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Explanation of Italian legislation and debate

Between the beginning of the Seventies and the end of the Eighties the debate on trafficking had not yet entered the public agenda, as street prostitution in Italy had declined in those years in favour of indoor prostitution, thus making the phenomenon less visible to the public and institutions. In addition, the majority of those in prostitution were Italian women, with a minority of South Americans and Austrians. Another interpretation of the decline in street prostitution is that in the eighties there was an improvement in indoor working conditions, a greater independence of prostitutes who worked without the so-called "pimps"(Danna, 2001). This improvement could be confirmed by the decrease in the number of complaints made, compared with the previous decade, concerning the dire conditions in hotels where prostitution was being practised illegally to avoid sanctions and to protect the anonymity of 'clients' (Danna, 2001)¹.

In the 1990s, the situation began to change again and, despite the decline in street prostitution in the 1970s and 1980s, substantial immigration began from war zones and areas suffering economic crisis, such as parts of Africa - particularly Nigeria - and Eastern Europe - in particular, Albania. The unacceptable conditions and situations seen before the seventies with regard to street prostitution were once again on the increase. A 2000 Europap report states that 54% of foreign street prostitutes are African, 30% from Eastern Europe and the remaining 16% are women from Latin America.(Danna, 2001)

The two main countries of origin of the prostitution system were also characterized by two different types of exploitation. The Nigerians initially entered Italy with the complicity that the traffickers enjoyed at the embassy of Lagos, which traded entry visas. Unlike Albanian women, Nigerians are forced to pay a high debt to enter Italy. Their movements in this country follow a hierarchical pattern with the less experienced ones positioned in marginal places, less frequented roads and therefore with less possibility of profit. And only if they are reliable are they then transferred to places that yield more money, such as cities. On the streets the Nigerian women are not directly controlled, they do not appear to have a pimp in the area because their obedience is already guaranteed by the traffickers' seizure of their passports (Danna, 2001).

¹ Danna D., "Le politiche sulla prostituzione in Europa negli anni Novanta", PhD thesis, 'Università degli studi di Trento, 2001, supervisore Marzio Barbagli, pp. 128-129

The conditions on the streets are the same for Albanian women who are not controlled by a pimp in the place where they operate. The difference between the Albanian and Nigerian exploitation systems is the method by which women are forced into prostitution. Albanian women are often deceived with the dynamic of the “lover boy”, the one who lures the girl, pretending to be in love with her, with the promise of marriage, when in reality their goal is to exploit her in the prostitution system. Italy is seen as a country where you can find success and fortune. Often Albanian girls come from rural villages and are not aware of what can happen to them once they arrive in Italy. Some of them are kidnapped and pimps use blackmail, through photos and videos, threats and physical and sexual violence, to keep them on the street.²

In both cases, these Nigerian and Albanian women are involved in trafficking for sexual exploitation, or sex trafficking. With regard to street prostitution by foreign women in the Nineties, we have an estimate given by Parsec, operators and street outreach workers from various organisations. The investigations on prostitution were based on the street because with the immigration of foreign women the phenomenon had returned to visibility on the streets, arousing the indignation of public opinion more for a question of "decorum" than for the protection of women's rights. According to Parsec's 1998 report, the national figure is between 14,757 and 19,289 foreign women, of whom 53% are located in the North, 37% in the Centre and 10% in the South, based on an estimate made in fourteen regions that takes into account a minimum and maximum value to calculate the number in both summer and winter. The calculation of the number of foreign women involved in street prostitution was based on surveys carried out by the various organisations in the local municipalities on the basis of the number of residence permits, subsequently reported to the regions.³

The law in Italy after the debate on trafficking

The debate on trafficking has been active since the 1990s and it was in 1998 that one of the most important instruments in the field of immigration was adopted in the context of the Italian national legal system, that is, the Consolidated Law on Immigration (*Testo unico delle disposizioni concernenti la disciplina sull'immigrazione e norme sulla condizione dello straniero*). One of the main points of reference in assisting victims of trafficking is Article 18 of the 1998 Consolidated Law, which provides for the issuance of residence permits for social protection reasons with the aim of "allowing foreigners to escape the violence and conditioning of the criminal organisation and to participate in a program of assistance and social integration" (art. 18, paragraph 1). The residence permit is valid for six months and can be renewable for a period of one year.⁴

² *Ibid*, p.128

³ *Ibid*, p.128

⁴ Single Text of the provisions concerning the regulation on immigration - Title II Legislative Decree, coordinated text, 25/07/1998 n° 286, G.U.18/08/1998

The innovative element is represented by the double-pronged approach, combining the legal aspect with the social side, without the two influencing each other. The previous provisions included the issue of a residence permit for reasons of justice that involved the victim's cooperation with Law Enforcement. This type of permit was therefore linked to the timing of the trial, as it was only granted after the start of the criminal trial. The issue of a residence permit for reasons of social protection does not, however, depend on the obligation to make a legal report on the part of the victim and this allows for a greater possibility of social and psychological balance, thus creating a climate of trust. A safe and secure environment is necessary for any subsequent cooperation in legal proceedings. The proposal to issue a residence permit may be made not only by the "Public Prosecutor of the Republic, in cases where proceedings have been initiated" but also by "the social services of local authorities or associations, and other entities" that run social protection projects. The chief of police then issues a residence permit on humanitarian grounds. The social protection permit allows access to work, study and welfare services and can be converted into a residence permit for employment or study purposes. The real revolutionary dimension is the social component, with which for the first time the victim's right to stay and receive assistance without the obligation to start a criminal trial is recognised.

The permit remains, however, subject to the inclusion of the person in a system of support and assistance with the aim of their integration in Italy. Therefore, the failure to participate in this system has the consequence of the withdrawal of the permit. The following is quoted from paragraph 1 of art.18 of Legislative Decree 286/1998:

1. When, in the course of police operations, investigations or proceedings for any of the offences referred to in Article 3 of Law No. 75 of 20 February 1958, or those referred to in Article 380 of the Code of Criminal Procedure, or in the course of social services provided by local authorities, situations of violence or serious exploitation against a foreigner are identified and there are concrete dangers to his or her safety, as a result of attempts to evade the influence of a group committed to one of the above-mentioned crimes or statements made during preliminary investigations or judgment, the chief of police, including on a proposal from the Public Prosecutor of the Republic, or with a favourable opinion from the same authority, issues a special residence permit to allow foreigners to escape the violence and conditioning of the criminal organisation and to participate in a social assistance and integration programme.

There are, however, some criticisms, despite the innovative element of the double-pronged approach. The social component remains very linked to the discretion of the chief of police. Its application, rather than a principle of law, often takes place only if there is good cooperation between the chiefs of police and the services concerned with the fight against trafficking. It is therefore quite common to issue a residence permit in practice only if the victim has expressed their willingness to cooperate with the authorities. This practice is contrary to what is laid down in the law itself and reduces everything to a negotiation between the State and the victim, the former

granting the latter residence within its borders and the latter agreeing to cooperate to support the State's work regarding security.

Another important element in the Italian legislation on combating trafficking in human beings is Law 228/2003 concerning measures against trafficking in persons. This law amends and updates Articles 600, 601, 602 of the Penal Code, in order to correctly transpose the provisions of the Palermo Protocol. It creates the Fund for anti trafficking measures⁵ *"(...) to finance social assistance and integration programmes for victims, as well as the other social protection purposes provided for in Article 18 of the Consolidated Law on Immigration, referred to in Legislative Decree no. 286 of 25 July 1998."*⁶

Article 13 of Law 228/2003 establishes a special programme to assist victims of trafficking or slavery, in which adequate conditions of housing, food and health care are to be provided on a transitional basis.⁷

Legislative Decree 24/2014, which transposes Directive 2011/36/EU, is also significant in the field of assistance to victims of human trafficking. This slightly amends Article 600 of the Penal Code and rewrites Article 601 completely. It also adds an amendment to the Code of Criminal Procedure, including special procedures for conduct around presenting evidence also for adult victims in the event that they are *"in a situation of particular vulnerability, also inferred from the type of crime for which it proceeds"*.⁸

The change could have been extended to all victims of trafficking and not only to those with particular vulnerabilities, which leaves some discretion in the assessment of such vulnerabilities. Furthermore, the opportunity was missed to affirm one of the fundamental principles of Directive 2011/36/EU, namely access to legal aid for victims without adequate financial resources. Article 4 of Legislative Decree no. 24/2014 states that in case of doubt about the age of the victim in question, they must be considered as a minor in order to ensure that they can have immediate access to reception measures. It also provides for an assessment to be carried out through a multidisciplinary procedure to determine their age, *"(...) conducted by specialised personnel and in accordance with appropriate procedures, which also take into account the specificities relating to*

⁵ Law n.228 dated 11 August, 2003 Measures against trafficking in persons, art. 12

⁶ Law n.228 dated 11 August, 2003 Measures against trafficking in persons, art. 12 comma 3

⁷ *Ibid*, art.13 comme 1

⁸ Legislative Decree n.24 dated 4 March, 2014, Implementation of Directive 2011/36 / EU, relating to the prevention and the suppression of trafficking in human beings and the protection of victims, which replaces the framework decision 2002/629 / GAI, art. 3

the ethnic and cultural origin of the child and, where appropriate, the identification of minors through the involvement of diplomatic authorities”⁹

If it is not possible through this procedure to determine the age of the victim then they are to be considered a minor. Another important article of this legislative decree is Article 8, which amends Article 18 of the Consolidated Law on Immigration by adding paragraph 3-bis which linked the two programs provided for social protection. That is, Article 18 of the Consolidated Law and Article 13 of Law 228/2003 having a single plan of emergence, assistance and social integration divided into two phases. The first phase consists of timely assistance following the intervention provided for by Article 13 of Law 228/2003, while the second phase is more structured and aims to create an individual program for the recovery and social integration of the person. There are, however, some criticisms here as well. Even though this legislative decree should transpose Directive 2011/36/EU, this has not happened completely. There has been no provision for access to this support programme from the moment in which there is reasonable reason to believe that the individual is a victim of human trafficking or slavery. The period of reflection has not been introduced and no provision has been adopted concerning the suspension of a deportation or expulsion order during the waiting period before the issue or refusal of the residence permit for social protection.¹⁰

The support programme was not defined in detail until 16 May 2016 with the Decree of the President of the Council of Ministers that gives the definition of the Single Programme of emergence, assistance and social integration in favor of foreign nationals and *citizens referred to in paragraph 6-bis of art. 18 of Legislative Decree no. 286/1998, victims of the crimes provided for in articles 600 and 601 of the Penal Code, or that are in the cases referred to in paragraph 1 of the same Article 18*, to be carried out through projects that ensure emergency food, adequate housing and healthcare, and then come to integration assistance.¹¹ The projects of this support programme must respect the general principles of multi-agency work, prevention of re-victimisation, creation of personalised plans according to the individual by focusing on their needs, their wishes and their potential, in accordance with the principle of non-discrimination.¹²

Article 6 regarding the "Right to compensation for victims of trafficking" is also a matter of concern, since the current system is not sufficient to guarantee victims the right to compensation. To this end, it allocates the resources of the Anti-trafficking Fund but does not provide for further

⁹ D.L. 24/2014 art. 4 paragraph 2

¹⁰ ASGI, Observations relating to the state of implementation in Italy of Directive 2011/36 EU relating to the prevention and repression of trafficking in human beings and the protection of victims in lieu of Council framework decision 2002/629 / JHA - Legislative decree no. 24, p. 6

¹¹ D.p.c.m. May 16, 2016 “Definition of the Single Program of emergence, assistance and social integration in favor of foreigners and citizens referred to in paragraph 6 bis of art. 18 of the legislative decree 25 July 1998, n. 286, victims of the crimes provided for in articles 600 and 601 of the criminal code, or who are involved in the cases referred to in paragraph 1 of the same article 18, article 1 paragraph 3

¹² *Ibid*, art.1 comma 4,5

funding, which makes the provision impracticable. In addition, art. 6 provides, with the addition of paragraph 2-ter to art.12 of L 228/2003, a lump sum compensation for each victim equal to 1,500 euros, however, only within the limits of the financial resources of the Anti-trafficking Fund. The basic compensation is the same for all the victims but their stories are different as well as the damage and trauma they have suffered, so this amount seems small.

In Article 9 of Legislative Decree no. 24/2014 there is a further amendment to L. 228/2003, specifically Article 13, which provides for the adoption of the National Action Plan against trafficking in human beings, which should have been adopted within three months of the entry into force of Legislative Decree no. 24/2014, and is aimed at *defining multi-annual intervention strategies to prevent and combat the phenomenon of trafficking in and serious exploitation of human beings, as well as actions aimed at raising awareness, social prevention, emergence and social integration of victims*. Unfortunately, this new instrument was only adopted almost two years late, on 26th February 2016.

Article 5 of Legislative Decree no. 24/2014, concerns the training of staff working in contact with victims of trafficking in human beings, but in fact it refers back to the National Action Plan against Trafficking for the methodology and target group to be involved.

Finally, Article 10 deals with referral provisions and refers to the various entities involved in administration to set up the coordination measures between the anti-trafficking system and the Italian asylum system. It expresses the need to provide foreign nationals with adequate information regarding both trafficking and the possibility of applying for international protection. Finally, it points out how the Territorial Commissions, in cases where indicators relating to trafficking in human beings or enslavement are found during the investigation, must inform the chief of police of their actions.

When it comes to the fight against trafficking, the National Action Plan against Trafficking in Human Beings and Serious Exploitation 2016-2018 must be mentioned¹³. As already stated, this was provided for by Legislative Decree no. 24 of 2014 and aims to *define multi-annual intervention strategies for the prevention and fight against the phenomenon of trafficking and the serious exploitation of human beings, as well as actions aimed at raising awareness, social prevention, emergence and social integration of victims*.

The plan has the strategic objective of improving the national response in the fight against trafficking, in accordance with the European and unified approach. It also has an operational objective, namely to define a national policy of coordinated and systematic intervention, involving the various relevant administrations at the central and territorial levels, with a collaborative approach aimed at optimising financial resources.

¹³ Department for Equal Opportunities, Action Plan against Trafficking and Serious Exploitation 2016-2018, <http://www.pariopportunita.gov.it/materiale/piano-dazione-contro-la-tratta-e-il-grave-sfruttamento/>

The two channels of action are:

1. Combating and suppressing the crime of exploitation of human beings, entrusted to all law enforcement agencies
2. prevention and protection of victims, entrusted to public social services and private organisations accredited by registering in the appropriate section II of the register of entities that carry out support programmes for immigrants¹⁴

The Plan is structured according to the 5 priorities indicated by the EU Strategy, taking into account the four guidelines (prevention, prosecution, protection, partnership):

1. Identifying, protecting and providing assistance to victims of trafficking
2. Increasing the prevention of trafficking in human beings
3. Strengthening the prosecution of traffickers
4. Improving coordination and cooperation between key stakeholders, and policy coherence
5. Broaden knowledge of emerging issues related to all forms of trafficking in human beings and provide an effective response.

According to the five priorities mentioned above, the first is prevention through the reduction of the causes of the phenomenon of trafficking in human beings and the limitation of the damage caused by this through awareness-raising campaigns involving both communities of migrants and the business world, strengthening cooperation with international anti-trafficking bodies.

The second concerns prosecution, giving a central role to the Police and the Judicial Authority in the fight against trafficking in human beings, reiterating the necessity of the specialization of the Public Prosecutors and the training of the Magistrates regarding the phenomenon of trafficking and combating it by the Superior School of Judiciary.

The third priority sets out the task of protecting and assisting victims of trafficking and serious exploitation by means of rapid identification, which is only possible if the persons in charge are adequately trained with regard to the rights and options available to victims of trafficking.

The last point concerns cooperation with the countries of origin of trafficking victims and is aimed at strengthening institutional relations and civil society. It also provides for cooperation on development initiatives with these countries, with the support of international organisations.

¹⁴As required by Article 52, paragraph 1, of the Implementation Regulation of the Consolidated Immigration Law, Presidential Decree no. 334 dated 18 October, 2004.

Currently the new triennial National Anti-Trafficking Action Plan 2019-2021 is being drawn up. On 18 October 2020 the Minister for Equal Opportunities and the Family, Elena Bonetti, announced that the most important objective is the definition of the new National Anti-Trafficking Plan for 2021, which will have to take into account the emergencies created by the COVID-19 epidemic, which has negatively impacted the situations of vulnerable people.¹⁵

¹⁵ Department for Equal Opportunities, 18 October 2020, European Day against Trafficking, Bonetti: “Within the year new Anti-trafficking Plan”, <http://www.pariopportunita.gov.it/news/giornata-europea-contro-la-tratta-bonettientro-lanno-nuovo-piano-anti-tratta/>