that have ratified or acceded to it, the recommended principles and guidelines are designed to direct the actions of both governments and intergovernmental and non-governmental organizations, recognizing their potential role not only in protecting but also in violating human rights of trafficked individuals[121].

3.2 The United Nations Office against Drug and Crime (GPAT, GLO.ACT)
The United Nations Office against Drug and Crime plays a crucial role in the global fight against human trafficking, providing leadership, technical assistance, and policy guidance to Member States. Founded in 1997 through the merging of the United Nations Centre for International Crime Prevention and the United Nations International Drug Control Program, it was initially named Office for Drug Control and Crime Prevention. In 2002, however, following the entry into force of the Organized Crime Convention and the Trafficking Protocol, the agency obtained its present name. This rebranding reflected a broader mandate, incorporating not only drug control and prevention efforts but also an expanded focus on tackling transnational organized crime, human trafficking, terrorism, and corruption.
Among the agency's most significant contributions to the fight against human trafficking are its data collection and research efforts. Every two years UNODC publishes indeed a Global Report on Trafficking in Persons, which aims to provide a global assessment of the scope of human trafficking and what is being done to tackle it within the framework of the Trafficking Protocol based on data gathered from 155 countries. The report is divided in key sections which include a framework analysis of trafficking patterns, an overview of legal measures taken in response, and detailed country-specific data on reported trafficking cases, victims, and prosecutions.
The Report, however, has both strengths and weaknesses. On the positive side, it offers invaluable insights into states' legislative responses to human trafficking. As the data is made publicly available, it is both valid and reliable.

[121] KAYE, MILLAR, O'DOHERTY (2019).

By consolidating this information in a single document, the Report provides a global assessment of the current international, national, and regional frameworks for combating human trafficking. Furthermore, it enables a detailed analysis of institutional responses to human trafficking as well as compliance with the Trafficking Protocol, exploring how national definitions align with the one set out in Article 3 of the latter. In this regard, the 2018 Global Report states that 168 countries have legislation in place that criminalizes trafficking in persons in line with the United Nations Trafficking in Persons Protocol[122].

On the negative side however, the Report bases its analysis exclusively on detected cases of human trafficking, drawing on information collected from a questionnaire distributed to governments as well as on open-source information[123]. Such approach, other than being subject to self-reporting bias[124] risks overshadowing the broader scope and dimension of trafficking and missing important data due to both differences in assessment capabilities and reporting standards across regions.

Beyond the Global Report, UNODC runs in parallel several specialized programmes. Among these, figures the Global Program Against Trafficking in Human Beings ('GPAT'). Launched in 1999, the Program aims to assists Member States in their efforts to combat trafficking in human beings and implementing the Trafficking Protocol through several measures including providing guidance on the drafting and revision of legislation; offering assistance for the establishment anti-trafficking offices and units; training law enforcement personnel, prosecutors, and judges; reinforcing mechanisms for victim and witness support; and promoting public awareness. The Program also carries out two other key functions: (i) assessment of trafficking routes and methods of organized criminal organization in order to enhance understanding of human trafficking and its key manifestations and patterns, and (ii) technical cooperation designed to strengthen the ability of governments to combat trafficking and increase international cooperation.

Upon request of Member States, GPAT can offer its expertise on matters related to trafficking as well as conduct visits in order to conduct research or support countries in the development of tailor-made strategies.

A core function of GPAT is also the development of practical tools for different actors operating within countries, including law enforcement, victim assistance providers, prosecutors, judges, policy makers and administrators. To this end, GPAT has published several materials including the Toolkit to Combat Trafficking in Persons, the International Framework for Action to Implement the Trafficking in Persons Protocol and the First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking.

Building upon the foundational work of GPAT, the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants

[122] Publication of the United Nations Office on Drugs and Crime, 2018, *Global Report on Trafficking in Persons*, p. 45.

[123] BOUCHÉ, BAILEY (2019: 165).

[124] Self-reporting bias refers to the tendency of individuals to provide inaccurate or distorted information about themselves, their behaviors, or their experiences.

('GLO.ACT') represents a more recent and comprehensive initiative in the global response to trafficking. Terminated in 2022, the Program was established as a joint initiative by the European Union and UNODC with the participation of IOM and UNICEF.
As reported by the UNODC website, the Program "works alongside partner countries in developing and implementing more effective national and international responses to trafficking in persons and migrant smuggling". To this end GLO.ACT was divided in five main pillars:

1. Strategy and policy development: assisting governments in formulating strategies and action plans to address trafficking and smuggling in line with their national context
2. Legislative assistance: supporting countries in reviewing and strengthening their legislative frameworks to ensure compliance with the UN Trafficking in Persons Protocol and the Smuggling of Migrants Protocol.
3. Capacity building: enhancing capacity and knowledge of criminal justice actors to combat trafficking, smuggling and protecting victims.
4. Regional and trans-regional cooperation: promoting collaboration and information exchange across borders for the identification, investigation and prosecution of offences
5. Protection and assistance to victims of trafficking and smuggled migrants: ensuring that victims receive proper assistance and support by working with both governmental authorities and civil society organizations.

After a first-four-year phase from 2015 to 2019, the Program was renewed for a second one following exclusively on Asia and the Middle East and on four countries in particular namely Afghanistan, Iran, Iraq and Pakistan.
This second phase highlighted the importance of sustained, localized efforts in addressing complex trafficking dynamics.

3.3. Programmatic and coordination initiatives (ICAT, UN.GIFT)

In addition to normative frameworks and technical assistance, the international community has also promoted several programmatic and coordination initiatives aimed at enhancing cooperation and coherence in the global fight against human trafficking.
Among these are the Inter-Agency Coordination Group against Trafficking in Persons ('ICAT') and the United Nations Global Initiative to Fight Human Trafficking ('UN.GIFT')
ICAT is a policy forum established in March 2007 by General Assembly Resolution 61/180 in order to, as stated in its website, "improve coordination among UN agencies and other relevant international organizations to facilitate a holistic and comprehensive approach to preventing and combating trafficking in persons, including protection and support for victims of trafficking". ICAT brings together several UN agencies and international organizations among which IOM, OSCE, UN Women, UNICEF, ILO, UNODC, UNHCR, Interpol etc. to align their efforts and promote coherence in how trafficking is addressed.

With this objective in mind, ICAT carries out several functions:

1. Providing a platform for exchanging information, experiences and best practices on anti-trafficking
2. Supporting the activities of the UN and other organizations and ensuring the implementation of relevant instruments on the prevention of trafficking and the protection of victims.
3. Working towards a coordinated approach to human trafficking grounded in human rights
4. Promoting and effective use of existing resources.

In order to implement such commitments ICAT has published a series of reports and issue brief on various topics such as non-punishment of victims, trafficking for the purpose of forced labor, the gender dimension of human trafficking and human trafficking in humanitarian crises.

In 2020 ICAT issued its first action plan which highlights six thematic priorities. These include promoting evidence-based and accessible information on human trafficking, addressing the root causes of trafficking, ensuring the protection of victims' rights through a human right centered approach, enhancing criminal justice responses, including accountability, cooperation and access to justice, discouraging demand that fosters exploitation and finally strengthening partnership with non-governmental actors.

In the same year as ICAT, different UN agencies and international organization (UNODC, ILO, IOM, UNICEF, OHCHR and OSCE) launched, on the basis of a grant of the United Arab Emirates, UN.GIFT. Such initiative seeks to UN.GIFT mobilize both state and non-state actors in the fight against human trafficking by (i) reducing the vulnerability of individuals and demand for exploitation, (ii) ensuring protection to victims of trafficking and (iii) supporting the efficient prosecution of criminals[125].

Its immediate objective is thus to increase knowledge and awareness of human trafficking but also to foster global commitment and action towards human trafficking through partnerships with several actors including governments, non-governmental organizations, civil society and the media[126].

While all such initiatives have undoubtedly contributed to greater coordination, visibility, and alignment of anti-trafficking efforts, their proliferation also highlights a recurring challenge within the international system. These initiatives indeed, although well-intentioned and often effective within their specific mandates, exist within a broader framework already populated by numerous programmes, agencies, and actors, each with its own priorities, tools, and methodologies which may result in institutional overlap, duplication of mandates, and fragmented implementation.

Despite their individual strengths, the coexistence of multiple frameworks and actors can lead to inconsistencies and an over-bureaucratization of anti-trafficking strategies. While cross-sectoral partnerships and inter-agency

[125] Publication of the United Nations Office on Drugs and Crime, 2010, CTOC/COP/2010/11 *Global Initiative to Fight Human Trafficking: report of the Secretariat*.
[126] *Ibid.*

cooperation remain key, there is a growing need to reevaluate the current institutional landscape to simplify it and ensure that it is capable of delivering an effective response to human trafficking. In this regard, it would be better to think of a possible revision of the current instruments through the consolidation of mandates and resources under a more unified structure.

4. The potential role of the International Criminal Court

At the international level, the International Criminal Court ('ICC') has the potential to play an important role in the fight against human trafficking.

The ICC was established by the Rome Statute in 1998 due to the growing need for a structured and permanent mechanisms to ensure accountability for grave violations of international law, also on the basis of the example set by the preceding *ad hoc* tribunals for the former Yugoslavia and Rwanda.

With jurisdiction over the crimes of genocide, crimes against humanity, war crimes and the crime of aggression, the ICC today counts 125 State Parties.

The Court operates following the principle of complementarity, meaning it intervenes only when national jurisdictions are unwilling or unable to prosecute these crimes themselves. The ICC can be activated in three ways: through a referral by a State Party, a referral by the United Nations Security Council, or on the initiative of the Prosecutor, who may open an investigation *proprio motu* with the authorization of the Pre-Trial Chamber. Its jurisdiction is limited to crimes committed after July 1, 2002 by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court.

Human trafficking is not explicitly enumerated as a crime under the Rome Statute, raising questions about the ICC's potential role in addressing it directly or indirectly through its existing mandate. According to some scholars however, certain forms of trafficking may fall under the ICC's jurisdiction, specifically within the "crimes against humanity."

Article 7 of the Rome Statute contains the list of acts that constitute crimes against humanity which include, among others, murder, extermination and deportation. With respect to human trafficking, the most relevant provisions are those relating to enslavement, sexual slavery, and other inhumane acts.

Enslavement is defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children"[127]. This definition is particularly significant, as it expressly acknowledges the possibility that trafficking in persons may fall within the broader notion of enslavement when it involves the exercise of powers akin to ownership over human beings.

Sexual slavery on the other hand, figures among a series of equally punishable acts such as rape, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

Finally, "other inhuman acts" refers to "acts of a similar character intentionally

[127] Treaty of the UN General Assembly, 17 July 1998, *Rome Statute of the International Criminal Court,* Art. 7(2)(c).

causing great suffering, or serious injury to body or to mental or physical health"[128].

While from a textual perspective it seems like the ICC could prosecute human trafficking the absence of cases before the Court demonstrates the limits of the current formulation.

Slavery and trafficking are indeed two distinct crimes; while the former necessarily presupposes ownership of the victim, intended as "purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty"[129], such element is not required for human trafficking to occur. In many trafficking cases perpetrators do exert control on victims through coercion, deception, debt bondage, confiscation of documents, however this hardly reaches the threshold of ownership.

Nonetheless, the Elements of Crimes, the document that assists the Court in interpreting and applying some articles of the Rome Statue acknowledges that, with reference to enslavement and sexual slavery "the conduct described in this element includes trafficking in persons, in particular women and children"[130].

This means that while the Rome Statute emphasizes ownership as a fundamental component of slavery at the same time it cautiously expands the concept, recognizing that practices not inherently amounting to slavery such as trafficking may, under certain conditions, be regarded or become as such[131].

Such approach however may create some confusion to the extent that, on the one hand, trafficking would appear to constitute the context within which enslavement may eventually occur but on the other hand, trafficking itself would seem to be envisaged as a particular manifestation of enslavement. While scholars disagree on the interpretation to be given to the Rome Statute, the most reasonable interpretation here would appear to consider as a crime against humanity only those instances of trafficking extremely serious to entail a total control over the victim which could be classified as ownership and thus amount to slavery. At the same time, such interpretation risks emptying the definition of trafficking which, as we have seen is composed of three elements, act, means and purpose, where the latter represents the mere intent to exploit the victim, without requiring actual exploitation for the offence to be complete.

Within this context, assimilating trafficking entirely to enslavement conflates two distinct notions, since enslavement presupposes the effective exercise of ownership-like powers, whereas trafficking may be punishable even in the absence of realized exploitation[132].

It is nonetheless arguable that trafficking could fall within the category of "other inhumane acts" considering how it can in fact inflict great suffering or serious injury to the body or to the mental or physical health of the victim.

Beyond the various interpretation given, the role of the ICC in persecuting human trafficking is further weakened by the requirement that, for a crime

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[128] *Ibid*., Art. 7(1)(k).
[129] Publication of the International Criminal Court, 2011, *Elements of Crime*.
[130] *Ibid*.
[131] GALLAGHER (2010), p. 185.
[132] OBOKATA (2005), p. 450.

against humanity to be defined as such, it must be committed "as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack"[133]. The first term refers to the number of victims involved in the act which must be a multiplicity therefore excluding isolated acts. Systematic on the other hand refers to the organized character of the act.
While such terms can be easily applied to situations of human trafficking especially when committed by organized criminal groups, more problematic appears to be the notion of "attack directed against any civilian population which, under the Rome Statute means "a course of conduct involving the multiple commission of acts […] pursuant to or in furtherance of a State or organizational policy to commit such attack"[134]. This means that the criminal act must be permitted by government or be a part of an official or unofficial policy. According to the Element of Crimes, in exceptional circumstances such policy may be implemented by the government also through deliberate negligence aimed at encouraging such attack.
While there are cases of corrupt officials cooperating with traffickers, more relevant here appears to be the concept of "organizational policy" which could be applied to those criminal groups carrying out trafficking operations. As the ICC Pre-Trial Chamber in the Katanga decision noted, indeed, such policy does not necessarily need to be carried out by state entities but can be made by "any organization with the capability to commit a widespread or systematic attacks against a civilian population"[135] and must not be explicitly defined by the organizational group, being the fact that the attack is planned, directed or organized enough to satisfy such criterion.
In the specific context of trafficking, it must be noted how criminal organizations involved in it often operate through diverse structures and methods; nonetheless, when and where they demonstrate the capacity to plan and execute human trafficking on a widespread and systematic scale it could be argued that they fall within the notion of "organization" as envisaged by Article 7 of the Rome Statute.
Given that trafficking is a transnational crime and that, because of it, national courts often have a hard time prosecuting it, the ICC has the potential to play a crucial role. As said above, the Court can only act when States who have accepted its jurisdiction are unwilling or unable to cooperate. In the case of trafficking, such a situation could arise when states do not have in place proper legislation prohibiting trafficking or when they are not able to conduct independent investigations and proceedings because of corruption.
At the same time however, the absence of a clear and precise reference to human trafficking in the Rome Statute makes it difficult for the ICC to establish legal certainty and to effectively prosecute the crime. Such an obstacle is further compounded by the high threshold set by the several elements needed for an offence to fall within crimes against humanity which would limit prosecution

[133] Treaty *Rome Statute of the International Criminal Court*, Art. 7(1).
[134] *Ibid*, Art. 7(2)(a).
[135] Decision of the International Criminal Court 30 September 2008, ICC-01/04-01/07, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, para. 396.

even if human trafficking was to be included as a separate, distinct offence within the Rome Statute.
In addition to these legal limitations, the Court, which does not possess its own police or independent investigative entity, must rely on States to collect and submit evidence which, given the complexity and transnationality of the crime is often difficult to gather and even more challenging to use to prove the required elements of crimes against humanity.
Finally, it must be noted that, were these challenges surmounted, human trafficking is still often overlooked and generally not regarded as sufficiently severe to justify the involvement of the ICC.
It is however undoubtedly the case that, if the issue were to be recognized as a matter of international concern, taking into account not only the challenges and risks it poses to state's security and sovereignty but also the amount of suffering it inflicts on victims, the ICC could play a fundamental role in the fight against trafficking, both by persecuting its perpetrators, but also by raising awareness on such continuously growing and evolving crime.

CHAPTER III
THE EUROPEAN FRAMEWORK

1. The EU first steps on trafficking

The European Union ('EU') interest in human trafficking dates back to the 1990s, marking the beginning of a more regional and structured response to the phenomenon. The entry into force of the Treaty of Maastricht, on 1st November 1993, represented a key development in this sense, creating a Union based on three pillars: the European Communities, the Common Foreign and Security Policy ('CFSP'), and cooperation in Justice and Home Affairs ('JHA'). This last pillar, in particular, enabled the EU to deal with a series of measures of common interest including "police cooperation for the purposes of preventing and combatting […] serious forms of international crime"[136], a category that can reasonably be interpreted to include human trafficking. The entry into force of the Treaty of Amsterdam in May 1999 will then make this point more explicit by including among the EU's objectives the provision of a high level of safety for citizens, to be achieved "by preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud […]"[137].

Building on this new institutional framework, one of the EU's first concrete steps in addressing trafficking was the first European Conference on Trafficking in Women held in Vienna in 1996. Bringing together experts, NGOs, academics as well as law enforcement and governmental authorities, the Conference discussed the issue of trafficking with the aim of raising awareness, identifying priorities and proposing a coordinated plan of action. Following the Conference, in November of the same year, the European Commission issued, in a Communication on trafficking in women for the purpose of sexual exploitation intended to stimulate policy debate and promote a coherent approach to these issues[138]. Here, the Commission proposed the development of a program on Sexual Trafficking of Persons (known as the STOP Program) which aimed at supporting the actions of persons involved in the fight against trafficking and at filling the gaps concerning data and research, dissemination of information and training[139].

The Program was completed in 2000, after which a second phase known as STOP II was established, which lasted until 31 December 2002.

In the following years, the growing awareness and political engagement on the issue of trafficking led to the gradual development of a more structured and harmonized legal framework at the EU level. This process culminated in the

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[136] *Treaty of Maastricht*, 7 February 1992, Article K.1.

[137] *Treaty of Amsterdam*, 2 October 1997, Article K.1.

[138] Communication from the Commission to the Council and the European Parliament, Commission of the European Communities, 20 November 1996, (96) 567, *On Trafficking in Women for the Purpose of Sexual Exploitation*.

[139] *Ibid.*

adoption of binding instruments such as the Council Framework Decision 2002/629/JHA on combating trafficking in human beings and, later on, Directive 2011/36/EU.

1.1 The Joint Action 97/154/JHA and the Council Framework Decision 2002/629/JHA

In 1997, on the basis of Article K.3 of the Treaty on European Union establishing measures for judicial cooperation in criminal matters, the Council of the European Union adopted Joint Action 97/154/JHA to combat trafficking in human beings and sexual exploitation of children. The document defines trafficking as "any behavior which facilitates the entry into, transit through, residence in or exit from the territory of a Member State", with a view to the sexual exploitation or abuse of adults or children. Although the Joint Action lists various forms of conduct that could constitute trafficking, they all relate exclusively to sexual purposes, thus excluding other possible forms of exploitation such as trafficking for forced labor.

The Joint Action requested Member States to review their national legislation in order to criminalize trafficking as defined therein, as well as participation in it or attempts to commit it through effective and proportionate sanctions. In addition, States were asked to implement measures necessary for an effective investigation and prosecution of offences, to adopt provisions for the protection of witnesses, victims and their families and to grant each other the highest possible level of judicial cooperation

The political momentum behind this initiative was further reinforced by the Tampere European Council in October 1999 where the European Council, discussing the need of migration flows called "for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings"[140]. Here, the European Council also recognized the close link between smuggling and trafficking, expressing its determination "to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants"[141] .

In July 2002, following the entry into force of the Organized Crime Convention and the Trafficking Protocol, the Council of the EU adopted the Framework Decision on Combating Trafficking in Human Beings, replacing the 1997 Joint Action. In line with international standards, the Framework Decision incorporated the three-element structure of trafficking, act, means, and purpose, contained in Article 3 of the Trafficking Protocol. Differently from the latter, however, the Framework Decision referred only to exploitation in the form of forced labor and sexual exploitation, omitting any mention of other possible purposes of trafficking such as organ removal, as well as any reference to the

[140] Presidency conclusions of the *Tampere European Council* of 15 and 16 October 1999, para. 22

[141] *Ibid*., para. 23.

transnational nature of the crime or the involvement of organized criminal groups.
The Framework Decision however strengthened some of the provisions of Trafficking Protocol; States are indeed required to criminalize trafficking through "effective, proportionate and dissuasive" penalties, when committed by both natural and legal persons[142]. To this end the Decision establishes a uniform threshold for minimum penalties to be imposed, requiring States to ensure that trafficking is punishable by imprisonment with a maximum penalty of at least eight years when committed under the following circumstances:

> "(a) the offence has deliberately or by gross negligence endangered the life of the victim;
> (b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography;
> (c) the offence has been committed by use of serious violence or has caused particularly serious harm to the victim;
> (d) the offence has been committed within the framework of a criminal organization [...]"[143].

The Decision also contains limited provisions on victims' protection, establishing, in Article 7, that investigation and prosecutions must not be made dependent on victim's complaints and that children are to be considered as "particularly vulnerable victims" thus requiring greater assistance also for their families. Furthermore, in order for the crime not to go unpunished the Decision introduces a series of criteria determining which country has jurisdiction on the matter[144].
Nonetheless, numerous criticisms were raised in regard to the Decision. First of all, as in the Trafficking Protocol, what prevails is a criminal justice approach, leaving victims' protection provisions weak and narrow with no reference, for example, to repatriation, remedies or processes. Second, the Decision does not contain an antidiscrimination clause nor a saving clause with respect to existing international agreements concerning refugees and human rights[145]. Finally, the Decision does not contain provisions on international cooperation.
In 2009 therefore, the Council released a proposal for repealing the Framework Decision in favor of a new agreement. This led to the adoption of Directive

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[142] Framework Decision of the Council, 19 July 2022, 2002/629/JHA, c*ombating trafficking in human beings*, Article 5.
[143] Framework Decision, 2002/629/JHA, Article 3.
[144] *Ibid*., Article 6 establishes that: "Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where:
(a) the offence is committed in whole or in part within its territory, or (b) the offender is one of its nationals, or (c) the offence is committed for the benefit of a legal person established in the territory of that Member State".
[145] GALLAGHER (2010: 99).

2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**,** which formally replaced Framework Decision 2002/629/JHA, and which will be subsequently analyzed.

1.2 The Residence Permit Directive

Given the lack of provisions regarding the question of short-term stays or residency for human trafficking victims in the 2002 Framework Decision, in April 2004 the European Council adopted Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

The aim of the Directive is to combat human trafficking by providing victims who are not EU nationals with a series of incentives to cooperate with the competent authorities in the investigation and prosecution of traffickers.

As Gallagher (2010) points out such instrument was indeed born out of the growing realization within the EU of the inherent obstacles in securing the collaboration of victims of human trafficking, who, as already mentioned, are frequently afraid to come into contacts with authorities due to due to fear of retaliation from traffickers, mistrust of law enforcement, or concerns about their immigration status. To this end, the Directive lays down the criteria for issuing a residence permit to such victims, the conditions of stay as well as the reasons for which the permit may be withdrawn or not renewed.

While the Directive applies only to third-country nationals, victims of human trafficking having reached the age of majority, Member States may, as envisaged by Article 3, apply it also to those who have been subject of an action facilitating illegal immigration and to minors. In case MS decide to apply the Directive provisions to minors, they shall take into account the best interest of the child, eventually extending, if necessary, the duration of the reflection period. Additionally, they shall ensure that minors have access to education, and, in case of unaccompanied children, they shall take the necessary steps to locate their families as well as to ensure legal representation. As with all Directives, Member States are free to establish more favorable standards.

Before the eventual release of a residence permit, MS must necessarily grant to victims a reflection period, the duration of which is to be decided by national law, aimed at "allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities"[146]. During such period victims cannot be expelled and must be granted access to material assistance necessary for their subsistence as well as access to emergency medical treatment and, if provided by national law, psychological assistance[147]. Where

[146] Directive of the European Parliament and of the Council, 29 April 2004, 2004/81/EC, *residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, Art. 6.

[147] *Ibid.*, Art. 7.

appropriate, Member States may also grant victims translation and interpretation services and free legal aid.
The reflection period may be terminated for reasons of public security or whether the victim has "actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences"[148].
At the end of such period, the victim must demonstrate to have cut all ties with their traffickers and clearly express their willingness to cooperate with the authorities. If they do so, they may be granted a residence permit which shall be valid for at least six months[149]. Once the relevant proceedings are over, however, the permit is not to be renewed[150]. In such a case, the victim could be required to leave the State unless it is granted some form of international protection. Additionally, the permit may be withdrawn if the victim renews contact with suspects, is found to have cooperated or complained fraudulently, poses a threat to public policy or national security or if it stops cooperating[151].
Victims who are granted a residence permit may then be authorized "to have access to the labour market, to vocational training and education"[152] for the duration of the permit as well as to existing programmes aimed at their recovery[153].
Turning to a critical assessment, even though the Directive represented a significant step forward at the time, being one of the first EU instrument to introduce measures on victims assistance and protection, its innovative character is severely limited by the conditional nature of the residence permit, to be granted only upon effective and meaningful cooperation with judicial authorities. It follows that victims are regarded primarily as instruments to support criminal justice efforts in combatting human trafficking, thus leaving unprotected those who are unable or unwilling to cooperate. Such issue will be partly remedied with the entry into force of the 2011 Directive, which introduced stronger victim protection provisions and a more rights-based approach. Nonetheless, significant gaps remain for victims wishing to remain in the territory of a MS.
As reported in the explanatory memorandum accompanying the original proposal, indeed, "the proposed Directive […] is not concerned with protection of either witnesses or victims. This is neither its aim nor its legal basis. Victim protection and witness protection are matters of ordinary national or European law"[154]. It is thus evident, once again, the prevalence of a criminal law approach over a human right one.

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[148] *Ibid.*, Art. 6.
[149] *Ibid*., Art. 8.
[150] *Ibid*., Art. 13.
[151] *Ibid*., Art. 14.
[152] *Ibid*., Art. 11.
[153] *Ibid*., Art. 12.
[154] Proposal of the European Commission, 28 May 2002, com(2002) 0071 final – CNS 2002/0043, *Explanatory memorandum to the proposal for a council directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities*.

It is clear that intent of the Commission, as highlighted by the Brussel Declaration on Preventing and Combating Trafficking was to "prevent the incidence of 'procedure shopping' whereby the capacity to accommodate and support genuine trafficked victims is eroded by the claims of fraudulent victims"[155].
Nonetheless, as noted by La Strada International: "the fact that States expect victims to cooperate in the investigation and prosecution of human trafficking offences, without sufficient guarantees for their protection, exposes them to retraumatisation, risk of reprisals and intimidation by the traffickers […]"[156].
In light of this, it is thus necessary to adopt a revision of Directive 2004/81/EC, perhaps by bringing it in line with standards set by the Council of Europe Convention on Action against Trafficking in Human Beings which allows for the granting of residence permits also based on the victim's personal situation, thus placing the individual, rather than their utility to the prosecution, at the center of anti-trafficking efforts.

1.3 The Lisbon Treaty and the Trafficking Directive

The entry into force of the Lisbon Treaty in 2009 marked a fundamental shift in the European Union's approach to combating organized crime. Article 79 of the Treaty on the Functioning of the European Union ('TFEU') established indeed the EU's competence to develop a common immigration policy aimed at ensuring the fair treatment of third country nationals legally resident within the EU. In this regard, it empowered the European Parliament and the Council to adopt measures concerning conditions of entry and residence, rights of legally residing third-country nationals, measures against irregular migration, and actions to combat human trafficking, particularly of women and children.
Building on this provision, Articles 82 and 83 TFEU further broadened the Union's competences in the field of criminal justice, particularly with regard to judicial cooperation and the approximation of national criminal laws.
The former, in particular, establishes the legal framework for judicial cooperation in criminal matters, to be based on the principle of mutual recognition of judgments and judicial decisions. It provides for the approximation of criminal laws and the adoption of minimum rules, by means of directives, concerning the mutual admissibility of evidence between MS, the rights of individuals in criminal proceedings, as well as the rights of victims of crime. Such harmonization measures must, however, respect the diversity of Member States' legal systems.
Article 83, on the other hand, allows the European Parliament and the Council to establish minimum rules regarding criminal offences and sanctions for serious crimes with a cross-border dimension. These offences include terrorism, human trafficking, sexual exploitation of women and children, drug and arms

[155] Declaration of the European Conference on Preventing and Combating Trafficking in Human Beings, 29 November 2002, 14981/02, *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*.
[156] Statement of La Strada International, 22 February 2022, *States should offer trafficked persons access to a residence permit on personal grounds.*

trafficking, money laundering, corruption, counterfeiting, cybercrime, and organized crime. It should be noted that such a list is not exhaustive and may be expanded by the Council where it acts unanimously and with the consent of the European Parliament.

Beyond institutional reform, the Lisbon Treaty also marked the entry into force of the Charter of Fundamental Rights of the EU, making it legally binding and granting it the same legal value as the Treaties. The Charter represented another significant step in the fight against trafficking, explicitly prohibiting it in Article 5. Such inclusion represented a significant innovation as it is one of the first human rights treaty containing an explicit prohibition on human trafficking in general[157]. Notably, trafficking was placed alongside the prohibition of slavery and forced labor, thereby reinforcing the close link between these violations.

Taken all together, such provisions laid the groundwork for a more coherent and effective EU approach in tackling organized crime, representing the core foundations of any subsequent measure aimed at combating human trafficking.

Building on this strengthened legal framework, the most important instrument within the European Union concerning human trafficking is Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, also known as the EU Trafficking Directive.

The approach of the Directive reflects a "an integrated, holistic, and human rights approach to the fight against trafficking in human beings"[158], focusing not just on the criminalization of the offence but also, as envisaged by the 3P paradigm analyzed in the previous chapter, on its prevention and on the protection of victims.

Differently from the previous Framework Decision, the Directive adopts, in Article 2, the definition of human trafficking contained in the Trafficking Protocol, demanding Member States to ensure that such intentional acts are punishable by national law. The Directive, however, goes a step further by broadening the scope of what constitutes "at minimum" exploitation. In addition to the forms already recognized at the international level, such as sexual exploitation, forced labor, and organ removal, it indeed includes new categories, namely forced begging and the exploitation of criminal activities.

Forced begging refers to situations where individuals, often children or disabled, are coerced into asking for money without offering anything in return, on behalf of their exploiters. In recent years, situations of forced begging have been increasingly reported throughout Europe. Nonetheless, identification of begging as a form of exploitation connected to human trafficking remains minimal. This is partly due to the fact that begging is a highly visible activity,

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[157] Both the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child previously addressed human trafficking. Such provisions, however, were limited to specific groups, namely women and children, rather than establishing a general and comprehensive prohibition.

[158] Directive of the European Parliament and of the Council, 5 April 2011, 2011/36/EU, *preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA*, Recital 7.

often taking place in public spaces[159], and during daytime. Such visibility, however, goes against the stereotypical image of human trafficking, frequently associated with clandestine networks, sexual exploitation, or forced labor behind closed doors, thus leading to the phenomenon being overlooked and to a consequent lack of identification of victims. That said, it is important to highlight that not all begging involves exploitation, and not all forced begging can be classified as trafficking as the latter requires the three key elements already analyzed: the act, the means, and the purpose of exploitation.

It is important to note that, for the purpose of the Directive, forced begging falls within the scope of forced labor as defined by the 1930 ILO Convention No 29 concerning Forced or Compulsory Labor. As a result "the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labor or services occur"[160]. Such elements are a work or service, intended as all types of work in any activity, industry or sector including within the informal economy, the menace of a penalty and finally, involuntariness, intended as the lack of free and informed consent of a worker to take a job as well as his freedom to leave at any time.

Exploitation of criminal activities, on the other hand, occurs when the victim is compelled to commit criminal offences such as pickpocketing, drug dealing, and shoplifting. Crucial in this regard is Article 8 of the Directive which establishes that Member States shall take the necessary measures to ensure that the competent authorities are "entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2"[161].

Note here that the word entitled means that authorities can decide not to prosecute or impose sanctions on victims but are not compelled to do so and thus, they may still choose to pursue legal action.

Apart from the non-punishment principle, the inclusion of new forms of exploitation represents an important innovation through which the EU sought to adapt to the evolving and dynamic nature of human trafficking and fill the gaps present at the international level.

With regard to the conduct that constitutes the offence it should be noted that the Directive does not require the victim to be transferred from one State to another nor the involvement of an organized criminal group, thus making human trafficking punishable also when carried out domestically, by an individual offender and towards a single individual.

Article 4 of the Directive then deals with penalties by establishing that human trafficking must be punishable by a maximum penalty of at least five years of imprisonment, extendable to ten years where a series of aggravating circumstances apply. These include a particular vulnerability of the victim, the

[159] HEALY (2017: 160).

[160] Directive 2002/629/JHA, Recital 10.

[161] Directive *preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA*, Article 2.

involvement of a criminal organization, the endangerment of the life of the victim, or the use of serious violence. Such measures solely represent a common minimum standard beyond which States are free to establish more severe sanctions.

As the previous Framework Decision, the Directive imposes liability of both natural and legal persons. This inclusion is particularly significant in cases involving human trafficking for forced labor within supply chains and complex business structures, such as multinational corporations, where legal entities may benefit, either directly or indirectly, from exploitative practices.

Article 7 provides for the seizure and confiscation of the instruments and proceeds derived from trafficking which can subsequently be used as part of the compensation mechanisms available to victims.

Article 9 deals with investigation, providing that Member States shall ensure that persons responsible for investigation and prosecution are duly trained and that they have at their disposal the necessary investigative tools. Importantly, investigation and prosecution must not be made dependent on the testimony of the victim, and criminal proceedings may continue even if the victim withdraws his statement.

Article 10 deals with jurisdiction obliging States to prosecute not only offences carried out within their territory but also those committed abroad by one of their nationals, thereby ensuring that both countries of origin and destination are responsible for prosecution. Additionally, a State may decide, but is not compelled, to establish further jurisdiction in cases where: (i) the offence is committed against one of its nationals or habitual resident, (ii) the offence is committed for the advantage of a legal person within its territory, (iii) the offender is an habitual resident. Such measures represent an important step in the prosecution of new criminal groups, often characterized by a high degree of territorial mobility, and in closing the legal gaps existing across states that transnational criminal networks might otherwise exploit to evade justice.

Beyond criminalization, the Directive complements criminal law provisions with other important tools including protection and prevention mechanisms.

For what concerns the former, the Directive introduces significant innovations both in comparison to the previous Framework Decision but also to the Trafficking Protocol. There are indeed seven provisions, going from Article 11 to Article 17, dedicated to victims' protection both through measures designed to guarantee assistance and support but also through actions aimed at preventing secondary victimization.

Article 11 provides that States must provide victims with assistance and support as soon as the authorities have a reasonable belief that the person might be a victim of trafficking. Such assistance, other than being informed and consensual, must not be made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial and shall be provided not only during criminal proceedings but also before them and, for a certain period of time, after it.

Such formulation however appears problematic not only because of the lack of specificity regarding the time frame during which such protection is guaranteed, but also because, as Giammarinaro argues:

> "This formulation could imply that assistance and support are provided to victims only in relation to criminal proceedings, and for its own purposes, and unfortunately it is mostly interpreted and implemented in this way at the national level. On the contrary, assistance measures should aim to full social inclusion of victims […], and therefore the duration of assistance and support should not be limited by the law or linked to the duration of criminal proceedings"[162].

Particular consideration should then be given to victims with special needs such as pregnant women or individuals with a disability or a mental or psychological disorder.

Subsequent articles deal with protection of victims of trafficking, including children, during criminal proceedings, setting out a series of measures aimed at avoiding secondary victimization which may derive either from contact with the police and judicial system or from threats of retaliation by traffickers[163]. These include for example avoiding an unnecessary repetition of interviews or questioning of the victim's private life, avoiding visual contact between the victim and the defendant and, in the case of children, ensuring that interviews are conducted by trained professionals, ideally in child-friendly settings and with the presence of a trusted adult or representative.

Articles 13 to 16 provide enhanced protection for child victims by establishing that all measures must take into account the "child's best interest"[164]. Member States are thus asked to undertake a series of actions aimed at supporting their physical and psycho-social recovery also by granting them access to education. Additionally, MS are required to implement measures directed at providing assistance to the family of the child, if present in the territory of the State concerned. Where the family cannot represent the child, MS must appoint a guardian or representative for the child victim. Particular attention is to be taken during criminal investigation and proceedings involving child victims, during which MS must ensure the possibility for the hearing to take place without the presence of a public as well as for the child to be heard without necessarily being physically present in the courtroom, for example through the use of communication technologies.

Importantly, in cases of doubts concerning the age, minority is to be presumed. Additional provisions are then dedicated to the protection for unaccompanied child victims.

With respect to prevention, Article 18 mandates Member States to implement prevention policies aimed at reducing demand that fosters exploitation, if necessary, by criminalizing the use of services objects of exploitation, as well

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[162] GIAMMARINARO (2021).

[163] VENTUROLI (2013: 63).

[164] Directive *preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA*, Article 13, 14 and 16.

as victims' vulnerability through information and awareness raising campaigns. Such measures must be carried out, where appropriate, in cooperation with NGOs and civil society organizations working within this field which, together with relevant authorities, must be regularly trained for the identification of victims.

After examining the contents of the Directive, it is now time to outline some concluding remarks. In general terms, the Directive can be viewed in a positive light: the multiplicity of aspects in it contained, demonstrates that the EU has understood that a phenomenon as complex as human trafficking cannot be tackled only from a criminal justice approach but rather requires a comprehensive strategy that integrates deterrence and victims' assistance.

Nevertheless, being European directives binding only as to the result to be achieved and thus requiring transposition by Member States within their national law, the primary challenge lies in the implementation of the Trafficking Directive's provisions. This concerns not so much criminalization laws but rather the protection and prevention measures which require significant resources and financial commitments as well as close collaboration between Member States and European bodies. In this regard, the European Parliament released, in 2021, a Report on the implementation of the Trafficking Directive aimed at addressing identified gaps and ensuring its consistent application across Member States.

Building upon the findings of the 2021 Report and in response to the persisting deficiencies in the implementation of the Directive, the European Parliament and the Council adopted, in June 2024, Directive (EU) 2024/1712, which amends Directive 2011/36/EU by introducing stronger rules to combat trafficking in human beings.

Among the major changes made to the original text are:

1. The forms of exploitation falling within the definition of trafficking have been further expanded to include forced marriage, illegal adoption, and surrogacy. With particular regard to the latter, the Directive targets those coercing women into becoming surrogates.
2. Member States are now required to criminalize also those knowingly using the services of victims of trafficking. As reported by Recital 26 indeed: "establishing this as a criminal offence is part of a comprehensive approach to reduce demand, which aims at tackling the high levels of demand that foster all forms of exploitation". It is important to note, however, that such criminalization should tackle only the use of services and not, for example, the purchase of products deriving from exploitative labor conditions.
3. Member States must include, among the aggravating circumstances, the fact that the offence was committed by a public official while performing their duties and when the perpetrator disseminates, through information and communication technologies materials of a sexual nature concerning the victim.
4. The support provided to victims has been strengthened. Member States are now required, in the provision of support to victims, to adopt a

victim-centered, gender-, disability- and child-sensitive approach. In addition, they are compelled to establish referral mechanisms aimed at guaranteeing the early identification of victims and the guarantee of appropriate support. Member States must also work with the competent authorities to allow victims of human trafficking to apply for international protection.

5. Finally, Member States are asked to adopt, by 15 July 2028, a National Anti-Trafficking Action Plan, to be reviewed at least every 5 years which may include the objectives and priorities of anti-trafficking measures, preventive measures, measures to strengthen investigation, prosecutions and identification and assistance to victims and procedures for monitoring the implementation of the Plan.

1.4 The Victims' Rights Directive

In the late 1990s, together with an increasing awareness about human trafficking and sexual exploitation, the EU began to recognize the need to protect victims during criminal proceedings. In the previous years, two important instruments had been adopted: the UN Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power and the Rome Statute of the International Court.

The UN Declaration represented one of the first major international instrument to explicitly recognize victim's rights and contained recommendations on measures to be taken in order to improve access to justice, fair treatment, restitution, compensation and assistance at the regional, national and international level.

The Rome Statute on the other hand was the first binding international treaty to establish procedural rights for victims in criminal proceedings containing provisions on the protection of witnesses and the right to reparations.

In line with this evolving legal context, at the Tampere Program of 1999, the EU recognized the need to adopt minimum standards on the protection of victims of crime, in particular concerning access to justice and the right to compensation[165]. As a result, a couple of years later, in 2001, the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. Composed of 19 articles, the Decision contained provisions on the victim's right to be heard, to receive information, to protection and compensation. The Stockholm Program of 2010, however, highlighted the need for a stronger action for the protection and support of victims. Subsequently, the European Commission's Impact Assessment of 2011 noted that:

> "the implementation of the Framework Decision […] is not satisfactory. […] whilst its scope covers most of the rights of victims of all types of crime and is overall still relevant, […] the scope of EU legislation on victims needs to be updated in light of new research and findings on victims, in particular as regards

[165] Presidency conclusions of the *Tampere European Council* of 15 and 16 October 1999, para. 32.

their rights and needs, mutual recognition of protection measures, and access to justice"[166].

As a result, it proposed the adoption of a new instrument that could offer victims of crime a greater level of protection.

In 2012, thus following the entry into force of the Trafficking Directive, the EU adopted Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (also known as the Victim's Rights Directive), which replaced the previous Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.

Unlike the latter , the Directive has a broader and more comprehensive content, focusing not only on procedural rights of victims within the judicial system but also on their access to support services, protection measures, and the recognition of their individual needs, thus reflecting a greater awareness of the multifaceted impact that crime can have on victims and of the necessity to adopt a human rights centered approach.

Adopted on the basis of Article 82 TFEU allowing the EU to harmonize standards on the rights of victims of crime, the Directive ensures that all victims receive the same minimum information, support, protection, and access to justice throughout all Member States.

The Directive sets the objective of "maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters"[167].

To this end, Article 1 of the Directive establishes that "Member States shall ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner […]".

Noteworthy is the conception of criminal offence seen as "a wrong against society as well as a violation of the individual rights of victims"[168], a definition which, by framing the crime primarily as a violation of fundamental rights inherent to every person, places the victim at the center of the justice system.

The Directive applies to both direct and indirect victims. This means that not only those who have firsthand suffered harm caused by a criminal offence are protected but also the family members of a victim who has died as a result of a criminal offence. States are however free to establish provisions that limit the number of family members who can benefit from the rights set out in the Directive[169]. Where the victim is a child, as always, a special approach needs to be adopted, taking into account his best interests.

The Directive then establishes a series of information rights; victims must receive communications in a simple and accessible language, also considering

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[166] Commission Staff Working Paper of the European Commission, 18 May 2011, SEC(2011) 580 final, *Impact assessment accompanying the proposal for a directive establishing minimum standards on the rights, support and protection of victims of crime and a regulation on mutual recognition of protection measures in civil matters.*

[167] Directive of the European Parliament and of the Council, 25 October 2012, 2012/29/EU, *establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, Recital 1.

[168] *Ibid.*, Recital 9.

[169] *Ibid.*, Recital 19.

their personal characteristics and eventual needs[170]. Such information shall concern, among others, the type of support they can obtain and from whom, the complaints procedure, protection measures, access to legal aid and finally access to compensation[171]. Additionally, victims must receive information about any decision not to proceed with an investigation or prosecution, and about the time and place of the trial, the charges against the offender as well as the final judgment[172]. Other than information, victims must also be able to access to confidential and free of charge victims' support services. These include having access to emotional and physiological support, financial and practical advice alongside advice aimed at preventing secondary victimization[173].

Even though victims should be able to access such support independently of whether they have filed a complaint to the police or related authorities, it frequently happens that, being the first point of contact, these authorities are in the best position to inform victims of the available support services and facilitate their referral in a timely and appropriate manner. Member States are thus encouraged to establish appropriate mechanisms to enable the referral of victims to victim support services, not just by police officials.

Victims shall also be afforded a series of rights in the course of criminal proceedings including the right to be heard, to legal aid, to reimbursement of expenses, to protection both during criminal investigation and proceedings and to protection of privacy.

The Directive also envisages provisions aimed at training officials likely to come into contact with victims in order to increase awareness of their needs and ensure that they are treated respectfully, professionally, and without discrimination[174]. Moreover, the Directive encourages cooperation among Member States aimed at exchanging best practices, receiving consultation and accessing assistance from European networks working on relevant matters[175].

On 28 June 2022, ten years after its adoption, the European Commission published an evaluation of the Victim's Rights Directive, showing how it has had a generally positive impact on victims' lives and safeguards across the EU. Nonetheless, several shortcomings can be identified.

First of all, even though clearly defined in the Directive, many Member States have interpreted terms such as "victim" and "family member" differently, thus leading to inconsistencies in the application of protection and support measures across the EU. Secondly, in many Member States, due to the lack of translators and interpreters, victims often have a hard time accessing certain services and exercising certain rights. Because of this, and also due to the poor training of practitioners who work with victims which frequently lack the knowledge and

[170] *Ibid*., Article 3.
[171] *Ibid.*, Article 4.
[172] *Ibid.*, Article 6.
[173] *Ibid.*, Article 8 and 9.
[174] *Ibid.*, Article 25.
[175] *Ibid.*, Article 26.

skills to do so, victims have had in some cases to find the information themselves.
In addition, the evaluation highlighted the lack of monitoring and reporting by Member States as well as lack of efficient coordination and cooperation among Member States.
On the basis of these shortcomings, in 2023, the European Commission proposed a series of amendments to the Directive intended to ensure that victims can fully benefit from the envisaged support and rights. The proposed changes, for instance, introduce an obligation for Member States to establish victims' helplines through which victims can receive information about their rights, access emotional support, and, where necessary, be referred to specialized services. Additionally, through the new amendments victims would benefit from a strengthened individual assessment and would be able, if they want to, to play a more active role in the course of criminal proceedings.

1.5 Institutional Mechanisms and Strategic Frameworks

Other than the legislative instruments just mentioned, the European Union has also established an extensive institutional and strategic framework to strengthen its response to human trafficking.
This includes the appointment of an EU Anti-Trafficking Coordinator, responsible for guaranteeing coherence and collaboration among EU institutions and Member States as well as the development of the EU Strategy on Combatting Trafficking in Human Beings (2021-2025) which, building upon the current legal and policy framework, focuses on reducing demand, disrupting the criminal networks, and protecting and empowering victims.

1.4.1. The EU Anti-Trafficking Coordinator

The figure of the EU Anti-Trafficking Coordinator ('ATC') was first envisaged by the Stockholm Program adopted by the European Council in 2009.
Within it, the European Council invited the Council of the EU to establish an ATC with the purpose of contributing to the development of a comprehensive EU policy against human trafficking, also through cooperation with third countries. The 2011 Trafficking Directive gave a formal legal basis to the role of the ATC, through Article 20 which affirms that: "In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC)".
The current ATC is Diane Schmitt who has been nominated by the European Commission in July 2021.
As laid down in the Directive, the EU Anti-Trafficking Coordinator is responsible for providing policy orientation, improving coordinator and coherence among the different Union bodies and actors including Member States with a view to avoid duplication of efforts and strengthening the development of existing or new policies to fight human trafficking.

In addition to such efforts, the ATC monitors the implementation of EU legislation, notably Directive 2011/36/EU. To this end, Member States are required to transmit to it a series of information such as assessments of trends in trafficking in human beings, results of anti-trafficking actions and statistics gathered in cooperation with relevant civil society organizations.
Particularly in regard to this last aspect, an important function of the ATC is the promotion of better data collection and research also in collaboration with EUROSTAT. For this purpose, a questionnaire is sent to MS containing information of key characteristics of identified victims and traffickers including age, sex, citizenship etc. referred to as "indicators". Such data is then used by the ATC to contribute to the preparation of the Progress report on combatting Trafficking in Human Beings which is published by the European Commission every two years on the basis of information gathered from EU countries, EU Agencies and members of the EU Civil Society Platform against trafficking in human beings. In addition, the ATC oversees the implementation of the EU Strategy on combating Trafficking in Human Beings, which will be discussed in the next subchapter.
Throughout all activities, a strong emphasis is placed on the adoption of a human rights-based, gender-specific, and child-sensitive approach.
Following the entry into force of the amendments to the 2011 Directive, Member States are now encouraged to establish national anti-trafficking coordinators, responsible for gathering data, analyzing patterns, developing and assessing national responses. Moreover, if States deem it necessary, national anti-trafficking coordinators may also be in charge of setting up contingency response plans aimed at preventing human trafficking in the event of emergency situations and promote, coordinate and finance programmes against trafficking.
In order to support the work of the ATC, the European Commission launched, on 5 June 2025, the EU Anti-Trafficking Hub. Directed by the ATC, the Hub will serve as a platform for bringing together and reuniting expertise and stakeholders in order to generate knowledge and exchange on anti-trafficking efforts. The Hub engages in three main activities namely research, analysis and advise through which it aims at contributing to the development of policies in the area of trafficking, supporting the implementation of both the EU Strategy on Combatting trafficking in human beings and the EU Anti-Trafficking Directive and exchange best practices and reinforce cooperation among experts and practitioners.

1.4.2. The EU Strategy on Combatting Trafficking in Human Beings (2021-2025)

In April 2021, the Commission adopted a new EU Strategy on Combatting Trafficking in Human Beings for the years 2021-2025. This initiative, which follows the previous EU Strategy towards the Eradication of Trafficking in Human Beings of 2012, provides a comprehensive framework to fight human trafficking based on the '3P' paradigm of prevention, protection and persecution.

The Strategy defines trafficking as a violent crime, which destroys individuals' lives by depriving people of their dignity, freedom, and fundamental rights. It highlights that trafficking is a global phenomenon that continues to happen within the EU and that the majority of victims are women and girls trafficked for sexual exploitation, even though many victims remain undetected. Recognizing that human crime is often carried out by organized crime networks, the Strategy is closely connected to the EU Strategy to Tackle Organized Crime adopted in the same year.

On the basis of the existing legal framework to fight trafficking, in particular the 2011 Trafficking Directive, the Strategy on Combatting Trafficking in Human Beings identifies four key priorities namely: (i) reducing demand that fosters trafficking, (ii) breaking the criminal model to halt victims' exploitation, (iii) protecting, supporting and empowering the victims, especially women and children and (iiii) promoting international cooperation.

In relation to the first point, the Strategy acknowledges that human trafficking and organized crime fosters due to the high demand of their products and activities. In this regard, it is estimated that the global annual profit from trafficking in human beings amounted to EUR 29.4 billion in 2015. Addressing demand is therefore crucial.

With this objective in mind the Commission sets the objective of strengthening the EU Employers Sanctions Directive, prohibiting the employment of third-country nationals irregularly staying within the EU, to cut off a major incentive for traffickers namely the demand for cheap and irregular labor. In addition, the Commission will present a proposal on sustainable corporate governance to provide guidance on due diligence aimed at recognizing and tackling the situation of forced labor.

As for the second priority, the Commission highlights how organized criminal groups often exploit legal businesses in carrying out their activities. An effective strategy must therefore address their infiltration into the legal economy by implementing measures to identify, seize and confiscate criminal assets which could then be used to compensate victims. The Strategy also highlights the need for increased training and for the strengthening of capacity building efforts, particularly in light of the continuously evolving skills, capabilities and use of technologies of criminals. Traffickers have indeed increasingly moved their activities online, especially during the Covid-19 pandemic, making it increasingly difficult to detect them. It is thus necessary to conduct a dialogue with the private sector, in particular with relevant internet and technology companies to reduce the use of online platforms for recruiting and exploiting victims as well as for the development of technology-based solution to fight human trafficking.

The third priority, focusing on victims, recognizes that trafficking "is a grave violation of fundamental rights, which causes great suffering and long-lasting harm to the victims". Given that the most prevalent form of trafficking is that for sexual exploitation, which affects mainly women and girls, the Strategy emphasizes the need of a gender sensitive approach but also of enhanced

protection for other vulnerable groups including LGBTIQ+ people, persons with disabilities and ethnic minorities such as the Roma Communities.
The Strategy highlights, once again, how early victim identification is crucial to provide them with adequate support and that appropriate referral mechanisms need to be established. The Strategy then recognizes how non-EU citizens face additional difficulties and that is it necessary to enhance partnerships with non-EU countries of origin and transit to ensure that victim's rights are guaranteed and that there are appropriate resources for supporting victims upon their return.
Finally, the last priority aims to strengthen international cooperation. Given the fact that in in 2020, 534 different trafficking flows were identified globally, the Commission invited Member States to increase information and intelligence sharing on trafficking as well as to facilitate cross-border judicial cooperation.

2. The Council of Europe legal framework

Within Europe, but outside the European Union, a fundamental role in the fight against human trafficking has been played by the Council of Europe.
Founded in 1949 to uphold human rights, democracy and the rule of law in Europe, the Council has throughout the years played an active role in the fight against human trafficking, promoting, in contrast with other international instruments, a strong human-rights based approach, focusing first of all on the protection and assistance of victims.
The CoE interest in human trafficking can be traced back to the 1990s. In 1991 indeed, the Council of Europe Committee of Ministers adopted Recommendation No. R(91)11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults. The Council then proposed, through a Group of Experts on Traffic in Women a comprehensive plan to fight human trafficking. Later on, in 1997 through Recommendation 1325 the Parliamentary Assembly, "alarmed by the dramatic increase in recent years in the traffic in women and forced prostitution in Council of Europe member states"[176], recommended to the Committee of Ministers the elaboration of a convention on traffic in women and forced prostitution. Such instrument:

> "would also be open for signature by states not members of the Council of Europe. The scope of the convention should be limited to adult women […]. It should focus on human rights, stipulating repressive measures to combat trafficking through harmonization of laws especially in the penal field, opening new channels for improved police and judicial communication, co-ordination and co-operation, and organizing a certain degree of assistance and protection for victims of trafficking, especially those willing to testify in court. This should also include physical protection if necessary, and in any case the granting of temporary residence permits as well as legal, medical and psychological assistance. The convention should establish a control-mechanism to monitor compliance with its provisions and to co-ordinate further action at the pan-European level to combat trafficking in women and forced prostitution"[177].

[176] Recommendation of the Parliamentary Assembly of the Council of Europe, 23 April 1997, 1325 (1997), *Traffic in women and forced prostitution in Council of Europe member states*, para. 1.
[177] *Ibid*., para. 4.

Such a proposal, however, was not taken up.
That same year trafficking became a collective concern of the Strasbourg Summit, which reunited the heads of State and Government of the Council of Europe. Although the focus remained primarily on women, their exploitation was acknowledged as a threat to citizen's security and democracy across Europe.
In the wake of this, a series of seminars were organized to increase awareness on the matter. Moreover, Member States were encouraged to develop national plans against trafficking.
In 2000 then two other legal instruments were adopted focusing on trafficking for sexual exploitation namely Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec(2001)16 of the Committee of Ministers to Member States on the protection of children against sexual exploitation.
Finally, following the entry into force of the Trafficking Protocol, in 2002 the Assembly requested again, through Recommendation 1545, the elaboration of a convention on trafficking in women which should:

> "focus on assistance to and the protection of victims of trafficking, by obliging the states parties to grant legal, medical and psychological assistance to such victims, by ensuring their physical safety and that of their families, and by granting special residence permits to victims on humanitarian grounds, and permanent residence permits to those willing to testify in court and in need of witness protection"[178].

This time, the request was accepted leading to the subsequent adoption of the Convention on Action Against Trafficking.
Such instrument, while being the most important within this area, is not the only one as also another crucial as another crucial treaty has been interpreted as providing protection against trafficking, namely the European Convention on Human Rights.

2.1 The European Convention on Human Rights

The European Convention on Human Rights ('ECHR'), officially known as the Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. Currently ratified by 46 countries, the Convention was the first instrument to implement some of the rights established within the UN Universal Declaration of Human Rights ('UDHR') and to give them a binding effect. The ECHR grew out of a period of anxiety and uncertainty, prompted by the end of the Second World War and the related horrors which provided the impetus for States to take the necessary steps for the creation of an international law of human rights.

[178] Recommendation of the Parliamentary Assembly of the Council of Europe, 21 January 2001, 1545 (2002), para. 11.

The Convention consists of 59 articles and is divided in three parts; the first section is composed of 18 articles, enshrining a series of fundamental rights such as the right to life, the right to liberty and security, freedom of expression, right to a fair trial as well as a series of prohibition including against torture, slavery and discrimination. Such rights and freedoms, as stated in Article 1, must be guaranteed by State Parties for all individuals, citizens or not, present within their territory.
The second section deals with the establishment of the European Court of Human Rights ('ECtHR'), the body responsible for interpreting and enforcing the ECHR. Composed of 46 judges, one from each of the Member States of the Council which must be elected among people of a "high moral character" with qualifications suitable for high judicial office, the Court is responsible for ensuring that State Parties uphold the rights and protections established by the Convention. In order to do so, the Court is entitled to review cases submitted by individuals or, in certain cases, by States, but not to initiate proceedings on its own. Finally, the third section contains miscellaneous provisions such as territorial application, denunciation conditions and reservations.
Continuously evolving, the ECHR has been, throughout the years, supplemented by a series of protocols which have introduced additional rights or procedures, adapting the Convention to changing circumstances. This dynamic character was confirmed by the ECtHR in the landmark judgment *Tyrer v. the United Kingdom*, where the Court has embraced the notion that "the Convention is a living instrument […] which must be interpreted in the light of present-day conditions"[179]. Such an approach will then be crucial in addressing modern human rights violations, particularly human trafficking.
It is important to underline that the ECHR is of fundamental importance not just within the CoE but also within the European Union itself; under Article 6 TEU indeed the EU recognizes the binding character of the Charter as part of primary law, establishes the rights freedom and principles set out in the Charter as general principles of Union law and has committed to acceding to it in order to strenghten the protection of human rights by creating a single European legal space.

2.2. Article 4 ECHR - Prohibition of Slavery and Forced Labor

The ECHR does not contain any express prohibition on human trafficking. This is due to the fact that, one the one hand as said above, the Convention was inspired by the UDHR which itself does not specifically mention human trafficking, and on the other hand due to the fact that, at the time of its adoption in 1950 human trafficking was not yet recognized as a distinct, complex human rights issue requiring specific legal provisions.
Despite the absence of an explicit reference, the text of Article 4 ECHR has been interpreted to cover contemporary forms of exploitation thus allowing the ECtHR to address human trafficking and related practices.

[179] Judgment of the European Court of Human Rights, 15 March 1978, 5856/72, *Tyrer v. The United Kingdom*, para. 31.

Article 4 of the Convention establishes the prohibition on slavery and forced labor. In particular it provides that: "No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labor".

To fully understand how Article 4 serves as a legal foundation for addressing human trafficking and related forms of exploitation, it is essential to examine the meaning and scope of the three core concepts it prohibits: slavery, servitude, and forced or compulsory labor.

For what concerns slavery, the ECtHR adopted the definition set out in the 1926 Slavery Convention according to which slavery is: "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"[180]. Servitude on the other hand refers to "an obligation to provide one's services that is imposed by the use of coercion". In particular the Court clarified that the prohibition on servitude encompasses "particularly serious forms of denial of freedom" and implies not only the obligation to perform services for others but also to live on another person's property and the impossibility of altering one's own condition[181].

It is thus evident that the main difference between the two lies in the concept of ownership, which must be necessarily present in the definition of slavery and is absent in that of servitude, even though the latter implies the inability to leave from such situation.

Importantly, as established by Article 15 ECHR, no derogation is possible from such prohibitions, not even in time of war or other emergencies threatening the life of the nation. It follows that the prohibition on slavery and servitude is a peremptory norm of general international law (*jus cogens*) which entails obligations *erga omnes*, that is obligations owed to international community as a whole. Such character was confirmed by the ECtHR which in *Siliadin v France* recognized that Article 4 ECHR represents "one of the fundamental values of democratic societies"[182].

Such absolute status does not apply on the other hand to the prohibition on forced or compulsory labor. Here the ECtHR has adopted the definition given by the ILO Forced Labor Convention of 1930 (No. 29). Art. 4(3) ECHR however includes a series of conditions which do not classify as forced or compulsory labor namely:

> "(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
> (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
> (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

[180] Judgment of the European Court of Human Rights, 26 July 2005, 73316/01, *Siliadin v France*, para. 124.
[181] *Ibid*.
[182] Judgment *Siliadin v France*, para. 82.

(d) any work or service which forms part of normal civic obligations"[183].

Additionally, in the case of *Van der Mussele v. Belgium*, the Court somehow drew a distinction between forced and compulsory labor by arguing that while the former "brings to mind the idea of physical or mental constrain", the latter does not encompass any and all forms of legal obligation but rather refers to work "exacted under the menace of any penalty" for which the individual concerned "has not offered himself voluntarily"[184].
Importantly however, in the same case the Court highlighted the fact that the convention is a "living instrument to be read in the light of the notions currently prevailing in democratic states" and that thus what constitutes forced or compulsory labor may change in accordance with the changing in response to shifting legal, social, and ethical standard, including the challenges posed by rapid technological advancements and the transformation of global labor markets.

2.2.1 Rantsev v. Cyprus and Russia

As said above, Article 4 ECHR does not contain any prohibition on trafficking. Nevertheless, in the famous case of *Rantsev v. Cyprus and Russia* the ECtHR explicitly recognized it as falling within the scope of the above-mentioned provision.
The applicant, Mr. Ranstev, was the father of a young woman Mrs. Oxana Rantseva of Russian nationality who had died in Cyprus. The woman had entered Cyprus under an artist visa to work in a cabaret.
On 19 March 2001, only three days later she had started to work, Mrs. Rantseva left the apartment she was living in with other women and allegedly left a note saying that she was tired and wanted to go back to Russia.
On 28 March 2001, however, she was seen in a discotheque by the manager of the cabaret which subsequently called the police asking them to arrest her on grounds that she was illegal. He then went to the discotheque together with a security guard and took her to a police station before leaving. However, neither the police nor the passport officer confirmed her unlawful stay in Cyprus and therefore, asked her employer to pick her up. As a consequence, without being identified as a potential victim of trafficking, she left with her employer who also collected her passport and brought her to a colleague's apartment.
The next morning Mrs. Rantseva was found dead on the street below the apartment in unexplained circumstances. The police later found a bedspread attached to the railing of the balcony where she was staying and eventually concluded that her death was not the result of a criminal act.
At this point her father, Mr. Ranstev requested that a new investigation be opened in both Russia and Cyprus to clarify the circumstances surrounding his daughter's death and to examine potential failures by authorities in protecting

[183] Convention of the Council of Europe, 4 November 1950, ETS No. 005, *European Convention on Human Rights*, Art. 4(3).
[184] Judgment of the European Court of Human Rights, 23 November 1983, 8919/80, *Van Der Mussele v. Belgium*, para. 34.

her from trafficking. Being dissatisfied with the slow proceedings of the investigations he ultimately brought the case to the European Court of Human Rights claiming violations of Articles 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 4 (prohibition of slavery and forced labor), and Article 5 (right to liberty and security) ECHR. In particular the applicant claimed that Cyprus and Russia failed to conduct and effective investigation into the circumstances of her daughter's death as provided by Article 2 ECHR. Furthermore, he claimed that the Cypriot authorities failed to protect her daughter from ill-treatment under Article 3 ECHR, and that Cyprus had violated Article 5 ECHR first by unlawfully detaining his daughter at the police station and subsequently by releasing her into the custody of her employer.

The applicant also claimed that both Cyprus and Russia failed to protect her daughter from being trafficked under Article 4 ECHR. The reasons behind such allegations of human trafficking lie in the fact that, first of all, Mrs. Rantseva had entered Cyprus on an artist visa, a type of visa which, according to multiple reports, has frequently been used in cases where women are later subjected to sexual exploitation. Secondly, when Mrs. Rantseva arrived at the police station her employer had her passport and several other documents, a situation which reasons with several trafficking situations in which victims are deprived of their documents to maintain control over them[185].

The Court eventually found Cyprus in violation of Article 2 "because of the failure to conduct an effective investigation into Mrs. Rantseva's death"[186], as well as in violation of Article 4 and 5 ECHR respectively because of the failure to afford "Mrs. Rantseva practical and effective protection against trafficking and exploitation in general and by not taking the necessary specific measures to protect her"[187] and because of the "unlawful detention in the period leading up to her death"[188]. Russia was also found to have breached its obligations under Article 4 ECHR due to its failure to investigate the alleged trafficking.

Despite the conclusions, the core of the Court's judgment focused on Article 4 and, in particular, on whether human trafficking fell within its scope. Article 4 indeed, as we have seen, does not contain any explicit mention to human trafficking but only to slavery, servitude and forced labor.

In responding to the question, the ECtHR started by reiterating, in line with previous case law, that the Convention's provisions cannot be interpreted in a vacuum but that rather it:

> "[…] must be interpreted in the light of the rules of interpretation set out in the Vienna Convention of 23 May 1969 on the Law of Treaties […] Under that Convention, the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn. The Court must have regard to the fact that

[185] STOYANOVA (2017: 296).
[186] Judgment of the European Court of Human Rights, 7 January 2010, 25965/04, *Rantsev v. Cyprus and Russia.*
[187] *Ibid*.
[188] *Ibid*.

> the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole and interpreted in such a way as to promote internal consistency and harmony between its various provisions. Account must also be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention […]"[189].

The Court went on by noticing that trafficking in human beings has become increasingly significant in recent years, as demonstrated also by the adoption of the Trafficking Protocol in 2000 and that the "increasingly high standards required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably require greater firmness in assessing breaches of the fundamental values of democratic societies"[190].
The Court then considered previous case law as well as the findings of the International Criminal Tribunal for the Former Yugoslavia which found that the traditional concept of slavery has now evolved to encompass not just powers attaching to the right of ownership but also situations of control of an individual's movement as well as psychological control and control of sexuality and forced labor. In line with this reasoning the ECtHR eventually concluded that:

> "[…] trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labor, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions It is described […] as the modern form of the old worldwide slave trade"[191].

The Court however did not discuss whether trafficking constituted a form of slavery, servitude or forced and compulsory labor considering it "unnecessary" but limited itself to determining that human trafficking, as defined by Article 3 of the Trafficking Protocol as well as by the Article 4 of the CoE Convention on Action Against Trafficking in Human Beings, falls within the scope of art. 4 ECHR.
As a result, the Court held that Cyprus had violated Art. 4 ECHR. This conclusion was based, in part, on the findings of the Ombudsman's 2003 report, according to which starting from the 1970s, Cyprus has experienced a growing number of trafficked women, a situation of which the authorities were well aware. In addition, the Court noted that:

> "[…] There were sufficient indicators available to the police authorities, against the general backdrop of trafficking issues in Cyprus, for them to have been aware

[189] *Ibid.*, para. 273-274.
[190] *Ibid.*, para. 277.
[191] *Ibid.*, para. 281.

> of circumstances giving rise to a credible suspicion that Mrs. Rantseva was, or was at real and immediate risk of being, a victim of trafficking or exploitation"[192].

Such situation must also be interpreted within the context of the obligations undertaken by Cyprus in the context of the Palermo Protocol and the Convention on Action Against Trafficking, which require States to provide adequate training for law enforcement, immigration and other relevant officials in identifying and preventing cases of human trafficking.
This approach by the Court, although noble in its intentions, has nevertheless been widely criticized by different authors for several reasons[193].
First of all, by defining trafficking as "based on the exercise of powers attaching to the right of ownership" the Court, despite the explicit reference to Article 3 of the Trafficking Protocol, equated human trafficking with slavery thus ignoring the three characterizing elements of the offence namely the act, the means and the purpose.
Secondly, as Stoyanova (2017), points out the ECtHR defined Mrs. Ransteva as a "victim of trafficking *or* (emphasis added) exploitation" which adds confusion as to whether Article 4 covers any type of exploitation, without however defining what it means by such term, or just exploitation in connection to the other two constitutive elements of trafficking.
Additionally, such broadened interpretation may contrast with the legality principle of national criminal justice systems. According to the principle *nullum pone sine lege* indeed a person can be punished only where it exists a law explicitly defining and punishing such crime, which thus does not allow for such extensive interpretations. It follows that national criminal laws cannot be treated as living instruments and any substantive change must be made through legislative amendments or through rules of statutory interpretation in common law systems[194]. Such a situation creates a tension for State Parties to the ECHR, which are required to guarantee the rights and prohibitions contained in the Conventions for all individuals within their jurisdiction.
As a result, although Article 4 ECHR does not explicitly mention human trafficking, its interpretation by the ECtHR obliges States to criminalize and prevent also such offence as part of their obligations.

2.2.2. The positive obligations deriving from Article 4

Throughout time, the evolution of the Convention has also affected the obligations of the Member States. Originally understood as mainly imposing negative obligations on States Parties, the ECtHR has progressively established that certain rights also entail positive obligations.
With respect to Article 4 ECHR, such principle was firstly recognized within the case of *Siliadin v France*.

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[192] *Ibid.*, para. 296.
[193] In this regard see: ALLAIN (2010), STOYANOVA (2017).
[194] O' NEILL (2023: 25).

The case concerned a 15-year-old girl of Togolese origin, Mrs. Siwa-Akofa Siliadin who, on 26 January 1994 arrived in France with Mrs. D, a French nation of Togolese origin, with a passport and a tourist visa.
Her family had agreed that she would work for Mrs. D in order to reimburse the cost of the air ticket and would later be enrolled in a local school. Upon arrival however Mrs. Siliadin was deprived or her passport and became an unpaid housemaid first for Mrs. D and later on for Mrs. B where she worked seven days a week up to 15 hours a day without being paid nor sent to school.
At a certain moment a neighbor, having become aware of her situation, alerted the Committee Against Modern Slavery which in turn filed a complaint with the prosecutor's office. On 28 July 1998, the police raided Mr. and Mrs. B's home. They were subsequently prosecuted by the Paris *tribunal de grande instance* and convicted of having violated Article 225-13 of the French Criminal Code which prohibits "obtain[ing] obtain from an individual the performance of services without payment or in exchange for payment that is manifestly disproportionate to the amount of work carried out, by taking advantage of that person's vulnerability or state of dependence".
As a result, Mr. and Mrs. B were sentenced to twelve months of imprisonment, seven of which were later suspended, as well as to the payment of a fine of FRF 100,000 each together with FRF 100,000 to the applicant in damages.
In October 2000, however, based on an appeal by Mr. and Mrs. D, the Paris Court of Appeal overturned the previous decision and acquitted the defendants. An appeal was thus made by Mrs. Siliadin to the Court of Cassation which reversed the Court of Appeal's decision but only with regard to the civil aspects, that is those related to the right to compensation. The case was then remitted to yet another court of appeal which upheld the findings of the tribunal de *tribunal de première instance* and awarded the applicant damages; the acquittals, however, remained unaffected.
At this point Mrs. Siliadin applied to the ECtHR alleging a violation of Article 4 ECHR on the prohibition of slavery and forced labor as well as
Article 1 ECHR establishing contracting parties' obligation to respect human rights. In particular the applicant claimed that France had failed to respect the positive obligations deriving from Article 4 to put in place an adequate system of protection and consequent criminal offences against the practices prohibited within the Article to which she was subject.
Determining that the applicant situation fell within the scope of the article as she was held in servitude and subjected to forced labor[195], the ECtHR eventually found France in violation of Article 4 ECHR.
Such a reasoning was based on the fact that neither slavery nor servitude were not classified as such as offences under French Criminal law and that existing provisions, notably 225-13 and 225-14 of the French Criminal Code, the former dealing with forced labor and the exploitation of vulnerable individuals and the

[195] The applicant' situation was not deemed to fall within the meaning of slavery because even though she was deprived of her personal liberty, Mr and Mrs B did not exercise of a genuine right of legal ownership over her, reducing her to the status of an 'object'.

latter addressing individuals subject to living or working conditions incompatible with human dignity, did not afford the applicant effective protection. This is due to the fact that, in certain cases it is not enough for a State merely to be a party to the Convention and to abstain from violating its provisions; the State also bears a positive obligation to implement adequate legal frameworks and practical measures to prevent, investigate, and punish such violations effectively.
As stated by the Court, indeed:

> "limiting compliance with Article 4 of the Convention only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective. Accordingly, it necessarily follows from this provision that States have positive obligations, in the same way as under Article 3 for example, to adopt criminal-law provisions which penalize the practices referred to in Article 4 and to apply them in practice"[196].

The Court subsequently noted that, being Article 4 ECHR non-derogable, "member States' positive obligations […] must be seen as requiring the penalization and effective prosecution of any act aimed at maintaining a person in such a situation"[197].
While in *Siliadin* the Court primarily affirmed the State's obligation to ensure the criminal prosecution of practices amounting to servitude and forced labor, in *Rantsev* the Court, having included trafficking within its scope, significantly broadened the range of positive obligations under Article 4 ECHR.
First of all, the Court established that, in order to comply with the positive obligation established in the previous case, States need to put in place an appropriate legislative and administrative framework, necessary for prohibiting and punishing trafficking. In this regard the Court noted that both the Palermo Protocol and the CoE Trafficking Convention highlight the need for a comprehensive approach to trafficking, also on the basis of '3P' Paradigm, emphasizing the need not just for prosecution but also for prevention and protection. In addition, such measures must not only be directed against traffickers but also extend to other sectors that may play a role in the trafficking process.
As the Court further clarified:

> "[…] the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking"[198].

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[196] Judgment *Siliadin v France*, para. 89.
[197] *Ibid*., para. 112.
[198] Judgment *Rantsev v. Cyprus and Russia*, para. 284.

The ECtHR then articulated further obligations, specifically: (i) the duty to take positive operational measures to protect victims, or potential victims, of trafficking in situations in which "State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being subjected to treatment in breach of Article 4 of the Convention"[199], and (ii) the procedural obligation to investigate potential situations of trafficking.

In the more recent case of *Krachunova v. Bulgraria* the Court was confronted with yet another potential obligation deriving from Article 4 ECHR, namely the duty of States to enable victims of trafficking to claim compensation from their traffickers in respect of lost earnings. The applicant was a young woman who, at the age of 26, met X, a man whose main occupation at that time was to drive prostitutes to and from their places of work. The applicant agreed to work with X as a prostitute and moved to his house.

By July 2012, the applicant wanted to quit sex work but feared X's reaction. After running away, she later returned to X, who took her identity card and resumed sex work. On February 2013, she was approached by police officers, at which point she told them that X was keeping her against her will, had her documents and that she needed help. As a result, the police opened an investigation against X who was eventually convicted of human trafficking.

The key issue, however, concerned compensation. The applicant indeed argued that X had taken away all her earnings and that, as a consequence, claimed compensation for pecuniary damage. Such a claim was however refused by the Sofia City Court who argued that, being that money earned in an "immoral manner that is prohibited by the law"[200], they were not to be returned to her. The applicant subsequently brought the matter to the European Court of Human Rights alleging a violation of Article 4 ECHR by the Bulgarian courts.

In delivering its judgment, the Court first had to determine whether Article 4 contained a positive obligation to enable the victims of trafficking in human beings to seek compensation in respect of lost earnings from their traffickers.

In doing this, the Court made reference to the three guiding principles guiding its interpretative approach. The first is that the Convention's purpose, that is the protection of human rights, requires its provisions and Protocols to be interpreted "in a way that renders the rights that they guarantee practical and effective"[201]. Second, the obligations that the Convention and the Protocols impose upon State Parties must be constructed in harmony with relevant international laws and treaties. Third, in interpreting the Convention and its Protocols, the Court "may have regard to developments in domestic legal systems that indicate a uniform or common approach or a developing consensus between the Contracting States in a given area"[202].

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[199] *Ibid.*, para. 286.

[200] Judgment of the European Court of Human Rights, 28 November 2023, 18269/18, *Krachunova v. Bulgaria*, para. 32.

[201] *Ibid*., para. 163.

[202] *Ibid*., para. 165.

The Court subsequently relied on a series of preceding case laws about Article 2 ECHR protecting the right to life, within which it held that the impossibility to lodge claims in respect of certain types of damage represented a breach of the same article[203]. On the basis of this, the Court extended its analysis from earlier jurisprudence related to Article 2 ECHR to derive a new positive obligation under Article 4, thus broadening the scope of victims' protection. The Court justified such a reasoning on the basis of some similarities among the two Articles: "together with Articles 2 and 3, Article 4 enshrines one of the basic values of the democratic societies making up the Council of Europe and trafficking (which threatens the dignity and fundamental freedoms of its victims) is incompatible with those values, as expounded in the Convention"[204]. The Court then highlighted the prevailing focus on investigation and punishment which "although essential for deterrence […] cannot wipe away the material harm suffered by the victims of trafficking that has already taken place or practically assist their recovery from their experiences"[205]. Within this context, the possibility of victims to seek compensation in respect of lost earnings "must be considered an essential part of the integrated State response to trafficking required under Article 4 of the Convention"[206], as well as a way to reduce the economic incentives to commit trafficking and to give victims an incentive to come forward and report trafficking, therefore increasing prosecution efforts. As a result, the Court eventually concluded that Article 4 ECHR does lay down a positive obligation for the State to allow victims of trafficking to claim compensation in respect of lost earnings.

Having clarified this, the question then moved as to whether the victim had a right to claim compensation given that the money was, according to Bulgarian law, obtained in an immoral manner. The Court however here clarified that even though the applicant was, at first, performing sex work voluntarily, the money she was seeking to retrieve came from human trafficking and her exploitation for coerced prostitution, which is incompatible with human dignity.

In doing so the Court did not express itself about the legality of sex work's contracts neither about whether the Convention prohibits the criminalization of prostitution. Rather it limited itself to determine whether the positive obligations previously identified could be avoided by the State in light of the immorality of the money's origin. As this was not the case, the Court eventually found Bulgaria in violation of Article 4 ECHR.

2.3 The Convention on Action Against Trafficking in Human Beings

Despite the role played by the ECHR, the most important instrument adopted by the CoE within the context of trafficking is the Convention on Action

[203] see *Movsesyan v. Armenia*, no. 27524/09, 16 November 2017; *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, 19 July 2018; and *Vanyo Todorov v. Bulgaria*, no. 31434/15, 21 July 2020.

[204] Judgment *Krachunova v. Bulgaria*, para. 168.

[205] *Ibid*., para. 169.

[206] *Ibid*., para. 171.

Against Trafficking in Human Beings, also known as the Trafficking Convention.
Entered into force in February 2008, the Trafficking Convention did not develop in a vacuum, rather its creation was shaped by several significant international and regional efforts in the years preceding its adoption. As previously mentioned indeed, following the entry into force of the Trafficking Protocol and the endorsement of a series of instruments directed at addressing sexual exploitation, in 2002 the Assembly requested through Recommendation 1545 that the Committee of Ministers elaborate a convention on trafficking in women. To this end, an Ad Hoc Committee on Action against Trafficking in Human Beings (CAHTEH) was established.
The drafting process was relatively private; no public hearings were held, and NGO's access to internal meetings was limited to a selected few[207]. Nonetheless, the Convention has been widely praised for its strong human rights focus, marking a significant departure from other legal instruments focusing predominantly on criminalization and law enforcement. Today, it counts 48 state parties including all Member States of the Council of Europe, as well as two non-member states: Israel and Belarus.
The human rights centered approach is evident from the very first article, which sets out the objectives of the Convention. These are:

> "a. to prevent and combat trafficking in human beings, while guaranteeing gender equality;
> b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
> c. to promote international cooperation on action against trafficking in human beings"[208].

Article 2 then sets out the scope of the Convention, arguing that it applies to "all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime".
Right from the beginning it is evident that the Trafficking Convention marks a significant departure from the Trafficking Protocol in several aspects. First of all, the convention refers to human beings in general without specifying the need to protect women and girls in particular. Rather it places a strong emphasis on the importance of a non-discriminatory approach and of gender equality, to the point that the latter is explicitly addressed in a dedicated article[209].
Second the Convention addresses trafficking, interpreted as a "a violation of human rights and an offence to the dignity and the integrity of the human being", in all its forms be it national, transnational, committed independently or in connection with an organized criminal group.

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[207] GALLAGHER (2010: 113).
[208] Convention of the Council of Europe, 16 May 2005, CETS no. 197*, Convention on Action against Trafficking in Human Beings*, Article 1.
[209] *Ibid.*, Article 17.

The definition of human trafficking contained in Article 4 however mirrors exactly that of the Trafficking Protocol, the only difference being that the Convention includes a definition of victim indented as any natural person subjected to trafficking as therein defined.
The Convention follows the '3P' paradigm of prevention, protection and prosecution. Concerning the former, chapter II of the Convention requires state parties to adopt a comprehensive framework aimed at addressing the root causes of human trafficking and discourages demand. In this regard Article 5 mandates MS to establish policies and programmes including awareness raising and education campaigns, research and training programmes and social and economic initiatives targeting vulnerable groups. In doing so MS must promote a human-rights based approach, integrating gender mainstreaming and taking into account child-specific needs. The Convention also highlights the need to open legal migration routes, thus acknowledging that restrictive migration policies and the consequent reliance on smuggling networks can heighten individuals' vulnerability to trafficking. At the same time however, Article 7 deals with border measures, mandating States to strengthen border controls, also by reinforcing cooperation among border control agencies in order to prevent and detect human trafficking.
Chapter III deals then with the protection and promotion of victims' rights. Unlike the Trafficking Protocol, the measures set out in the Convention are mandatory and significantly broader in scope. Among the most important provisions here is the one related to victims' identification[210], recognized as of paramount importance both in safeguarding their fundamental rights and in enabling a successful prosecution of offenders. To this end, MS are mandated to ensure that competent authorities are duly trained and qualified in identifying and helping victims of trafficking, also by collaborating with other parties and relevant organizations. Importantly "if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process […] has been completed"[211].
Both identified victims and presumed ones must then be granted access to a series of assistance measures including, but not limited to, accommodation, access to emergency medical assistance, translation and interpretation services, counselling and provision of information, assistance during judicial proceedings, and access to education for children[212]. Such assistance must not, in any case, be made conditional on the victim's willingness to cooperate with the authorities. Lawfully resident victims may however be entitled to additional support such as access to healthcare, the labour market, vocational training, and education.
Articles 13 and 14 introduce a significant innovation, particularly when compared to EU instruments. The former provides for the so called recovery

[210] *Ibid.*, Article 10.
[211] *Ibid*.
[212] *Ibid.*, Article 12.

and reflection period, arguing that, where there are reasonable grounds for believing that an individual is a victim of trafficking, that person must be granted a period of *at least 30 days* (emphasis added) necessary to "recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities"[213]. During such period it will not be possible to enforce any expulsion order against him or her.
At the end of such period MS must then decide whether to grant a renewable residence permit to victims in one or both of the following situations:

> "a. the competent authority considers that their stay is necessary owing to their personal situation;
> b. the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings"[214].

This represents the major point of departure from other international instruments, particularly from the EU Residence Permit Directive. The latter indeed, as we have seen, not only does not specify a time limit for the reflection period, thus leaving it to the discretion of MS but also links the granting of a residence permit to cooperation with authorities. On the other hand, the Trafficking Convention provides for this option but also includes the possibility of granting a permit based on the victim's personal situation, thereby adopting a more victim-centered approach.
As described in the Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, "the personal situation requirement takes in a range of situations, depending on whether it is the victim's safety, state of health, family situation […]"[215] and has been introduced taking into account the fact that immediate return of victims to their countries can be counterproductive. Victims may indeed face a serious risk of re-trafficking or retaliation, while law enforcement authorities may be unable to collect important information needed to effectively combat trafficking networks.
The duration of the permit, however, as well as the criteria for its eventual withdrawal, are left to the discretion of Member States, with the sole mandatory condition being that the permit must be renewable.
Where the victim wishes to return or whether the residence permit is not granted, the Convention provides for repatriation which must be preferably voluntary and which must take into account the rights, safety and dignity of that person as well as status of any legal proceedings related to the fact that the person is a victim. Member States must however establish repatriation programmes aimed at the "the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour

[213] *Ibid*., Article 13.
[214] *Ibid.*, Article 14.
[215] Report of the Council of Europe, 16 May 2005, no. 197, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 184.

market, in particular through the acquisition and improvement of their professional skills"[216].
Chapter IV deals with substantive criminal law. Here are outlined several important provisions among which measures aimed at criminalizing trafficking, the use of services of a victim of trafficking and criminalization of acts relating to travel or identity documents, together with rules on sanctions and aggravating circumstances. Finally the chapter provides for the non-punishment principles, establishing that MS "shall provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so"[217], a provision that weakens the human rights approach of the Convention as it is not mandatory and covers only cases in which victims have committed an offences because of coercion and not, for example, due to deception or abuse of authority[218]. Additionally, as Gallagher (2010) highlights: "as the provision only covers punishment, States Parties also remain technically free to detain and prosecute trafficked victims for […] involvement in unlawful activities".
The subsequent chapter deals with investigation, prosecution and procedural law, providing important provisions for what concerns victims and witnesses protections, court proceedings and jurisdictional issues. Here it is outlined the principle according to which investigation or prosecution must not be made conditional on a report or accusation of the victim.
Chapter VI addresses cooperation with other states and civil society. Interstate cooperation shall be "to the widest extent possible" and shall be directed at: "preventing and combating trafficking in human beings; protecting and providing assistance to victims; [carry out] investigations or proceedings concerning criminal offences established in accordance with this Convention"[219].
Additionally, Member States are encouraged to cooperate with non-governmental organizations and members of civil society.
The final chapter concerning the monitoring mechanism will be discussed in the next subsection.

2.4 GRETA: The Monitoring Mechanism of the Council of Europe

Amongst the most innovative aspects of the Trafficking Convention is, without doubt, the existence of a monitoring mechanism.
Article 36 of the Convention establishes indeed the Group of experts on Action against Trafficking in Human Beings ('GRETA'). Composed of a minimum of 10 members and a maximum of 15 members to be: "chosen from among persons of high moral character, known for their recognized competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas

[216] *Ibid.*, Article 16.
[217] *Ibid.*, Article 26.
[218] GALLAGHER (2010: 118).
[219] Convention *Convention on Action against Trafficking in Human Beings*, Article 32.

covered by this Convention"[220], GRETA monitors the implementation of the Trafficking Convention. It does so by preparing a report in which it analyses the implementation of a series of selected provisions of the Convention, together with suggestions and proposals on how States can strengthen their compliance.

GRETA's evaluation is based on three main sources: a questionnaire, information from civil society and subsidiaries, and country visits.

At the beginning of each round, GRETA selects a series of provisions on which to base the evaluation. It then sends a questionnaire to State Parties with the aim of collecting information directly from MS. The questions are usually rather general, but States are encouraged to provide links, copies of relevant legislations, action plans and case law to back up their answers.

In addition to States' replies, GRETA can gather information from civil society organizations and organize together with national authorities and eventually independent experts, country visits. Such visits typically consist of meetings with government ministries and agencies but can also include consultation with civil society and international organizations as well as visits to shelters where victims of trafficking receive protection and assistance[221].

On the basis of such information, GRETA then drafts a report concerning the implementation of the provisions as well as proposals on how States can strengthen their compliance. The draft is then transmitted to the Party concerned, which is invited to submit its comments and observations. These comments are subsequently appended to the final evaluation report, which is made public and sent both to the State in question and to the Committee of the Parties. The Committee of the Parties is an organ composed of the representatives of the Parties to the Convention. Upon receiving the final report, the Committee may adopt recommendations indicating the measures to be taken by the Party concerned to implement the GRETA's conclusions as well as promoting cooperation for the proper implementation of the convention. The Committee of the Parties may not modify the reports produced but, as illustrated in the Explanatory Report "this mechanism will ensure the respect of the independence of GRETA in its monitoring function, while introducing a 'political' dimension into the dialogue between the Parties"[222].

[220] *Ibid*., Article 36.
[221] PIOTROWICZ (2017: 46).
[222] Report *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 369.

CHAPTER IV
THE ITALIAN FRAMEWORK

1. Human trafficking in Italy: data and characteristics

In the last decades, Italy has experienced a growing number of trafficked persons, both as a destination country and as a 'gateway' toward other European destinations. Italy is indeed, due to its geographical location in the Southern Mediterranean and its proximity to the African Continent, in particular to Libya and Tunisia, a major entry point for illegal immigration to Europe, a factor that, as we have seen, may significantly contribute to human trafficking. It is for this reason that, as will be outlined in the following sections, the first instruments dedicated to tackling human trafficking are to be found in immigration law.

In this regard, authorities acknowledge that mixed migration flows make it difficult to distinguish between irregular migrants and those who are trafficked and/or in need of international protection. In conflict-affected areas, displaced populations are frequently targeted by human traffickers as escaping violence are often more easily deceived. Migrants and refugees traveling along routes through Libya or sub-Saharan Africa face the same risk. In Libya, for example, militias control some of the detention centers for migrants which are often detained and used for exploitative purposes.

Given the fact that trafficking is often difficult to detect, data varies significantly depending on the reporting organization. As a result, it is often challenging to gain an accurate understanding of the actual number of people involved.

According to the last GRETA report on Italy published on 23 February 2024:

> "Italy remains a country of destination and transit for victims of human trafficking. Since 2018, between 2,100 and 3,800 persons per year have been detected as possible victims of trafficking. While most of them were women, the number of men and transgender victims has increased. Sexual exploitation remains predominant, but the number of victims of labour exploitation is growing. High-risk sectors include agriculture, textile, domestic service, construction, hospitality and restaurants"[223].

The majority of data collected derives from the Observatory of anti-trafficking interventions as well as the National Anti-trafficking Helpline.

According to the latter in particular it is estimated that there are between 15,000 to 20,000 persons at risk[224] of human trafficking in Italy.

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[223] Publication of the Council of Europe Group of Experts on Action against Trafficking in Human Beings, 11 March 2024, *Third Evaluation Round. Italy: Report submitted by the Italian authorities on measures taken to comply with the Committee of the Parties Recommendation CP/Rec(2022)05 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, p. 5.

[224] According to the Anti-Trafficking System Glossary it is considered at risk an individual exposed to conditions of exclusion and hardship which increase the risk of being subject to human trafficking and/or serious exploitation.

According to GRETA, since 2018 between 2,100 and 3,800 persons per year have been detected as possible victims of trafficking[225].
Nonetheless, the number of cases detected remains extremely low. In 2021, only 751 victims of trafficking and exploitation were identified; in 2022, the number of individuals supported by the anti-trafficking system stood at 850[226].
It is thus evident that there is a significant gap between the number of detected victims and the actual magnitude of the phenomenon. Such imbalance is due to a series of reasons including low levels of training for the detection and identification of victims, low attention for other types of trafficking beyond sexual exploitation as well as a low self-reporting rate by victims often deriving from fears of punishment or deportation.
Additionally, cases of trafficking are often qualified as different offences including exploitation of prostitution, facilitation of irregular migration and labour exploitation which therefore reduces the number of situations effectively investigated and prosecuted as human trafficking. In this regard, GRETA has raised concerns that prosecutors and judges may apply a narrow definition of human trafficking, necessarily linking it to the existence of a transnational element, the involvement of a criminal organization, and the absence of the victim's consent, elements which, however, are not constitutive of the internationally accepted notion established by the Trafficking Protocol.
As a result, the number of criminal investigation proceedings has been minimal: for what concerns the former it appears that the investigations opened for the offence of human trafficking were 84 in 2019, 52 in 2020, 44 in 2021 and 42 in 2022[227]. The number rises a little if we take into account also related offences such as reduction and maintenance into slavery and labour exploitation. Nonetheless, according to the US 2024 Trafficking in Persons Report, in 2022, courts convicted only 66 traffickers under Articles 600, 601, and 602 of the Italian Criminal Code, a decrease compared with 81 convictions in 2021 and 80 in 2020.
As reported by the GRETA, in 2024 the majority of detected victims were female even though the number of male and transgender victims has been increasing, especially for labour exploitation. It is reported that there is also a growing number, among victims, of pregnant victims. A significant number of victims were identified during the asylum procedure.
For what concern the purposes, sexual exploitation remains the predominant one, even though the number of detected victims has been decreasing, in part because the COVID-19 pandemic which prostitution indoor and made it more difficult to identify victims. This, however, does not necessarily reflect a genuine reduction in the actual prevalence of trafficking.

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[225] Publication of the Group of Experts on Action against Trafficking in Human Beings, 23 February 2024, 03, *Evaluation Report Italy - Access to justice and effective remedies for victims of trafficking in human beings.*
[226] Data retrieved from UNODC and Numero Verde Anti-Tratta.
[227] Publication of the Group of Experts on Action against Trafficking in Human Beings, 23 February 2024, 03, *Evaluation Report Italy - Access to justice and effective remedies for victims of trafficking in human beings.*

Forced labour also constitutes one of the most prevalent purposes of human trafficking, affecting a wide range of sectors including agriculture, construction, domestic work, and manufacturing. In 2024, for the first time in the history of the Anti-Trafficking system, the number of cases emerging from labor exploitation has surpassed those from sexual exploitation, reflecting changing trends and patterns.
Other forms of exploitation include forced begging, domestic servitude, forced marriage, and forced criminality.
A recurring phenomenon closely linked to human trafficking is the so-called debt bondage, a form of modern slavery in which individuals are forced to work to repay a debt, often incurred to finance their journey to Italy.
Presumed victims have been identified as originating from 101 different nationalities, the majority of which coming from Nigeria but also Côte d'Ivoire, Pakistan, Bangladesh and Morocco.

2. The Merlin Law

Like at the international level, also in Italy the fight against human trafficking initially began as a struggle against sexual exploitation and the exploitation of prostitution. Italy was, indeed, among the signatories of the 1910 International Convention for the Suppression of the White Slave Traffic**,** and the 1921 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, both of which, as we have seen, placed an overwhelming focus on trafficking for the purpose of commercial sexual exploitation and on the abolition of prostitution more generally.
In line with these standards, in February 1958, Italy approved Law no. 75 of 20 February 1950, also known as the Merlin Law, named after the first signatory, Senator Angelina Merlin. Composed of 11 articles and 4 final and transitional provisions, the Law concerned the abolition of the regulation of prostitution and the fight against the exploitation of prostitution of others.
Before its entry into force, prostitution was not only permitted but also strictly regulated. The Cavour Law of 1859 in particular established that prostitution could be legally carried out in private establishments designated for that purpose, the so called "closed houses" or "houses of tolerance". To this end, anyone wishing to open a brothel had to register it with the local authorities and to allow regular inspections. Prostitutes were then required to register with the local police in order to obtain a license issued by the Public Security Authority and to undertake biweekly medical examinations, carried out to diagnose and prevent venereal diseases[228].
In 1948, however, on the basis of the example of a former French prostitute, Marthe Richard, under whose leadership brothels had been closed in France, Senator Angelina Merlin presented a bill aimed at abolishing state regulated prostitution. Such push would later be reinforced by the entry into force of the 1949 United Nations Convention for the Suppression of the Traffic in Persons, which requires States to criminalize the exploitation of prostitution of others.

[228] BONFANTI, DI NICOLA (2015), p. 3.

However, it would take another ten years before the law could be fully enacted, finally coming into force in 1958.
From the outset, the debate surrounding the proposal was particularly intense, accompanied by the testimony of hundreds of women who wrote letters to the Senator. As written in the introduction of the book *"Lettere dalle case chiuse*" of Lina Merlin and Carla Barberis:

> "Rereading the many letters—most of them not anonymous—that Lina Merlin received "from the brothels" opens a window onto the harsh reality of postwar Italy, marked by poverty and moral desolation, which affected several thousand women and their children, trapped in a kind of social ghetto from which it was extremely difficult to escape.
> The letters of support addressed to Lina Merlin present highly compelling arguments, expressed in simple language and with dramatic clarity. These writings reveal not only the desire to no longer be subjected to exploitation in state-controlled brothels, but above all, the hope of reclaiming a normal life—leaving behind the degrading bureaucratic harassment and discriminatory rules that denied them even the most basic civil rights, such as the right to work or to marry public employees"[229].

The debate surrounding the Merlin Law took place in a context in which brothels were widely considered a necessary evil to regulate men's 'natural instincts' and in many cases preserve marriages. Discussion touched upon serval different topics from the abolition of exploitation to those concerning public health and the spread of venereal diseases.
Despite this resistance, Merlin consistently argued that the existing system of regulation was fundamentally incompatible with the principles of the Italian Constitution. In particular, she first referred to Article 2, which recognizes and guarantees the inviolable rights of the individual and affirms the primacy of the person over the State, an article which, in the opinion of Merlin "implicitly condemns regulation [of prostitution], which justifies the degradation of a large number of unfortunate women under the pretense of providing a social service"[230]. Merlin further invoked Article 3, establishing the equality of all citizens before the law, Article 32, recognizing health as a fundamental right of the individual and Article 41 according to which economic activities cannot be conducted in a way that harms human dignity.
Support for the law came from the Socialists, Communists, Republicans, Christian Democrats, and some Social Democrats. Opposing it were the Liberals, Radicals, members of the Italian Social Movement, Monarchists, the majority of the Social Democrats.
Eventually, ten years after it was first presented, the law will be approved on 20 February 1958 with 385 votes in favor and 115 against and will enter into force on 20 September of that same year.
Moving on to the content of the law, Article 1 states that: "the operation of brothels is prohibited within the territory of the State and in any territories under

[229] MERLIN, PERTINI (2017).
[230] *Ibid*., p. 7.

the administration of Italian authorities"[231], ordering their closure within six months from the entry into force of the law[232].
Importantly the law banned state regulated brothels but not prostitution as such which remained legal, provided that it occurred between consenting adults. The primary concern of the law is thus to prevent anyone from taking advantage of a person's condition to induce them into prostitution and to profit from it. To this end, the law introduced, in Article 3, a series of crimes punishable by imprisonment from two to six years among which recruiting a person for the purpose of engaging them in prostitution, inducing an adult woman to engage in prostitution, inducing a person to travel to another State or to a place other than their usual residence for the purpose of engaging in prostitution, operating within associations that recruit or exploit prostitution, facilitating or exploiting the prostitution of others.
Article 4 then establishes a series of cases in which the punishment is to be doubled, including where the act is committed through violence, threats, or deceit. It is thus clear that, though not yet systematically defined and while exclusively focused on prostitution, the Merlin Law already, contained all the elements of human trafficking which will then be defined by the Trafficking Protocol namely the act, here evident in the recruitment or the inducement to relocate, the means, seen in the aggravating circumstance of the use of violence, threat or deceit and finally the purpose namely exploitation of prostitution.
Notice how, as in cases of human trafficking defined at the international level, what is prohibited is the act of seeking women for the purpose of engaging them in prostitution, independently of whether prostitution actually occurs. What is thus necessary for the act to constitute an offence is not the factual occurrence of prostitution, but solely a specific *mens rea*: the perpetrator must act with the aim of engaging the woman concerned into prostitution for the purpose of exploitation.
In the second chapter of the law, provisions are made for re-education and rehabilitation of ex- prostitutes. To this end, Article 8 provides for the establishment of welfare institutions aimed at protection, assistance, and re-education of women which used to work in brothels.
Finally, the transitional provisions provided for the establishment of the first Female Police Corps, which from that point onward would substitute the police for what concerns the prevention and repression of crimes against public decency, juvenile delinquency, and prostitution. Such unit will be later dissolved in 1981 by Law No. 121/1981 and integrated into the regular *Polizia di Stato*.

3. The Consolidated Immigration Act (Legislative Decree no. 286/1998)

Beyond the Merlin Law, another significant step taken by the Italian State to combat human trafficking dates back to 1998, when the Consolidated

[231] Law 20 February 1958 No. 75, *Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui*, Art. 1.
[232] *Ibid*., Art. 2.

Immigration Act was approved through Legislative Decree no. 286/1998. Officially known as the Consolidated Act on Provisions Concerning Immigration Regulations and Rules on the Status of Foreign Nationals, the Act is composed of 49 articles, and it is based on three fundamental principles: (i) the regulation of migration flows, (ii) the fight against irregular immigration, and (iii) the granting of a broad range of rights aimed at the integration of legally residing foreign nationals.
While primarily focused on immigration the law contains, in Article 18, an important instrument for what concerns protection of victims of trafficking and exploitation. At the time of its adoption, prior to both the Palermo Protocol and the EU Framework Decision, there was still no widely accepted definition of human trafficking, and judicial experience with the phenomenon was often limited to case of sexual exploitation of women. Nonetheless, Italy recognized the need not only to combat human trafficking but also to prioritize the protection and assistance of victims, marking a significant shift from the traditional approach, primarily focused on criminalization.

3.1 Article 12 - Facilitation of Illegal Immigration

A first provision aimed at fighting human trafficking can be found in Article 12 concerning the facilitation of illegal immigration. As it can be inferred from the title, the Article is mainly concerned with punishing smuggling (rather than trafficking). Specifically, it criminalizes the act of who "promotes, directs, organizes, finances, or carries out the transportation of foreign nationals into the territory of the State, or performs other acts aimed at unlawfully facilitating their entry into the territory of the State, or into another State of which the person is not a citizen or does not hold permanent residence status". The prescribed penalty includes a term of imprisonment ranging from two to six years and a fine of 15,000 euros for each individual involved[233].
Although Article 12 does not explicitly address trafficking, its significance emerges more clearly when considering the interaction between smuggling and trafficking. As seen in the chapter two, human trafficking and smuggling are two different crimes; while the former concerns action undertaken with the purpose of exploiting an individual, often, but not exclusively, for the purpose of forced labor or sexual exploitation, the latter
involves the procurement of illegal entry of a person into another state in order to obtain a financial profit. Although on paper the two appear as distinct phenomena that affect people in different ways, they are, in reality, profoundly interlinked and often overlap. As earlier noted, it frequently happens indeed that individuals entering a country as smuggled migrants, because of a series of factors including irregular status, poverty, smuggling indebtedness, become vulnerable, more susceptible to exploitation and eventually end up as victims of trafficking.

[233] Legislative Decree, 25 July 1998, No. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, Art. 12.

As a result, the difficulty in distinguishing between the two, further exacerbated by the fact that, at the time of entry into force of the Consolidated Immigration Act, the Organized Crime Convention and the related Protocols had not yet been written nor approved, led to their convergence in the Italian legal framework.
Article 12(3ter) provides, indeed, two aggravating circumstances according to which the penalty is increased from one-third to one-half, and a fine of 25,000 euros applies for each person for which illegal entry was facilitated. The one which concerns us is stated in letter a) which includes acts:

> "[…] committed with the purpose of recruiting individuals to be destined for prostitution or, in any case, for sexual or labor exploitation, or they concern the entry of minors to be employed in illegal activities in order to facilitate their exploitation".

The concept of recruitment and exploitation immediately evokes the notion of human trafficking, reflecting, the fine line that separates it from smuggling.
Although the provision was originally adopted at a time when no specific legislation against trafficking existed, the later introduction of laws specifically addressing this phenomenon has made the wording of Article 12, paragraph 3-ter increasingly problematic.
First of all, it results in a partial legislative overlap between Article 12(3-ter) of the Immigration Act and Article 601 of the Penal Code, which incorporates the definition of trafficking as set out in the Palermo Protocol.
Such overlap may then lead to the possibility for the Italian legislator to overcome its obligation in terms of protection and assistance to victims of trafficking by recognizing the individual not as a trafficking victim but rather as a smuggled person. Given that, Article 10bis of the Consolidated Text on Migration, criminalizes anyone who enters the State irregularly, the smuggled migrant even recruited and entered the state because recruited by someone else for purposes of exploitation, may end up being treated as an offender and eventually prosecuted[234]. Such a norm then, not only contradicts the Smuggling Protocol, according to which migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling[235], but also makes the already difficult task of identifying victims of trafficking and other forms of severe exploitation even more challenging, given the already known fears of victims, now exacerbated by the risk of criminalization.
Nonetheless, the overlap between the two is not total as Article 12(3-ter) lacks some of the elements of trafficking defined in the Palermo Protocol.
First, the Article, as said before, is meant to address cases of smuggling, which, by its very nature, necessarily presupposes the movement from one state to another. As a result, even in the case of recruitment for exploitative purposes, Article 12 to apply, this must involve a transnational movement of an illegal

[234] MINETTI (2020).
[235] Treaty of the UN General Assembly, 15 November 2000, *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime,* Art. 5.

nature. It follows that cases of internal trafficking, as well as cross-border trafficking that occur lawfully, are automatically excluded.
Second, Article 12(3-ter) only makes reference to exploitation for sexual purposes, for forced labor or for the employment of minors in illegal activities, thus ignoring not only the possible employment of adults in illegal activities, but also other possible exploitative purposes such as trafficking for the purpose of organ removal or forced begging. Given that the Immigration Act was enacted before the entry into force of the Palermo Protocol, one could argue that some legislative omissions may be understandable, were it not for the fact that, over the years, the Act has undergone several amendments, yet these gaps have remained unaddressed, and no substantial effort has been made to align the provision with the international framework.
Third, and perhaps most importantly, Article 12 lacks the means element. While other states have omitted such an element from their national definition of trafficking, its presence or absence represents a crucial factor in the distinction with smuggling. Smuggling in fact generally presupposes the consent of the person being transported, whereas in trafficking, the victim's consent is vitiated, invalid, having been obtained through means such as violence, threat, coercion, deception etc. The absence of such feature thus marks an important factor in the determination of what provision should be applied.

3.2 Article 18 – Residence Permit for Social Protection

For what concerns victims' protection, the most important article in this regard is Article 18 concerning the residence permit for social protection.
The Article finds its origins in an earlier provision, namely Decree Law of 13 September 1996, no. 477 concerning urgent provisions on immigration policy and for the regulation of entry and stay in the national territory of citizens of countries not belonging to the European Union. The latter, indeed, envisaged the release of a residence permit in cases where a non-EU citizen was "found to be at serious risk as a result of cooperation or statements made during preliminary investigations or trial"[236]. If such was the case, the Police Commissioner could issue a special permit, provided that the potential return to the concerned individual to its country of origin posed a serious threat to their personal safety and that the contribution offered was of particular importance for the identification and capture of the offenders or the dismantling of the criminal organization. It is thus evident the incentive-based nature of the provision, primarily aimed at combating crime rather than protecting and integrating the victims. Such nature was also reflected in its duration, of one year, extendable only for procedural or security reasons and which could be revoked when the conditions required for its issuance were no longer met, if the procedural or security needs ceased, or if the foreign national engaged in conduct incompatible with their stay in Italy.

[236] Legislative Decree 13 September 1996, No. 477, *Disposizioni urgenti in materia di politica dell'immigrazione e per la regolamentazione dell'ingresso e soggiorno nel territorio nazionale dei cittadini dei Paesi non appartenenti all'Unione europea*, Art. 5.

The new Article 18 of Legislative Decree no. 286/1998, on the other hand, offers a broader degree of protection. It provides for the possibility for the Chief of the Police, also upon proposal by the Public Prosecutor or with the favorable opinion of the latter, to issue a residence permit for reasons of social protection to foreign nationals who are subjected to violence and severe exploitation, and who, in attempting to escape the control of criminal organizations, face concrete dangers to their personal safety. Such risk may arise either from statements made during criminal proceedings or simply from the victim's attempt to break free from the control of the criminal organization. The aim of the permit is, as stated in the Article, to "allow the foreign national to escape the violence and influence of the criminal organization and to participate in an assistance and social integration program".

According to the terms of the Article, a situation of violence or exploitation can be identified in the course of police operations, criminal investigations or judicial proceedings concerning one of the offences listed in Article 3 of Law No. 75 of 20 February 1958 (Merlin Law) or one of those provided for in Article 380 of the Code of Criminal Procedure.

The first one, criminalizes various forms of exploitation linked to prostitution including inducing someone into prostitution, recruiting someone for purposes of prostitution, managing, organizing or other places of prostitution, participating in or supporting national or foreign organizations involved in recruiting people for prostitution or in the exploitation of prostitution as well as facilitating or exploiting the prostitution of others in any form.

On the other hand, Article 380 of the Code of Criminal Procedure establishes a series of cases in which the police must carry out a mandatory arrest when a person is caught in the act of committing a serious intentional crime including slavery, trafficking and labour exploitation.

Additionally, situations of violence or serious exploitation can also be identified during social assistance interventions carried out by local social services.

As provided in the Implementing Regulation of Legislative Decree No. 394 approved just one year later, the Article foresees to paths through which the residence permit can be obtained:

a) a judicial path, which is triggered by statements made by the foreign national as part of an investigation concerning acts of violence or exploitation;
b) a social path, triggered where local social services or authorized NGOs/organizations identify a situation of violence or exploitation independently of the presence of a criminal trial.

The objective of such dual track system is to ensure that victims of trafficking can obtain protection not only by filing a formal complaint to the judicial authorities but also through the intervention of social services explicitly authorized by law to carry out assistance program. Given that, as we have seen, victims of trafficking are often, at least initially, afraid to turn to the police or judicial authorities, the social path represents an important alternative through which they can still access protection. Such an alternative may also play a

crucial role in building the victim's trust in the system, eventually leading to their collaboration in the identification and prosecution of traffickers.
If one of the circumstances above applies, the various elements demonstrating that the conditions set out in Article 18 are met "shall be communicated to the Chief of Police, with particular reference to the seriousness and immediacy of the danger, as well as to the significance of the contribution made by the foreign national to effectively combat the criminal organization or to identify or apprehend those responsible for the offences mentioned in the same paragraph"[237].
Note that, despite the presence of the social path the fact that among the elements figures the significance of the contribution made to the prosecution of those responsible seem to suggest that cooperation is still the preferred basis for granting the residence permit. Such interpretation is also confirmed by the fact that, according to NGO representatives, the "social path" is rarely applied
Before the release of a permit, the Chief of Police must verify the existence of other conditions namely the state of danger, the existence of an assistance program, the victim's consent to participate in the program, and the eventual conditions of the latter.
This last aspect represents an important limit as the release of the permit is made conditional on the effective existence, operation and accessibility of the assistance program, which must have been previously designed, approved and funded and to which the individual must be allowed to access.
The granting of the permit is then further limited by the fact that the investigation of the criminal police must necessarily one of the offences listed in Article 3 of Law No. 75 of 20 February 1958 or one of those provided for in Article 380 of the Code of Criminal Procedure, thus precluding situation of violence of exploitation that may come up in the course of operations concerning other types of offences.
Nonetheless is evident how the Article represents a significant innovation, as the law introduces a series of measures more than ten years before such provisions were adopted by the European Union[238], most notably the possibility of granting protection without necessarily requiring cooperation with the authorities. An approach which for the first time puts victim's rights at the center of the fight against trafficking, considering them as a priority which can't be subordinated to criminal proceedings.
As we have seen, some instruments, such as the EU Residence Permit Directive, still do not provide for this possibility.
The residence permit, labelled "special cases", has a duration of six months, renewable for a year or more if necessary for reasons of justice. It may be withdrawn if the social program is interrupted or in cases of conduct

[237] Legislative Decree 25 July 1998 No. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, Art. 18.
[238] As seen in the previous chapter, it is only in 2011 with the enactment of Directive 2011/36/EU that the European Union imposed the obligation to ensure that assistance and support to trafficking victims is not made conditional on their cooperation in criminal investigations or judicial proceedings.

incompatible with the latter as well as of the conditions that originally justified its issuance no longer apply, that means for example when the person is no longer in danger.
The residence permit "grants access to social assistance services and education, as well as registration on employment lists and the performance of subordinate (dependent) work, subject to minimum age requirements"[239].
Eventually the permit may also be converted into a residence permit for study purposes. Additionally, if, upon the expiration of the residence permit, the individual concerned is employed, the permit may be extended or renewed for the duration of the employment relationship.
In 2007, with the amendments introduced by Law No. 17 of 26 February, the possibility of obtaining the residence permit was extended to European citizens. As a result, other than being entitled to the right to movement, entry and residence in the territory of a Member State under EU law, those who are victims of violence or serious exploitation and face a situation of serious and immediate danger must be able to access the relevant assistance and social integration programmes and enjoy all of the related rights.
Despite its innovative character Article 18 also presents several shortcomings.
First the lack of a definition of the "concrete danger" the individual has to face for the release of the permit leaves to the Chief of Police a considerable margin of discretion which often fails to take into account the specific needs and vulnerability of the victim.
Second, the extremely short duration of the permit, of only six months, provides wholly inadequate to allow the victim to recover from the abuses and exploitation to which he or she was subject and to reintegrate into society. While the permit may be converted into one for work purposes it appears totally disconnected from the actual timeframes needed for inclusion in the labor market[240].
Additionally, assistance programs have often been experienced by victims as forms of isolation and deprivation of personal autonomy which only reinforce their vulnerability. To this it must be added the fact that most of the time such programs lack the adequate resources needed to respond to a continuously evolving phenomenon, ultimately proving ineffective[241].

4. Law 228/2003 and the subsequent amendments to the Italian Penal Code
In addition to the measures introduced by Article 18 of the Italian Immigration Law, intended to protect victims, Italy has also enacted measures to criminalize human trafficking in itself. The most important law in this regard is Law No.228 of 2003, enacted to implement Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.
Officially entitled Measures against Human Trafficking the law introduces new criminal provisions and amends existing ones, more specifically Articles 600,

[239] Legislative Decree *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*.
[240] PALUMBO, ROMANO (2022).
[241] *Ibid*.

601, and 602 of the Italian Penal Code which concern the crimes of "reduction or maintenance in slavery or servitude," "trafficking in persons," and "purchase and sale of slaves". In particular, the Law redefines and strengthens such offences, ensuring a stronger legal framework which complements the victim-centered approach promoted by Article 18 of the Consolidated Immigration Act. The initial provisions, particularly Articles 1 to 4, are thus primarily focused on the reformulation of the relevant criminal offences in the Italian Penal Code. These will be examined in detail in the next section.

Articles 4 to 11 introduce amendments extending criminal and administrative sanctions to legal entities involved in trafficking crimes. They adapt investigative tools like wiretapping, include trafficking offences under anti-mafia laws, and provide protections and benefits for collaborators with justice

The Law then provides, in Article 12, for the establishment of a Fund for Anti-Trafficking intended to finance assistance and social integration programmes for the victims, as well as other forms of social protection provided for in Article 18 of the Consolidated Immigration Act. The funds are made up of resources allocated pursuant to Article 18 of Legislative Decree No. 286 of 1998, as well as amounts resulting from the confiscation of assets and properties belonging to convicted traffickers.

Article 13, on the other hand, establishes a special assistance program aimed at providing immediate and transitional support to victims of the crimes of slavery and human trafficking, as defined under Articles 600 and 601 of the Italian Penal Code. The Program aims at guaranteeing victims' adequate access to housing, food, and healthcare, within the limits of the allocated financial resources. In cases involving foreign victims, these are entitled to additional protections under Article 18 of the Consolidated Immigration Act. Special attention is to be given to unaccompanied foreign minors "by providing a specific assistance program that ensures adequate conditions of reception and psycho-social, medical, and legal support, including long-term solutions that extend beyond the age of majority"[242].

Article 13 also introduces the National Plan against Trafficking and Serious Exploitation with the objective of defining "multi-year strategies for the prevention and fight against human trafficking and severe exploitation, as well as actions aimed at raising awareness, promoting social prevention, identifying victims, and supporting their social integration".

Article 14 contains preventive measures. It establishes that the Ministry of Foreign Affairs must establish cooperation strategies, international meetings and information campaigns in the victims' countries of origin, taking into account their level of cooperation and their respect of human rights. In addition, the Ministers of the Interior, for Equal Opportunities, of Justice, and of Labour and Social Policies organize, where necessary, training courses for relevant personnel. Finally, the last two articles contain coordination provisions and transitional rules.

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[242] Legislative Decree 25 July 1998 No. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, Article 13.

4.1 Article 600 - Enslaving or Keeping Persons Enslaved

The original version of Article 600 of the Italian Penal Code recited:

> "Anyone who reduces a person to slavery, or to a condition analogous to slavery, shall be punished with imprisonment from five to fifteen years".

Enacted in 1931, the provision remained largely unapplied for decades, due in part to its vague formulation. The lack of an internal definition of slavery or conditions analogous to slavery, indeed, inevitably tied the interpretation of the Article to the definition provided first, by Article 1 of the 1926 Slavery Convention and later by Article 1 of the 1956 Supplementary Convention on the abolition of slavery.

Second, due to the presence of Article 603, now abrogated, according to which: "anyone who subjects a person to their control in such a way as to reduce them to a total state of subjugation shall be punished with imprisonment from five to fifteen years", Article 600 was largely interpreted as covering only situation of *de jure* slavery, as opposed to *de facto* slavery. However, given that slavery had long been abolished almost everywhere as a legal status of the human person, the provisions was hardly ever enforced, and slavery was considered an offence that could be committed only abroad, in those few communities that still recognized and practiced it[243]. The expression "conditions analogous to slavery" did, to some extent, include those de facto situations set out in the 1956 Slavery Convention such as debt bondage, forced tenancy, non-consensual marriage and transfer of women, child exploitation via transfer of custody for labor. Nonetheless, the absence of a national catalogue or detailed legal framework to define and classify these conditions led to inconsistent implementation and limited practical effect.

In 1981, the Italian Constitutional Court, through sentence n.96 declared article 603 unconstitutional. The decision was based on the fact that the provision violated the principle of legality, lacking clarity in its constitutive elements. In the words of the Court:

> "The legislator, by establishing a criminal sanction for anyone who subjects a person to their power in such a way as to reduce them to a total state of subjugation, would have in effect entrusted the concrete identification of the elements of the offence—characterized by generic intent, undefined conduct, and an indeterminate result—to the arbitrary discretion of the judge"[244].

The abolition of Article 603, combined with the inadequacy and lack of specificity of Article 600, created the need for a reform of the latter, also driven by the necessity to comply with international standards on the matter.

As a result, Law 228/2003 completely rewrote the norm.

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[243] BERNASCONI (2013), p. 74.

[244] Judgment of the Italian Constitutional Court, 9 April 1981, n. 96, para. 1.

The new article read as follows:

> "Anyone who exercises over a person powers equivalent to those of ownership, or who reduces or maintains a person in a condition of continuous subjugation by forcing them to perform labor or sexual services, to beg, or otherwise to carry out activities involving their exploitation, shall be punished with imprisonment from eight to twenty years.
> The reduction to or maintenance in a state of subjugation occurs when the conduct is carried out through violence, threats, deception, abuse of authority, or by taking advantage of a situation of physical or psychological inferiority or a state of necessity, or through the promise or giving of money or other benefits to the person having authority over the individual.
> The penalty is increased by one third to one half if the acts referred to in the first paragraph are committed against a person under the age of eighteen, or are aimed at the exploitation of prostitution, or at subjecting the victim to the removal of organs".

From the outset, the difference from the previous formulation becomes evident. The offence described above is indeed characterized by multiple alternative conducts.
The first type of conduct covered punishes slavery intended as the "exercise of powers *equivalent* (emphasis added) to those of ownership". Such conduct, which is inherently exploitative, presupposes an objectification of the victim. Through this wording, the legislator acknowledges that the offence of slavery does not pertain solely to situations legally recognized as such, but also to circumstances in which the victim is, in practice, treated as an object of possession, even in the absence of any formal legal status.
The second type of conduct, on the other hand, which may be classified as servitude, covers the reduction or maintenance of a person "in a condition of continuous subjugation by forcing them to perform labor or sexual services, to beg, or otherwise to carry out activities involving their exploitation". By eliminating the notion of a "condition analogous to slavery," the new article covers a much more specific set of circumstances explicitly listed.
In addition, differently from the previous version, the new one addresses not only reduction into slavery but also maintenance. These two must not be interpreted in terms of immediacy or permanence, rather as elements describing the nature of the conduct; while the repealed provision, dealing only with "reduction" necessarily presupposed a prior *status libertatis* and thus could not be applied to those already in a state of slavery, the current norm punishes both those who initially engage in the conduct by enslaving someone as well as those who subsequently prolong an already existing situation which was created by others, thus ensuring the continuation of the victim's deprivation of liberty[245].
For such an offence to occur two elements must be present: (i) the reduction or maintenance of a person in a status of subjugation must occur through one of the means described within the article such as violence, threat, abuse of authority etc.; (ii) the coercion of the victim to perform labor, sexual services

[245] CORSELLI (2011), p. 13.

or other kinds of exploitative activities. The inclusion of the residual clause "or otherwise to carry out activities involving their exploitation" confers an open-ended character to the list, thus preventing it from being considered exhaustive. Two key clarifications must be made regarding these elements. First, while the notion of exploitation is not defined, it must be kept into account that such concept must not necessarily assume an economic dimension, but it may also arise from mere self-serving purposes[246]. Second, while means such as violence, threat etc. are necessary to establish and maintain the state of subjugation, the Court of Cassation has clarified that the coercion to perform exploitative activities does not constitute an additional act to be carried out through such means but rather constitutes the direct consequence of the state of subjugation which in itself, results in coercion[247]. In other words, it is not necessary for the perpetrator to resort to one of the means listed each time the victim is required to perform an activity as the ongoing state of subjugation is in itself enough to generate such coercion.

For the offence to be constituted an additional element is then necessary: the victim must indeed be kept in a state of *continuous* (emphasis added) subjugation through one of the means specified in the Article. To put it differently, it is not enough that the victim is sporadically required to perform exploitative acts, rather such condition must be sustained and ongoing. It must be noted, however, that the state of continuous subjugation does not imply a complete denial of personal freedom. As the Court of Cassation clarified indeed: "The condition of segregation and subjugation to another's power of control does not cease when it is temporarily relaxed, allowing for moments of conviviality and apparent benevolence, aimed at better bending the victim's will and overcoming their resistance"[248].

For what concerns the means described in the Article through which subjugation may be achieved or perpetrated, it should be noted that differently from EU Framework Decision 2002/629/JHA to which Law 228/2003 was meant to give effect, the legislator choose not to include the controversial and ambiguous term "abuse of a position of vulnerability" using instead expression to it related such as the abuse of a situation of physical or psychological inferiority as well a state of necessity. This latter in particular calls for a certain clarification. At first glance, indeed, one might be inclined to think that the state of necessity refers to what contained in Art. 54 of the Penal Code. The latter, however, by excluding the punishability of a person who has committed a crime because compelled by the necessity to save himself or others from an imminent danger of serious harm, represents a justification for an act not an element of vulnerability and would thus end up applying not to the victim, but rather to the offender.

On the other hand, as the Court of Cassation subsequently explained, the state of necessity refers uniquely to the victim and not to the perpetrator. As a

[246] PECCIOLI (2005), p. 98.
[247] Judgment of the Court of Cassation, Section V, 1 February 2006, n. 4012.
[248] Judgment of the Court of Cassation, Section V, 18 December 2000, n.13125, Gjini.

consequence, it shall not be interpreted as a justification under Article 54 of the Penal Code[249], but rather as a precondition for the exploitation of the victim. In this sense, the term "necessity" should be better understood as "state of need" comparable with the notion found in Article 644 of the Penal Code concerning aggravated usury committed against someone in a state of need as well as the one contained in Article 1148 of the Civil Code which allows contract rescission when one party exploits the other's state of need to gain an unfair advantage. Accordingly, it should be understood as "any condition of weakness, or of material or moral deprivation, affecting the victim, capable of influencing or undermining their personal will"[250].

For what concerns the difference between the conducts prescribed by Art. 600, two aspects stand out: on the one hand, the permanent or habitual nature of the offence; on the other hand, the form of the offence.

While slavery does not require anything beyond the exercise of a dominion over the victim, qualifying as a permanent offence "*a forma libera*", being punishable independently on the manner in which the illicit was committed, servitude characterizes as an offence "*a forma vincolata*". Servitude, indeed, derives from the combination of two acts: first, continuous subjugation by means of violence, threat etc. and second coercion to perform certain services. In this case, the offence is not only permanent but also habitual "since its commission requires the repetition over time of multiple acts of the same kind. This is inferred from the very definition of servitude as a state of continuous subjugation, accompanied by a plurality of performances carried out by the victim"[251].

Finally, it should be noted that despite the difference between the two offences, both are ultimately directed at the exploitation of the victim and their services and are punished by the same penalty, namely imprisonment ranging from eight to twenty years. As a consequence, even though one could have the impression that servitude represents a less serious offence than slavery such hypothesis is refuted by the identical sanction envisaged for both conducts, which makes it difficult to clearly distinguish between the two crimes in practice.

In recent years, the norm has undergone further amendments. First, Law No. 108 of 2 July 2010, abrogated the last paragraph, which also appeared in Articles 601 and 602 of the Penal Code, concerning aggravating circumstances, reuniting the latter instead under a single Article 602-ter[252].

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[249] Article 54 of the Criminal Code provides that: "A person is not punishable for an act committed out of necessity to save themselves or others from an imminent danger of serious harm to the person, provided that the danger was not voluntarily caused by them, could not otherwise be avoided, and the act is proportionate to the danger".

[250] Judgment of the Court of Cassation, Section III, 25 January 2007, n. 2841.

[251] *Ibid*.

[252] Article 602-ter of the Criminal Code reads: "The penalty for the offences provided for in Articles 600, 601, and 602 is increased by one-third to one-half:

a) if the victim is under eighteen years of age;
b) if the acts are aimed at exploiting prostitution or for the purpose of subjecting the victim to organ removal;

Second, Legislative Decree No. 24 of 2014 implementing Directive 2011/36/EU introduced some minor modifications including the reference to coercion "to engage in unlawful activities" involving the exploitation of the victim, as well as to coercion "to undergo organ removal". It has been noted, nonetheless, that this latter practice, being instantaneous in itself, might not be consistent with the continuous nature of the state of subjugation required by the provision, a paradox which could be resolved by interpreting coercion to organ removal as coercion to consent to the removal, performed in accordance with the procedures outlined in the second paragraph of Article 600 of the Penal Code, thereby establishing the required state of subjugation[253].
An additional innovation introduced can be seen in the second paragraph where, among the means used to reduce the victim in a state of subjugation, now appears the concept of "abuse of a situation of vulnerability".

4.2 Article 601 - Trafficking in Persons

The original version of Article 601 read as follows:

> "Whoever engages in trafficking or otherwise trades in slaves or in persons in a condition analogous to slavery shall be punished with imprisonment from five to twenty years".

The Article did not provide a definition of trafficking, which at the time had not yet been codified at the international level, nor did it clearly distinguish trafficking from the slave trade.
Rather the two concepts were treated almost interchangeably. The definition of trafficking was therefore derived from international instruments in force at the time, in particular the 1926 Geneva Convention to Suppress the Slave Trade and Slavery according to which slave trade referred to:

> "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves"[254].

It is thus evident, straightaway, the strong bond between trafficking and slavery, not only in legal terms but also in the ultimate purpose of exploitation and commodification. This conceptual overlap, however, led not only to a lack of legal clarity but also to a failure to take into account more subtle and systemic forms of exploitation, hindering both effective prosecution and victim protection. Such shortcomings were also exacerbated by the fact that the

c) if the act results in a serious danger to the life or physical or mental integrity of the victim".

[253] Publication of the Italian Court of Cassation, 27 March 2014, *Relazione III/04 del 2014: Attuazione della direttiva 2011/36/UE relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime.*

[254] Convention of the League of Nations, 25 September 1926, C*onvention to Suppress the Slave Trade and Slavery*, Art. 1.

original version of the Article used the plural term “persons”, thus classifying as trafficking or slave trade only an act committed against a multitude of victims. Where the conduct concerned only one person, indeed, this was considered as falling within what prescribed by Art. 602 concerning the alienation and acquisition of slaves.
The emergence of new forms of exploitation and the increasing awareness towards human trafficking underscored the urgent need for a reform of the existing provisions. As a result, Article 2 of Law 228/2003 considerably revised the previous norm, replacing it with a much more detailed one:

> "Anyone who engages in the trafficking of a person in the conditions referred to in Article 600, or who, in order to commit the offences referred to in the first paragraph of that same article, induces such person through deception, or compels them through violence, threat, abuse of authority, or by taking advantage of a situation of physical or psychological inferiority or a state of necessity, or through the promise or giving of sums of money or other benefits to the person having authority over them, to enter, stay in, leave the territory of the State, or to move within it, shall be punished with imprisonment from eight to twenty years. The penalty shall be increased by one third to one half if the offences referred to in this article are committed against a person under the age of eighteen, or are aimed at the exploitation of prostitution, or at subjecting the victim to the removal of organs".

Also Article 601, like Article 600, outlines two types of conduct. The first one is that of who engages in the trafficking of a person already in a state of subjugation pursuant to Article 600. Here, the *status libertatis* of the concerned victim has already been violated and actually represents a necessary prerequisite for the commission of the offence. If, indeed, the offender would have first handedly reduced the victim into slavery, such an action would not be classified as an offence under Article 601, but rather under Art. 600.
Differently from the previous version, the new one utilizes the singular “person”, thus implying that the unlawful conduct can involve a single individual. As a consequence, if trafficking involves more than one person, there will be a plurality of offences under Article 601.
As for reduction or maintenance into slavery, also in the case of trafficking the offence is to be considered only potentially habitual, given that a single instance of trafficking involving one individual is sufficient for the offence to be constituted. None of the two versions of the norm, however, properly defined the conduct of ‘trafficking’, a gap which will only be resolved in 2014 with the reception of Directive 2011/36/EU.
The second type of conduct, which may be labelled “capture for the purpose of enslavement” punishes anyone who, in order to commit the crimes outlined in Article 600 that is reduction or maintenance in a state of slavery or servitude, induces the victim through unlawful means to enter, stay in, leave the territory of the State, or to move within it.
Note that the means through which the victim is induced to move are the same as those outlined in Article 600 and thus won’t be further discussed.
Concerning the action of the perpetrator, a debate unfolds here between those who believe that the word “induces” signifies that for the conduct to be realized

it is not necessary for the victim to actually move but only to be convinced of moving by the perpetrator. Such interpretation would, however, shift the threshold of liability to a moment prior to the actual transfer of the victim, making it enough that the offender intended the transfer, and that the victim had merely been mentally persuaded to move[255]. Nonetheless, in the view of the majority, a view also shared by the present author, for the offence to be completed the inducement must lead to the effective entry, stay, transfer, or exit of the trafficked person from Italian territory[256], thus requiring more than a simple intent of the victim.

Note how both the expressions "stay" and "move within" acknowledge that trafficking must not necessarily have a transnational dimension but can also occur nationally, without even requiring the movement of the victim, but simply their permanence within the national territory.

In contrast to what provided for in the first conduct, here the prerequisite is not a prior state of slavery but, on the contrary, one of freedom. In this case then we are faced with a specific intent offence, requiring not only knowledge on the part of the offender of the *status libertatis* of the victim but also a specific *mens rea* namely the intention to reduce or maintain the concerned individual into a state of subjugation. This means that the crime occurs independently of whether such actually takes place and regardless of whether the person responsible for the subjugation is someone different and not involved in the victim's movement. That said, the wording of the provision, in particular the sentence "in order to commit the offences" seems to imply a subjective identity between the person who induces or forces the victim to move and the one who, later on, intends to subject them to servitude or slavery[257]; in reality it is often the case that the person who manages the transfer of the victim is different from the one who exploits her. Nonetheless, an interpretation of the provision that includes also the conduct of traffickers not directly involved in the final exploitation could contrast with the principle of legality[258].

Moving on to analyzing the difference between the two conducts, from a certain point of view they seem to be opposite and almost incompatible; if indeed in the first conduct the status of subjugation of the victim represents a pre-requisite, in the latter this becomes the ultimate aim.

It is precisely because of this, however, both conducts do not generally concur with Article 600 as in the first case the conduct is automatically absorbed within Article 601 while in the second case it represents the 'normal' development of the action and thus it constitutes a non-punishable *post-factum*.

Furthermore, while the first conduct is the one properly labelled as "trafficking", it is actually the second type of conduct prescribed that actually contains the three elements defined by the Palermo Protocol namely the act, means and purpose. Being however punishable by the same sentence, namely

[255] CORSELLI (2011), p. 23.
[256] PECCIOLI (2005), p. 116.
[257] CORSELLI (2011), p. 25.
[258] BERNASCONI (2013), p. 80.

imprisonment ranging from eight to twenty years, one could argue that both conducts simply represent two different aspects of the same phenomenon.
Legislative Decree No. 24 of 2014 has led to a complete rewriting of the article, more in line with European standards and with the internationally accepted definition of trafficking. The current version of Article 601 now recites:

> "Anyone who recruits, brings into the territory of the State, transfers — even outside it — transports, transfers authority over, or harbors one or more persons who are in the conditions referred to in Article 600, or who carries out the same acts with respect to one or more persons by means of deception, violence, threats, abuse of authority, or by taking advantage of a situation of vulnerability, physical or psychological inferiority, or need, or by offering or giving money or other benefits to the person who has authority over them, for the purpose of inducing or forcing them to perform labor or sexual services, to beg, or otherwise to engage in unlawful activities involving their exploitation, or to undergo the removal of organs, shall be punished with imprisonment from eight to twenty years.
> The same penalty applies to anyone who, even without using the means referred to in the first paragraph, carries out the above-mentioned acts against a minor.
> The penalty shall be increased by up to one third for any captain or officer of a national or foreign ship who commits or participates in the acts described in the first or second paragraphs.
> Any crew member of a national or foreign ship that is intended — before departure or during navigation — for trafficking, shall be punished, even if none of the acts under the first or second paragraph or relating to slave trade have been committed, with imprisonment from three to ten years"[259].

The new version of the norm incorporates Article 2 of European Directive 2011/36/EU, specifying the defining features of human trafficking. The act and means have been amplified, including among the former the transfer of authority and harboring of the victim, conducts which may not entail any physical displacement in the strict sense of the term, while among the latter the taking advantage of a situation of vulnerability.
Regarding the interpretation of the Article, there is a debate concerning the meaning to be given to the term "or" situated after the words "Article 600" which in Italian would stand for "*ovvero*" a term that in legal language can be used both in a disjunctive sense (meaning ″or″) and in an explanatory sense (meaning "that is", "namely"). The phenomenon of trafficking of people already in a situation of slaver is, indeed, not envisaged by the European Directive, thus constituting a unique feature of the Italian legal framework[260]. This has generated some confusion as to whether the norm should be understood as covering a crime comprising a single offence or rather multiple distinct ones. According to the first understanding then, Article 601 should be interpreted in conformity with Article 2 of Directive 2011/36/EU. Trafficking would thus be considered as occurring where any of the acts set out in the first part of paragraph 1 is committed against a person in a state of slavery or subjugation,

[259] The last two paragraphs have been added through an amendment introduced by Legislative Decree 1 March 2018, n. 21, Art. 2, paragraph 1, letter f.
[260] VETTORI (2014).

in conjunction with one of the means and for the purposes set out in the second part of that same paragraph. Such an interpretation, however, by linking the crime of trafficking to that of slavery, not only also appears to contrast with the EU Directive which contains no such reference, but also provides a much lower level of protection, excluding all those people who are trafficked without being in a previous state of slavery. Consider for example all those who are initially smuggled, and who subsequently end up being victims of exploitation.
If one, however, would have to adopt the second reading we would be confronted with two different offences; a first one, committed by who recruiters introduces into, transfers outside, receives or harbors one or more individuals subjected to the conditions referred to in Article 600, regardless of the means through which such actions are carried out as well as the purpose; a second one, by contrast, would arise when the same acts are committed through the use of one of the above-mentioned coercive means for the explicit purpose of exploitation. In this sense, the provision would appears to be, at least in part, disconnected from Article 600, insofar as the reference to the latter wouldn't represent a prerequisite but rather an added value, an additional layer of protection deriving from the fact that EU Member States are free to apply higher or more favorable standards in the transposition of directives.
Such an interpretation is also supported by the fact that the Italian law further broadens the EU Directive by including, alongside coercion to perform exploitative activities also its inducement. This innovation would therefore have the merit of raising the level of protection by also including among the purposes the mere persuasion of the victim to engage in a specific activity.
Concerning the third paragraph an important consideration must be made. While at first sight it appears that the penalty provided for offences involving minors is the same as the one for adults in spite of their greater vulnerability, this is not the case. In accordance with Recital 12 of Directive 2011/36/EU according to which "when the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children"[261], the Italian legislation provides specific aggravating circumstances. Article 602-ter of the Penal Code establishes that the penalty for the offences specified in Articles 600, 601 (first and second paragraphs), and 602 is increased by one-third to one-half, including when the victim is under eighteen years of age. As a result, the new wording Art. 601 has not resulted in the absorption of the aggravating circumstance provided for in Art. 602-ter, rather, it has only clarified that when minors are object of trafficking, the latter conduct can be configured even in the absence of the methods explicitly stated[262].
The new Article is nonetheless silent on some critical aspects.
First of all, there is no reference to the fact that the consent of the victim is irrelevant where any of the means listed are used. While there is a reference to

[261] Directive 2011/36/EU, Recital 12.
[262] Judgment of the Court of Cassation, Section V, 1 October 2015, n. 39797.

the fact that in relation to minors, the conduct is punishable even in the absence of such means, the provision does not clarify that, in the case of adults, consent cannot be invoked to exclude liability where for example coercion, deception or abuse of vulnerability is involved.
Second, as in Article 600, while adopting the expression "abuse of a position of vulnerability" among the list of possible means to carry out one of the acts described in the first paragraph, the legislator failed to include within the Article a definition of the latter or the criteria to identify it, thus essentially leaving its interpretation to the judge. Such aspects become particularly relevant when considering, for instance, the phenomenon of trafficking, for the purpose of sexual exploitation or forced labour. In such cases, it is common for the victim not to suffer physical violence or coercion in the strict sense but rather to just submit to what appears to be the only possible alternative for their own survival[263].

5. Other applicable criminal offences

Beyond Art. 600 and 601 throughout the years a series of other provisions have been added to the Criminal Code to tackle several different aspects of trafficking. Among these are Art. 600-bis on child prostitution, 600-ter on child pornography, 600-quarter on virtual child pornography, Art. 601-bis concerning trafficking in organs removed from living persons, Art. 609-bis on sexual violence, 609-quater on Acts of Sexual Acts with Minors, 609-quinquies on Corruption of Minors and finally Art. 609-undecies regarding grooming namely solicitation of minors for sexual purposes.
Particularly important is then Art. 416 regarding criminal association which punishes the promotion, establishment, and participation in an association formed by three or more persons with the purpose of committing multiple crimes. The penalty provided is imprisonment from three to seven years for promoters and leaders, and from one to five years for those who merely participate in the association. With the entry into force of Law 228/2003 a new paragraph 6 has been added to the Article according to which if the association is directed at committing one of the acts established under Articles 600, 601, 601-bis, and 602, as well as Article 12, paragraph 3-bis of the Consolidated Act on immigration among others, imprisonment from five to fifteen years is applied in the cases provided for in the first paragraph, and from four to nine years in the cases provided for in the second paragraph.
For the crime to be established three constitutive elements must be present: first there must be a stable and permanent associative bond among at least three persons, second such persons must be united by the shared intent to belong to the criminal group and third they must pursue an indeterminate criminal program.

[263] ASGI, *Osservazioni al decreto legislativo 4 marzo 2014 n. 24 di attuazione della direttiva 2011/36/UE relativa alla prevenzione e repressione della tratta di esseri umani e alla protezione delle vittime e che sostituisce la decisione quadro 2002/629/GAI.*

For what concerns the first element it is not necessary for the association to have a hierarchical structure and even a minimal level of organization is sufficient. Mere participation in the association is also punishable.
Regarding the second element, it is necessary a specific intent requiring both the awareness and the will to be a member of a criminal group as well as the intention to contribute to the criminal plan. Importantly in this regard the norm punishes the association regardless of whether actual offences have been committed. What counts is thus the intention not the actual execution.
Finally, the last element requires that the association and the criminal plan must exhibit a character of indeterminacy. This means that the association must have an open-ended or general criminal purpose directed at committing multiple offences (even of the same nature). Such an aspect allows us to distinguish Art. 416 from Art. 110 of the Criminal Code concerning participation in a crime where the criminal agreement is not permanent and stable, but rather merely occasional and accidental.
Within the context of human trafficking the provision allows for the prosecution of individuals who, while participating in the offence, might remain unpunished. As we have seen indeed human trafficking consists of three constitutive elements, all of which must be present for the it to be considered a criminal offence. Nevertheless, trafficking is often managed and carried out by broader criminal groups within which each member has a specific function; the latter, while crucial for the ultimate realization of the conduct, may not fall within the definition of trafficking. Through Art. 416 therefore the Italian legislation fills an important gap, allowing for a more effective prosecution of traffickers.
Furthermore, the norm serves an important preventive function as it anticipates criminal repression to the mere endangerment of the interests protected. In other words, the provision enables authorities to act before a specific crime has been committed, being the simple risk posed by the mere existence of the association to the public order enough to trigger its criminalization.
The norm also allows for harsher penalties to be imposed on traffickers whenever they act not as individuals, but as members of a criminal organization. Such measure highlights, once again, the close relationship between organized crime and human trafficking, already recognized by the United Nations through the adoption of the Trafficking Protocol which is attached to the Organized Crime Convention.
The introduction of paragraph 6 in Article 416 of the Criminal Code represents therefore an important step in the implementation of Italy's international obligation as well as a further step in the fight against human trafficking.

6. The crime of *Caporalato*: labor exploitation and the new Article 603-bis of the Italian Penal Code

Labour exploitation represents the second most common form of human trafficking, accounting within the EU 37% of trafficking victims, even though this may be an underrepresentation due to the fact that forced labour is less frequently detected and reported than trafficking for sexual exploitation.

In Italy, among the most common and serious form of labour exploitation one can identify the so-called *caporalato*. The latter is an illegal form of recruitment and organization of labor in the context of dependent (or subordinate) employment. According to the Placido Rizzotto Observatory exploitation and *caporalato* involve approximately 450,000 farmworkers who see their fundamental rights violated on a daily basis, 132,000 of whom are forced to live and work in conditions akin to slavery. It is estimated that the illegal labor and *caporalato* business in the agricultural sector alone is worth an estimated 4.8 billion euros[264].

Even though strictly referring to the activity of unlawful intermediation, the phenomenon of *caporalato* is characterized by the simultaneous role of three individuals: on the one hand, the worker, often an individual in conditions of socio-economic vulnerability who, in desperate need of employment, are willing to accept harsh and degrading working conditions. On the other hand, the employer who, seeking to minimize costs in spite of its constitutional obligation, generates demand for low-cost and unskilled labor. Finally, the *caporale,* that who acts as an intermediary by recruiting laborers and placing them with employers, demanding in return a significant share of the worker's wages as compensation for the services provided, a share which often exceeds 50% of the worker's wage.

Those who fall victim to *caporalato* are most commonly irregular migrants, unaware of their rights and who have no way to legalize their status.

This vulnerability is further compounded by the fact that, because Article 10-bis of the Consolidated Immigration Act criminalizes illegal entry and stay in the Italian territory, many are afraid to report their situation to the authorities as they risk being punished rather than protected.

Further aggravating this situation is the fact that the activity of *caporali* is not limited to recruiting workers but becomes a form of domination over them, exercised through threats, violence and intimidation to the point that the worker becomes a commodity, to be traded and exploited without any safeguards or guarantees and once exhausted and worn out becomes useless, and is therefore discarded[265]. A dehumanization confirmed by the numerous cases of migrants who have died or been injured, left behind in the fields or along the roads without any form of assistance or medical help.

In most cases, the "*caporali*" not only deliver the workers to the employers but also engage in monitoring and directing the work of the victims directly at the workplace.

It is thus clear how the *caporalato* is closely connected with human trafficking as it often involves at least the recruitments through means such as threat, use of force and deception for purposes of exploitation.

For many decades, however, the phenomenon was not properly addressed as such, rather the sources regulating such phenomenon were drawn from broader immigration laws, agricultural legislation and labor regulations.

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[264] OMIZZOLO (2020).

[265] GIULIANI (2015), p. 18.

As a result, throughout time emerged the need for a specific offence aimed at sanctioning those conduct too serious to be covered solely by the existing legal provisions concerning labor intermediation and supply but not enough to fall within the threshold established by Article 600 of the Penal Code due to the absence of state of total subjugation of the victims[266].
In 2011, through Legislative Decree no. 138/2011 of 13 August, the legislature recognized for the first time *caporalato* as a form of labor exploitation and the need to protect workers' rights and dignity. Promulgated with the objective of improving the country's stability, development and competitiveness as well as supporting employment in response to the international crisis, the law introduced, among other things, the crime of *caporalato* into the penal code under Article 603-bis labelled unlawful intermediation and labor exploitation.
The Article read as follows:

> "Unless the act constitutes a more serious crime, anyone who carries out an organized activity of mediation by recruiting labor or organizing work activities characterized by exploitation, through violence, threats, or intimidation, taking advantage of the workers' state of need or necessity, shall be punished with imprisonment from five to eight years and a fine of 1,000 to 2,000 euros for each recruited worker.
> For the purposes of the first paragraph, one or more of the following circumstances constitute an indication of exploitation:
> 1. Systematic payment of workers in a manner clearly different from national collective agreements or in any case disproportionate to the quantity and quality of the work performed;
> 2. Systematic violation of regulations regarding working hours, weekly rest, mandatory leave, and holidays;
> 3. The existence of violations of safety and hygiene regulations in the workplace that expose the worker to danger for health, safety, or personal well-being;
> 4. Subjecting the worker to working conditions, surveillance methods, or housing situations that are particularly degrading.
>
> The following constitute specific aggravating circumstances and entail an increase of the penalty by one-third to one-half:
> - The fact that the number of recruited workers exceeds three;
> - The fact that one or more of the recruited subjects are minors below the working age;
> - Having committed the act by exposing the intermediated workers to situations of serious danger, considering the nature of the services to be performed and the working conditions".

The clause "unless the act constitutes a more serious offence" established right away the subsidiarity of the crime, regulating the overlap with related offences such as reduction and maintenance into slavery and human trafficking.
The Article as formulated found, however, limited application.
As it can be inferred from the first paragraph, the provision was directed solely at punishing those carrying out an activity of intermediation. The latter had to be carried out in an organized manner, meaning that the conduct had to display an entrepreneurial or quasi-entrepreneurial, taking advantage of the worker's

[266] *Ibid*., p. 139.

state of need or necessity and the work activity had to be characterized by exploitation through violence, threats or intimidation.
On the contrary, there was no reference to the employer who knowingly benefitted from the exploitative activity, who thus remained unpunished.
Such omission constituted not only an irrationality, since the intermediary necessarily needs an employer but also a significant legislative gap as the latter is often the one dictating the working conditions, wages, working hours, and the health and safety standards within which the activity is carried out, potentially leading to exploitation.
Some argued that the formulation "or organizing work activities" pertains to a moment after than that of intermediation thus extending the scope of the provision to the activity of the employer. Such an interpretation as however been refuted by the Court of Cassation according to which the only reasonable reading of the text is that according to which only those who carries out the intermediation can committee the crime referred to Article 603-bis[267].
In light of this the only way of criminalizing the employer would have been to establish a joint liability in light of Article 110 of the Penal Code in those situations where he was aware of the methods used by the intermediary as the latter had been by him instructed to seek workers. Such a possibility, however, was scarcely utilized and did not compensate for the absence of a specific conduct directly targeting the 'user' of the services.
The irrationality of excluding the employer among the punishable subject is exacerbated by what set out within the second paragraph which, while not explicitly defining exploitation, sets out a series of indicators that characterize it. By looking at such indicators indeed it is evident how they pertain not so much to the *caporale* as to the employer. For what concerns the payment of wages indeed, while it is true that *caporali* withhold a substantial portion of the workers' wages as compensation for their placement services, it is ultimately the employer who determines the amount of the remuneration. Similarly, it is the employer who determines the timetables and modalities of the work activity, and it is he who is in charge of the sanitary conditions.
The only indicator which seems to pertain to the activity of the *caporale* is the last one regarding the supervision of the work and in some cases, housing conditions. It is indeed common for the *caporali* to be in charge not only of the mediation between the worker and the employer but also of the supervision, accommodation and the transport of the worker from the workplace and vice versa. What emerges is therefore a situation of severe limitation of the personal autonomy of the workers which, unable to move freely, are deprived of any possibility to seek alternative employment or access support outside the exploitation system they find themselves in. To this must be added the fact that the cost of transportation to and from the agricultural fields is deducted from these workers' wages, which further reduces their already meager pay.
Despite the *caporale* involvement in the above-mentioned activities, however, these are often carried out with the knowledge, if not the approval, of the

[267] SCARCELLA, PISTORELLI (2011).

employer. It is thus not clear how such indicators could effectively apply to the conduct of the intermediary.
Recognizing such gap, in 2016 through Law n. 199 of 29 October, Article 603-bis was reformulated as such:

> "Unless the act constitutes a more serious offence, the following is punishable by imprisonment from one to six years and a fine ranging from €500 to €1,000 for each recruited worker:
> 1) Anyone who recruits labor with the purpose of assigning it to work for third parties under exploitative conditions, taking advantage of the workers' state of need;
> 2) Anyone who uses, hires, or employs labor, including through the intermediation described in point (1), subjecting workers to exploitative conditions and taking advantage of their state of need.
>
> If the acts are committed through violence or threats, the punishment shall be imprisonment from five to eight years and a fine ranging from €1,000 to €2,000 for each recruited worker.
> For the purposes of this article, the presence of one or more of the following conditions shall constitute an indicator of exploitation:
> 1) Repeated payment of wages clearly below those provided by national or territorial collective labor agreements signed by the most representative trade unions at the national level, or otherwise disproportionate in relation to the quantity and quality of work performed;
> 2) Repeated violations of laws governing working hours, rest periods, weekly rest, mandatory leave, and vacation time;
> 3) Violations of regulations on health and safety in the workplace;
> 4) Subjecting workers to degrading working conditions, surveillance methods, or housing situations.
>
> The following constitute specific aggravating circumstances and result in an increase of the penalty by one third to one half:
> 1) If the number of recruited workers exceeds three;
> 2) If one or more of the recruited individuals are underage and below the legal working age;
> 3) If the act was committed by exposing the exploited workers to situations of serious danger, in light of the nature of the tasks to be performed and the conditions of work".

The most important innovation is undoubtedly represented by the fact that the offence now extends also to the employer who, taking advantage of their state of need, uses or hires workers, including but not necessarily through an intermediary, subjecting them to exploitation.
As a result, the provision now punishes two different conducts; on the one hand the activity of the *caporale* who recruits workers on account of third parties for exploitative activities, on the other hand the activity of the employer who directly exploits workers. While the first conduct is completed when the offender provides to a third party a person with the intention to make him or her work under exploitative condition, regardless of whether the actual employment takes place, the second one represents an offence *a forma vincolata* requiring the actual engagement of the individual under exploitative conditions as a result of the employer's conduct. Importantly in this latter case the activity of the intermediary does not constitute a necessary element but rather becomes

secondary since the worker can be contacted and recruited directly by the employer, even in a legal manner, without the need to go through a third party, so long as the employment is characterized by exploitation.
Of course, for the exploitative conditions to materialize it is necessary for the employment to be sustained for a significant amount of time contrary to the activity of the *caporale* which may be carried out occasionally and be realized even through a single act. Precisely in this latter regard the new Article does not require anymore the involvement of an "organized activity", an element which presupposed that the conduct had to be carried out in a non-occasional manner through a structured operation.
Nor is required the use of threat or violence as constitutive elements of the offence, turning them instead into aggravating circumstances. In this way the scope of the provision is extended also to those situations characterized by the absence of such elements but still involving exploitation.
This change becomes particularly important in that it distinguishes the crime described in Art. 603-bis from that of forced labour as defined by the ILO. At first sight indeed one could be inclined to think that the present norm constitutes a transposition of the international norms concerning forced or compulsory labor, particularly the Forced Labor Convention of 1930.
In reality, however, the two offences present significant differences.
Forced or compulsory labor indeed refers to "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily". Here, the two key elements are the threat of a penalty as an essential part of the activity and the absence of the worker's consent.
The crime set out in Art. 603-bis as modified in 2016, on the other hand, not only does not require the necessary presence of threats or violence but is carried out with the worker's consent, albeit impaired by a situation of need, in a manner that results in their exploitation.
The situation of need here is not to be interpreted according to the state of necessity described in Art. 54 of the Penal Code nor to the one contained in Art. 600. On the contrary it is to be intended as "a situation of serious hardship, even if temporary, capable of limiting the victim's free will and leading them to accept particularly disadvantageous conditions"[268].
Regarding the employer's conduct particular attention should be given to the choice of words employed. If, indeed, the terms "hire" and "employ" seem to refer to the existence of a formal work relationship the word "use" points to a conduct not necessarily identifiable within a formal regulatory framework[269], thus covering most cases of *caporalato* and exploitation in which the work is carried out primarily off the books.
Focusing now on the third paragraph, it lists a series of indicators of exploitation divided in four categories: remuneration, disproportionate with the standards set by collective agreements and/or with the work performed; working hours;

[268] Judgment of the Court of Cassation, Section IV, 16 March 2021, n. 24441.
[269] BRASCHI (2022).

health and safety in the work place and general working conditions which include surveillance methods and housing conditions.
These are the same as those contained in the previous version except for the fact that, for the first two indicators is not required anymore the "systematicity" of the act but just its reiteration. In addition, within the third indicator the provision no longer makes reference to the worker's personal integrity.
In doing so, the legislator lowered the threshold of applicability of the offence, significantly raising the working standards necessary to avoid a conviction.
Importantly such indicators are not to be interpreted as exhaustive, determinative and cumulative. Rather they simply represent a tool for the judge, a reference framework within which to evaluate whether a situation of exploitation has occurred. As a consequence, their general and perhaps vague character does not contradict the principle of legality.
As better explained by Honorable Berretta in the Report to the Second Committee:

> "the conditions referenced in the article, in other words, constitute mere indicators of the existence of the facts subject to criminal prosecution, which the judge must take into account when ascertaining the truth, but they certainly do not coincide with the constitutive elements of the crime. […] The legislator, by listing the indicators of exploitation, simply facilitates the judge's reconstructive tasks, guiding the investigation and assessment towards those areas (wages, working conditions, housing conditions, etc.) that represent the privileged domains where exploitative and abusive conduct tends to emerge"[270].

It would thus be possible, at least in theory, for the judge to overlook such conditions taking into account instead new elements not mentioned within the Article, also in light of new technologies and the resulting working modalities which have, and still are, giving rise to new forms of exploitation.
Clearly such an approach could be problematic as the vagueness of the term exploitation might lead to interpretative uncertainties. Furthermore, it risks entrusting the judge with a political and economic steering role, capable of challenging the legitimacy of new contractual models tied to an ever more competitive and deregulated economy[271]. An expansion of the range of indicators as well as a greater definition of the concept of exploitation appear, therefore, desirable.
Regardless of their interpretation it is important to highlight that the reiteration of the conducts outline in paragraph 3 number 1 and 2 are to be intended as referring to each worker and not to the aggregate of occasional conducts carried out in relation to different workers. This is due to the fact that object of protection of the provision is not a public interest but rather the dignity of the individual person as set out in Article 34 of the Constitution[272].

[270] Relazione per la II Commissione (A.C. 4008), 16 November 2016.
[271] TORRE (2020), p. 87.
[272] Judgment of the Court of Cassation, Section IV, 11 Novembre 2021, n. 45615.

6.1 The residence permit for foreign nationals who are victims of illegal mediation and labor exploitation

As a result of the rise in incidents of *caporalato,* in 2024 Decree Law No. 145 known as the "*Decreto Flussi*" introduced urgent provisions regarding the entry of foreign workers into Italy, the protection and assistance of victims of illegal recruitment (*caporalato*), the management of migratory flows and international protection, as well as the related judicial procedures. Within this framework, a new form of protection specifically directed at victims of labour exploitation was introduced.

The Decree amended the Consolidated Immigration Act, adding alongside the residence permit provided by Art. 18, a new Art 18-ter concerning the residence permit for foreign nationals who are victims of illegal intermediation and labour exploitation.

The provision substituted the dispositions previously contained in paragraphs 12-quarter, 12-quindquies and 12-sexies of Article 22 which envisaged the release of a residence permit, of the duration of six months, for foreign nationals subject to particularly exploitative conditions who filed a complaint and cooperated in criminal proceedings.

Article 18-ter now provides for the immediate release of a residence permit in cases of situation of violence, abuse or labor exploitation identified during the course of police operations, investigation or proceedings concerning the crime set out in Art. 603-bis of the Criminal Code, where the worker effectively contributes to bringing the facts to light and identifying those responsible.

Importantly, the permit may be released not just to the victim but also to his/her family members.

Contrary to what provided by Art. 22 the new Article 18-ter does not require a formal complaint by the victim. Situations of violence, abuse and labor exploitation may therefore emerge during police operations or be presented by third parties or as provided by paragraph 2, may be reported to the judicial authority or to the Chief of Police (*questore*) by the National Labor Inspectorate. In such case it is the latter who provides an opinion to the *Questore*, concerning also the eventual issuance of the permit.

Even though this may seem an innovation on the one hand, on the other hand the new Article seems to have completely eliminated the possibility of releasing the permit upon complaint of the victim, thus significantly reducing the level of protection provided.

What is required nonetheless it is the collaboration of the victim to criminal proceedings. Differently from Art. 22 however, which simply required "cooperation" without specifying how and to what extent, Article 18-ter demands that such cooperation must "contribute effectively to the emergence of the facts and to the identification of those responsible"[273]. As a result, it seems that such requirement further lowers the level of protection afforded, highlighting the incentive-based nature of the permit.

[273] Legislative Decree, 25 July 1998, no. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero,* Art. 18-ter.

Moreover, the lack of clear elements defining what constitutes an effective contribution, risks providing the competent authority with excessive discretion which may potentially lead to arbitrary decisions.
While awaiting the issuance of the residence permit the victim is allowed to lawfully remain in the territory of the State as well as to temporarily carry out work activities unless grounds precluding the release of the permit emerge.
At this stage, however, no provision is established to assist the worker in finding a safe employment following exploitation. This lack of support increases the risk that the individual may fall back into similar exploitative or vulnerable situations, undermining the overall goal of protection and rehabilitation.
Such provision nonetheless provides an important element for those migrants who often have an immediate need to support the family left behind in their country of origin.
The residence permit issued pursuant to Article 18-ter has an initial duration of six months and may be renewed for one year or for a longer period if required for reasons of justice.
This permit, like the one provided for victims of trafficking, allows access to social assistance services and education, as well as enrollment in employment centers, and the performance of both subordinate and autonomous work.
If, upon the expiry of the residence permit, the individual is employed, the permit may be converted into a residence permit for work purposes or for study purposes, provided that the holder is enrolled in a regular course of study, or for job-seeking purposes.
The permit may be revoked in cases of conduct incompatible with its purposes, when the conditions that first justified its issuance no longer apply or in cases of conviction for the offence referred to in Article 603-bis of the Criminal Code.
Article 6 of Decree Law No. 145/2024 provides then for assistance measures guaranteed to those who have obtained a residence permit. In particular it establishes assistance measures aimed, through personalized programs, at t social and employment integration. These measures, which may also be extended to the family member of the foreign national must not exceed the duration of the permit and shall grant them access to the broader system of local services capable of addressing social, health, and fundamental needs such as housing, education, and employment. The Article then provides for a series of cases in which such measures may not be granted or revoked, including for what concerns this latter case, in the event of unjustified refusal of suitable job offers.
Despite the positive intentions behind Decree Law No. 145/2024, the narrowing of eligibility requirements, especially the demand for victims' "effective" cooperation in criminal proceedings, risks excluding many individuals and shifting responsibility onto victims, potentially discouraging them from coming forward.
It is thus clear that the present system is still too focused on criminalization rather than victim protection. Despite the presence of multiple initiatives to fight labour exploitation implemented throughout the years what is missing is an approach that focuses on the root causes of *caporalato* and abuse, namely the increasingly limited pathways for entering the country legally and the growing

demand for low-cost labor. If we add to this the fact that the quotas set by the *decreti flussi* are often insufficient to match labor supply and demand, it is not difficult to understand how *caporalato* has been able to spread so extensively.

7. Legislative Decree of March 4, 2014, No. 24 on the implementation of the EU Trafficking Directive

In 2014 Italy approved Legislative Decree n. 24 which implemented Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. As we have seen above, the transposition substantially modified some Articles of the Penal Code, in particular Article 601 concerning trafficking of persons. Beyond these changes, however, the Decree also introduced some other substantial rules on protection of victims, crime prevention, criminal prosecution and institutional coordination.

Article 1 establishes two general principles: first, in the implementation of the Decree, account must be taken of the personal situation of the victims and of vulnerable groups such as minors, unaccompanied minors, the elderly, persons with disabilities, women, especially if pregnant, single parents with minor children, persons with mental disorders, and those who have experienced torture, rape, or other forms of severe psychological, physical, sexual, or gender based violence. Second, the application of the Decree must be without prejudice to the rights and obligation of the State and the individuals, in particular those deriving from the Convention relating to the Status of Refugees and the related Protocol as well as the principle of non-refoulement.

Article 2 then amends Art. 600 and 601 of the Penal Code as seen above, expanding the definition of enslavement and trafficking to align such offences with EU standards.

Article 3 amends Article 389 of the Code of Criminal Procedure concerning Measures on the Request for an Evidentiary Hearing. In particular, it introduces a new paragraph 5-ter, according to which the judge, upon request of a party, may extend to adult individuals "in conditions of particular vulnerability" the same protective measures provided under paragraph 5-bis for cases involving minors. These include, for example, the possibility for the hearing to take place in a location other than the courthouse as well as for the possibility to use specialized support facilities and to record testimonies through audio or video equipment.

The Decree also contains rules on the protection of unaccompanied minors' victims of trafficking; Article 4 establishes that they must be adequately informed of their rights, including eventual access to international protection and that, by decree of the President of the Council of Ministers mechanisms shall be established for determining the age of unaccompanied minors, taking into account the minor's ethnic and cultural background. In cases where the age cannot be effectively determined, minority is to be presumed.

In Article 5, the Decree also addresses training requirements establishing that within training programs conducted by the competent authorities specific training modules on human trafficking must be provided for public officials which may be concerned by such matter.

An important provision concerns then the right to compensation for the victims of trafficking. In particular, through Article 6, the Decree intervenes on Article 12 of Law 228/2003 on trafficking — which established the Anti-Trafficking Fund — by extending its scope to cover also the right to compensation for victims. The Decree establishes an indemnity of €1,500 for each victim, to be granted within the limits of the Fund's annual resources and sets out the access procedures. According to the latter the compensation claim must be submitted within 5 years of the final sentence recognizing the right to compensation or one year from the filing of the issued dismissal if the perpetrator of the crime is unknown. It is then established that, whether the victim is under investigation or has been convicted for crimes referred to in Article 407, paragraph 2, letter a of the Code of Criminal Procedure which includes offences related to organized crime, terrorism, crimes against public safety and sexual offences against minors, she cannot access the fund.

It must be noted, however, that the Fund is intended not only to provide compensation to victims, but also to finance assistance and social integration programs for victims of trafficking as well as protection measures granted under Article 18 of the Consolidated Immigration Act. As a result, it provides wholly inadequate to meet the needs of victims. This is due to the fact that, one the one hand, part of the Fund is financed through the proceeds of confiscation which are however rarely recovered and often difficult to access in practice, while on the other from funds already earmarked for the implementation of Article 18, which moreover, are intended not only for victims of trafficking, but for a broader category of individuals subjected to violence or severe exploitation.

It is thus evident that, given that the expansion of the Fund's scope introduced by the 2014 Decree has not been accompanied by a corresponding increase in allocated funding, it ultimately appears structurally insufficient to support the broader range of interventions now under its mandate.

Moving on, Article 7 designates the Ministry of Equal Opportunities as the body responsible for carrying out guidance and coordination tasks concerning social prevention measures on human trafficking as well as assistance to victims. It is moreover responsible of assessing trends in human trafficking and based on them, to present to the European Union Anti-Trafficking Coordinator a biennial report.

Article 8 then modifies Article 18 of the Consolidated Immigration Act by adding a new paragraph 3-bis according to which foreigners and EU citizens victims of one of the crimes provided for in Articles 600 and 601 of the Penal Code or of violence and serious exploitation, are entitled to access a program of emergence, assistance and social integration. Such program shall grant them access to adequate housing, food, healthcare as well as the prosecution of assistance and social integration projects.

In 2016, a Prime Minister's Decree entitled "Definition of the Unified Program for the Identification, Assistance and Social Integration of Foreign Nationals and Citizens referred to in paragraph 6-bis of Article 18 of Legislative Decree No. 286 of 25 July 1998, who are victims of the offences set out in Articles 600 and 601 of the Criminal Code, or who fall under the circumstances outlined in

paragraph 1 of the same Article 18", has outlined the modalities of the above mentioned program. According to such Decree the program is to be carried out through territorially implemented projects which must respect the human rights of victims and the principle of non-discrimination and prevent their re-victimization. Each project must include interventions related to the phases of identifying victims, reporting and referral to protection services, victim identification, protection, and social inclusion. Projects must take into account safety needs of the victims, their willingness and determination to develop skills and capabilities aimed at autonomy, and the effectiveness of public and private social networks responsible for legal, healthcare, and socio-healthcare assistance, as well as housing support.
Moreover, each project must necessarily include safe housing, emergency care, legal aid, and coordination with social services as well as at least at least two systemic actions**,** locally implemented but replicable at the national level such as pilot programs, inter-institutional networking, support for entrepreneurship, and models for long-term integration[274].
The ultimate objective of such program is to allow the victim, whether trafficked or reduced or maintained into slavery to escape the circle of exploitation to which he or she is subject and denounce the perpetrators; at the end of the duration of the program the individual concerned can choose to continue receiving assistance by joining the program of assistance and social integration under Article 18, paragraph 1.
Finally, Article 9 provides for the adoption of the National Action Plan against Human Trafficking and Severe exploitation which will be outlined below.
While overall the Decree successfully transposes EU Directive 2011/36 some comments can be made. First of all, while the Decree highlights the importance of recognizing victims' vulnerabilities, it doesn't establish neither a mechanism for identifying such vulnerabilities nor harsher penalties for crimes committed against such individuals. As we have seen, indeed Articles 600 and 601 provide for the same penalties even for crimes committed against minors, thus going against Recital 12 of the EU Directive.
Second, and perhaps most importantly, the Italian Legislation lacks the principle of non-prosecution or non-application of penalties to victim set out in Article 8 of the EU Directive. While in some instances Art. 54 of the Penal Code concerning the state of necessity can be applied, it is often difficult in the case of trafficking to prove the existence of a "present danger of serious harm" to the person. Such limit was also recognized in a recent decision of the Court of Cassation of 18 January 2024[275]. The case concerned a woman who was deceived into leaving Nigeria for Italy by the false promise of a job. During her journey she was subject to severe violence including repeated rape and, upon arrival, was deprived of all freedom and forced to prostitute herself to pay off the debt incurred. Subsequently

[274] Decree of the President of the Council of Ministers, 16 May 2016, *Definition of the Unified Program for Identification, Assistance, and Social Integration in favor of foreigners and citizens referred to in paragraph 6-bis of Article 18 of Legislative Decree No. 286 of July 25, 1998*.
[275] Judgment of the Court of Cassation, Section VI, 18 January 2024, n. 2319.

threatened with retaliation against her grandmother who remained in Nigeria, she accepted, driven by economic necessity, to work as a drug courier.
Convicted for the unlawful transportation of illicit substances, the woman filed an appeal with the Court of Cassation claiming the failure of the judges to apply the justification provided under Article 54 of the Penal Code.
The second instance judgment indeed did not consider the victim to be exposed to a risk of a present danger of serious harm, claiming that she could have escaped the control of her traffickers by turning to public institutions.
In delivering its judgment the Court first examined the supranational norms concerning human trafficking, which establish the non-punishment principle.
These include the Council of Europe Trafficking Convention, ratified by Italy with Law 2 July 2010, n. 108, which in Art. 26 establishes a non-punishment provision, Directive 2011/36/EU which contains a similar provision in Art. 4 as well as the Recommendations and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights. Within this context, the Court acknowledged how "the complex framework of the supranational legal system, incorporated into the domestic system, requires recognizing as crucial the principle of non-criminalization of trafficking victims"[276], also considering the fact that trafficked persons are frequently involved in illegal activities because of the enormous pressure, including of an economic nature they are subject to as a result of the severe violation of their human rights and which deprives them of any form of decision-making autonomy.
The Court has affirmed that the offences subject to a possible assessment of non-criminalization are not limited to those arising from a direct threat of harm or a situation of irregularity, but also include acts committed in an attempt to escape exploitation by others. This latter category encompasses even acts carried out in the absence of direct coercion, where the trafficker takes advantage of the victim's particular vulnerability, leaving the person concerned with no real or acceptable alternative.
The Court then moved on to analyze the presence, within the Italian legislation, of instruments granting the non-punishment of victims for acts they were compelled to commit as a result of being trafficked. In doing so the Court referred to the 2019 evaluation report on Italy published by GRETA which highlighted the lack of a provision implementing Art. 26 of the Convention.
The Court subsequently recognized that, even though the Italian legal system does not provide for a specific provision that enshrines the principle of non-punishment for victims of trafficking, it is possible to derive it from Art. 54 of the Penal Code. In this regard the Court recognized the obligation of the judge to interpret Article 54 in a manner consistent with international obligations, taking into account the primacy of EU law and its *effet utile*, in light of three fundamental principles: (i) the need to protect the inalienable human rights of trafficking victims; (ii) the need to prevent secondary victimization by subjecting victims to unnecessary criminal proceedings; (iii) the prohibition

[276] *Ibid*., para. 3.3.

against exposing the State to possible liability due to judicial acts that violate the obligation undertaken under Article 10, 11 and 117 of the Constitution.

8. The National Action Plan against Human Trafficking and Severe Exploitation (2022-2025)

In 2022, in conformity with what provided by Law n.228/2003 the Minister for Equal Opportunities and the Family and the Minister of the Interior presented the second The Minister for Equal Opportunities and the Family and the Minister of the Interior presented the 2022–2025 National Anti-Trafficking Action Plan to the Council of Ministers. It constitutes the second National Anti-Trafficking Plan, adopted to follow up on the 2016–2018 plan. The strategic objective of the new Action Plan is:

> "to enhance Italy's national response to the phenomenon of trafficking, in line with a coordinated European approach, by acting in full respect of human rights and the principle of non-discrimination, while adopting a gender mainstreaming perspective and ensuring the protection of the rights of minors, women, and vulnerable groups more broadly"[277].

The Plan first analyzes the international and European framework on trafficking and, in particular, the report published by GRETA concerning Italy's implementation of the CoE Trafficking Convention.

Among the recommendations proposed by GRETA some aspects stand out. First, the need to adopt a provision ensuring victims the recovery and reflection period set out in Article 12 of the Convention. Second, the necessity to adopt measures to guarantee victims effective access to compensation, including by reviewing the maximum amount of € 1,500 of compensation paid by the State. Third, the importance of complying with Art. 26 of the Convention by adopting a provision allowing for the non-punishment of victims of trafficking for their involvement in unlawful activities connected with their trafficking situation. Fourth, the need to review the Code of Conduct for NGOs undertaking activities on migrants' rescue operations at sea. According to GRETA, indeed, the Code could put at risk the search and rescue operations carried out by NGOs, consequently impeding the proper identification of victims of trafficking among migrants.

The Plan then highlights the importance of collecting data and improving cooperation with both public and private territorial networks. Particular importance is given to the necessity to adopt a gender-sensitive approach that takes into account the fact that different victims of trafficking (men, women and children) require different assistance measures, due to their different vulnerabilities and manners of exploitation.

A section is then dedicated to the impacts of the COVID-19 pandemic and the Russian Ukrainian conflict on the phenomenon of trafficking. It is examined how the pandemic has changed the patterns of human trafficking, particularly

[277] Publication of the Department for Equal Opportunities (2022), *National action plan against trafficking and serious exploitation of human beings 2022–2025*.

the methods of recruitment and exploitation which have increasingly moved online making them increasingly difficult to detect.
The war in Ukraine, on the other hand, along with the resulting large-scale internal and cross-border migration flows, has significantly increased individuals' vulnerability to becoming victims of trafficking, particularly of women and unaccompanied minors arrived in greater numbers.
An important aspect is represented by the duration of the Plan, of only three years, a choice driven by the need to adapt to the rapid changes in the trafficking phenomenon, including in relation to new technologies.
The Plan then follows the model of the four P's on which international strategies to combat human trafficking are based namely prevention, protection, prosecution and partnerships, identifying for each category critical steps to be taken:

1. Prevention. The Plan highlights how "effective action against trafficking, however, cannot be solely based on repressive action, but must consist of a series of interventions of a different nature."[278]. In line with this the Plan recognizes the great relevance of preventive strategies which must be aimed mostly at reducing the demand that fosters human trafficking. A more human-rights oriented approach can be observed here highlighting the utmost importance of tackling primarily demand rather than merely implementing awareness-raising strategies, which often risk blaming the victims. Moreover, the plan acknowledges that the effectiveness of information activities for prevention is limited as even though it may increase individuals' knowledge of a given phenomenon, they do not necessarily lead to a change in behavior.
   It is then recognized the profound link between migration and human trafficking and the need for coordinated strategies tackling both trafficking and smuggling as well as the necessity to train those who most frequently come into contact with victims, including border authorities.
2. Prosecution. The Plan underlines the need to dismantle the model of traffickers both online and offline. To this end, it is essential to intensify the collaboration between the law enforcement agencies and national and international protection bodies.
   Moreover, it is necessary to ensure ongoing training and to increase knowledge of the phenomenon by civil and criminal law judges as well as improve the skills of magistrates for what concerns interviewing techniques for victims of trafficking.
   The plan also highlights the importance of improving knowledge on current trafficking legislation including Art. 18 of the Consolidated Immigration Act as well Articles 600 and 601 of the Italian Criminal Code, which are still rarely applied.
3. Protection. The Plan points out how Italy is leading the way in Europe in terms of detecting victims of trafficking. Nonetheless it highlights the necessity to strengthen the mechanisms for identification of victims as well

[278] *Ibid*.

as to update the reception measures pursuant to Art. 18 of the Consolidated Immigration Law and Art. 13 of Law 228/2003 in response to the changing patterns of trafficking and characteristics of victims. It is underlined the urgency of implementing strategies to identify victims among asylum seekers but more importantly outside the latter, between those who arrive through seasonal flows or for family reunification purposes and which are more difficult to identify. In this sense it is essential to guarantee access to anti-trafficking bodies in repatriation detention centers and reception centers for foreigners, in order to allow for the effective identification of trafficking victims.

Finally, the Plan calls for the establishment of pathways for the social and professional inclusion of victims of trafficking or severe exploitation

4. Partnerships. The Plan advocates for greater cooperation with European and international bodies as well as with the European and non-EU countries involved in human trafficking. It calls for the implementation of a mechanism of cooperation with EU countries to ensure protection and assistance for victims of trafficking seeking international protection who are sent from another EU country to Italy as a result of the Dublin Regulation[279].

   The Plan also encourages cooperation with private sector organizations operating within the countries of origin to increase awareness and reduce the risk of re-trafficking.

The Plan then establishes a monitoring mechanism to determine the effective functionality of the system as well as possible areas for improvement.

9. Challenges and Future Perspectives in Combating Human Trafficking in Italy

While Italy has adopted a comprehensive legal framework to combat human trafficking and protect its victims there are still gaps and challenges.

First of all, data collection is still deficient. The government has not maintained so far, a consolidated database on investigations, prosecutions, convictions, and sentencing of traffickers, or of their victims. Additionally, lack of interpreters especially for West African dialects limited and continue to do so law enforcement efforts and investigations, also due to an insufficient level of insufficient cooperation with countries of transit and origin.

It is thus necessary that Italy to strengthen interagency coordination and partnership with civil society for the purpose of data collection which would also allow to evaluate the effectiveness of existent measures aimed at tackling the phenomenon.

Second, gaps in victim identification persist. This is partly due to the increasing difficulties in distinguishing between smuggled and trafficked individuals.

[279] The Dublin Regulation establishes that, despite some exceptions, the Member State responsible for examining an asylum application is generally that where the asylum seeker first entered.

Current migration trends, increasingly involving people escaping from violent conflicts who, finding themselves in a state of profound vulnerability, are more likely to end up being exploited or abused in both transit and destination countries, has increasingly blurred the lines between the two phenomena. Within this context there is the need "to move away from the categories that once corresponded to a specific status, and which therefore entailed different systems of assistance and protection"[280].

The identification of victims proves particularly difficult at disembarkation points and hotspots often due to the lack of appropriate places where to conduct confidential interviews as well as lack of cultural mediators. Such issue is also further exacerbated by the fact that due to the lack of places in the Reception and Integration System many migrants remain in emergency reception centers, which even though supposedly temporary, have now become the *de facto* standard model of migrant reception. NGOs and anti-trafficking trained personnel often have difficulties in accessing such centers thus diminishing the possibility of identifying victims of trafficking. The same happens for removal centers for migrants where there is an insufficient screening of risks of trafficking or re-trafficking upon return.

Moreover, as highlighted by GRETA in its latest report the restrictive immigration measures adopted by the Italian governments over the years have increasingly resulted in a criminalization of migration and, as a result, to an increasing fear by the victims of trafficking to report their situation due to fear of detention or deportation[281].

Third, the majority of anti-trafficking efforts focus on sexual and labour exploitation with the consequence that too little attention is paid to the identification of victims of forced marriage, forced criminality and forced begging.

Particularly in this latter regard, not enough attention is given to cases of child begging within Roma communities, often perceived as "culturally ingrained practices" but which derive instead from a complex set of ant socioeconomic factors makes the group especially vulnerable including deep and multi-dimensional poverty, lack of employment due to stereotypes and prejudices, low levels of education resulting from social exclusion as well as discrimination and segregation[282]. Within this context it is particularly important for law enforcement authorities to be trained to recognize signs of trafficking and exploitation of children caught begging, pickpocketing or committing delinquencies.

Fourth, measures for victim's compensation are insufficient. Victims of trafficking can receive compensation only up to 1.500 euros, a paltry amount if we consider the level of exploitation they endure. Furthermore, upon request the victim has to prove not to have received compensation from the offender, a

[280] NICODEMI (2017), p. 2.

[281] Publication *Evaluation Report Italy - Access to justice and effective remedies for victims of trafficking in human beings*, para. 233-239.

[282] Publication of the Center for the Study of Democracy, 2015, *Child trafficking among vulnerable Roma communities.*

request which often discourages victims to apply also due to the long waiting times needed to obtain a decision. So far, no victim has received compensation[283].
Finally, Italy lacks some key provisions concerning the definition of trafficking namely the irrelevance of the victim's consent and the non-punishment clause.
Despite the progress made over the past decade in strengthening the response to human trafficking, it continues to pose a serious threat to vulnerable individuals.
Looking ahead, increasing commitment is needed, one that builds on the experience gained so far but that also understands the growing link between trafficking and smuggling and that focuses not just on criminalization but also and most importantly on prevention and protection of victims.
This requires expanding legal pathways for migrants to enter Italy, increasing training programs for the identification of victims, improving access for anti-trafficking NGOs to migrant reception systems, and paying greater attention to the different forms of trafficking, including how they are evolving in light of new technologies.

[283] Publication *Evaluation Report Italy - Access to justice and effective remedies for victims of trafficking in human beings*, para. 88.

CONCLUSIONS

Throughout this thesis, the complex and continuously evolving nature of the phenomenon of human trafficking has been repeatedly highlighted. The broad range of shapes it can take and the capacity of criminal organizations to adapt to market demands, technological evolutions, evolving migration patterns as well as victims weaknesses make it incredibly hard to tackle.

As a result, the legislation and policies aimed at combating it must be in constant development and adaptation both to protect victims as well as to prosecute traffickers.

At the international level, the legal framework established for the first time by the United Nations General Assembly in 2000, with the adoption of the Trafficking Protocol, is still too focused on criminalization without paying enough attention to the protection of victims. As previously discussed, the Protocol is indeed not a human rights instrument but mainly a law enforcement tool which mandates States first and foremost to adopt measures to establish human trafficking as a criminal offence in their national legislation. Such requirement is, however, not matched by an equivalent obligation when it comes to victim protection, which is largely framed in optional terms. As we have seen for example States need just to consider implementing measures aimed at the physical, psychological and social recovery of victims of human trafficking, but are not compelled to do so. Such an approach fails to take into account a fundamental element in the prosecution of traffickers, namely victim's collaboration. Without adequate protection indeed, victims, who frequently fear or experience intimidation and reprisals from traffickers, are not likely to cooperate with the authorities in the identification and prosecution of those responsible.

An important role could be played by the International Criminal Court in case human trafficking is recognized as falling within the crimes against humanity.

Such a designation would both raise awareness about the seriousness of the crime but also offer victims greater protection and access to justice by allowing the Court to persecute perpetrators who might otherwise go unpunished due to differences and loopholes in national legal systems.

This, however, requires States Parties not only to cooperate with the ICC as the latter heavily relies on them for what concerns investigations, evidence-gathering, arrests and execution of judgments but also, considering the often transnational nature of the crime, among each other for the collection of relevant information. In this sense, the role of other international and regional organizations, such as INTERPOL, UNODC, and the European Union, becomes vital.

At the European level, greater attention has been devoted to victim protection, reflecting a more balanced approach between the prosecution of traffickers and the safeguarding of victims' rights.

The EU Trafficking Directive for example represents an important instrument that takes into account the evolving nature of human trafficking and the human rights of victims. One of its key provisions requires that assistance and support be provided to victims as soon as there are reasonable grounds to believe that a person might have been trafficked, regardless of their willingness to cooperate with law enforcement. Nonetheless, some instruments, most notably the EU Residence Directive, still mandate cooperation with authorities. While intended to avoid 'procedure shopping' such an approach not only risks subjecting victims to retrafficking and prevents them from accessing the support and assistance they are theoretically entitled to, but also hampers their cooperation with the authorities as the latter is much more likely to occur in an environment where victims feel safe, protected, and supported, rather than pressured into collaboration as a precondition for accessing their rights.

Within this context, a revision of the Directive appears necessary, one more focused on human-rights that de-links the release of the residence permit from victim's cooperation and focuses instead on their recovery and social integration.

Much more advanced in this sense is, as we have seen, the legal framework established by the Council of Europe. The recognition that human trafficking falls within the scope of Art. 4 of the European Convention of Human Rights represented indeed a landmark decision as it acknowledged human trafficking first and foremost as a human rights violation, thus shifting the focus beyond mere criminalization. Such human rights centered approach was then reinforced by the adoption of the Convention on Action against Trafficking in Human Beings which contains important obligations in terms of victim protection which must not be made contingent upon their cooperation with law enforcement authorities. Nonetheless, as with the Trafficking Directive, several gaps in its implementation by Member States have been identified, especially for what concerns the granting of recovery and reflection period, the confiscation of proceeds of trafficking, victim's compensation as well as the implementation of the non-punishment principle.

Moving on to the Italian framework, Italy has been one of the first countries in Europe to adopt, well before the entry into force of the Palermo Protocol, a system of protection and assistance of victims of severe exploitation and human trafficking. Throughout time such measures have converged into what is now a comprehensive anti-trafficking system, one which recognizes organized crime as a significant factor in human rights, gives special attention to children recognized as a particularly vulnerable group and tackles several different forms of abuse especially sexual and labor exploitation. In doing so, Italy has been able to establish an integrated normative arrangement which allows not only for the effective prosecution of the trafficking but also for the protection of its victims.

Nonetheless recent restrictive migration policies risk undermining such system. As I have repeatedly mentioned throughout the thesis, smuggling and human trafficking, while two distinct offences, frequently overlap. Migrants are indeed extremely vulnerable to abuse and exploitation, especially when fleeing

violence and conflict due to the lack of access to legitimate forms of employment, legal status and social protection; a risk which is further increased when they move through irregular channels. As underlined by ILO and IOM, the lack of safe and regular migration pathways creates the preconditions in which migrants are compelled to rely on smugglers to cross international borders, exposing themselves to the possibility of being exploited or intercepted by criminal organizations involved in human trafficking. Such vulnerability is then exacerbated by factors including lack of proper documentation, disadvantaged backgrounds, and debt incurred at departure or along the journey. The recent securitization of migration, combined with increasing policies of externalization of borders, the practice of shifting migration control to countries outside a nation's territory, have intensified victims' exposure to risk, weakened authorities capacity to identify potential ones and enabled at the same time organized crime to flourish.

By blurring the distinction between smuggling and trafficking such policies shift the focus primarily on deterrence and control rather than human rights. In doing so, they risk criminalizing the victims rather than protecting them, undermining at the same time the possibility of prosecuting traffickers and dismantling the criminal networks within which they operate due to a lower probability of victim's cooperation with authorities.

Within this context, it is essential both to clearly distinguish between the two crimes in order to avoid misidentifying victims of trafficking as smuggled migrants but also to address them jointly, developing a clear link between anti-trafficking measures, asylum procedures and broader migration policies. An integrated approach would not only enhance identification and protection of victims but also ensure that individuals fleeing persecution or exploitation are not further penalized and do not risk falling into the hands of traffickers.

This requires fostering cooperation between asylum authorities, law enforcement, and support services, as well as ensuring that procedural safeguards, such as access to legal aid, non-punishment clauses, and recovery periods, are consistently applied. Above all, expanding safe and legal migration pathways for both migrants and refugees, thereby reducing reliance on smugglers, remains the strongest preventive measure.

Beyond migration routes, preventing and combating human trafficking also requires a specific focus on the root causes that sustain exploitation including discrimination, structural poverty, lack of opportunities and most importantly demand. The ever-increasing pursuit of cheap labour, the commodification of sexual services and the consumption of cheap goods and services produced through coercion are all factors that enable the human rights industry to grow.

Against this backdrop, measures addressing corporate due diligence and supply chains regulations, coupled with liability of both natural and legal persons for trafficking offences are crucial. Equally important is the criminalization of the conscious use of services provided by victims of trafficking. Unfortunately, such provisions are still rare present in national legislation and where they exist, prosecutions related to them are very few.

Cooperation is also key, both at the national and international level. For what concerns the former, it is necessary to involve several stakeholders including immigration authorities who may be responsible of identifying victims; ministries of health, women and children to ensure proper assistance to victims; labour inspectors to identify victims of exploitation and financial institutions to confiscate the proceeds of trafficking and ensure proper compensation to victims. All of this must be accompanied by the involvement of NGOs and civil society organization which can provide essential support such as language and cultural mediation, legal assistance and counselling, psychological care and social reintegration.

Given the transnational nature of human trafficking however international cooperation is also needed. This involves exchanging information and best practices among countries, providing mutual legal assistance, enforcing extradition agreements, establishing cooperative mechanisms for the confiscation of the proceeds of trafficking as well as adopting migration agreements which may include labour standards, safe pathways, modes of repatriation and son on.

Finally, victims must be put first. National, regional and international instruments on human trafficking must focus especially on human rights, not just because of the need to protect and assist victims, vulnerable and traumatized,

but also because by providing them with pathways for social integration and recovery it is much more likely to create a safe environment in which they are motivated to cooperate. Such an approach remains the only truly effective way to combat this crime.

BIBLIOGRAPHY

ALLAIN (2017a), *Genealogies of human trafficking and slavery* in PIOTROWICZ, RIJKEN, BAERBEL (Eds.)*, Routledge Handbook of Human Trafficking*, New York, 1st ed, p. 2 ff.

ANNONI (2013), *Gli obblighi internazionali in materia di tratta degli esseri umani,* in FORLATI (ed)*, La lotta alla tratta di esseri umani fra dimensione internazionale e ordinamento interno*, Napoli, pp. 1-28.

ARMSTRONG (2020), *Concepts of Slavery in the United States 1865–1914,* in WINTERDYK, JONES (eds), *The Palgrave International Handbook of Human Trafficking,* Cham, 1st ed, p. 35 ff.

BERNASCONI (2013), *La repressione penale della tratta di esseri umani nell'ordinamento italiano*, in FORLATI (ed.), *La lotta alla tratta di esseri umani tra dimensione internazionale e ordinamento interno*, Napoli, pp. 69–89.

BONFANTI, DI NICOLA (2015), *I reati in materia di prostituzione. I nuovi scenari interpretativi. I reati connessi, le misure di prevenzione e di sicurezza, le forme di protezione*, Milano.

BOUCHÉ, BAILEY (2019), *The UNODC Global Report on Trafficking in Persons: An Aspirational Tool with Great Potential* in WINTERDYK, JONES (eds), *The Palgrave International Handbook of Human Trafficking*, Cham, 1st ed, p. 164 ff.

BREWER, SOUTHWELL (2020), *Legal policy and framework on trafficking* in SOUTHWELL, BREWER, DOUGLAS-JONES *Human Trafficking and Modern Slavery Law and Practice* (eds.), London, 2nd ed, p. 1 ff.

BURKE *ET AL.* (2022), *Introduction to Human Trafficking*, in BURKE (ed.) *Human Trafficking*, New York, p. 3 ff.

CORSELLI (2011), La riforma degli art. 600 e 601 c.p.: la legge 228/2003, Palermo.

GALLAGHER (2010), *The international law of human trafficking*, Cambridge.

GALLAGHER (2017), *Trafficking in transnational criminal law* in PIOTROWICZ, RIJKEN, BAERBEL (Eds.), *Routledge Handbook of Human Trafficking*, New York, 1st ed, p. 20 ff.

GIULIANI (2015), *I reati in materia di caporalato, intermediazione illecita e sfruttamento del lavoro*, Padova.

GOŹDZIAK (2021), *Human Trafficking as a New (In)Security Threat*, Cham, 1st ed.

HEALY (2017), *Exploitation through begging as a form of trafficking in human beings – over-estimated or under-reported?* in PIOTROWICZ, RIJKEN, BAERBEL (eds.), *Routledge Handbook of Human Trafficking*, New York, 1st ed, p. 157 ff.

ID. (2017b) *White Slave Traffic*, in *International Law* in *Journal of Trafficking and Human Exploitation*, 1(1), p. 1 ff.

KAYE, MILLAR, O'DOHERTY (2019), *Exploring Human Rights in the Context of Enforcement-Based Anti-trafficking in Persons Responses* in WINTERDYK, JONES (eds), *The Palgrave International Handbook of Human Trafficking*, Cham, 1st ed, p. 601 ff.

KAYE, MILLAR, O'DOHERTY (2020), *Exploring Human Rights in the Context of Enforcement-Based Anti-Trafficking in Persons Responses*, in WINTERDYK, JONES (eds), *The Palgrave International Handbook of Human Trafficking,* Cham, 1st ed, p. 601 ff.

LAMMASNIEMI (2020), *International Legislation on White Slavery and Anti-Trafficking in the Early Twentieth Century*, in WINTERDYK, JONES (eds), *The Palgrave International Handbook of Human Trafficking*, Cham, 1st ed, p. 67 ff.

MERLIN, PERTINI (2017)*, Lettere dalle case chiuse.*

NEWMAN (2022), *Historical Perspective* in BURKE (ed) *Human Trafficking*, New York, p. 32 ff.

O' NEILL (2023), *The Transnational Crime of Human Trafficking*, 1st ed.

PALUMBO, ROMANO (2022), *Evoluzione e limiti del sistema anti-tratta italiano e le connessioni con il sistema della protezione internazionale* in GAROFALO, SELMI (eds.), *Prostituzione e lavoro sessuale in Italia : Oltre le semplificazioni, verso i diritti*, pp. 65-89.

PECCIOLI (2005), *Unione Europea e criminalità transnazionale*, Torino.

PIOTROWICZ (2017), *The European legal regime on trafficking in human beings* in PIOTROWICZ, RIJKEN, BAERBEL (eds.), *Routledge Handbook of Human Trafficking*, New York, 1st ed, p. 41 ff.

SILLER (2019), *The law of human trafficking: From international law to domestic codification in the U.S. and abroad* in DALLA, SABELLA (eds.)

*Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approac*h, London, 1st ed, p. 189 ff.

STOYANOVA (2017), *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law*, 1st ed.

SWAUGER ET AL. (2022) *Sociological Perspective: Underlying causes* in BURKE (ed.) *Human Trafficking*, New York, p. 117 ff.

VENTUROLI (2013), *La direttiva 2011/36/UE: uno strumento "completo" per contrastare la tratta degli esseri umani*, in FORLATI (ed.), *La lotta alla tratta di esseri umani fra dimensione internazionale e ordinamento interno*, Napoli, p. 47 ff.

WILKINS (2020), *Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking,* in WINTERDYK, JONES (eds), *The Palgrave International Handbook of Human Trafficking*, Cham, 1st ed, p. 3 ff.

WINTERDYK, JONES (2020), *The Palgrave International Handbook of Human Trafficking*, Cham, 1st ed.

JOURNAL ARTICLES

ALLAIN (2010), *Ranstev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery* in *Human Rights Law Review*, 10, pp. 546 ff.

CHUANG (2006) *Beyond a Snapshot: Preventing Human Trafficking in the Global Economy'* in *Indiana Journal of Global Legal Studies*, 13, p. 137 ff.

DOEZEMA (1999), *Loose Women or Lost Women? The Re-Emergence of the Myth of White Slavery* in *Contemporary Discourses of Trafficking in Women* in *Gender Issues*, 18, p. 23 ff.

GALLAGHER (2009), *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling - a Preliminary Analysis* in *Human Rights Quarterly*, 23(4), pp. 975 ff.

HATHAWAY (2008), *The Human Rights Quagmire of "Human Trafficking"* in *Virginia Journal of International Law*, 49, p 1 ff.

NICODEMI (2017), *Le vittime della tratta di persone nel contesto della procedura di riconoscimento della protezione internazionale. Quali misure per un efficace coordinamento tra i sistemi di protezione e di assistenza?* in Diritto, Immigrazione e Cittadinanza, 1.

NIEUWENHUYS, PÉCOUD (2007), *Human Trafficking, Information Campaigns, and Strategies of Migration Control* in *American Behavioral Scientist*, 50, p. 1674 ff.

OBOKATA (2005), *Trafficking of Human Beings as a Crime against Humanity: Some Implications for the International Legal System*, in *The International and Comparative Law Quarterly,* 54(2), pp. 445–457.

OMIZZOLO (2020), *Caporalato. Lo sfruttamento del lavoro tra agromafie e politiche istituzionali*, in *Costituzionalismo.it*, 2, pp. 1–18.

PALMISANO (2010) *Dagli schiavi ai migranti clandestini: la lotta al traffico di esseri umani in una prospettiva internazionalistica* in *Ragion pratica*, p. 469 ff.

PATI (2011), *States' Positive Obligations with Respect to Human Trafficking: The European Court of Human Rights Breaks New Ground in Rantsev v. Cyprus & Russia*, in *Boston University International Law Journal*, 29, pp. 1 ff.

PIOTROWICZ, SORRENTINO (2016) *Human Trafficking and the Emergence of the Non-Punishment Principle* in *Human Rights Law Review*, 16, p. 669 ff.

REANDA (1991), *Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action* in *Human Rights Quarterly*, 13, p. 202 ff.

SCARCELLA, PISTORELLI (2011), *"Manovra bis": le disposizioni rilevanti per il diritto penale contenute nel d.l. 13 agosto 2011, n. 138, di imminente conversione (con emendamenti)*, in *Diritto Penale Contemporaneo*.

TORRE (2020), *L'obsolescenza dell'art. 603-bis c.p. e le nuove forme di sfruttamento lavorativo* in *Labour & Law Issues* 6, n. 2, p. 72 ff.

SITOGRAPHY

GIAMMARINARO (2021), *Revising EU Directive on human trafficking? For bad or good reasons?,* available *online.*

DE GIOIA (2025), *Il delitto di riduzione o mantenimento in schiavitù o in servitù: lo stato di necessità della vittima*, in *Diritto penale Delitti*, available online.

MINETTI (2020), *Uses and Abuses of the Anti-Smuggling Law in Italy* in *Criminal Justice Network*, available online.

VETTORI (2014), La tratta degli esseri umani in *ADIR - L'altro Diritto*, 2014, available online.

BRASCHI (2022), *Il reato di intermediazione illecita e sfruttamento del lavoro: elementi costitutivi e apparato sanzionatorio* in *Lavoro Diritti Europa*, available online.

DOCUMENTS

Addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Office of the High Commissioner for Human Rights, 2002, E/2002/68/Add.1, *Recommended Principles and Guidelines on Human Rights and Human Trafficking.*

Commission Staff Working Paper of the European Commission, 18 May 2011, SEC(2011) 580 final, *Impact assessment accompanying the proposal for a directive establishing minimum standards on the rights, support and protection of victims of crime and a regulation on mutual recognition of protection measures in civil matters.*

Communication from the Commission to the Council and the European Parliament, Commission of the European Communities, 20 November 1996, (96) 567, *On Trafficking in Women for the Purpose of Sexual Exploitation*.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 14 April 2021, COM(2021) 171, *Eu Strategy on Combating Trafficking in Human Beings.*

Convention of the Council of Europe, 16 May 2005, CETS no. 197, *Convention on Action against Trafficking in Human Beings.*

Convention of the Council of Europe, 4 November 1950, ETS No. 005, *European Convention on Human Rights*.

Convention of the League of Nations, 11 October 1933, *International Convention for the Suppression of the Traffic in Women of Full Age*.

Convention of the League of Nations, 25 September 1926, C*onvention to Suppress the Slave Trade and Slavery*.

Convention of the League of Nations, 30 September 1921, *International Convention for the Suppression of the Traffic in Women and Children.*

Convention of the United Nations, 2 December 1949, No. 1342, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*.

Declaration of the European Conference on Preventing and Combating Trafficking in Human Beings, 29 November 2002, 14981/02, *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*.

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

Directive of the European Parliament and of the Council, 25 October 2012, 2012/29/EU, *establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.*

Directive of the European Parliament and of the Council, 29 April 2004, 2004/81/EC, *residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.*

Framework Decision of the Council, 19 July 2022, 2002/629/JHA, c*ombating trafficking in human beings.*

International Agreement for the Suppression of the "White Slave Traffic", 18 May 1904.

International Convention for the Suppression of the White Slave Traffic, 4 May 1910.

Issue Brief, Inter-Agency Coordination Group against Trafficking in Persons (ICAT), 2019, No. 8, *Non-Punishment of Victims of Trafficking in Persons.*

Issue paper of the United Nations Office on Drugs and Crime, 2013, A*buse of a position of vulnerability and other "means" within the definition of trafficking in persons.*

Law 20 February 1958 No. 75, *Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui*.

Legislative Decree, 13 September 1996, No. 477, *Disposizioni urgenti in materia di politica dell'immigrazione e per la regolamentazione dell'ingresso e soggiorno nel territorio nazionale dei cittadini dei Paesi non appartenenti all'Unione europea*.

Legislative Decree, 25 July 1998 No. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*.

Legislative Decree, 25 July 1998, no. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*.

Policy Paper of La Strada International, 2022, *The Impact of Criminalising the 'Knowing Use' on Human Trafficking.*

Proposal of the European Commission, 28 May 2002, com(2002) 0071 final – CNS 2002/0043, *Explanatory memorandum to the proposal for a council directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities.*

Publication of ASGI, *Osservazioni al decreto legislativo 4 marzo 2014 n. 24 di attuazione della direttiva 2011/36/UE relativa alla prevenzione e repressione della tratta di esseri umani e alla protezione delle vittime e che sostituisce la decisione quadro 2002/629/GAI*.

Publication of the Center for the Study of Democracy, 2015, *Child trafficking among vulnerable Roma communities.*

Publication of the Council of Europe Group of Experts on Action against Trafficking in Human Beings, 11 March 2024, *Third Evaluation Round. Italy: Report submitted by the Italian authorities on measures taken to comply with the Committee of the Parties Recommendation CP/Rec(2022)05 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*.

Publication of the Department for Equal Opportunities, 2022, *National action plan against trafficking and serious exploitation of human beings 2022–2025*.

Publication of the Group of Experts on Action against Trafficking in Human Beings, 23 February 2024, 03, *Evaluation Report Italy - Access to justice and effective remedies for victims of trafficking in human beings.*

Publication of the International Criminal Court, 2011, *Elements of Crime*.

Publication of the Italian Court of Cassation, 27 March 2014, *Relazione III/04 del 2014: Attuazione della direttiva 2011/36/UE relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime.*

Publication of the OSCE for Democratic Institutions and Human Rights, 2004, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons – A Practical Handbook.*

Publication of the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2013, *Policy and Legislative Recommendations towards the Effective Implementation of the Non-Punishment Provision with Regard to Victims of Trafficking*.

Publication of the United Nations Economic and Social Council, 20 May 2002, E/2002/68, *Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council.*

Publication of the United Nations Economic and Social Council, Commission on Crime Prevention and Criminal Justice, 21 February 2006, E/CN/15/2006/10, *Preventing, combating and punishing trafficking in human organs.*

Publication of the United Nations Office on Drugs and Crime, 2003, *The Global Programmes.*

Publication of the United Nations Office on Drugs and Crime, 2006, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.*

Publication of the United Nations Office on Drugs and Crime, 2008, *Toolkit to Combat Trafficking in Persons.*

Publication of the United Nations Office on Drugs and Crime, 2009, *Model Law against Trafficking in Persons.*

Publication of the United Nations Office on Drugs and Crime, 2010, CTOC/COP/2010/11, *Global Initiative to Fight Human Trafficking : report of the Secretariat*.

Publication of the United Nations Office on Drugs and Crime, 2018, *Global Report on Trafficking in Persons 2018.*

Report of the United Nations Office on Drug and Crimes, 2024, Global Report on Trafficking in Persons 2024.

Publication of the United Nations Office on Drugs and Crime, 2020, *Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.*

Recommendation of the Parliamentary Assembly of the Council of Europe, 23 April 1997, 1325 (1997), *Traffic in women and forced prostitution in Council of Europe member states*.

Report of the Council of Europe, 16 May 2005, no. 197, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*.

Resolution of the Economic and Social Council, 27 July 1993, 1993/29, *World Ministerial Conference on Organized Transnational Crime.*

Report of the International Labor Organization, Walk Free and the International Organization for Migration, 2022, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage.*

Statement of La Strada International, 22 February 2022, *States should offer trafficked persons access to a residence permit on personal grounds.*

Treaty of the UN General Assembly, 15 November 2000, *Convention Against Transnational Organized Crime.*

Treaty of the UN General Assembly, 15 November 2000, *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime.*

Treaty of the UN General Assembly, 15 November 2000*, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime.*

Treaty of the UN General Assembly, 17 July 1998, *Rome Statute of the International Criminal Court*.

CASE LAW

Decision of the International Criminal Court 30 September 2008, ICC-01/04-01/07, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

Judgment of the Italian Court of Cassation, 18 January 2024, Case no. 2319, *O.M v. O.L*.

Judgment of the European Court of Human Rights, 26 July 2005, 73316/01, *Siliadin v France*.

Judgment of the European Court of Human Rights, 7 January 2010, 25965/04, *Rantsev v. Cyprus and Russia*.

Judgment of the European Court of Human Rights, 15 March 1978, 5856/72, *Tyrer v. The United Kingdom*.

Judgment of the European Court of Human Rights, 23 November 1983, 8919/80, *Van Der Mussele v. Belgium*.

Judgment of the European Court of Human Rights, 28 November 2023, 18269/18, *Krachunova v. Bulgaria.*

Judgment of the Court of Cassation, Section V, 18 December 2000, n.13125, Gjini.

Judgment of the Court of Cassation, Section V, 1 February 2006, n. 4012.

Judgment of the Court of Cassation, Section III, 25 January 2007, n. 2841.

Judgment of the Italian Constitutional Court, 9 April 1981, n. 96.

Judgment of the Court of Cassation, Section VI, 18 January 2024, n. 2319.

Judgment of the Court of Cassation, Section V, 1 October 2015, n. 39797.

Judgment of the Court of Cassation, Section IV, 16 March 2021, n. 24441.

Judgment of the Court of Cassation, Section IV, 11 Novembre 2021, n. 45615.