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From Nigeria to Europe: the phenomenon of trafficking and its international regulation

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Alla mia adorata mamma,

ovunque tu sia il mio amore ti raggiungerà.

Per sempre.

Sommario

Abstract

Quando parliamo di schiavitù tendiamo ad associare il fenomeno ad un'epoca passata, distante sia nel tempo che nella mentalità. Ad oggi, in una società moderna come quella occidentale, fondata sui diritti umani e la libertà, sembra strano discuterne ancora ma si tratta di un fenomeno ancora presente, seppur in forma diversa. Il concetto di schiavitù, il quale si fonda sull'imposizione di un forte controllo su un'altra persona, deprivandola di tutti i suoi diritti, è sempre stata una costante nella storia umana assumendo nel tempo diverse sfaccettature. In seguito, nel secolo dell'illuminismo la schiavitù ha cominciato ad essere contestata in quanto le persone cominciarono a combattere per il riconoscimento dei diritti di eguale dignità e libertà di ogni essere umano. Nonostante l'abolizione della schiavitù abbia rappresentato un passo fondamentale nella storia dell'uomo e abbia portato tutti gli Stati del mondo a considerarla illegale, sarebbe sbagliato affermare che ad oggi non esista più. La "schiavitù moderna", termine con la quale è denominata oggi, si caratterizza per le diverse forme con la quale si manifesta, ovvero: traffico di essere umani soprattutto donne e bambini, schiavitù sessuale, contrabbando di migranti, traffico di organi, sfruttamento lavorativo, matrimonio forzato e molto altro.

Alla luce di ciò, nel primo capitolo del mio elaborato verrà dato rilievo a una particolare categoria soggetta a sfruttamento sessuale ovvero quella delle donne nigeriane trafficate nei paesi europei. La tratta delle donne è una forma di schiavitù moderna e, in quanto tale, ha una natura complessa che coinvolge la migrazione, la violenza, le violazioni dei diritti umani e la discriminazione di genere. Considerando le pessime condizioni di vita che devono affrontare, milioni di donne e ragazze iniziano un viaggio disperato per sfuggire alla povertà in Nigeria e cercano di raggiungere le coste europee alla ricerca di una vita migliore. I reclutatori di solito le convincono con la promessa di opportunità di lavoro come badanti e parrucchiere ma, una volta arrivate a destinazione sono costrette a una vita di prostituzione. Tutti questi fattori rendono le donne vulnerabili ai trafficanti e contribuiscono a una pratica già in crescita. Tenendo conto di questi dati è molto importante che questo fenomeno sia contenuto e che le donne ricevano la giusta assistenza e il sostegno necessario.

Il secondo capitolo della tesi si concentrerà sull'evoluzione della legislazione internazionale ed europea concernente la tratta per porre l'attenzione sugli strumenti creati nel tempo con l'obiettivo di contrastare il fenomeno. I primi strumenti internazionali risalgono ai primi anni del Novecento con la creazione della "Convenzione per la repressione della tratta delle bianche del 1904" e la successiva Convenzione del 1910 con l'annesso protocollo, le quali rappresentano un passo iniziale nella definizione, seppur poco chiara, del fenomeno. Successivamente, il quadro normativo si è ampliato nel corso del XX secolo con l'adozione nel 1950 della "Convenzione Europea per la salvaguardia dei diritti umani e delle libertà fondamentali" la quale rappresenta un punto di svolta nella normativa per la salvaguardia dei diritti umani. Oltre a ciò, la "Convenzione sull'eliminazione di ogni forma di discriminazione contro le donne" ha aggiunto un focus specifico sulla tratta

delle donne, riconoscendo le sfide che le donne affrontano in questo contesto. Anche la "Convenzione delle Nazioni unite contro la criminalità organizzata transnazionale" è stato un punto di svolta fondamentale in quanto ha portato alla ridefinizione del concetto di tratta e, grazie ai successivi protocolli aggiuntivi, sono state aggiunte misure specifiche per prevenire, reprimere e punire la tratta di persone, specialmente donne e bambini. Il Consiglio d'Europa ha poi avuto un ruolo fondamentale con la "Convenzione sulla lotta contro la tratta di esseri umani" e infine la "Convenzione di Istanbul" ha enfatizzato la necessità di maggiori misure di prevenzione e protezione delle vittime attraverso una prospettiva di genere. Invece, a livello dell'Unione Europea, gli strumenti legali adottati sono stati creati in risposta alla crescente consapevolezza della necessità di un approccio comune e coordinato tra gli Stati membri per affrontare gravi violazioni dei diritti umani. Tra le varie misure adottate ci si focalizzerà su l'Azione Comune 97/154/GAI, una delle prime iniziative volte alla tutela delle vittime, per poi passare alla Decisione Quadro del Consiglio 2002/629/GAI che ha rappresentato un ulteriore passo in avanti nella definizione degli strumenti normativi comuni per affrontare la tratta di esseri umani sul territorio dell'Unione Europea. Inoltre, la Direttiva 2004/81/CE ha introdotto misure specifiche in merito ai permessi di soggiorno rilasciati ai cittadini di paesi terzi vittime del fenomeno e infine la Direttiva 2011/36/UE ha consolidato e ampliato le disposizioni delle normative precedenti, rafforzando le misure di prevenzione ed enfatizzando la necessità di cooperazione tra gli Stati.

Per concludere, con lo scopo di dare ulteriore rilevanza all'evoluzione normativa in materia verranno analizzati cinque casi della Corte Europea dei diritti dell'uomo. Così facendo, si porrà l'attenzione su un sistema che si prefigge di garantire il rispetto dei diritti umani e la tutela delle vittime soggette a pratiche disumane come la tratta, tra le quali figurano anche le donne nigeriane. I casi che verranno esaminati all'interno del terzo e ultimo capitolo sono: "Siliadin c. Francia", "Rantsev c. Cipro e Russia", "L.E c. Grecia", "Chowdary e altri c. Grecia" e "S.M c. Croazia". L'insieme di questi casi offre l'opportunità di esplorare le dinamiche giuridiche e le interpretazioni della CEDU in risposta a complesse situazioni e sfide emergenti nel contesto dei diritti umani.

Introduction

When we talk about slavery, we tend to associate the phenomenon with a distant era both in time and thought. Today, in a modern society such as the Western one, based on individual rights and freedoms, it seems strange to discuss about it, yet it is a phenomenon that is still present albeit in a different form. The concept of slavery which is defined as the imposition of control on a person considered property of another has been a constant throughout human history, though it has assumed various forms depending on centuries, culture, and socio-economic conditions. In the old system of slavery, the master's dominion was acknowledged by law, and he or she could assert a rightful ownership over the slave, which they might trade or sell like any other property[1]. Conversely, in modern slavery, we cannot speak of the right to property, but rather of a *de facto* property, illegal and hidden, but still aimed at the deprivation of the freedom and personal self-determination of the subjects. Slavery began to be openly contested on the moral, cultural and social level only in the century of enlightenment, when people began to fight for its universal abolition in the face of the recognition of the right to the equal dignity and freedom of every human being. In fact, it was precisely on the impetus of the Enlightenment that, from the end of the 18th century to the first half of the 19th century, slavery and the slave trade began to be progressively declared illegitimate in most States of the Western world[2]. Despite the fact that the legal abolition of slavery represented a fundamental stage in the process of civilization which has led all the States of the world to consider it illegal today, it would be incorrect to believe that this has led to its definitive disappearance. Slavery today has taken other forms, less visible and recognizable and therefore more difficult to eradicate. They are referred to as "new slavery," which list is sadly long and open: among these are the trafficking of human beings, and especially of women and children, often for the purpose of labour or sexual exploitation, debt slavery etc, those are all modern forms of slavery, which often overlap with each other. Moreover, there are also forms of “contracted slavery”, that coincide with form of labour exploitation in which the condition of

[1]BONO, Salvatore. Schiavi in Europa nell’età moderna. Varietà di forme e di aspetti. *Schiavitù e servaggio nell’economia europea secc. XI–XVIII*, 2014, pp 309

[2] BOSMA, Ulbe. Slavery and labour contracts: Rethinking their nexus. *International Review of Social History*, 2018, 63.3: pp 505.

substantial enslavement is disguised by the conclusion of contracts, however, they impose unfair clauses which imply the loss of the freedom of movement and decision of the people involved[3]. Furthermore, slavery can also take the form of torture or inhuman and degrading treatment, such as trafficking in human organs; female genital mutilation; forced marriage or the use of children in armed conflict or illegal activities. It is important to emphasize that a common feature of both old and new forms of slavery is the condition of weakness, and therefore of vulnerability of the subjects exposed to it, for example women, children, illegal immigrants, refugees, asylum seekers[4]. Anyone in a condition of weakness, can still be a new slave of the XXI century, that is, possessed or controlled by another human being by means of physical and psychological abuse or through the threat of such abuse. The entire work has been organized into three chapters, in which an attempt has been made to describe and analyse different aspects of the Nigerian context but also to focus on the evolution of the international framework regarding trafficking.

In the first chapter of my thesis, the emphasis will be on a particular category that is subject to sexual exploitation, namely Nigerian women trafficked in European counties. Trafficking of women is a form of modern slavery and as such it has a complex nature involving migration, violence, violations of human rights and gender discrimination. Considering the poor living conditions they face, millions of young girls start a desperate journey in order to escape from the poverty in Nigeria and they try to reach the European coast searching for a better life[5]. Often, however, once they arrive, they are forced into a life of prostitution. The subject of this practice are women who want to escape from a difficult reality with little hope for their future. The recruiters usually convince them with the promise of job opportunities in Europe such as caregiver and hairdresser. This work

[3] ROCCELLA, Massimo. La condizione del lavoro nel mondo globalizzato fra vecchie e nuove schiavitù. *Ragion pratica*, 2010, 2: pp 420.

[4] PALUMBO, Letizia, et al. Vulnerabilità attraverso la lente dell'intersezionalità, nella normativa e nella giurisprudenza europee e italiane. In: *Donne gravemente sfruttate Il diritto di essere protagoniste*. Edizioni Gruppo Abele, 2022, pp 20.

[5] PRIMI, Antonella; VARANI, Nicoletta (ed.). *La condizione della donna in Africa sub-sahariana: riflessioni geografiche*. libreriauniversitaria. it ed., 2011.

reveals that the number of Nigerian women exploited is increasing and it has become really hard to ensure them the rights they deserve. All these factors make women vulnerable to traffickers and contribute to an already growing practice. Taking into account these data it is very important that this phenomenon is curbed and that women are provided with the right assistance and the necessary support.

The second chapter of the dissertation will focus on the evolution of international and European legislation on trafficking to give attention to the tools created over time to fight the phenomenon. The first international instruments date back to the early twentieth century with the creation of the "International Convention for the Suppression of the White Slave Traffic of 1904" and “The International Convention for the Suppression of White Slave Traffic and the Protocol of 1910" that represent an initial step for future global efforts. Subsequently, during the century the regulatory framework expanded with the adoption in 1950 of the "European Convention on Human Rights". This convention marked a turning point, linking the protection of human rights to the fight against trafficking in persons and establishing a legal framework for the protection of victims. In recognition of the difficulties women face, the "Convention on the Elimination of All Forms of Discrimination Against Women" subsequently added a special focus on women aiming to eliminate discrimination in all areas of life. Furthermore, the "United Nations Convention against Transnational Organized Crime" has introduced a new definition of trafficking and, thanks to the subsequent specific protocols, additional measures have been introduced to prevent, suppress and punish trafficking in persons, especially women and children.

At the European Union level, the legal instruments adopted have been created in response to the growing awareness of the need for a common and coordinated approach among Member States to address this serious violation of human rights. Joint Action 97/154/JHA, was a step towards the creation of a harmonised European regulatory framework with the aim of adopting coordinated measures to fight trafficking in human beings and promoting closer cooperation between Member States. Moreover, the adoption of Council Framework Decision 2002/629/JHA, which sought to define the crime of trafficking in

persons and establish uniform penalties for those engaged in it, marked a significant advancement in the definition of common legal instruments to address trafficking throughout the European Union. Directive 2004/81/EC introduced specific rules on residence permits issued to third-country nationals who are victims of trafficking in human beings. This directive has provided a regulatory framework to ensure adequate protection and support for victims of trafficking. Ultimately, the requirements of earlier rules were broadened and unified by Directive 2011/36/EU. It established more specific rules on victim protection, reinforced prevention measures and emphasized the necessity of Member State collaboration.

Finally, the purpose of the third chapter is that of examining a number of important cases from the European Court of Human Rights (ECHR) that have contributed significantly to the development of international human rights law. These judgements raise important issues concerning the protection of the fundamental rights of individuals, focusing in particular on issues of discrimination and inhuman or degrading treatment. In particular, we will focus on emblematic cases such as "Siliadin v. France", "Rantsev v. Cyprus and Russia", "L.E v. Greece", "Chowdary and others v. Greece" and "S.M v. Croatia". These cases provide a unique opportunity to explore the legal dynamics and interpretations of the ECHR in response to complex situations and emerging challenges in the context of human rights.

CHAPTER 1- MIGRATION, WOMEN AND TRAFFICKING: A CONTEXTUAL ANALYSIS OF THE NIGERIAN SITUATION.

Premise

Human mobility is not a new social phenomenon, since migration is as old as humanity. The displacement of individuals, groups of people or entire population has characterized the succession of historical epochs. A great number of relevant events are determined by large mobilizations of individuals: from the invasions of "barbarian" peoples in Roman times, to the colonisations by European countries in the Americas and Africa, until the forced migrations of Africans trafficked as slaves. These phenomena do not make it easy to try to define clearly what an immigrant is, a designation that changes according to the legal systems and the historical and political context. It is therefore a definition characterized by relativity and contingencies. The United Nation Organization define a migrant as *"a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons"*[6], taking into account as a basic factual element travel to a country other than that of origin or habitual residence, and extended permanence. In order to analyse the phenomenon, it is possible to frame migration as a process with a dynamic that evolves continuously, adapting to the transformations over time, as a system of relationships that connects different spatial areas, of departure, transit and arrival, involving a plurality of actors and institutions.

The phenomenon of international migration has evolved to become one of the protagonists of the most relevant global events. Although it develops in dynamics far from recent, such as satisfying needs dictated by the search for new opportunities, escaping poverty and wars, the so-called era of mass migration reaches its peak from the mid-twentieth century onwards, when travel began to affect all regions of the world.

[6] UN Migration Agency (IOM, "Recommendations on Statistics of International Migration", 1998.

Within the vast and diversified production of migratory studies, overcoming the dominant theory of neoclassical matrix, which considers the migrations as an automatic effect of the action of push and pull factors, makes it possible to place the analysis of international mobility at the centre of the processes of globalization. This led to the definition of as a form of collective action, both in terms of the cause and effect of social transformations in the countries of departure and in the countries of destination of flows.[7]

This change of perspective highlights how migratory movements in the context of globalisation are seen on the one hand one of the causes for violent deprivation of rights, a source of discrimination and exploitation for migrants, and on the other hand how they represent one of the essential forces actively working in the reconstruction of the social, political, economic and cultural aspect of the contemporary world.[8]

The identification of general trends in migration processes by Castles and Miller[9] provide a framework for conceptualizing the new global transformations and the different figures of international migrants, also in order to search for a global explanatory theory that identifies the causes that are at the origin of the migration phenomenon. These trends can be seen in the process of globalization in all those sectors that allow the facilitation and speeding up of mobility, markets, communications and transport, but also in the phenomenon of the acceleration of flows due to easier access to all the information that simplifies the decision-making plan for the organization of travel and also a diversification of the migration model, which includes a wide range of legal status of migrants for most of the destination countries. Finally, the process of feminization of migration outlines a clear diversification of the composition of flows that allows attention to be paid to the significant quantification of the presence of women within the process, and to analyse its role in the context of the socio-economic dynamics of the

[7]MASSEY, Douglas S., et al. Theories of international migration: A review and appraisal. *Population and development review*, 1993, pp 436.

[8]TRIANDAFYLLIDOU, Anna. Globalisation and migration: An introduction. *Handbook of migration and globalisation*, 2018, pp 4.

[9]TRIANDAFYLLIDOU, Anna. Globalisation and migration: An introduction. *Handbook of migration and globalisation*, 2018, pp 6-7.

destination countries.[10] Finally, another important aspect in the context of migration is the politicisation of migration. The migration issue, in fact, is the main element of political polarization that takes on important roles within every political scenario. Some issues such as sovereignty, citizenship, security and the economy are the spaces in which the main transformations affecting institutions and fundamental political concepts regarding immigration are reflected at national and international level.

1.1.2 The concept of gender in migration studies

Only in the 1990s the study of migratory flows developed a substantial gender perspective. The research focused on the processes of social construction of relationships between men and women and on changes in relation to the asymmetry of power linked to the experience of migration. A first perspective analysed in the encounter between gender and migration is articulated in the criticism of the main economic theories of migration studies, which consider men as the “breadwinner” of the family.[11] A traditional approach to the social role of women considers their migration path only in terms of "accompanying family member". The second perspective instead is oriented towards an exit strategy from the origin context of patriarchal type. It is only through experiences such as entering the labour market that women are able to acquire a decision-making role within the family. The change in the social role of women, in a globalised context of progress in term of schooling, urbanisation and the spread of information, is an element that affects the scale of women’s migration compared to that of men. In this perspective, migrations would be processes structured by gender that could produce new gender relationships. Focusing on the gender issue makes it possible to identify issues that go beyond the distinction between men and women. In this way the figures are defined in terms

[10] O’REILLY, Karen. Migration theories: A critical overview. *Routledge handbook of immigration and refugee studies*, 2022, pp 30.

[11] When one parent works outside the home and the other takes care of the family's needs, for example, that person is referred to as the "breadwinner" since they bring in the majority of the household revenue. If both members of the marriage are employed, they may be regarded as co-breadwinners, even if the major breadwinner may still be the one with the higher salary.

of reciprocity, where no analysis aimed at one or the other should be carried out in a totally separate study. The different cultural models of the relationship between men and women, and the representations that gender assumes depending on cultural identities allows to analyse what are the processes that a migrant woman faces since her identity is structured, both within the gender culture of the origin countries and within the gender structures of the destination society.

1.1.3 The concept of vulnerability

In recent years, arrivals on European coasts have made visible, at least in part, the conditions of women's migratory journeys from different African countries. The gender- based violence that migrant women may suffer are not limited to the origin and transit countries but also include the countries of destination. In fact, in the absence of policies capable of adopting a gender perspective even the first reception centres can become a place of abuse, discrimination and exploitation.

Today, trafficking for the purpose of sexual exploitation is one of the most complex gender-based violence involving migrant women. Analysing the phenomenon of trafficking means not only looking at the logic of the market and the economy, as well as addressing the issue of migration policies and institutional systems of reception. Moreover, the feminization of migrations has expanded the nature of the sex market in certain countries of immigration, increasing the variables of sexual supply including ethnic, linguistic and social status diversity.[12] While on the one hand the focus on the phenomenon of trafficking has led to a greater visibility of the dynamics of sexual and labour exploitation of young women (but also of men), on the other hand has excluded a greater reflection on the condition in which themselves are forced to live and therefore on forced prostitution as a social phenomenon.

In addition, it is essential to analyse the concept of vulnerability. Vulnerability has historically been a difficult concept for women's movements in fact, the feminist thought has rejected the patriarchal approach to this notion. Recalling the classical theories of modern

[12] D'ELIA, Cecilia; SERUGHETTI, Giorgia. *Libere tutte: dall'aborto al velo, donne nel nuovo millennio*. Minimum fax, 2017.

political-juridical thought, feminist thought has declined vulnerability as a universal, inevitable human trait, which refers to corporeality, and implies a greater exposure to injury and illness. At the same time, this thought highlighted how vulnerability is a condition deriving from relationships of strength, oppression, inequality and is therefore subject to changes in its intensity and form, because it is connected to the hierarchies of power that characterize the context in which a person is located.[13] In this sense, vulnerability is a condition in which women find themselves as a result of their subordinate position in the hierarchies of patriarchal power, which intersects with other social hierarchies according to class, nationality, skin colour, disability, sexual orientation, etc. This conceptual framework implies that vulnerability must be assessed in relation to the multiple personal, economic, social and cultural factors that contribute to determining the position of the person in a given historical-social context.

1.2 General information: the historical background of migration in Nigeria

Nigeria is known as the "diasporic African State" par excellence in fact the history of Nigerian migration has three large diasporas occurred during the last century. The first wave of migration corresponds to that of British colonialism that lasted from 1914 to 1960 when Nigeria became independent. This migration involved the children of the wealthiest social class who went to Europe to finish their studies. In Italy, for example, the first immigrants from Nigeria appeared in the 1970s. The second phase took place between the 1960s and the 1990s, coinciding with serious economic losses in the oil sector which is the country's only source of wealth. Nigeria is formed by the presence of different ethnic groups, among which, violent protests have been triggered due to the unclear distribution of oil revenues (accounting for 98% of exports). In fact, in the late 1990s, the first attacks in the Niger

[13]PALUMBO, Letizia, et al. Vulnerabilità attraverso la lente dell'intersezionalità, nella normativa e nella giurisprudenza europee e italiane. In: *Donne gravemente sfruttate Il diritto di essere protagoniste*. Edizioni Gruppo Abele, 2022. p. 19-33.

Delta on the facilities and employees of the oil corporations were organized.[14] Furthermore, a significant organized movement of Nigerian women from Delta State and Edo State—particularly from Benin City, the state capital of Edo—has occurred since the late 1980s. This migration of women from the Southern States was caused by the crisis linked to the collapse of the price of oil that affected the medium-income population since the late 1970s and it was in those years that the phenomenon of Nigerian prostitution began to develop. Moreover, in the late eighties, Nigerian criminal organizations (of which the most famous is Black Axe) reached the European markets involving Nigerian women but also women from Ghana and Cameroon. This strong organised crime is firmly established in various regions of the world, playing a major role, above all in drug trafficking, and subsequently in the exploitation of prostitution. The third phase was caused by the numerous coups that occurred between the '70s and the '90s. Nigeria was constantly ruled by military regimes during those years, which greatly increased population insecurity. In fact, both the military and political insecurity but also corruption contributed strongly to the increase of the phenomenon of migration. Since 1990, Benin City has become a magnet for organized crime and many women come to this city because of the large number of traffickers willing to organize the trip to Europe. It is estimated that 85% of Nigerian women forced into prostitution in Europe have passed through Edo State, although they do not habitually reside there.[15]

[14]CECCORULLI, Michela, Le nuove migrazioni. Analisi del fenomeno riguardante i flussi che interessano i confini esterni dell'Unione Europe, Dipartimento Relazioni Internazionali, Roma,2017. pp 69-72

[15] KELLY, Annie. Trafficked to Turin: The Nigerian Women Forced to Work as Prostitutes in Italy. *The Guardian*, 2016, 7.

1.2.1 Legal system of the State

As of 2023, Nigeria has a population of 218.000.00[16] and is the most populated country on the African continent. Population density is higher in the south and southwest regions. There are several ethnic groups, the main ones are: hausa-fulani (30%); yoruba (15.5%); igbo/ibo (15.2%); ijaw (1.8%); kanuri (2.4%); hibiscus (3.5%); and tiv (2.4%). The population is predominantly Muslim (53.5%) and Christian (45.9%), while a minority (10%) have indigenous beliefs.

The state gained independence from Great Britain in 1960, and became a Federal Republic in 1963. The fundamental source of the country is the Constitution, which was adopted in 1999, and subsequently amended in 2010, 2017 and 2018. The political history of Nigeria is characterized by the alternation of long periods of military regime and short periods of civil government. Moreover, the legal system of the Country is particularly complex due to the co-presence of federal laws, state laws, customary norms and Islamic law (sharia).

Nigeria is currently divided into 36 states under the current constitution, to which the federal capital of Abuja is included. These states are typically distinguished by the predominance of particular religious groups in each of them. Each State, with its own constitution, elects a Governor - who appoints an Executive Council - and a Parliament, usually unicameral, which has legislative power. The constitutional provisions also provide for a third level of government - local government - holding a number of functions and receiving economic contributions from both the Federation and the State in which it is located. According to the presidential formula, the Federation is governed by the President. It shall be elected by universal suffrage for a term of four years. The federal character of the office is guaranteed by the dual condition provided by the electoral system: to rise to office the candidate must, in fact, obtain a majority of the preferences of the votes cast as a whole and not less than a quarter of the preferences expressed in at least two thirds of the Member States. In addition to the

[16] Ministero degli affari esteri e della cooperazione internazionale, ultimo aggiornamento 23/01/2023. Disponibile al link https://www.infomercatiesteri.it/perchepaese.php?id_paesi=23#

President, a Vice President and the Ministers who are appointed by the President, after a positive opinion of the Senate, form the Government body. The President, assisted by the Vice President and the Ministers of the Federation, has the executive power and, as Supreme Head of the Armed Forces, the ability to declare a state of emergency. However, the consent of the Senate is required in all cases where the deployment of army troops outside Nigerian territory is necessary. The National Assembly has legislative power and consists of a Chamber of Representatives, whose 360 members are elected by universal suffrage by the Nigerian people, and a Senate composed of 109 members: the States elect 3 senators, while the Territory of the capital is entitled to only one senator.[17]

1.2.2 Customary laws

Customary (or ethnic) norms are indigenous laws that mainly concern personal and family relationships. They are difficult to identify because they are unwritten rules that reflect the traditions, culture, values and habits of the people they refer to. Customary rules apply to matters such as: succession in royal titles, testamentary executions and small commercial disputes. Customs are territorial in nature and are independent of an individual's ethnic background. In fact, the customary rules reflect the rules followed by all the persons in the place where they are invoked. Customary rules may be invoked before customary courts. These courts operate in most states and require the parties involved to demonstrate the application of a certain custom to the case, as established by the Nigerian Evidence Act.[18] In other words, the standards invoked must not clash with the natural sense of justice, equity and good conscience, nor be in direct or indirect conflict with a written rule of law. The requirement that the customary rule invoked must adhere to the natural sense of justice and good conscience has

[17] BELLUCCI, Stefano. *Africa contemporanea. Politica, cultura e istituzioni a sud del Sahara*. Carocci Editore, 2010.
[18] NWOCHA, Matthew Enya. Customary law, social development and administration of justice in Nigeria. *Beijing L. Rev.*, 2016, pp 436.

made it possible to prevent the legalization of harmful practices used by certain ethnic groups.

1.2.3 Sharia

Sharia (also called Muslim personal law) is the complex of behavioural rules and moral conduct inspired by Islamic precepts. Since the birth of the current Federation, Nigeria has been characterized by a dense presence of ethnic groups living together with the two most widespread religions in the world, Islam and Christianity. Given the significant ethnic and religious mixture, there have always been many tensions but they started to spread with greater emphasis in the early 1970s, when economic growth was accompanied by the proliferation of extremist Islamic groups. These clashes prevented the effective realization of religious freedom in a system characterized by the presence of two great religions that have never managed to live together peacefully.[19] These 12 northern Nigerian Islamic states insist on fully implementing Sharia law, stressing in their own codes that any offense that is judged to be against the Koran and the Sunna but is not specifically specified or addressed therein shall be punished in accordance with maliktiti law. As a result, they were able to close all the gaps relating to the information left out of the codes: «Any act or omission which is not specially mentioned in this Sharia Penal Code but is otherwise declared to be an offence under the Qur'an, Sunnah and Ijtihad of the Maliki school of Islamic thought shall be an offence under this code and such act or omission shall be punishable (...)»[20]

The situation worsened in January 2000, when in the criminal law of 12 of the 19 northern Nigerian states (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara) Sharia was reintroduced, with the consequent imposition of Islamic laws even to non-Muslim citizens. These states justified the need for the reintroduction of Sharia law by supporting the social function of the

[19]UDUGBOR, Marcellus. Breve studio sull'incostituzionalità della Sharia in Nigeria. *IURA*, 2007, 3: 159-174.

[20] Zamfara State Sharia Penal Code, 2000, art. 92.

Islamic religion as a tool to fight poverty and immorality. However, the boundary between the social function exercised by Islam and the imposition of this religion with consequent violation of religious freedom, in this context, is very blurred.

In particular, art. 38 of Chapter IV of the Federal Constitution states that "Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance".[21]

Concretely, the fact that Sharia law has been reintroduced into the criminal law of 12 of the 36 states means that, although historically the northern states were characterized by the presence of a predominantly Muslim population, there may be some non-Muslim citizens in the territory who would be prosecuted under Islamic civil and criminal laws. In fact, the existence of State-specific Constitution should not affect the supreme value of the Federal Constitution, which must remain an undeniable principle. In other words, all laws adopted by each of the 36 States must not be in contrast to constitutional rules.

Art. 277 paragraph 2, lett. b[22] of the Federal Constitution concerning the jurisdiction of the Court of Appeal of the Sharia, expressly states that the Court has jurisdiction only in proceedings in which all parties involved are of Islamic religion. Since being a citizen of a State in northern Nigeria does not necessarily imply that such a citizen is of the Islamic religion, the reintroduction of Islamic criminal law in the north of the Federation is a tool potentially capable of discriminating against those who do not identify with the precepts of the Islamic religion. Moreover, given that the Federation is historically characterized by the presence of several ethnic groups and religions, the danger of violation of religious freedom is significant and constant. [23]

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[21] Constitution of the Federal Republic of Nigeria, 1999, op. cit., art. 38

[22] Constitution of the Federal Republic of Nigeria, 1999, art. 277(b, c)

[23] MOTIN, A. Rashid; MOTEN, A. Rashid. Political dynamism of Islam in Nigeria. *Islamic Studies*, 1987, 26.2: 179-189.

1.3 Trafficking in human beings

1.3.1 Causes

Push and pull-factors that characterize the current Nigerian migration are multiple. The context of origin is poor and often women leave in order to help their family by sending remittances. The main factor that encourages Nigerian women to leave their country is gender-based violence, which relegates women to the margins of society to the point of forcing them to leave the country. In Nigerian society, women are marginalized and lack support networks, which contributes significantly to the country's high rate of migration. Moreover, poverty, economic difficulties, gender inequalities, traditional practices, beliefs, and restrictive European migration policies have an important role in the phenomenon of human trafficking in Nigeria. With regard to the economic situation of Nigeria in important to stress the fact that the State is among the largest oil producers in the world and over the years has attracted the aims of many and exacerbated the political situation. It is significant to recall that the number of states in the Federal Republic has increased since 1966 from 3 to 36 and the number of local governments from 50 to over 700[24]. In particular, since 2003, the Niger Delta, a region rich in minerals, hydrocarbons, gas and oil, which accounts for 95% of exports, is at the center of electoral fraud and is unmanageable due to inter-ethnic violence, especially among the Ijaw groups, Urhobo and Itsekiri. This economic situation, based almost exclusively on oil, produced a serious crisis in the eighties caused by the end of the oil boom, starting a "new neoliberal aggression" [25] which can be summed up in the drastic impact that the structural adjustment schedule has had on the Nigerian labor market. In 1986, the structural adjustment schedule was introduced. In this way, Nigeria accepted a loan and adopted the measures proposed by the International Monetary Fund and the World Bank. These policies included reducing public

[24]WATTS, Michael. Resource curse? Governmentality, oil and power in the Niger Delta, Nigeria. *Geopolitics*, 2004, 9.1: 50-80.

[25]BURGIO, G. Le Veneri del Delta. Migranti nigeriane, prostituzione transnazionale e maschilità occidentale. In: *Le frontiere del corpo. Mutamenti e metamorfosi*. ETS, 2014. p. 121-143.

spending on essential services such as housing, health care and education; privatization; devaluing the local currency; and freezing wages. These actions resulted in high unemployment rates in the public sector, a deterioration of social services and, consequently, a greater tendency to migrate, especially among women.[26] Moreover, gas, hydrocarbon and oil have harmed the environment and, as a result, have caused socio-economic damage. In addition to harming millions of people's access to clean drinking water, pollution from non-renewable sources has also attacked the air and water, rendering land unusable due to oil sedimentation; the infrastructure needed for oil extraction has resulted in significant deforestation; and oil platforms have harmed fishing.[27] The environmental and economic difficulties and the limited work opportunities therefore lead women, but not only, to migrate, which remains the only resource available to improve their lives. Furthermore, the existence of elements like illiteracy, discrimination, violence against women in Nigerian society, and the loss of support networks (like family members) are also among the motivating factors. Other elements include the need to provide for one's family financially or the desire for more independence from violent and patriarchal social and familial contexts.[28] Finally, the lack of structures and adaptation policies, coupled with high population growth, especially in rural areas, are the final economic and political push factors to be noted. The majority of women who become victims of human trafficking originate from the State of Edo, specifically Benin City, where ongoing urbanization has resulted in pronounced social problems.

[26] PLAMBECH, Sine. *Points of Departure: Migration Control and Anti-trafficking in the Lives of Nigerian Sex Worker Migrants After Deportation from Europe: PhD Dissertation*. Department of Anthropology, University of Copenhagen, 2014.

[27] AKINYOADE, Akinyinka; CENTER, African Studies; ENWEREMADU, David. A TALE OF TWO GIANTS: OIL AND ECONOM-IC DEVELOPMENT IN NIGERIA AND INDONESIA (1960-1999). 2014. Pp 160-195

[28]PRIMI, Antonella; VARANI, Nicoletta (ed.). *La condizione della donna in Africa sub-sahariana: riflessioni geografiche*. libreriauniversitaria. it ed., 2011.

1.3.2 The recruitment of victims

The trafficking of women for the purpose of sexual exploitation from Nigeria involves a target of very young women, today mainly minors,[29] coming from different geographical areas. Recruitment usually takes place in villages around large metropolitan areas: not only in Benin City but also in other states of the country such as Delta, Lagos, Ogun, Anambra, Imo, Akwa Ibom, Enugu, Osun, Rivers[30]. As anticipated, there has been an increase in the number of underage girls due to several aspects including the interest of the market, the necessity to respond to competition from other criminal groups and the requirement to have more submissive and inexperienced individuals, to reduce the possibilities of reporting or insubordination. Additionally, even if they are kept in more secure centres, unaccompanied minors are a vulnerable category that criminal networks exploit to reduce the likelihood of deportation. There are other three ways to recruit victims in the origin country. Firstly, it may happen that it is the women themselves who seek contact with the traffickers in order to arrive in Europe. Secondly, recruiters approach women on the street and persuade them with false promises, mostly related to job or school prospects in Europe, putting them in touch with the madam. In other instances, the traffickers' coercion persuades them to depart. Finally, since the victims' family members are the ones who consent to the traffickers, recruiting frequently occurs in locations that the victim is acquainted with—such as their house, place of employment, or school. Many times, family members who urge a daughter or wife to Europe in the hopes of receiving future financial support through remittances agree to the trafficking of the victims.[31] As inheritance is actually only passed down from father to son in many communities and organizations in Edo State, women are compelled to look for other methods of surviving, such as traveling overseas or being sexually exploited. This is especially true for low-income families. Remittances sent to families in Benin City are

[29] UNICRI, La tratta delle minorenni nigeriane in Italia. I dati, i racconti, i servizi sociali, Stampa Unicri, Torino, 2010, pp 9-20.
[30] EASO – European Asylum Support Office, Nigeria. La tratta di donne a fini sessuali, Lussemburgo, Ufficio delle pubblicazioni dell'Unione Europea,2015, pp 15.
[31] BBC, Human Trafficking: the lives bought and sold, 28 luglio 2015.

factors that sustain human trafficking, promoting the false idea that life overseas is better than in Nigeria. One of the main reasons of trafficking is discrimination against women in concerns of inheritance rights. When women start their migration journey voluntarily, recruitment can also take place in transit countries. Here, women are subject to multiple human rights violations, including torture, rape, extortion, forced labour, sexual exploitation.[32] In particular: in Niger Nigerian women enter the country through Zinder and Maradi and are led to Agadez in connection houses, where they are forced into prostitution for continue the journey. In fact, in Agadez there is a Nigerian settlement, made up of migrants returned from Libya or stopped along the way, part of which are local contacts of the network of trafficking[33]. Moreover, with regard to Libya, Nigerian women are detained in the connection houses, where they are sexually exploited and raped without using contraception methods. They often get pregnant and are forced to pay for unsafe abortions. The madam are also present in Libya, in fact, as reported by the testimonies collected by Human Rights Watch, in the country, women are subjected to the domination of the madam who seizes all their belongings, including phones, forcing them to prostitution.[34]

1.3.3 Trafficking for the purpose of sexual exploitation

Nigerian young girls who are victims of trafficking for the purpose of sexual exploitation generally come from poverty, low schooling and are becoming increasingly young: mostly girls between 15 and 18 years, with an increasing number of girls between 13 and 14 years. The latter are often constrained by the traditional customs that require the first-born orphans of a mother to support the living parent and the younger siblings.[35] The Global Report on Trafficking in Persons (GLOTIP)

[32] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, p. 2.
[33] Cooperativa Be Free, INTER/ROTTE: storie di tratta, percorsi di resistenza, aprile 2016, pp.20-21.
[34] Human Rights Watch, You Pray for Death -Trafficking of Women and Girls in Nigeria, 2019, p. 36.
[35] Save The Children, Piccoli schiavi invisibili 2018, p. 20

2022[36], published by the United Nations Office on Drusg and Crime (UNODC), provides an overview of the number of people trafficked globally, regionally and nationally. At the global level, 53,800 victims of trafficking were identified in 2020, for a total of nearly 190,000 victims in the period 2017-2020. The Report points out that in 2020, for the first time in the last 20 years, the number of confirmed victims of trafficking has decreased, as a direct consequence of the limitations imposed by the pandemic of Covid-19. Specifically, there were 11% fewer victims of trafficking identified in 2020 compared to 2019. However, this trend is not to be considered only in a positive sense, as it could be attributable both to the increase in forms of trafficking that are more difficult to identify and the identification of victims. Looking only at sexual exploitation, also in 2020, the number of victims of trafficking identified has suffered a decrease of about 24% compared to the previous year. The first year of the pandemic also recorded a 27% decrease in the number of convictions per trafficking globally, compared to 2019.[37] At the same time, factors such as wars and climate disasters increase the likelihood of the most vulnerable people to become victims of trafficking. The African continent and the Middle East are today the regions most affected by armed conflicts: this means that the majority of people who have become victims of trafficking for war reasons move to and from these territories (73% from sub-Saharan Africa, 11% from the MENA region).[38] In 2020, women and young girls accounted for 60% of the total number of victims identified (42% women, 18% girls). Adult men accounted for 23% and children and young boys for 17%.

[36] UNODC. 2023. Global Report on Trafficking in Persons 2022. United Nations publication, Sales no.: E.23.IV.1. Disponibile al link: https://www.unodc.org/documents/dataandanalysis/glotip/2022/GLOTiP_2022_web.pdf.

[37] Save the Children, Piccoli schiavi invisibili 2023, p 11.

[38] Report of the Special Rapporteur on trafficking in persons, especially women and children. Addressing the gender dimensions of trafficking in persons in the context of climate change, displacement and disaster risk reduction (A/77/170). 2022. Disponibile al link: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/427/23/PDF/ N2242723.pdf?OpenElement

With regard to the European Union, in 2021, 7,155 victims of human trafficking were registered: in other words, 16 victims of trafficking per million inhabitants. With a 10% increase in the total number of victims compared to the previous year, in 2021 almost 44% of victims of trafficking had citizenship of the country where they were identified, while about 16% came from other European countries, and over 40% from non-European countries[39]. The link between irregular migration, smuggling and trafficking is also evident in the European context: recruited in their countries of origin with the promise of better living conditions in the EU, migrants often become victims of different forms of trafficking both in transit and destination countries.

1.3.4 Trafficking of women in Nigeria

Trafficking in women is of central importance in Nigeria, not only externally but internally.[40] Internal trade is often the first step towards international trade. An increasing number of people are trafficked from rural communities in Oyo, Osun and Ogun States in the south-west, Akwa-Ibom, Cross River and Bayelsa States in the south, Ebonyi and Imo States in the south-east and Benue, Niger and Kwara States in the middle belt to cities such as Lagos, Abeokuta, Ibadan, Kano, Kaduna, Calabar and Port Harcourt[41]. Domestic work, farm labour, and prostitution are the main occupations of this trafficking region, with forced labour incidents being especially prevalent in Lagos. Nigerian women are one of the five non-European nationalities most at risk of trafficking to the EU. Of the total number of Nigerian women trafficked in the EU in 2017, 72% are victims of trafficking for sexual exploitation; 20% for labour exploitation; and the remaining 8% are

[39] Eurostat. 2023. Trafficking in human beings statistics. Disponibile al link: https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Trafficking_in_human_beings_statistics#registered_victims_of_trafficking_per_one_million_inhabitants

[40] US DOS, Trafficking in Persons, Nigeria, 2017, p. 306.

[41] UNITED NATIONS. GENERAL ASSEMBLY, et al. *Report of the Special Rapporteur on trafficking in persons, especially women and children*. United Nations General Assembly, 2018. file:///C:/Users/marro/Downloads/A_HRC_41_46_Add-1-AR.pdf

subjected to other forms of exploitation. Of this total, about half is in Italy. 80% of women arriving in Italy from Nigeria, most of them aged between 13 and 24, are considered potential victims of trafficking for the purpose of sexual exploitation by the IOM.[42] Nigerian women who are victims of trafficking often come from family environments characterized by poverty, domestic and sexual violence. The analysis of some of the interviews carried out by the Territorial Commission of Rome for the recognition of international protection between 2016 and 2017, shows that in 61% of cases the reason for expatriation is attributable to the phenomenon of gender violence, including the desire to escape forced marriages[43]. Forced marriages are still common in both the north and south. In particular, in the north, in the Sates of: Damawa, Bauchi, Borni, Gombe, Jigawa, Kano, Katsnia, Kebi, Nasarawa, Niger, Sokoto, Yobe and Zamfara. They are also particularly common in the Hausa ethnic group, which is Muslim. In the south, among the Igbo who are mostly Christians, forced marriages are in decline, although the practice of marriages with a reparative function in cases of teenage pregnancy remains.

1.3.5 Trafficking and exploitation of internally displaced persons

In December 2019, the IOM reported 2 million internally displaced persons in the north-eastern states of Nigeria: Borno (1.4 million), Adamawan (240 thousand); and Yobe (134 thousand); Taraba (101 thousand); Bauchi (64 thousand); Gombe (37 thousand). In the center north and center west the displaced persons reach 500 thousand. 80% of those who are internally displaced are women and children.[44] Moreover, in refugee camps, many of the hundreds of women and girls freed by Boko Haram find refuge, after being kidnapped and subjected to domestic servitude, forced labour and sexual slavery, including

[42] IOM, "Human trafficking through the central Mediterranean route: data, stories and information collected by the International Organization for Migration" (2017).
[43] Actionaid-Be Free,2018, Mondi Connessi, p. 15.
[44] International Organization for Migration (IOM), Mar 07 2020. DTM Nigeria — Displacement Report 30 (December 2019). IOM, Nigeria.

through forced marriages with members of Boko Haram.[45] Especially in the north-east, in the camps for internally displaced persons, the phenomenon of sexual abuse of women and girls is widespread. Additionally, the UN Special Rapporteur on Trafficking in Persons reported in 2019 that in the abovementioned camps - both official and informal - and in the places where displaced persons find refuge there are cases of trafficking for the purpose of sexual exploitation of women, including by government officials and law enforcement.[46] Human Rights Watch revealed in July 2016 that 43 Nigerian women and girls were victims of sexual assault, including rape, and were used by non-state actors and the Nigerian government while they were residing in seven camps for internally displaced people in Maiduguri. 37 of them were coerced into having sex by false promises of marriage and material and financial support; four of them claimed being drugged and raped. Less than five of the 43 women and girls surveyed in the aforementioned research, according to Human Rights Watch, stated they had received assistance from the government.[47]

1.3.6 The phenomenon of "baby factories"

An emerging contemporary phenomenon in Nigerian society is exemplified by the "baby factories". Little girls who find themselves pregnant against their will might be exploited thanks to this system, which deliberately encourages child trafficking. Baby factories can be identified as buildings, hospitals or orphanages where girls and women are induced to give birth to children who are subsequently sold on the black market. These children are often sold to infertile couples or involved in illegal trafficking. Despite the widely publicised awareness campaigns, unfortunately this trend is increasing. One of the reasons why this phenomenon continues to spread is the social stigma

[45] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, p. 4.
[46] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, p. 4-5
[47] Human Rights Watch, Nigeria: Officials Abusing Displaced Women, Girls-Displaced by Boko Haram and Victims Twice Over, 2016.

associated with unwanted conception by teenagers. Additionally, because of the social pressure on couples to have children, the poor economic conditions force many girls to offer their children in exchange for minimal cash benefits. In September 2018, 19 pregnant women and 4 children were rescued from one of the so-called baby factories in Nigeria. Lagos police, the Nigerian megalopolis and former capital, raided four buildings and found several women, between 15 and 28, along with their children.[48] Police investigations revealed that the girls had been lured to Lagos with the false promise of working as maids for wealthy families. When they got there, they were taken hostage, had their phones taken from them, and forced to work as prostitutes. Only after a year of sexual exploitation, they were promised a large sum of money if they gave birth to a child. Babies were then sold on the international market at prices exorbitant: the price for a male child exceeded 1000 dollars, while for a female child it was between 700 and 900 dollars.[49] The two main factors that fuel the baby factories phenomenon are poverty and illegality, and the bureaucracy involved in legal adoption also discourages couples from following the correct procedure. Many couples are anxious and want to get children quickly, but in orphanages they face many difficulties and instead opt for illegal facilities or seek places in which children are sold without documentation. Similarly, some women who get pregnant and are abandoned by their companions and forced to face an uncertain future, turn to baby factories where they give birth and are paid. In many cases, these women are detained against their will and continue to be pregnant through the intervention of young men hired for this purpose. Because they ignore adoption protocols, the authorities have labelled this phenomenon as human trafficking.

1.4 The criminal organisation in Nigeria

The types and sizes of Nigerian criminal organizations that manage the trafficking of women for the purpose of sexual exploitation vary greatly,

[48] BBC, Nigeria Police raid Lagos "baby factory", 30 settembre 2019.

[49] CORAZZA, T. "Baby factories": le fabbriche di bambini e il fenomeno della tratta in Africa Occidentale, (2019). - Opinio Juris.

often due to the wealth of the criminal group and the relationships with corrupt state agents. Nigerian criminal groups are well organized both geographically and logistically and are able to mobilize a large number of human resources. One of the main strengths is their presence along the traffic route.[50] The typical Nigerian criminal organization is not structured in a hierarchical way but organized in groups, made up of a few members, who perform predefined tasks. There are baiters who can be relatives or friends of the victim but also other previously exploited women, pastors of churches or corrupt public officials[51]. In addition to them there are women (known as *madam* or *maman*), that recruit and keep in subjection the victims. Often there are *madam* both in Nigeria and in the destination country. The *madam* of the destination country is responsible for women and their exploitation after their arrival. The *madam* operating in Nigeria and the *madam* operating in the destination country are closely linked and are often related. Moreover, the madam in the destination country often maintains close control over each stage of the process of trafficking. They control and organize groups, usually made up of ten to fifteen women, and they appropriate of the earnings. Furthermore, there are also corrupt state agents who facilitate the movement of victims and provide protection for traffickers. In particular, they prevent investigative activity.

Among other Nigerian criminal organizations trafficking human beings, in particular women, stand out groups that derive their origin from a degeneration of the brotherhoods (cults) founded in the universities of the Niger Delta region since 1950.[52] More recently, particularly since the late nineties of the past century, such brotherhoods began to infiltrate the social, political and economic system, even with the use of violence. In 2001, to prevent the expansion of such organizations, the federal government of Nigeria issued the Secret cult

[50] Europol, CRIMINAL NETWORKS INVOLVED IN THE TRAFFICKING AND EXPLOITATION OF UNDERAGE VICTIMS IN THE EUROPEAN UNION, ottobre 2018, p. 12.

[51] Women's Link Worldwide, Trafficking of Nigerian Women and Girls: slavery across borders and prejudices, 2015, p. 9.

[52] Direzione investigativa antimafia, Relazione del Ministero dell'Interno al Parlamento, luglio-dicembre 2018, p. 510-511.

and Secret Society Prohibition Bill, which introduced the "constitutional offense" of creating or participating in any activity of secret cults. Nevertheless, even today in Nigeria the cult and brotherhoods are very present and well rooted in the traffic of people: in addition to BLACK AXE and EIYE, currently stand out for the particular use of violence the JUNIOR VIKINGS CONFRATERNITY (JVC), the SUPREME VIKINGS CONFRATERNITY (SVC) and the DEBAM, secessionist of the ETERNAL FRATERNAL ORDER OF THE LEGION CONSORTIUM.

1.4.1 The criminal organization in transit countries

The movement of victims of human trafficking from Nigeria to transit nations and ultimately to Europe is facilitated by other members of the criminal network. In particular, the bogas or guide men who are the one that deal with the transfer of victims to transit countries. They are, in most cases, Nigerian men who have not made it to Europe. Usually, a madam resident in Europe or a "brother" of the guide man (i.e., a man who knows the guide man, because he belongs to his ethnicity or because he comes from his own neighbourhood) contact him to ask him to go to Nigeria and collect the victims, in order to transport them to transit countries. At this stage the guide man always executes the orders of the madam.[53] The boss usually indicates a man who controls, on behalf of the madam, the victims of trafficking in the transit countries of North Africa. Finally, the connection man that deals with facilitating the transfer of victims in Europe. The connection men are sometimes in direct contact with the madam, other times they are not a structured part of the criminal network but are traffickers, contacted by the guide man or the boss, to negotiate the entry of the victims to Europe. Moreover, even in transit countries, corrupt state agents facilitate traffickers, ensuring their protection.

[53] Women's Link Worldwide, Trafficking of Nigerian Women and Girls: slavery across borders and prejudices, 2015, pp. 9-11

1.5 The conclusion of the agreement: debt and voodoo rites

Once the girls are recruited the transport and financing of the trip is arranged. The Nigerian system is based on the so-called debt bondage, that is the debt that the woman contracts and that she will have to pay to the organization. In the practice it is crucial the use of a popular voodoo belief, known as "juju". It is a traditional religious belief in which a ritual ceremony is organized to stipulate the oaths, often practiced with objects such as lock of hair, pubic hair and nails that give the ritual a magical atmosphere. During the ceremony a contract that binds the girls to repay their debt is stipulated. Otherwise, they will be punished by the "juju". The voodoo ritual is a central element of the modus operandi of the trafficking system in Nigeria, which exploits a popular belief to profit at the expense of the poorest. The "juju" represents the link between the payment of the debt contracted for the trip and the form of slavery that binds the girls to the madam. The ritual is able to frighten the victims that are used to live a life of religious traditions and beliefs, to the point that the madam can be sure that the girls will not leave before having paid the debt. The "juju" is an evil method because within the phenomenon of trafficking becomes a tool to perpetuate the status of slavery of victims, through a psychological manipulation difficult to eradicate. In recent years, the amount of debt to be repaid by prostitution or forced labor has slightly decreased: the range goes from 25,000 to 60,000 euros. According to the 2018 ActionAid-Be Free report the lowering of the price is due both to the decrease in the price of sexual services - currently ranging from 10 to 15 euros - both to the greater number of Nigerian girls present, and finally to the mode of travel, which in past years was mostly by plane and now through the Libyan route, with a higher risk of death.[54]

On 9 March 2018, the highest religious authority in the realm of voodoo beliefs, the Oba of Benin City Ewure II (ancient figure of king dating back to the times of the Benin Empire and spiritual guide of the

[54]Actionaid-Be Free, Mondi Connessi, giugno 2018, p. 16. (https://www.actionaid.it/app/uploads/2019/04/Nigeria_Mondi_Connessi.pdf)

population of Edo State), officiated a ceremony in the presence of all the native doctors of Benin to revoke the oaths made by victims of current and future trafficking. In fact, after multiple requests from NAPTIP (National Agency for the Prohibition of Trafficking in Persons), the Oba announced that women subjected to juju oaths must be considered free and can denounce the identity of their traffickers, without fear of any harm. Moreover, the Oba has launched curses against all those who will use the juju rite for the purposes of trafficking, forgiving those who have done so in the past.[55] With regard to the repercussions of the Oba's edict on victims of trafficking, when the news began to circulate in the Nigerian community present in Italy, there was an increase in requests for exit from the exploitation circuits. In fact, the edict provoked panic among the madam who, fearing the possible repercussions of the curses launched them, reacted by expelling the victims of trafficking from the houses and leaving them in the street without money or housing.[56]

1.6 The journey

The journey, with a cost between 25,000-60,000 euros, is organized by the madam and realized through her collaborators who accompany the victims during the journey. The most popular routes include crossing Nigeria by mini-bus (passing from Kano), crossing the border with Niger by car, on foot or by motorbike, arriving in Agadez (Nigeria), passing through the Sahara Desert to the Libyan cities of Zuwarah, Sabha or Tripoli and then crossing of the Mediterranean Sea to Europe. During the overland journey, women are taken from one connection house (also called ghettos) to another and are often raped and forced into prostitution. The journey can last from a few months to a few years.[57] In addition to the route that crosses Niger and Libya, other

[55] NAPTIP, Oba of Benin revokes oaths on victims of human trafficking, places curses on perpetrators and unrepentant juju priests, 2018, reperibile al sito https://www.naptip.gov.ng/?p=1683

[56] Save The Children, Piccoli schiavi invisibili 2019-Rapporto sui minori vittime di tratta e di grave sfruttamento, p. 22

[57] EASO, Nigeria Sex Trafficking of Women, 2015, p. 33.

routes to get to Europe are those that see as transit countries Algeria and Morocco.

1.7 Countertrafficking

1.7.1 Legal framework

Human trafficking is a difficult phenomenon to fight involving different actors and therefore requires the adoption of joint policies by different States and organisations. With regard to the international legal framework, Nigeria is part of the following treaties: Slavery Convention (1927), The Universal Declaration of Human Rights of 1948, which establishes the "standards" of human rights; Convention for the Suppression of Trafficking in Persons and the Exploitation of Prostitution (1949), Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984); Declaration on the rights of persons belonging to national, ethnic, religious, and linguistic minorities (1992); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979; Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984); Convention on the Rights of the Child of 1989; Additional protocol to prevent, repress and punish trafficking in persons, in particular women and children (2000) and finally the Protocol to the African charter on human and people's rights on the rights of women in Africa.

With regard to the federal legal framework, the Nigerian Constitution prohibits slavery and forced or compulsory labour (Art. 34 co. 1)[58]. Moreover, the Federal Law on the Rights of the Child enacted in 2003 and adopted by 24 states (12 northern states have not ratified) codifies children's rights in the areas of trafficking, forced labour and other harmful practices.[59] Respectively, sections 21-23 of that Act prohibit child marriage (under the age of 18) and forced marriage; Sections 28-

[58] Art. 34.1. Costituzione Nigeriana, ultimo accesso 18 ottobre 2023

[59] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, p. 6.

30 prohibit forced labour[60], including child trafficking for that purpose[61]; Sections 31-32 prohibit sexual exploitation of children[62]. Finally, of extreme importance is the Trafficking in Persons (Prohibition) and Enforcement Administration Act (adopted in 2003 and amended in 2005 and 2015).[63] This Act established the National Agency for the Prohibition of Trafficking in Persons.[64] As a result of changes introduced in 2015, trafficking for sexual and labour exploitation purposes is punished with a penalty of five years imprisonment and a fine of one million naira ($ 2,770). Moreover, the prison sentence is increased to seven years if the victim of trafficking for the purpose of sexual exploitation is a minor. However, according to the Special Rapporteur on Trafficking in the UN, this legislation is more directed to the prosecution of traffickers than to the prevention of trafficking and the protection of victims and focuses mainly on trafficking for the purpose of sexual exploitation, at the expense of trafficking for the purpose of labour exploitation and other forms of exploitation[65]. With reference to the legal framework of the individual states: both the Southern Criminal Code and the Northern Criminal Code, but also the Sharia Penal Code, provide for rules concerning trafficking in human beings[66]. In particular: the Southern Criminal Code prohibits the recruitment of women for the purpose of sexual exploitation abroad (section 223) and punishes the use of juju rites for the purpose of coercion (section 210[67]); The Abuja Penal Code[68], which refers to the Northern Penal Code in general terms, provides for severe penalties (up to 10 years in prison) for the recruitment of minors for the purpose of sexual exploitation (section 278). With regard to trafficking

[60] Child's Right Act, 2003, pp. 14-15
[61] Ibidem pp.16-17
[62] Ibidem pp.17
[63] Trafficking in Persons (Prohibition) and Enforcement Administration Act, 2003.
[64] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, p. 6.
[65] Trafficking in Persons (Prohibition) and Enforcement Administration Act, 2015, art.16
[66] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children,2019, p. 7
[67] Criminal Code Act, 1990, rispettivamente pp. 53, 50
[68] Penal Code (Northern States) Federal Provisions Act, 1960.

of women is only prohibited internally (section 276). Moreover, the text of the Sharia Penal Code (applied by 12 out of 19 northern states) prohibits trafficking of women for the purpose of exploitation of prostitution, providing for imprisonment until to two years and a maximum of 50 lashes (section 239).[69]

1.7.2 Enforcement of the rules

It is important to stress that Nigeria is one of the first African countries to have adopted anti-trafficking legislation. However, as highlighted by the UN Special Rapporteur on Trafficking in Persons, the main challenges are related to the implementation of this legislation. In this regard, the obstacles to practical application are mainly represented by the lack of resources, training and adequate equipment for the various public offices involved in the fight against the phenomenon.

1.7.3 Federal level: NAPTIP

Numerous initiatives have been started at the national and international levels to try to tackle the phenomenon of human trafficking. The Trafficking in Persons (Prohibition) Enforcement and Administration Act of 2003 was passed as a result of Nigeria's ratification of the UN protocol to prevent, suppress, and punish trafficking in persons, particularly that of women and children, in 2001. Subsequently, The Trafficking in Persons (Prohibition) Enforcement and Administration Act 2003 served as the legal basis for the establishment of Nigeria's National Agency for the Prohibition of Trafficking in Persons (NAPTIP) on July 14, 2003. The Women Trafficking and Child Labor Eradication Foundation (WOTCLEF) introduced a private member bill before the National Assembly that led to the creation of this Act. On July 7, 2003, the National Assembly approved the Bill, and on July 14, 2003, the President gave his assent. Thus, adopting a four-pronged strategy of prevention, protection, prosecution, and partnership, NAPTIP was established by law as Nigeria's central agency to combat human trafficking. The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 was revised in 2005,

[69] Harmonised Sharia Penal Code Law, 2002, p. 93.

substantially bolstering the agency. As the crime of human trafficking developed during the ensuing years, the Trafficking in Persons (Prohibition), Enforcement and Administration Act (26 March 2015) was passed in order to further reinforce the institutional framework.
The main aims of the agency are to prevent trafficking in human beings and increase awareness of possible victims, investigate and prosecute the perpetrators of trafficking in persons and organize the return of victims and their reintegration into society.[70] According to NAPTIP data, 1,890 victims were saved in 2017, of which 23.7% men and boys and 75.3% women and girls[71]. Most of the Nigerian victims came from the state of Edo and, to a lesser extent, from the Delta and Benue states; 89 of them came from other states, mainly Benin and Togo.
Unfortunately, NAPTIP encounters several difficulties including corruption involving government officials, magistrates and border police; the underfunding of the Agency, which is linked to the inability to take adequate action to protect victims and the absence of NAPTIP officials in rural areas. Moreover, the lack of coordination between NAPTIP and the relevant federal government departments (for example, the Ministry of Women and Social Affairs, the Ministry of Labour and Ministry of Education). Moreover, it results problematic the coordination between the Nigerian Immigration Service and NAPTIP because of the absence of offices of the Agency in the border areas. Finally, it is important the creation of the Joint Border Task Force, a project launched by the United Kingdom in 2015 in collaboration with NAPTIP, to strengthen the trust between the police forces of the two States, create a favourable environment for joint investigations and train Nigerian magistrates. The project also includes a Joint Task Force at border posts, currently composed of an anti-trafficking team composed of 19 agents (about 10% of the total of NAPTIP investigation teams) and three lawyers. According to the UN Special Rapporteur on Trafficking, this Task Force is an effective example of international

[70] NAPTIP. Functions of the Agency. https://www.naptip.gov.ng/about-naptip-2/.
[71] NAPTIP, 2017 Data Analysis Final, 17-21.

cooperation between the UK and Nigeria in the fight against trafficking in persons[72].

With regard to the powers, the Agency has the authority to look into whether any person, group, or thing has broken its Act or another law's definition of trafficking. In order to carry out searches in support of its obligations under its Act or other laws, it may also enter any building, asset, or conveyance. The NAPTIP has the authority to hold, arrest, and prosecute any violators of this Act or any other Nigerian legislation pertaining to human trafficking. It has the authority to locate, seize, detain, or keep custody of any property that it has a reasonable suspicion has been used or implicated in an offense under this Act or another law in order to conduct an investigation and bring charges. Additionally, it has the authority to seal off properties if there is a plausible suspicion that they are being utilized or connected to offenses against the Act. Moreover, NAPTIP has the ability to request information from any person, authority, corporation, or company without interference in order to implement any of the TIPPEAA act's provisions (Trafficking in Persons Prohibition Enforcement and Administration Act 2015).[73]

1.7.4 State level: Edo State anti-trafficking policies

Edo State, as the main area of origin of Nigerian victims of trafficking, is engaged in combating the phenomenon through policies of prevention and repression. In 2017, the Edo State Task Force Against Human Trafficking (ETAHT) was established by the state government, which has as its main purpose the fight against human trafficking, contributing to the recovery of victims of trafficking and working in collaboration with other bodies and agencies involved in the fight against trafficking[74] In 2018, Edo State allocated 242 million naira ($670,360) to ETAHT.[75]

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[72] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, pp. 13-15.

[73] NAPTIP. Powers of the Agency. https://www.naptip.gov.ng/about-naptip-2/

[74] Edo State, Edo State Task Force Against Human Trafficking (About), ultimo accesso 19 ottobre 2023

[75] US Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report, 2019, p. 355.

According to ETAHT data, between November 2017 and May 2019 assistance was provided to 4676 people who were victims of trafficking and repatriated to Edo State, 592 of whom took professional courses. 58 investigations were opened against alleged traffickers of human beings and 25 people were convicted. In addition, as of December 2018, 90 million naira has been spent on contributions to victims of trafficking.
According to the UN, the main problem regarding the functioning of ETAHT is the lack of coordination with NAPTIP.
On May 23, 2018, as a result of the Oba Edict, Edo state governor Godwin Obaseki signed a law banning, preventing and punishing human trafficking. In particular, this legislation punishes trafficking for the purpose of sexual exploitation, work, organ removal and the employment of children under the age of 12 as domestic servants.[76] The purpose of this law is to provide an effective and comprehensive legal framework for the prevention and suppression of human trafficking and related offences in Edo State, facilitating local, national and international cooperation.

1.7.5 Investigations, prosecutions and access to justice

From 2004 to 2018, 362 people were convicted in Nigeria for human trafficking. Given the scale of the phenomenon, the UN Special Rapporteur points out that the phase of repression of trafficking needs to be strengthened. The main problems identified by the Special Rapporteur concern:
- Corruption and its impunity;
- The lack of specific expertise on this issue by law enforcement, prosecutors and magistrates;
- The excessively long delays in judicial proceedings;
- The lack of coordination between NAPTIP, prosecutors and consultants under investigation;
- The fact that investigations are based almost exclusively on the testimony of the victim, causing the closure of cases due to the lack of

[76] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, p. 7.

evidence and the pressure of family members to withdraw the complaint by the victim;
- The lack of reliable data on the level of compensation paid to victims of trafficking following judicial proceedings;
- The consideration by the Nigerian authorities only of trafficking for the purpose of the exploitation of prostitution, disregarding other forms of trafficking. Moreover, those who have started migration voluntarily and have been exploited in the countries of transit or destination are often not considered victims of trafficking.

1.8 Identification, repatriation and reintegration of victims in Nigeria

1.8.1 Identification of victims

In 2014, NAPTIP developed guidelines for the protection and assistance of victims of trafficking. However, officials of the Agency and the Immigration Service, interviewed in 2018 by Human Rights Watch, said they were unaware of its existence. Moreover, the identification of victims is entrusted exclusively to law enforcement and immigration service personnel, without the involvement of other competent figures (e.g., educators, health workers, social workers). In particular, there is a lack of adequate training of the staff of embassies abroad. The identification of victims is also hampered by the lack of a national database and standard operating procedures, as well as the corruption of law enforcement in border areas. It is extremely difficult to identify the victims of trafficking in camps for internally displaced persons in Nigeria. This is linked to the fact that women and children forcibly recruited by Boko Haram for the purposes of sexual exploitation, child labour and enlistment are not considered by the government to be victims of trafficking. There are therefore no recognition procedures or adequate services in the camps for displaced persons.

1.8.2 Repatriation of victims

With regard to the return of victims of trafficking to Nigeria, a distinction must be made between (i) repatriations carried out within the IOM-EU programme and (ii) repatriations carried out by the Federal

Government of Nigeria on the basis of bilateral agreements with third States.

According to the Protocol on Trafficking in Persons, on the subject of residency permits and the repatriation of victims of trafficking, Article 7 says: "… In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors. According to article 8, when a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary."[77]

In December 2016, the joint EU-IOM initiative was launched to assist migrants along the main African migration routes, with a particular focus on voluntary returns. The initiative was funded through the European Union Emergency Trust Fund for Africa (EUTF). Voluntary returns are defined by the IOM as those carried out in the absence of physical or psychological pressure and based on a conscious decision by migrants. However, on several occasions, the UN has called into question precisely the "voluntary" element of such repatriation, in particular from transit countries such as Libya, Niger and Mali. In May 2018, the UN Special Rapporteur on the Rights of Migrants highlighted that, in most cases, such repatriations cannot really be considered "voluntary" due to the lack of a coercive and fully informed decision, in fact, many migrants accept repatriation because they are in a

[77] UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: https://www.refworld.org/docid/4720706c0.html

condition of detention or the absence of real alternatives. [78] In her work Giorgia Serughetti states that "While migrant smuggling is framed through voluntariness on the part of those who are smuggled, human trafficking implies a form of involuntariness, based on the use of means that vitiate the victim's consent to the subsequent exploitation. Additionally, this distinction centres on the relation of the trafficker/smuggler to subsequent exploitative conditions, with human trafficking requiring the continued exercise of control over a person, while the role of the smuggler is primarily to facilitate border crossing. […]"[79]. In most cases Nigerian women are convinced that once abroad they will have the opportunity to work and earn money with the promise of a better future but these are fake promises implemented by traffickers to deceive them. Moreover, once women and young girls have accepted to move abroad traffickers implement the use of the *juju,* the fundamental peculiarity of these oaths is both their contractual character and the fact that they create psychological control over the victims. Women often believe that breaking the oath can cause misfortune, illness, madness and death of a family member.

As of February 2020, 78,297 migrants have been repatriated through the IOM programme from transit zones, in particular from Libya (38,248), Niger (33,970) and Mali (2642). In addition, as of 28 August 2018, 9,695 Nigerian migrants were assisted through this program; of these, 440 were identified by the IOM, in collaboration with NAPTIP, as victims of trafficking. However, the UN Special Rapporteur on Migrants' Rights stressed that, given the inhuman conditions in which migrants find themselves in Libya, the number of victims of trafficking among returnees could be much higher.[80]

Moreover, the IOM-EU programme provides assistance and reception services for returned migrants, which in Nigeria are carried out in

[78] UNCHR, 2018, Report of the Special Rapporteur on the human rights of migrants, p. 8.

[79]SERUGHETTI, Giorgia. Smuggled or Trafficked? Refugee or job seeker? Deconstructing rigid classifications by rethinking women's vulnerability. *Anti-trafficking review*, 2018, 11.

[80] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, p. 11.

collaboration with the National Commission for Refugees, Migrants and Internally Displaced Persons, NAPTIP, the National Emergency Management Agency and the Edo State Task Force against human trafficking.

1.8.3 Repatriation by the Nigerian Government

The Nigerian federal government has repatriated a considerable number of Nigerian migrants from Libya. No official data has been provided. However, the UN estimates that the government repatriated 2,130 migrants from Libya via Port Harcourt in January 2018. According to the UN Special Rapporteur on Trafficking in Human Beings, returnees through the Federal Reintegration Programme have not received any support on their return, despite many being rejected by their families. Some have received support from civil society organisations, but their capacity for assistance is limited.

1.9 Reception services

1.9.1 The refuges of NAPTIP

NAPTIP has established ten shelters for women and child victims of trafficking in the cities of Abuja, Lagos, Benin City, Uyo, Enugu, Kano, Maiduguri, Makurdi and Osogbo, for a total of 334 places. Since 2004, NAPTIP has provided assistance to a total of 13,186 people: 1,890 in 2017 and 826 in 2018.

The main issues related to the assistance provided by NAPTIP concern:

− The absence of shelters for men: according to disaggregated data provided by NAPTIP, from 2004 to 2018 9,344 women and 3,842 males were assisted, however, the latter are only minors. The lack of adequate services, the additional stigma associated with victim status and related stereotypes about masculinity lead to men refusing to be repatriated.

In any case, 60% of the men returning to Nigeria from Libya suffer from drug dependence and require adequate specialist assistance, provided

only by civil society organisations that - however - are not equipped to cope with the scale of the phenomenon;[81]
− the lack of clear criteria for the access of victims of trafficking to shelters.
− The existence of "mixed" shelters, which accept victims of various types of violence (such as domestic abuse) in addition to victims of human trafficking. This makes it more difficult to effectively rehabilitate victims of human trafficking, who are frequently compelled to deal with the stigma associated with being forced into prostitution even in shelters. The UN Special Rapporteur, during his visit to the Abuja shelter run by NAPTIP, noted that out of 43 adults and four children housed, only three were victims of trafficking;
− The lack of sufficient resources to manage and maintain NAPTIP shelters. In 2018, the Agency's shelter in the state of Borno was empty and the staff proved to be poorly trained. The victims were often sent back to camps for internally displaced persons or left to themselves.
− The limited period of stay in shelters, which appears to be only six weeks and which, according to the UN, is insufficient to allow a real rehabilitation of the victims.
− Arbitrary detention and denial of freedom of movement in NAPTIP shelters. The NAPTIP shelters in Lagos and Benin City, visited in 2017 by Human Rights Watch, are located far from the city centre, are surrounded by high walls, barbed wire and the entrances are manned by security guards. The victims in the shelters, besides being denied freedom of movement, can neither communicate with their families nor receive visitors. In addition, many of the victims interviewed by Human Rights Watch say they did not receive adequate information about when they could return to their families. This state of arbitrary detention undermines the reintegration of the victim into the community, undermines confidence in the services provided and prevents victims from requesting the necessary protection and assistance, so much so that victims often refuse acceptance.[82] In addition, in 2017 Human Rights

[81] Consiglio dei diritti umani delle NU, Report of Special Rapporteur on trafficking in persons, especially women and children, 2019, pp. 9-11.
[82] Human Rights Watch, You Pray for Death -Trafficking of Women and Girls in Nigeria, august 2019, pp. 58-64.

Watch interviewed eight underage girls who were victims of trafficking who, after a short stay in shelters, were transferred from NAPTIP to an orphanage. Minors reported poor conditions and services in such facilities: lack of adequate food, hygiene products and medical care. Most of the girls said that they had no further contact with NAPTIP agents, despite multiple requests to the orphanage management.[83]

1.9.2 Reintegration services

The guidelines for the protection and assistance of victims of trafficking developed by NAPTIP highlight the primary importance of long-term rehabilitation of victims. According to interviews carried out in 2017 and 2018 by Human Rights Watch, it emerges that most of the victims feel that they have not received adequate, long-term assistance from the Agency and NGOs[84]. This also applies to the services offered by the IOM to migrants repatriated to Nigeria by that international organisation. Human Rights Watch reports that most of the victims interviewed in 2017 and 2018 reported that they had not received significant health care and assistance from the IOM, in particular psychological support. In addition, many victims claimed that they did not receive adequate professional training from NAPTIP or NGOs and that they were not supported in starting their business activities. Also, in the context of the professional services offered, the UN Special Rapporteur on Trafficking highlighted that they are limited to short-term training and offer women limited job options, mainly in professions traditionally associated with the role of women in society (e.g., sewing, tailoring, hairdresser).

In general, the main issues related to the reintegration of victims of trafficking in Nigerian society concern:
− Social stigma and family rejection, which stems from not having met the expectations of income related to migration. The fear of retaliation leads, in some cases, to the refusal of victims to return to the community of origin.

[83] Human Rights Watch, You Pray for Death -Trafficking of Women and Girls in Nigeria, august 2019, pp. 64-66.
[84] Ibidem p. 67.

− Financial difficulties. Many victims claim that they have no means of subsistence and cannot find employment.
− Lack of adequate support to address the impact of trafficking on the mental and physical health of victims. Most of them, in fact, report suffering from physical and mental disorders (post-traumatic stress, depression, suicidal instincts) and having difficulty accessing care services.[85] In particular, the total inadequacy of psychological support services is highlighted.[86]
− Relocation to a Nigerian state other than the one of origin. In fact, there is a tendency to call "foreigner" anyone from a different geographical region (in particular with respect to the south and north of the country), discriminating such people also with respect to access to work. Thus, the relocation of victims of trafficking to geographical areas characterised by ethnic and religious groups other than their own could make them more vulnerable and hinder their reintegration.[87]

1.10 Re-trafficking

One of the greatest risks for victims of trafficking who have left the exploitation circuit is that of re-trafficking.
According to the IOM, the UN Special Rapporteur on Trafficking in Persons, the Group of Experts on Action Against Trafficking in Human Beings (GRETA) and the European Commission[88], re-trafficking means the situation in which a person who has escaped from exploitation is again subject to it after returning to the country of origin, transit countries or destination countries.
Therefore, the following paragraphs will analyse the risks of re-trafficking of victims of Nigerian trafficking (i) in the destination countries, (ii) in transit countries and (iii) in Nigeria. With regard to Europe, in 2018, the main destination countries for victims of Nigerian

[85] Human Rights Watch, You Pray for Death -Trafficking of Women and Girls in Nigeria, agosto 2019, pp. 48-54.
[86]EATON, Julian, et al. Interventions to increase use of services; mental health awareness in Nigeria. *International journal of mental health systems*, 2017, 11: 1-6.
[87] EASO Nigeria: la tratta di donne a fini sessuali, ottobre 2015, p. 50.
[88] Commissione europea, study on prevention initiatives on trafficking in human beings: final report, 2015, p. 63.

trafficking were Spain and Italy[89]. However, between 2010 and 2015, the largest number of victims of Nigerian trafficking were recorded in the Netherlands, the United Kingdom and France[90].

1.10.1 risk of re-trafficking in the destination countries

With regard to Spain, the GRETA reports the presence of victims of Nigerian trafficking in expulsion centres (repatriated without any prior verification on the protection they would receive in Nigeria) and the lack of adequate identification and assistance services for victims of trafficking in the temporary reception centres in Ceuta and Melilla. In the United Kingdom the problem is linked to assisted voluntary returns, as there are no specialised programmes for victims of trafficking that assess the danger of re-trafficking; in France, it is linked to the failure to identify victims of Nigerian trafficking who, claiming to be of age on arrival, do not benefit from adequate protection.
In addition, there is a risk of re-trafficking linked to the issue of repatriation: GRETA urges the French authorities to provide more information to victims on reintegration and protection programmes in the countries of origin. finally, in Italy, the risk of re-trafficking is caused by the ability of criminal networks to take victims from temporary shelter and the lack of clear procedures to identify victims of trafficking pending deportation.

1.10.2 Risk of re-trafficking in the transit countries

During the journey to Europe, victims of trafficking may be able to escape from exploitation systems and then end up again in the countries of transit. As highlighted in paragraph 7, the main transit countries for victims of Nigerian trafficking to Europe are Libya, Morocco or Algeria. Therefore, the risks of re-trafficking in such contexts will be analysed. In Algeria sub-Saharan migrants, also from Nigeria, enter the territory illegally through the network of traffickers and, when they

[89] FRONTEX, Risk Analysis for 2018, p. 34.
[90] Eurostat, Trafficking in Human Beings, 2015, p. 38.

manage to escape from it, they are more exposed to the risk of returning to the trafficking circuit, because of their status as irregular migrants and poverty. Moreover, in Algeria the risk of re-trafficking is linked to collective expulsions to Niger, which have affected Nigerian migrants since 2017, as denounced by the UN Special Rapporteur on the rights of migrants. In Morocco, the risk of re-Trafficking in victims of Nigerian trafficking is linked to a number of factors, including the presence of a network of Nigerian traffickers which has been operating in that country for several years and the social stigma suffered by women surviving trafficking for the purpose of sexual exploitation. Moreover, In Libya, the risk of re-trafficking is high because of corruption in institutions. The political instability in Libya in recent years has meant that police, militias, smugglers, traffickers, criminal gangs and civilians can safely detain migrants in unofficial detention centres, use them to extort money and force them to work for free. In particular, the traffickers of human beings unlawfully detain migrants and sell them to criminal organisations that release them, after paying a ransom, to take them to the coastal areas waiting for the crossing of the Mediterranean. In such cases, migrants may be arrested again, returned to detention centres and resold to criminal gangs or be able to board for Europe. Even after embarking on the journey to the Mediterranean, there is a high risk of re-trafficking. This is related to the rescue operations carried out by the Libyan Coast Guard, whose complicity with the traffickers has been demonstrated. In fact, in June 2017, the UN Security Council Sanctions Committee Expert Group on Libya denounced the involvement of the Libyan Coast Guard in human trafficking[91]. In particular, migrants, intercepted by the latter, are reported in Libyan detention centres, where they are exposed to greater risks of re-entering the sexual and labour exploitation circuit, as confirmed by the UN.[92]

[91] Consiglio di sicurezza delle NU, Report of the Libya Panel of Experts, 1 giugno 2017, p.63.

[92] UNSMIL, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 2018, p. 4.

1.10.3 Risk of re-trafficking in Nigeria

In Nigeria, the risk of re-trafficking for victims of trafficking for the purpose of sexual exploitation is caused by several factors such as the close relationship often existing between traffickers and the family of the victim, which increases the risk for the latter to be re-trafficked;[93] the social exclusion suffered by victims of trafficking once they return to their community, isolated for having carried out prostitution and for fear of being carriers of sexually transmitted diseases; the subjection to the *juju,* which allows traffickers to maintain control over the victim even after returning to their country of origin; the lack of housing for victims of trafficking organised by NAPTIP and NGOs in Nigeria; the economic conditions of the victims of trafficking who, once out of the exploitation circuits, find themselves in a situation of extreme poverty. In these cases, the risk of re-trafficking is higher when the victims have not finished paying the debt with the traffickers, also because of the threats that the latter address to the victim and his family members.[94] The complex articulation of the criminal network dealing with human trafficking allows traffickers in Europe to warn their partners in Nigeria of the repatriation of the victim. In particular, there are cases where traffickers await repatriated victims directly at the airport.

1.11 Conclusion

Human trafficking in Nigeria was the subject of this first chapter. The first section of the chapter gathers broad information in order to establish the context against which the issue of trafficking is understood. This information includes fundamental data about the State of Nigeria, its economy, its legal system, and its population. Subsequently, it narrows its attention to the phenomena of human trafficking, which is viewed as a non-linear process that involves retracing the steps from recruiting to social reintegration. Due to the non-linear nature of human trafficking, it is important to address the

[93] Ibidem pp 4.
[94] Ibidem pp. 4.

danger of trafficking in Nigerian migrants' transit and destination countries as well as the problem of re-trafficking.

CHAPTER 2- THE EVOLUTION OF ANTI-TRAFFICKING LAW FROM THE INTERNATIONAL PERSPECTIVE.

2.1 Introduction

Since the early years of the twentieth century, there have been agreements and conventions aimed at the prevention and suppression of trafficking in human beings, a phenomenon already subject to international prohibition established during the Congress of Vienna in 1815, with the "Declaration on the abolition of the slave trade". However, the lack of a universally recognized definition of the phenomenon made it impossible to harmonize State legislation and to establish common law enforcement. Consequently, in the first decade of the 20th century, the first international provisions were drawn up to fight the phenomenon of female sexual exploitation known as the "white slave traffic", which consisted in the abduction and recruitment of thousands of European women, who by deception were forced into the prostitution market in the great cities of the continent or led to the colonies.

Other conventions have been established over time with the goal of providing a specific definition of the phenomena in order to fight it and provide more protection for women who are victims of such exploitation. Indeed, the European Convention for the Protection of Human Rights (ECHR) was established in 1950, which was crucial because, unlike other instruments for the protection of human rights, the ECHR established a monitoring mechanism that allows each individual, after exhausting all internal remedies, to seek justice before the European Court of Human Rights in case of violation of the Convention itself or its Protocols. In addition, the Convention on the Elimination of All Forms of Discrimination against Women was established in 1979 which, as stated in the preamble, plays a key role in the fight against human trafficking because it acknowledges that despite numerous efforts made by the United Nations to promote women's rights and equality between women and men, "women continue to be subject to serious discrimination". Indeed, such discrimination against women violates the principles of equal rights and respect for human

dignity. Moreover, with regard to a new definition of trafficking, it will be necessary to wait for the new millennium, and in particular the signing of the Protocol on trafficking, which is additional to the United Nations Convention against Transnational Organised Crime. In fact, Article 3 will extend the list of possible forms of exploitation including the exploitation of the prostitution of others or other form of sexual exploitation, forced labour and services, slavery or practices similar to slavery, servitude or removal of organs. Subsequently, among the instruments adopted there is the Council of Europe Convention against Trafficking in Human Beings, which is one of the most important instruments in the matter of trafficking in human beings as it is characterized by the adoption of a perspective based on the centrality of human rights and in the enunciation of the fundamental principle on the basis of which the protection and promotion of the rights of victims of trafficking must be guaranteed without any discrimination. Finally, in 2014, the Istanbul Convention was adopted, an international instrument created with the aim of developing a regulatory framework to protect women against all forms of violence. Furthermore, the Convention contains a special chapter dedicated to migrant women, including undocumented women, and to women asylum seekers, two categories particularly subject to gender-based violence.

Moreover, several regulatory instruments have been adopted at European level to fight trafficking in human beings. In particular, since the adoption of Joint Action 97/154/JHA which focused on a system of protection characterised by rewarding only those who cooperate with justice, attention will then be drawn to developments since the entry into force of the 2002 Framework Decision, focused almost exclusively on the repressive aspect of the phenomenon which led to the elaboration of Directives more focused on the protection of victims. Among them is Directive 2004/81/EC (which defined the conditions for the issuance of a short-term residence permit to foreign citizens subject to trafficking) and Directive 2011/36/EU (which adopted for the first time a holistic approach to the matter, combining criminal measures with provisions for the protection and support of victims).

Section 1- The international regulatory framework

2.2 International Convention for the suppression of the white slave traffic of 1904.

One of the earliest documents dealing with a crime connected to the modern phenomenon of human trafficking is the International Agreement for the Suppression of the White Slave Traffic[95], which was established in 1904.[96] The convention, which was signed in Paris on May 18, 1904, and came into effect on July 18, 1905, lacks a definition of what constitutes trafficking[97]. The convention, at art. 1, state that "[e]ach of the Contracting Governments undertakes to establish or name some authority charged with the coordination of all information relative to the procuring of women or girls for immoral purposes abroad; this authority shall be empowered to correspond directly with the similar department established in each of the other Contracting States".

First of all, the only offense under consideration is the trafficking of white women and girls. Initially used to characterize the situation of

[95] International Agreement for the Suppression of White Slave Traffic, 1 LNTS 83, done May 18, 1904, entered into force July 18, 1905, amended by a Protocol approved by the UN General Assembly on Dec. 3, 1948 30 UNTS 23, (hereinafter International Agreement for the Suppression of White Slave Traffic), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-8&chapter=7&clang=_en

[96] The International Convention for the Suppression of the White Slave Traffic of 1904 was adopted by 13 European states: Belgium, Denmark, France, Germany, the United Kingdom, Italy, the Netherlands, Norway, Sweden, Portugal, Russia, Spain and Switzerland.

[97]With regard to terminology, it is worth highlighting the difference between the various terminologies related to trafficking. Slave trade is traditionally recognized as the trade of black people from Africa to Europe or the United States in the period between the 16th and 19th century; White Slave traffic is considered the abduction and recruitment of European women, who by deception were forced into the prostitution market in the great cities of the continent or led to the colonies; finally, human trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit.

working women in British factories, the phrase "White Slave Traffic" was later applied to the trafficking of European women for prostitution.[98] This serves to distinguish the trafficking of white women from the slave trade, which is the traditionally recognized trade of black people from Africa to Europe or the United States, for exploitation.[99] The Convention under consideration, therefore, applies only if the victim of the crime is female (regardless of age) and white.

The second element of uncertainty concerns the object of the specific intentionality of the crime in question, namely *immoral purposes.* It could be said that, since the text of the Convention mentions explicitly the term "prostitutes" in art.3, "[t]he Governments undertake, when the case arises, and within legal limits, to have the declarations taken of women or girls of foreign nationality who are prostitutes, in order to establish their identity and civil status, and to discover who has caused them to leave their country", without referring to other crimes that be subject to the specific intent of trafficking, the only relevant purpose for the integration of the crime under consideration is that of exploitation of prostitution.[100] Such an interpretation, however, risk to be excessively restrictive, especially if we consider that art.1 speaks of immoral purposes, plural term.

In addition, Article 3 of the Convention mandates that governments compel their national officials to report to the appropriate authorities any suspicious entry of individuals who seem to be trafficking victims.

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[98] OBOKATA, Tom. *Trafficking of Human Beings from a Human Rights perspective: Towards a more holistic approach*. Martinus Nijhoff Publishers, 2006. Pp, 13

[99] ALLAIN, Jean. White slave traffic in international law. *Journal of Trafficking and Human Exploitation*, 2017, 1.1: 1-40. Available at disponibile al seguente link: https://glc.yale.edu/sites/default/files/pdf/allain_the_white_slave_traffic_in_international_law.pdf

DEGANI, Paola, et al. Note su Schiavitù e diritti umani. Le attività del Gruppo di lavoro delle Nazioni Unite sulle forme contemporanee di schiavitù. *Pace, diritti dell'uomo, diritti dei popoli*, 1993, 3: 75-108., available at: https://unipd-centrodirittiumani.it/it/pubblicazioni/Note-su-schiavitu-e-diritti-umani-Lattivita-delGruppo-di-lavoro-delle-Nazioni-Unitesulle-forme-contemporanee-di-schiavitu/841

[100]GALLAGHER, Anne T. *The international law of human trafficking*. Cambridge University Press, 2010, p. 13.

A declaration from the woman or girl establishing their identification and civil status is also necessary in order to forward this information to their country of origin and initiate the procedure of repatriation upon the victim's claim or upon demand from the person in charge of them. The possibility of assistance, which will not come from national authorities but rather from public or private charitable organizations providing security for a set amount of time, is favoured above the victim's repatriation.

As regards the costs of repatriation, Art. 4 states "[w]here the woman or girl to be repatriated cannot herself repay the cost of transfer, and has neither husband, relations, nor guardian to pay for her, the cost of repatriation shall be borne by the country where she is in residence as far as the nearest frontier or port of embarkation in the direction of the country of origin, and by the country of origin as regards the rest".[101]

2.3 The international Convention for the Suppression of White Slave Traffic and the protocol of 1910

Six years after the signing of the International Agreement for the Suppression of White Traffic in 1904, Great Britain, Germany, Austria, Hungary, Belgium, Brazil, Denmark, Spain, France, Italy, the Netherlands, Portugal, Russia and Sweden decided to adopt a new convention on the subject, the International Convention for the Suppression of White Slave Traffic, with the Protocol of 1910[102]. The Convention of 1910, once again aimed at repressing the "White Slave Traffic", defines trafficking in art. 1 and 2, as amended by the Final Protocol. Art. 1 states that "[a]ny person who, to gratify the passions of others, has hired, abducted or enticed, even with her consent, a woman or a girl who is a minor, for immoral purposes, even when the various

[101] International Agreement for the Suppression of White Slave Traffic, at art 4.

[102] International Convention for the Suppression of the White slave Traffic, 3 LNTS278, done May 4 1910, entered into force Aug. 8, 1912, amended by a Protocol approved by the UN General Assembly on Dec. 3, 1948, 30 UNTS 23 (hereinafter 1910 White Slavery Convention), available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII10&chapter=7&clang=_en

acts which together constitute the offence were committed in different countries, shall be punished"[103]. Additionally, Art. 2, in turn, states that "[a]ny person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman or a girl of full age for immoral purposes, even when the various acts which together constitute the offence were committed in different countries, shall also be punished."[104] Unlike the 1904 Convention, the 1910 Convention stipulates that contracting parties must also sanction domestic trafficking.

Moreover, comparing again the definition of trafficking enunciated in art. 1 and 2 of the 1910 Convention with that contained in the previous 1904, it is possible to note that the first Convention made a generic reference to "immoral purposes" while the second is more explicit and in fact states "to gratify the passions of [...] for immoral purposes". This definition undoubtedly narrows the range of possible "immoral purposes" contemplated by the 1904 Convention, focusing on the exploitation of prostitution.

This Convention takes a step toward a more comprehensive approach to trafficking by expanding the ways in which any girl or woman could be coerced into prostitution to include instances of inducement and procurement. Therefore, it is confirmed internationally that women can become victims of traffickers even in the absence of violence, even though the Agreement makes a distinction between young victims, for whom the means of coercion were irrelevant, and adult victims, for whom some evidence of the means of offense procured was required. Since article 4 states that the Contracting Parties shall communicate to each other their existing laws on the matter or the ones they intend to implement, as well as any kind of modification of national legislation affecting the scope of the treaty, the international cooperation for the incrimination of prosecutors is more heavily weighted in this Agreement than in the one from 1904.[105] Moreover, the Agreement

[103] 1910 White Slavery Convention, at art 1.
[104] Ibid., at art 2.
[105] Ibid., at art 4.

identifies actions that States must take in the next sections to facilitate communication between parties in order to facilitate judgments regarding the fate of both the victim and the perpetrator. These actions may be carried out through diplomatic or judicial representatives.

2.4 The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR)

Regarding the regional and global advancement of human rights, it is important to note how this phenomenon has evolved in Europe as a result of the political and cultural unity of the member states of this region. The Council of Europe, an international organization founded in 1949 with the goals of fostering greater unity among its members, preserving and advancing shared values and principles, and guaranteeing the effective protection of fundamental rights, played a significant role in this regard. The European Convention on Human Rights (ECHR) and the European Court of Human Rights[106] serve as the core elements of a protection system that was designed to ensure that all Member States would have access to the same minimal standards of fundamental rights protection.[107] Twelve States (Germany, France, Italy, Belgium, the Netherlands, Luxembourg, Denmark, the United Kingdom, Ireland, Iceland, Norway, and Turkey) signed the Convention on November 4, 1950, in Rome. Currently, every one of the Council of Europe's 46 members has ratified it. Therefore, the Convention's territorial scope is larger than the European Union's.[108] With the adoption of this Convention on Human Rights, each State is required to uphold the rights defined in the Convention within the framework of its jurisdiction and for all individuals, without regard to any factor, including gender, race, colour, language, religion, political

[106] The European Court of Human Rights is an international court established in 1959 in order to ensures that the contracting States respect the Convention.
[107] HARRIS, David John, et al. *Harris, O'Boyle, and Warbrick: Law of the European Convention on human rights*. Oxford university press, 2023. Pp 3-36
[108] RUSSO, Carlo; QUAINI, Paolo M. *La Convenzione europea dei diritti dell'uomo e la giurisprudenza della Corte di Strasburgo*. Giuffrè Editore, 2006.

opinion, national or social origin, membership in a national minority, wealth, birthplace, or any other characteristic.

With regard to the structure of the Convention it consists of three parts: a first substantial part containing the catalogue of human rights (Art. 1-12) and some general provisions on the enjoyment, protection and limitation of these rights (Art. 13-18); a second part (Art. 19-51) by which the European Court of Human Rights is established and its functioning regulated in order to make effective the protection of these rights; and lastly, a third part (Art. 52-59) containing final provisions.

The ECHR has over time been supplemented by 16 additional protocols, some of which (Protocols number 1, 4, 6, 7, 12 and Protocol No. 13 on the abolition of the death penalty in all circumstances) have expanded the range of protected rights and have been ratified by only a few Member States. Provisions amended or added over time by Protocols number 2, 3, 5, 8, 9 and 10 were replaced by Protocol No. 11 (which entered into force on 1 November 1998). In 2004, Protocol No. 14 entered into force, allowing international organisations, including the European Union, to become parties to the Convention. Protocol No. 11 mandates the establishment of a permanent European Court of Human Rights (ECHR), which replaces the two previous organs of the Strasbourg control system: the European Commission for Human Rights and the European Court. As per Article 32 of the Convention, the Court's jurisdiction encompasses "all matters concerning the interpretation and application of the Convention". However, the primary feature of the new establishment is undoubtedly its provision of a system of individual applications (Article 34), which supplements the traditional interstate recourse (Article 33). This allows any natural person, including groups of individuals or non-governmental organizations (NGOs), to seek justice from the Court if they believe they have been subjected to a violation of the rights established in the Convention or its Protocols; In addition, the conditions of admissibility outlined in Article 35 suggest that the appeal must not be anonymous or substantially similar to other cases the Court has previously considered, that internal appeals must be exhausted first, and that the appeal must be filed within four months of the internal judgment. The ECHR's norms are written in a way that permits them to be continuously

adjusted to reflect advancements in law, society, ethics, and science. The examination of the Strasbourg Court's case law, which ultimately resulted in the creation of a common European human rights legislation, is a necessary step in comprehending the Convention. Furthermore, it is commonly known that the concept that "the Convention is a living instrument... which must be interpreted in the light of present-day conditions"[109] was first expressed in the Tyrer v. United Kingdom judgement. This concept has since permeated Strasbourg case law and served as the foundation for an interpretive approach. From that point forward, the Court would often debate whether it should change the interpretation, and it would in many cases. During the interpretation process, the Court has predominantly depended on the Vienna Convention on the Law of Treaties (VCLT)[110] interpretation norm; nevertheless, in certain cases, the Court has also sought the parties' agreement. Evolutionary interpretations are admissible under Convention law and are regularly used by the European Court when interpreting the Convention.

2.4.1 Regulatory structure of article 4 of the ECHR and the fundamental characteristics of the prohibitions of slavery and servitude

Moreover, for the purpose of the thesis special attention is to be paid on article 4[111]. The article consists of three paragraphs: the first contains the prohibition of reduction and maintenance in slavery and servitude, without providing a definition for both crimes; the second paragraph contains the prohibition of forced or compulsory labour, also in this case without giving any explanatory definition. A definition of forced or compulsory labour can be drawn from the third paragraph, which has the function of delimiting the content of the second and contributing to its interpretation, illustrating what cannot be considered to be included

[109] ECtHR, Tyrer v. the United Kingdom, 25 April 1978, § 31, Series A no. 26

[110] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980)1155 UNTS 331 (VCLT).

[111] European Convention on Human Rights, article 4. Available at https://www.echr.coe.int/documents/d/echr/guide_art_4_eng

in the conduct prohibited by it. Activities not to be regarded as forced or compulsory labour include a) the work required of legitimately held persons, b) military services or substitute civilian services, c) the services required in cases of disaster, d) civic duties. The structure of the article, and the fact that it has kept the prohibitions of the former separate from those of the second paragraph, is due to the intention to give the prescriptions a different degree of intensity. Only slavery and servitude, since they continuously and indefinitely invest the status of the person in its entirety, would be subject to absolute prohibitions, as can also be inferred from the coverage expressly guaranteed to them by Article 15 paragraph 2 of the Convention which prohibits for them any derogation even in the event of war or other public danger threatening the life of the Nation. Whereas, as regards prohibitions on forced or compulsory labour, they do not enjoy the same absoluteness, and the Contracting States would be allowed to derogate from this in exceptional circumstances, since they are less all-encompassing than the status of the person, normally presenting themselves as being concerned only with the profile of the work activity, which is done involuntarily, but for a limited period of time and for limited circumstances[112]. As for particular cases, despite the lack of definition of art. 4, the Strasbourg Court has repeatedly expressly referred to the definitions of "slavery", "servitude" and "forced labour" contained in other international conventions, thus importing them into the ECHR system. In any case, the absence of explicit definitions and the adoption of broad formulas within art. 4 could be considered rather than a problem, its value, resulting in the choice not to limit excessively the character of the prohibitions, so as to allow them to consider even those new forms of slavery that in 1950 were unthinkable (evolutionary interpretation) and realize the purpose of the article to repress and eliminate all forms of slavery and exploitation of man by other men (teleological interpretation).

The characteristics of the absolute prohibitions of slavery and servitude stated in the first paragraph of article 4 can be regarded to be of major

[112] LEVENTHAL, Zoë. Focus on Article 4 of the ECHR. *Judicial Review*, 2005, 10.3: 237-243.

importance with respect to other rights and freedoms recognized in the ECHR.[113] In fact, it is clear that reducing a subject to the property of others irremediably compromises the enjoyment of any other right or human freedom. As a result, freedom from slavery and servitude are necessary and inalienable rights, and an individual cannot legitimately consent to their restriction or deprivation. Furthermore, the binding nature of the Convention's prohibition of slavery and servitude, as well as a few other rights (the right to life, the prohibition of torture, the concept nullum crimen, nulla poena sine lege), reflects their supremacy. On the one hand Article 15 of the Convention states in the first paragraph that in the event of war or other public danger threatening the life of the nation, Contracting States may adopt measures derogating from their obligations under the Treaty, on the other hand the second paragraph expressly excludes this possibility with regard to art. 4. With regard to the violation of the prohibition by the contracting States, it is not only the direct reduction into slavery or servitude (negative obligation) but also the fact that the State has not taken all the appropriate measures to repress these particularly serious forms of human rights violations, in this way it is also recognized that States have a positive obligation against slavery and servitude.

2.5 The Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a fundamental instrument in the field of women's rights, offering a global perspective on the phenomenon of discrimination. CEDAW was adopted by the General Assembly in December 1979 and entered into force on September 3, 1981. It is the result of a long process characterized by the adoption of a series of documents within the United Nations on the subject of women's rights, the most important of which was the 1967 Declaration of the same name. The Convention is portrayed as a brand-new, legally binding

[113] RUSSO, Carlo; QUAINI, Paolo M. *La Convenzione europea dei diritti dell'uomo e la giurisprudenza della Corte di Strasburgo*. Giuffrè Editore, 2006.

agreement that comprehensively and coherently addresses the problem of discrimination against women in all spheres of society. It places special emphasis on women's full and fair participation in the social and economic advancement of society, as well as the removal of barriers like poverty and gender stereotypes that typically stand in the way of this goal.[114]

Article 1 of the Convention defines the concept of discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[115] For the first time, the concept of discrimination is defined in detail in an international document. It covers more than just formal or legal issues; it also includes any action or circumstance that actually keeps women from exercising their rights to the fullest extent possible on an equal basis with men.

Note that, based on the kinds of activities that the State is expected to do, the rights guaranteed in the Convention can be divided into three categories: First-class regulations grant a particular right, primarily pertaining to civil and political rights; second-class regulations oblige the State to take appropriate action, such as to change patterns of behaviour that are discriminatory; and third-class regulations oblige States to take action to accomplish a specific goal, specifically pertaining to the enjoyment of economic and social rights. In this regard, it is important to remember that the States Parties to the Convention are obliged under Article 2 to take all necessary steps to change discriminatory customs and practices in addition to eradicating discrimination that results from national legislation and from " person, organization or enterprise of all kinds" and to take all appropriate

[114] ASSEMBLY, UN General. Convention on the elimination of all forms of discrimination against women. *Retrieved April*, 1979, 20: 2006.

[115] Convention on the Elimination of all forms of discrimination against Women, art 1.

measures to modify discriminatory customs and practices. [116] This is an element of great importance in the international human rights law, as the State becomes legally responsible both for the measures it implements (positive obligations) and for the measures it refrains from implementing (negative obligations) in order to prevent discrimination against women.

Finally, Art. 6 of the Convention provides that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". In this regard, it may be noted that the Convention obliges States Parties to repress the trafficking in women in all its forms, and not only that for the purpose of exploitation of prostitution.[117] This is a symptom of the international community's increasing sensitivity to the phenomenon of trafficking, not only aimed at the exploitation of prostitution, but also characterized by a specific intentionality of a different nature.

Additionally, with the adoption by the General Assembly on 6 October 1999 of the Optional Protocol, The Committee for the Elimination of All Forms of Discrimination against Women has moved in the direction taken by other bodies monitoring the implementation of international human rights instruments.[118] By ratifying the Optional Protocol, a State recognizes the competence of the Committee on the Elimination of Discrimination against Women, the body in charge of monitoring states' observance to the Convention, to receive and consider complaints from individuals or groups within its jurisdiction. With the entry into force of the Protocol in December 2000, which as of January 2016 has 106 States Parties, a procedure has been introduced to allow individuals or groups to submit written communications to the Committee on

[116] Ibiden art.2

[117] HELLUM, Anne; AASEN, Henriette Sinding (ed.). *Women's human rights: CEDAW in international, regional and national law*. Cambridge University Press, 2013.

[118] UNION, Inter-Parliamentary, et al. *The Convention on the Elimination of All Forms of Discrimination Against Women and Its Optional Protocol*. UN, 2003. Pp, 27-46

infringements of any of the rights provided for in the Convention, including those protecting collective interests.

2.6 The United Nations Convention against Transnational Organized Crime

The World Ministerial Conference on Organized Crime, which was organized by the UN Secretary-General in November 1994 in Naples on the advice of the Commission for the Prevention of Crime and Criminal Justice, is one of the most significant phases in the preparation of the United Nations Convention against Transnational Organized Crime. In an attempt to effectively combat a phenomenon that has been at the centre of international discussions and concerns since the Fifth United Nations Congress for the Prevention of Crime and the Treatment of Offenders took place in Geneva in 1975, one of the main goals of the Conference was to investigate the possibility of drafting an international convention against transnational organized crime.[119] The Convention ought to have contained clauses that made it illegal to associate with criminal organizations, given the courts the authority to conduct special investigations, and established protection for witnesses.[120] Respect for human rights and conformity of this legal document with national laws would have been required. The Conference unanimously adopted the Naples Political Declaration and a Global Action Plan, under which the need to adopt a worldwide legal instrument to combat transnational organised crime was underlined: the importance of such instruments lies in enclosing the commitment and political will of the States to cooperate in combating the phenomenon in all its forms.[121]

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[119]STANDING, André. *Transnational Organized Crime and the Palermo Convention: A Reality Check*. New York, NY: International Peace Institute, 2010.

[120] RAM, Christopher. the United Nations Convention against transnational organized Crime and its Protocols. In: *Forum on crime and society*. 2001. p. 135-45.

[121] WHEATLEY, Joseph. Transnational organized crime: A survey of laws, policies and international conventions 1. *Routledge handbook of transnational organized crime*, 2021, 51-66.

By Resolution 51/120 of 1996[122], the UN General Assembly requested that the Commission on Crime Prevention and Criminal Justice develop a draft treaty on transnational organized crime that would incorporate the decisions made during the Naples Conference. A first draft Convention was drafted by an intergovernmental group of experts who gathered in Warsaw. However, the task of drafting the conventional text and additional international instruments (which will become the annexed Protocols) against arms trafficking, smuggling of migrants, and human trafficking was given to an ad hoc Committee by Resolution 53/111 of the General Assembly. Several government delegations (121 delegates in the last two sessions) and non-governmental and intergovernmental organizations engaged in the Committee's work since it started in January 1999. The Main Convention and the Additional Protocols against human trafficking and smuggling of migrants were completed and approved by the UN General Assembly on November 15, 2007, by resolution 55/25[123]. This marked the conclusion of the process, which took place in July 2000.

Concurrently with the Convention, three Protocols were drafted to combat human trafficking, smuggling of migrants, and trafficking of weapons. The three Protocols, give importance to crimes other than those provided for by the Convention, notably, during the Preparatory Phase, the Japanese delegation was particularly interested in regulating the trafficking of weapons, while the delegations from Latin America and Italy were focused on the smuggling of migrants.[124] The Protocols extend the scope of the provisions contained in the Convention to crimes of trafficking, smuggling of migrants and firearms, and are therefore defined as "additional to the Convention".

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[122] United Nation General Assembly, Resolution adopted by the General Assembly on the UN Convention against Transnational Organised Crime, UN Doc 51/120 (1996).

[123] United Nation General Assembly, Resolution adopted by the General Assembly on the UN Convention against Transnational Organised Crime, UN Doc 55/25 (8 January 2001).

[124]MICHELINI, Gualtiero; POLIMENI, Gioacchino. Il fenomeno del crimine transnazionale e la Convenzione delle Nazione Unite contro il crimine organizzato transnazionale. *AA. VV., Criminalità organizzata transnazionale e sistema penale italiano, a cura di Rosi, Milano*, 2007, 19.

The relationship between these international instruments is governed by Article 37 of the Convention[125], according to which the protocols which may be added to it are binding only on States which become Parties to them, which must necessarily have adhered to the main regulatory instrument (in fact the autonomy of the protocols is denied). In addition, paragraph 4 introduces an obligation of uniform interpretation of the contractual provisions and protocol. Article 1 of each Protocol, referred to in the general provisions as "Relationship with the United Nations Convention Against Transnational Organised Crime", reiterates the obligation of uniform interpretation, stressing that any offence contained in the additional instruments must be interpreted as an offence provided for under the Convention, the provisions of which will apply to it unless otherwise provided.

The purpose of the UN Convention against Transnational Organised Crime is to "promote cooperation to prevent and combat transnational organised crime more effectively" (Art. 1)[126]. According to the Convention's provisions, "cooperation" must be interpreted broadly to include both improved national systems of combating organized crime (such as by making it mandatory for some offenses to be criminalized in national laws and by encouraging research and information exchange activities) and technical and operational cooperation between States in the fight against the phenomenon. The scope of the Convention, to which Article 3 is dedicated, extends to the prevention, investigation and prosecution of offences involving participation in an organised criminal group, money laundering, corruption and obstruction of justice, as well as for crimes punishable by imprisonment of at least 4 years or with a higher penalty for so-called "serious crimes".

The Convention applies where there is the involvement of an organised criminal group, that is, “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

[125] Article 37 of the UN Convention on Transnational Organised Crime.
[126] Article 1 of the UN Convention on Transnational Organised Crime.

indirectly, a financial or other material benefit" (art 2, para. a)[127], and they are of transnational nature. Transnationality is defined in the second paragraph of Article 3 as the specific nature of crimes committed in more than one State, or committed in a single State but that is planned, coordinated, controlled, or directed in a different State or involving criminal groups operating in more than one State, or committed in one State but with substantial effects occurring in another.

However, as clarified by the Legislative Guide for the implementation of the United Nation Convention against transnational organized crime published in 2004 by UNODOC[128], the element of transnationality and involvement of an organised criminal group does not extend to all the articles of the Convention. Article 34.2 requires each Member State to penalise the four offences covered by the Convention regardless of whether they were committed by an organised group or their transnational nature.

2.6.1 Palermo protocols: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The elaboration of the United Nations Convention has been accompanied, as has already been pointed out, by the definition of specific Protocols dedicated to the fight against human trafficking, smuggling of migrants and the illicit manufacturing and trafficking of firearms. However, the three extra instruments were not conceived simultaneously: only the Protocol against the smuggling of migrants was initially envisioned, and the work for establishing a protocol against trafficking did not begin until a later stage of the Convention discussions. However, Member States were concerned that vulnerable individuals, particularly women and children, were left without any kind of protection due to the lack of an international instrument specifically devoted to combating human trafficking. The trafficking

[127] Ibidem art 2 paragraph a.

[128] UNODOC, *Legislative Guide for the implementation of the United Nation Convention against transnational organized crime,* 2004.

and smuggling of migrants have long been considered as a unitary manifestation of the generic phenomenon of international human trafficking. The latter term was intended as all forms of criminal activity based on the illegal recruitment, transfer and introduction of persons from one State to another, or within the same State, for profit.

Only thanks to a slow regulatory process, initiated in the 1990s and then culminated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children[129], it was possible to distinguish trafficking in human beings from smuggling of migrants. Firstly, among the elements of differentiation between the two phenomenon there is, with regard to the smuggling of migrants, the migrant's consent to the crime; this is distinct from the phenomenon of trafficking, which is typified instead by the use of violent, coercive, deceptive, or abusive means.[130] Moreover, while the purpose of smuggling is identified in the advantage that the smuggler derives from having procured the illegal crossing of borders, whereas trafficking is identified in the exploitation of the migrant after reaching the destination State. Because it might be difficult to discern between a migrant's deliberate choice and being forced against his/her will, the objective of the conduct has proven to be a crucial factor in differentiating between the two situations. In many cases, the victims willingly come to an arrangement with the trafficker, only to find out later, when they get to the destination state, that the conditions and nature of the employment are completely different from what was agreed upon.

According to the definition found in the corresponding Protocols, trafficking is a crime against the person, whereas smuggling of migrants appears to be a crime against the State. People's rights are constantly gravely infringed when it comes to trafficking, which is precisely why the two Protocols' objectives are different. While both seek to stop the

[129]Protocol to Prevent, Suppress, Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 UNTS 319

[130] WILLIAMS, Phil, 2007, “The role of transnational organized crime”, in Newman, Edward, Trafficking in humans: social, cultural and political dimensions, pp. 126-131, New York: United Nations University Press

issue and promote interstate collaboration in order to successfully combat it, only the Anti-Trafficking Protocol additionally seeks to protect and assist victims while respecting their human rights.

Regarding the different provisions of the Convention, the relationship between the Convention against Transnational Organized Crime and the Protocol on Trafficking is defined in Article 1. The Protocol is meant to be read consistently with the Convention. This entails the possibility of making certain interpretative or implementing changes to the Convention where circumstances so require, but only where strictly necessary. The Protocol's jurisdiction encompasses the prevention, investigation, prosecution, and victim protection of the offenses listed in Article 5[131], provided that those offenses involve an organized criminal group and meet Article 4's requirements for transnationality.

Furthermore, the first internationally accepted definition of trafficking can be found in Article 3 of the Protocol. This term is based on the differentiation between conduct, means, and purpose of exploitation. The conduct consists in the recruitment, transportation, transfer, harbouring or receipt of persons[132]. Moreover, the means are considered 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. Any intimidation against the victim must be interpreted as a threat, and the "other forms of coercion" mentioned in the norm pertain to the exploitation of the subject's cultural background (religious or popular beliefs) in order to limit its ability to make its own decisions. Finally, the purpose of exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[133]

The definition of trafficking as defined by Article 3 of the Protocol has garnered widespread international consensus. This development has

[131] Palermo Protocol, art 5.
[132] Palermo Protocol art 3.
[133] Ibidem art. 3.

made it possible to harmonize Member State laws regarding the case of trafficking, a development that was previously impeded by the absence of an effective strategy to combat the phenomenon.

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

The Council of Europe Convention on Action Against Trafficking in Human Beings has as its priority the protection of human rights of victims of trafficking and the construction of a system of assistance. The Convention is characterized by the broad scope of its objectives, and in this context, it outlines appropriate actions to prevent and combat the phenomena. It is inspired by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, as well as the United Nations Convention against Transnational Organised Crime and the related Additional Protocol. As a result, the fundamental principle concerns the protection and promotion of victims' rights, which must be guaranteed without any discrimination based on sex, race, colour, language, religion and political opinions. In fact, the Warsaw Convention emphasizes that human trafficking is a violation of human rights, as well as the dignity and integrity of individuals, and that, in this regard, the protection of all victims must be strengthened.

Art. 4 of the Council of Europe Convention on Action Against Trafficking in Human Beings uses the definition of human trafficking found in Art. 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.[134] The Convention was made available for signature on May 16, 2005, in Warsaw, but it wasn't until February 2008 that it came into effect.[135]

As already underlined in paragraph 2.5.1 the notion of trafficking contained in art. Article 4 of the Convention is based on three constituent elements such as conduct, means of action and purpose of

[134] KONRAD, Helga. The fight against trafficking in human beings from the European perspective, pp. 172- 178, New York: United Nations University Press.
[135] Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, 16 May 2005

exploitation, meaning that for a case to be classified as human trafficking, it must contain all of these components.

The Convention's unique feature that sets it apart from other pertinent international legal treaties is the primary focus on safeguarding and advancing the rights of victims of trafficking. Specifically, the Warsaw Convention can provide greater protection for trafficked persons than the minimum standards established at the international level because of its more precise provisions and more limited regional framework[136]. Moreover, the Convention's primary goals include preventing and combating human trafficking, promoting international cooperation, and protecting victims, as stated in paragraph 5 of the Preamble. The Council of Europe regards trafficking as an infringement on human rights and an offense against an individual's dignity and integrity (Article 1)[137].

Preventing human trafficking in all its manifestations, both domestically and globally, is the declared goal of the Convention, regardless of its connection to organized crime. In this sense, for the functioning of the UN Convention and the Anti-trafficking Protocol, it is necessary that the conditions of transnational crime and the existence of a criminal organization are met[138]. On the contrary, the aforementioned Council of Europe Convention applies to all hypotheses of trafficking in human beings, regardless of the transnational nature of the specific case and the presence of a criminal organisation. In fact, the Warsaw Convention increases the possibilities of protection offered by the Additional Protocol to the UN Convention, adapting them to the different aspects that the phenomenon can concretely assume. Prevention and victim protection are the subject of other core ideas that are outlined in detail in the new Convention. From an initial perspective, it is imperative to guarantee the safeguarding and

[136] Council of Europe, Explanatory Report – CoE Convention against Trafficking, CETS No. 197, para 30.

[137] Article 1 of the Council of Europe Convention on Action against Trafficking in Human Beings

[138] PLANITZER, Julia. *Trafficking in human beings and human rights: The role of the Council of Europe Convention on Action against Trafficking in Human Beings*. NWV Verlag, 2014.

advancement of victims' rights without giving rise to any form of discrimination based on gender, race, colour, language, religion, political beliefs, nationality, socioeconomic status, or ethnicity.

Additionally, the prevention of human trafficking is the focus of Chapter II of the Convention, which emphasizes the importance of coordination among the several agencies tasked with preventing and fighting human trafficking[139]. Together with promoting a human rights-based strategy and taking the necessary steps to ensure that immigration occurs under legal conditions, this action should be closely coordinated with the introduction of prevention programs targeted at those who are most vulnerable to trafficking. This will lower the likelihood that children will be exposed to exploitation. According to Article 5[140], States must take all necessary steps to facilitate legal immigration, including informing the public about the legal requirements for entry and residency on their territory. In particular, the latter provision is interesting because it identifies restrictive immigration policies as one of the causes of trafficking in persons.

Moreover, particular attention is paid to cooperation. The latter is regulated by Chapter VI and is expanded in line with a particular strategic decision that seeks to promote cooperation between authorities and civil society in the various areas of victim protection and prevention rather than being restricted to interactions between judicial authorities.[141] According to the provisions of article 32, States have a mutual obligation to cooperate in the fight against the phenomena of human trafficking and exploitation, which they must carry out to the greatest extent feasible.[142]

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[139] Chapter II of the Council of Europe Convention on Action against Trafficking in Human Beings, available at https://rm.coe.int/168008371d (accessed October 2023)

[140] The Council of Europe Convention on Action against Trafficking in Human Beings, art,5.

[141] Chapter VI of the Council of Europe Convention on Action against Trafficking in Human Beings, available at https://rm.coe.int/168008371d (accessed October 2023).

[142] The Council of Europe Convention on Action against Trafficking in Human Beings, art,32.

Chapter VII of the Warsaw Convention governs the monitoring mechanism on the application of the Convention by the Member States, to which special emphasis should be given. This is an additional feature that distinguishes the Council of Europe Convention from the United Nations Convention, and contributes to the development and strengthening of the global legal system against the phenomenon of trafficking. Periodically, a group of highly qualified experts (GRETA)[143] in the areas of human rights, assistance and protection of victims and the fight against trafficking in persons shall draw up reports and conclusions on the implementation of the Convention by each Member State. Based on these findings, the Committee of the Parties (a political body formed by the Committee of Ministers of the States) shall adopt recommendations, addressed to each Party, on the measures necessary to comply with the conclusions drawn by the experts.

2.8 The Istanbul Convention

Since 1990, the Council of Europe has addressed violence against women more thoroughly through a series of recommendations and resolutions. The Committee of Ministers' Recommendation Rec (2002)5[144], for instance, foreshadowed the Istanbul Convention in a number of areas, including the definition of violence against women and the States' need to exercise the obligation of due diligence. The document emphasized that violence against women is a systemic issue in society, stemming from unequal power dynamics between genders and ultimately limiting women's access to and enjoyment of their fundamental human rights. The Istanbul Convention will follow the Committee of Ministers' earlier emphasis in this document on the necessity of coordinated effort by all parties involved in the process of

[143] Group of experts on Action against Trafficking in human beings (GRETA).

[144] Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence[144] (Adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers' Deputies) available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612 (accessed October 2023)

ending violence, including NGOs and the institutions that deal with victims the most, such the police and health services.[145]

The Council of Europe then launched a campaign against violence against women, including domestic abuse, between 2006 and 2008. The primary goals of this campaign were to increase public awareness of violence against women and to put Recommendation Rec (2002)5 into practice by enacting new legislation and carrying out an Action Plan. However, States were required to focus on four main areas: data collecting and awareness-raising, victim support and protection, legal and regulatory tools. Within this effort, the states coordinated a range of local and national initiatives. Finally, the Parliamentary Assembly passed Resolution No. 1582[146] in 2007 as part of this campaign, mandating seven actions from the states. These included making domestic violence against women a crime, building enough shelters for abused women, and allocating enough funds to put new laws into effect. The Council of Europe gathered multiple data from the campaign regarding the incidence of violence against women among Member States and the range of approaches taken to address the issue. This resulted in the creation of the Ad Hoc Committee to Prevent and Combat Violence against Women and Domestic Violence (CAHVIO) by the Committee of Ministers in 2008, whose main duty was to develop a treaty on violence against women. Following nine meetings and discussions with representatives of the Member States since its founding, the CAHVIO produced a text in 2011. The text created by the CAHVIO's efforts was approved by the Committee of Ministers on April 7, 2011, opened for signature in Istanbul on May 11, 2011, and went into effect on August 1, 2014, following the tenth ratification.

The Convention is organized into 12 chapters and has 81 articles in total. The provisions and actions outlined in this treaty fall into four groups, or the "4 Ps": prevention, protection, prosecution and co-ordinated policies. The Council of Europe has determined that it is

[145] MANENTE, T. La violenza nei confronti delle donne dalla Convenzione di Istanbul al «Codice Rosso». *Torino, G. Giappichelli Editore*, 2019, 11-14.

[146] Resolution 1582 (2007) of the Parliamentary Assembly, available at https://pace.coe.int/en/files/17594/html (accessed November 2023).

crucial to concentrate emphasis on these many sectors and to impose duties on governments in order to accomplish the eradication of domestic violence and gender-based violence. Furthermore, it is emphasized that historical records of unequal power relations between men and women show that these relations lead to prejudice against women, which in turn causes violence against them. In this regard, the Convention includes a number of provisions, such as Articles 12, 13, and 14 on prevention, awareness, and education, that are intended to further the cause of gender equality in addition to ending violence against women. Indeed, eradicating all forms of discrimination against women and advancing gender equality are specifically among the objectives of the Convention, as stated in Article 1, along with the eradication of violence against women and domestic abuse. Moreover, The Council of Europe notes in its Explanatory Report 2[147] that women who experience violence against them also find it more difficult to exercise their other fundamental rights, including the right to life, dignity, and independence. Regarding the Convention's content, the first six articles serve as an introduction and have general application. They lay out the general obligations for States, explain the objectives of the Convention, and provide definitions. The objectives of the Convention are outlined in the first article. Eliminating all types of domestic violence and violence against women is the primary goal. The Convention also intends to establish international cooperation for the eradication of violence, integrated approaches amongst the many agencies and associations dealing with violence, and measures for victim protection and support.

Additionally, it is crucial to pay close attention to the definitions contained in Article 3, particularly the one regarding "violence against women." This definition describes a violation of women's human rights and a type of discrimination against them. It encompasses all acts of gender-based violence that inflict or are likely to inflict physical, sexual, psychological, or economic harm or suffering, including threats

[147]Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, available at https://www.istat.it/it/files/2017/11/ExplanatoryreporttoIstanbulConvention.pdf (accessed November 2023).

of such acts, coercion, or arbitrary deprivation of liberty in both public and private spheres. Several declarations from the 1990s have included violence against women as a violation of human rights; the first was the 1993 United Nations General Assembly's Declaration on the Elimination of Violence Against Women (DEVAW). Moreover, the Istanbul Convention's definition of "violence against women" has an intriguing and novel element: it makes reference to economic damage and suffering, suggesting that economic violence is one of the several types of violence against women. Until recently, the majority of research and global tools have concentrated on more conventional types of violence, like sexual, physical, and psychological abuse. The concept of economic violence is first included into a legally enforceable international agreement by the Istanbul Convention.

Furthermore, Article 3 states that "domestic violence" includes "[…] any acts of physical, sexual, psychological, or financial abuse that take place within a family, household, or between spouses or partners, whether or not the perpetrator currently resides with the victim. […]"[148] The definitions of the Convention reiterate the distinction made by the title between domestic abuse and other forms of violence against women. The decision reached in the Istanbul Convention aims to highlight the issue of domestic abuse, which is a serious and widespread problem. It is crucial to emphasize that domestic abuse is defined as violence against women when it respects all of its characteristics. This includes situations in which a woman is targeted as a victim due to her sex and when violent acts serve as a manifestation and reinforcement of oppression and dissimilar power dynamics. Nonetheless, the definition of domestic violence acknowledges that both men and women can become victims of this type of abuse because it does not specify the victim's gender. In light of this, the first chapter also lays out States' responsibilities in this area, a liability that comprises both positive and negative obligations, so that States can demonstrate a tangible commitment to carrying out the requirements of prevention, protection, and punishment of violence against women. In addition to abstaining from actions that can escalate violence against women,

[148] Istanbul Convention, art 3

Member States must make sure that institutions, authorities, and other state representatives uphold this obligation. Contracting Parties shall also take all reasonable steps to prevent, investigate, and punish those accountable for acts falling under the scope of the Convention, even in cases where such acts have been committed by non-State actors. In cases where a State fail to fulfil this positive obligation, it may also become liable for private parties' actions. For a long time, it was believed that the State could intervene only for the violence in which it itself was involved, its main obligation was therefore negative and consisted precisely in refraining from committing acts of violence. The Istanbul Convention, in Article 5, further consolidates these achievements and extends the protection owed to women by the State. In this way, in fact, the State no longer has only the negative obligation to refrain from committing violence against women, but also the positive obligation to adopt and diligently implement all necessary measures to prevent, investigate and punish the perpetrators of violence.

A certain group of women, migratory women, are the target of more regulations included in the Convention. Since these women frequently do not ask for help and do not receive the proper assistance and protection, they are more likely to remain victims of violence. This is because these women find it more difficult to access the services offered by the State to victims of violence due to their migrant status. Article 4, which states that the Contracting Parties should assure the implementation of the provisions of this Convention without any discrimination based [...] on the status of migrant or refugee[149], is the source of this issue's attention. This is to ensure that no services or other provision that benefits migrant or refugee women are taken away from them. Furthermore, the Convention's Article 59 takes into consideration the circumstance in which a migrant woman's residency status depends on her spouse's[150]. It is in fact possible to obtain a residence permit in a State by marrying someone who is a regular resident or who holds citizenship there. Before allowing a spouse to have an independent

[149] Istanbul Convention, art 4.
[150] Ibidem art 59

residence visa, the majority of European nations have minimum marriage requirements that range from one to three years depending on the Member State. However, there is a serious issue with this kind of residency permit: in the event that the woman became the victim of abuse, she would have to decide whether to keep up the violent relationship in order to keep her residency status or to end it and renounce her status. In these situations, even if the marriage has not reached the minimum defined period, the Convention mandates that the victim be granted an independent residence visa in the event that the marriage is terminated. This law is intended to give migrant women who are victims of abuse the freedom to leave their abusive partner, seek help from the authorities, or utilize services that provide protection and assistance, all without having to worry about having their residency status revoked as a result of their marriage ending. Moreover, Article 60 of the Convention addresses the granting of refugee status stating that "[…] gender- based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.[151]" For a long time, the various forms of persecution that women experience in comparison to men were not taken into account by the legislation pertaining to the right of asylum, and as a result, these reasons were not included in the list of grounds for awarding refugee status. Certain jurisdictions had already listed female genital mutilation and women trafficking as examples of violence against women that must be prevented. The Convention compels States to list any types of gender-based violence that fall under its scope as persecutions relevant to this Article and, consequently, to give refugee status to those who are victims of such abuse.

Ultimately, even in cases where an asylum request has been denied or has not yet been approved, States are required by Article 61 to uphold the principle of non-refoulement towards victims of gender-based abuse. Article 33 of the Geneva Convention establishes the concept of non-refoulement, stating that: "No Contracting State shall expel or

[151] Ibidem, art 60.

return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[152] Because it safeguards asylum seekers' fundamental right to be free from torture, cruel or degrading treatment, and other human rights breaches, this principle is essential to the regulation of refugee status. In contrast, States who are not parties to the Geneva Convention must nevertheless comply by this regulation since it has become a part of customary international law. States are thus prohibited from sending women abroad to nations where there is a significant possibility that they may endure torture, cruel or inhumane treatment, or where their lives may be in danger.

Section 2- The European regulatory framework

2.8 Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children.

The alarming extent of trafficking in Europe, in spite of the considerable efforts made by the international community to fight this phenomenon, showed the necessity for additional regulatory tools that could ensure a higher level of harmonization between national legislation and, in particular, that is able to strengthen the protection and guarantees for victims of trafficking. The Joint Action 97/154/JHA for the fight against trafficking of human beings and the sexual exploitation of children is one of the earliest acts of the European Union concerning trafficking. It was enacted by the Council of the European Union based on Article K.3 of the Treaty on European Union[153]. Through this act, the Member States committed to revising national legislation in accordance with their constitutional and legal requirements in order to consider criminal

[152] Geneva convention, art 33.

[153] Council Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children 97/154/JHA, *OJ L 63, 4.3.1997*. available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31997F0154 (accessed November 2023).

activities related to these phenomena as criminal offences and to provide for the appropriate penalties, in light of the increasingly concerning dimensions of serious international organised crime. In accordance with Title I, Part A), trafficking is defined as "[…] any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a Member State for the purpose of sexual exploitation in cases where there has been the use of violence, intimidation, fraud, abuse of authority, or threat.[154]" Moreover, the purposes listed in Title I also include the exploitation or sexual abuse of children, which does not require the use of the aforementioned illicit means.

Nonetheless, the limit of the Joint Action is evident in the "measures to be taken at national level"[155]. In fact, the Council offers protection measures—such as the issuance of a temporary residence permit or the option to return to the country of origin—or to any other country that is willing to accept them—with the rights and protections that are ensured by the national laws of the Member State to victims who choose to testify and provide information helpful for the criminal prosecution of trafficking behaviour. Such a protective system, which is restricted to the procedural sphere and is exclusive to individuals who choose the judicial cooperation path, will eventually be replaced by further regulatory actions.

The legal framework pertaining to judicial cooperation underwent a significant transformation with the entry into force on May 1, 1999, of the Treaty of the European Union, which was signed in Amsterdam on October 2, 1997. In order to tackle these issues, the European Union has found new regulatory and political conditions to become more effective. Among the amendments made to the EU Treaty, one of the most important concerns the transfer of visa, asylum and immigration matters from the then third pillar to the first, placing them among the areas of competence of the EU institutions and no longer left to intergovernmental cooperation. Moreover, human trafficking is included in the list of organized crime types examined by Article 29

[154] Title I, part A. Joint Action 97/154/JHA, 1997.
[155] Title II Joint Action 97/154/JHA, 1997.

TEU (ex-Article K.1), which is listed under Title VI's "Provisions on police and judicial cooperation in criminal matters"[156] along with terrorism and illegal drug and weapon trafficking. In order to provide European Union residents with a high degree of security in a space of freedom, security, and justice, the instruments of collaboration are used to counteract these phenomena. The Council, which has the authority to make framework decisions and decisions pertaining to cooperation, is tasked with achieving these goals.

The conclusions of the European councils held in Tampere (October 1999), Laeken (held on December 14 and 15, 2001), Seville (June 2002), and Thessaloniki (June 2003) demonstrate the growing political priority placed on the need to stop and fight the expansion of the phenomenon of trafficking. The development of techniques for regulating immigration flows was specifically noted in Tampere as one of the priorities for tackling issues pertaining to unlawful immigration. Moreover, with conclusion No. 23, the European Council also stressed its commitment to "tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants."[157] In particular, States are urged to establish a unified EU policy, to adopt severe sanctions against this kind of criminal activity and seek to identify and dismantle criminal organizations operating in the sector.

2.9 2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings.

In July 2002, the Council of the European Union adopted a framework decision on combating trafficking in human beings, replacing the Joint Action 97/154/JHA. The Framework Decision establishes a framework of common European provisions on the subjects of criminalization, sanctions, aggravating circumstances, jurisdiction, and extradition

[156] Title VI, Joint Action 97/154/JHA, 1997.

[157] Presidency conclusion n.23 of the European Council in Tempere, 15 and 16 October 1999, available at https://www.europarl.europa.eu/summits/tam_en.htm (accessed November 2023)

along with trying to harmonize the laws and regulations of the Member States regarding judicial cooperation in criminal matters[158]. The Treaty of Amsterdam's unique ability to permit the harmonisation of Member States' laws and regulations is the primary reason for the adoption of the Framework Decision. The Framework Decision recognizes the Additional Protocol on Trafficking as a significant step forward in international cooperation and emphasizes the necessity of integrating the measures taken by international organizations to fight trafficking at the European level. This includes developing a comprehensive approach that includes, as a crucial component, defining the elements of criminal law in each Member State.[159] The Additional Protocol on Trafficking and the Framework Decision both define trafficking as crimes against individuals committed with the intent to exploit them. In fact, Article 1 requires each Member State to "punish any conduct regarding the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where use is made of coercion, force or threat, including abduction; or the use is made of deceit or fraud; or there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved; or payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography."[160]

Moreover, each Member State shall take the necessary measures to ensure that the instigation, aiding, abetting or attempt to commit an offence must be punished by effective, proportionate and dissuasive

[158] Council Framework Decision of 19 July 2002 on combating trafficking in human beings 2002/629/JHA, OJ 2002 L 203/1. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0629 (accessed October 2023).

[159] KORVINUS, Anna G., et al. Trafficking in human beings. *Third Report of the Dutch National Rapporteur, Bureau NRM*, 2005. Pp 30

[160] Framework Decision **2002/629/JHA, article 1.**

sanctions.[161] Specifically, under Article 3, a person who commits a trafficking offense and endangers the life of the victim, or who commits the offense against a person who is particularly vulnerable, or who uses serious violence or causes serious harm to another person, or who participates in the activities of a criminal organization, faces a maximum sentence that is not less than eight years in prison[162]. Additionally, the Framework Decision define, more precisely than previous international legal instruments, the definition of certain concepts including that of particularly vulnerable victims. Article 3, para. B identifies as such the person who has not reached sexual maturity and who has been the victim of trafficking aimed solely at sexual exploitation. In the Framework Decision, it is clear that the Member States are making a great effort to fight trafficking through sanctions, while the protection of victims of trafficking has been neglected. Article 7, the only article devoted to the subject, contains substantive provisions reserved exclusively for minors, and only one general provision on investigations and prosecutions.[163]

2.10 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings.

The Council of the European Union created a new legislative tool in 2004 with the intention of boosting the protection of victims' rights while also enhancing the effectiveness of the fight against human trafficking.

In the event that victims of human trafficking are not citizens of the European Union, Directive 2004/81/EC establishes the requirements for the issuance of a temporary residence permit, depending upon their

[161] PEERS, Steve. EU immigration and asylum law. Trafficking in Human Beings, 2016, pp 809.
[162] Ibidem, article 3
[163] Ibidem article 3 paragraph b and article 7.

cooperation with the relevant authorities[164]. Articles 5-8 of the Directive specify the steps involved in granting a residence permit. These steps state that victims must be made aware of the options available to them and given time to consider their options before deciding whether or not to cooperate with the appropriate authorities. The victim won't be able to make a decision freely and with complete awareness of the circumstances, nor will their potential collaboration be as beneficial until they are no longer influenced by the offenders (article 6). During the reflection period, no expulsion measures may be taken against the victim. Additionally, the victim must be provided with a minimum quality of living that allows them to obtain emergency medical treatment, language support, and, if necessary, free legal representation under national law. According to the competent Member State's legislation, the duration of the reflection period will be decided; however, it can also be ended for reasons of public safety or if the individual in question has willingly reconnected with those who engage in human trafficking or smuggling. States will conduct a number of assessments, including whether it is acceptable for the victim to remain in the country for the duration of an investigation or criminal proceedings, whether the victim has severed all ties to the perpetrators, and whether there is a clear desire to cooperate with the police and judiciary. These assessments will be completed after the reflection period has ended, or even before if the individual in question has indicated a clear intention to cooperate. Finally, a residence permit is only granted under these conditions, granting the beneficiary access to the labour market, professional growth, and educational opportunities as well as the same treatment guaranteed during the term of reflection (Articles 9 and 11)[165]. The issued permit shall be valid for at least six months, after which it may be renewed if the conditions for its issue continue to apply. However, the authorities may withdraw it at any time, not only when the beneficiary has re-established a link with the alleged

[164] Council Directive 2004/81/EC of 29 April 2004 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 OJ L 261/19, available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081 (accessed October 2023).

[165] Council Directive 2004/81/EC, art 9-11.

perpetrators or when he or she ceases to cooperate, but also when his/her cooperation or complaint is deemed fraudulent, or the case is closed. If the resident permit is revoked or expires, the usual laws governing foreign nationals will take effect. If there isn't another document allowing the foreign national to stay in a Member State lawfully, the authorities will carry out his or her repatriation. Additionally, following the issuance of the residence permit it is guaranteed the access to programmes to encourage "their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin."[166] Directive 2004/81/EC is a step forward in protecting victims of human trafficking compared to earlier European legislative instruments such as Framework Decision 2002/629/JHA, as it requires States Parties to take a number of measures. However, the guaranteed protection is not sufficient, as it introduces a rewarding system for granting residence permits, whereby permits are only granted in exchange for cooperation.

Because it offers no benefits to victims of trafficking or those who have assisted illegal immigration and do not plan to cooperate with legal or police authorities, or do not have useful information about the perpetrators of the offenses to which they are subject, the Directive has been viewed as a tool for the suppression of the crimes of trafficking and smuggling rather than for the protection of victims. The need to end the reward system is evaluated in the Commission's Report to the European Parliament and the Council on the Application of the Directive by providing temporary residency permits to individuals who have been the victims of human trafficking or who have assisted in illegal immigration, regardless of their cooperation with authorities.[167]

[166] Council Directive 2004/81/EC, art 12.

[167] Relazione della Commissione al Parlamento europeo e al consiglio sull'applicazione della direttiva 2004/81/CE available at https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A52010DC0493 (accessed November 2023).

2.11 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

The 2009 proposal for a new framework decision on victim protection, prevention, and suppression of human trafficking was proposed with the purpose of creating a new legislative tool in order to abrogate the earlier Framework Decision 2002/629/JHA. Specifically, the 2002 Framework Decision only contains criminal law provisions—some of which are subject to exceptions or reservations—making it impossible to implement an effective anti-trafficking policy. In contrast, the Commission proposal included new objectives, such as providing protection and assistance to victims of trafficking and establishing an efficient monitoring system.

However, the Proposal for a New Framework Decision on Trafficking was abandoned with the entry into force of the Lisbon Treaty on 1 December 2009. In fact, art. 34 para. 2 TEU, before the 2009 amendments, provided that the Union could only adopt common positions, decisions, framework decisions and conventions in the field of police and judicial cooperation. With the entry into force of the Treaty of Lisbon and the assimilation of the sector within the Community, it becomes necessary to use the ordinary decision-making mechanism also for these matters. In particular, Article 83 TFEU provides that the European Parliament and the Council may, by means of directives, lay down rules on the definition of criminal offences and sanctions in particularly serious crime areas with a transnational dimension[168], which expressly includes trafficking in human beings. Accordingly, the European Commission, in accordance with the ordinary legislative procedure, proposed a new Proposal for a Directive in March 2010, with the aim of introducing minimum rules on the definition of offences and penalties in the area of trafficking, and common provisions to strengthen crime prevention and victim

[168]Articolo 83, co. 1, TFUE, available at https://publications.europa.eu/resource/cellar/0f0fbd5f-3acc-4776-8828ae073a35bef6.0017.01/DOC_1, (accessed November 2023).

protection. The new proposal introduces a broader concept of trafficking than that contained in the Framework Decision 2002/629/JHA, such that begging and illegal activities are also considered as forms of exploitation, bringing it closer to that contained in the Palermo Protocol.

With regard to criminal sanctions, the Commission proposal is a step forward compared to the 2002 Framework Decision. In fact, the new proposal requires Member States to provide that trafficking offences are punishable by imprisonment of not less than five years (the 2002 Framework Decision did not provide for any threshold). The limit increases to 10 years when the crime is committed against particularly vulnerable victims, with particular reference to minors; it is committed in the context of a criminal organizations; has intentionally or through serious negligence endangered the life of the victim; and has been committed through serious violence or has caused the victim particularly serious injury. The new proposal's text makes it evident that the measures on victim support and protection play a significant role, setting it apart from other legislative instruments. In sharp contrast to the decision made by the European institutions in the Framework Decision, which reserves the subject to Article 7 alone, whose restrictions apply only to minors, the latter is contained in multiple articles of the text submitted by the Commission. The Directive provides, as a novelty, that a residence permit may be granted for humanitarian reasons to victims of trafficking regardless of whether their cooperation with the justice. Moreover, the directive introduces a series of new measures aimed at strengthening the network of support and assistance, including psychological assistance, to victims of trafficking, with a particular focus on children under the age of 18. In this regard, it is envisaged the appointment of a guardian for the unaccompanied minor. Finally, a specific measure concerns the right to access compensation systems for victims of violent crimes of intent.

On 2 September 2010 the European Parliament adopted a draft amendment on the basis of the positions drawn up in the General Guideline previously formulated by the Council of the European Union on the Commission text. However, the project was not immediately approved by the Council. At this point, a series of informal meetings

were initiated in order to find a compromise between the divergent positions of the Parliament and the Council. These meetings, called "trialogues", ended in November 2010 with the development of a shared text. The document drawn up by the Council of the European Union outlines the key elements of the negotiation and the differences on matters including the severity of the penalties, extraterritorial jurisdiction, and the appointment of an anti-trafficking coordinator.

On 5 April 2011, Directive No. 2011/36/EU of the European Parliament and of the Council of the European Union replaced the Council Framework Decision 2002/629/JHA[169]. Consequently, by defining crimes and sanctions with a common framework for all EU member states, the prevention, repression, and victim protection of human trafficking have been reinforced. The Directive proposes an integrated approach to the issue that prioritizes the protection of human rights and is consistent with the Stockholm Programme[170], which was approved by the European Council in December 2009, and is in accordance with international instruments, including the Trafficking in Persons Protocol to the 2000 UN Convention on Transnational Organized Crime. Not only does the new legislation reinforce harsh criminal penalties, but it also recognizes victim protection as a critical component of the fight against human trafficking and suggests that a range of players, including the police, the judiciary, public institutions and non-governmental organizations, should be involved.[171]

The definition of trafficking contained in the Directive is essential for the effective strengthening of criminal measures, the definition states that " the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those

[169] Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, 2011/36/EU, 5th April 2011, OJ L 101/1, available at http://eur-lex.europa.eu/legalcontent/EN/ALL/?uri=CELEX:32011L0036 (accessed 13 November 2023)

[170] The Stockholm Programme, *OJ C 115. (04/05/2010)*.

[171] MITSILEGAS, Valsamis; BERGSTRÖM, Maria; KONSTADINIDES, Theodore (ed.). *Research Handbook on EU Criminal Law*. Edward Elgar Publishing, 2016. Pp 422-438.

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."[172] The Directive goes on stating that the victim's lack of a "real or acceptable alternative[173]" puts them in a vulnerable position when it comes to abuse. Various characteristics, such as sex, pregnancy, health state, and disability, might make an individual more vulnerable and make them more likely to accept exploitation. These aspects should be taken into consideration when assessing vulnerability. Furthermore, it is clear that this is a step forward from the prior regulatory approach, which limited the identification of victims who were particularly vulnerable, such as those who had not reached sexual maturity or had been trafficked for the purpose of prostitution. The purpose of exploitation is specified in detail by describing various types of exploitation, ranging from the exploitation of prostitution to other forms of sexual exploitation, including labour exploitation, slavery, begging, the removal of organs and, more generally, the use of victims in illegal activities.[174] However, the consent of the victim to exploitation is irrelevant when a means of coercion is used to acquire control over the subject[175]

When the definition of trafficking in the Directive is compared to that in the Framework Decision 2002/629/JHA, a first point of differentiation between the two legislative instruments becomes apparent: the Directive decides to reintroduce the definitions found in international instruments, updated with a few additions to make the description of the phenomenon adequate to its recent evolution, rather than limiting the scope of trafficking offences to cases of exploitation of prostitution and exploitation of labour (Art. 1 c. 2, 2002/629/JHA).

In addition, the Directive requires that Member States must mandate that competition, attempted human trafficking, and the instigation,

[172] Directive 2011/36/EU article 2 clause 1.
[173] Ibidem, article 2 clause 2.
[174] Ibidem, article 2 clause 3
[175] Ibidem, article 2 clause 4

assistance, and abetting of such activities are criminalized (Article 3). Moreover, a detailed list of the penalty treatment levels and several aggravating circumstances related to the conditions of the victims is provided in Article 4. The obligation to provide for the liability of legal persons and the appropriate penalties for the offenses covered by the Directive is also included in Articles 5 and 6. Finally, as mentioned in article 7, Member States have the right to collect and seize the tools and money used in human trafficking. Apart from making trafficking behaviour illegal, the directive also requires Member States to include a non-punishable provision for individuals trafficked and involved in criminal activities, or who have been coerced into committing illegal acts as a direct result of one of the trafficking offenses (Article 8).[176]

Among the improvements made by the directive to address the situation are the laws pertaining to investigations. Effective investigation techniques employed by appropriately qualified staff turn trafficking into a crime that is independent of victim reporting or accusation (Art. 9 co. 3 and 4). This makes it possible to prosecute the offence even when the victim is not able to make an effective contribution in the judicial proceedings, or is still subject to intimidation, measures already envisaged for other serious crimes committed by organised crime.

However, the provisions contained in article 11-17 on victim support and protection remain the distinctive characteristic of the Directive. Victim assistance and support measures, including necessary medical care, interpreting and translation services, and material assistance (including adequate housing), must be provided on a voluntary, informed basis while taking into account the unique needs of the victims during the criminal proceedings and for a suitable amount of time after the criminal proceedings are over. That being said, the order sets the standard for assistance at the very first sign of a trafficking offense.

In criminal proceedings, victims of crime must have rapid access to legal advice and help, and if the victim lacks sufficient financial resources, this aid must be given without charge. The aim is to guarantee the trafficked person access to compensation systems, that is

[176] Ibidem art 7-8.

to say, to public funds set up in order to provide relief for the victim. Ad hoc rules are then provided for the protection of minors, or those who, in case of doubt, are deemed to be such. These rules prescribe actions for the subjects' physical and psycho-social recovery following individual evaluation, as well as the necessary precautions to keep them safe during criminal investigations and proceedings. According to Article 18, all Member States must implement policies aimed at distancing and lowering the demand for any kind of exploitation associated with human trafficking, including education and training. To increase knowledge and lower the risk of victimization, particularly for children, research initiatives, teaching programs, and information and awareness-raising efforts are also necessary. Lastly, States are encouraged to enact laws that would make it illegal for someone to intentionally use the services that victims of human trafficking provide, based on the international requirements of the Warsaw Convention (albeit this provision is not legally enforceable). The Anti-Trafficking Coordinator's action is also encouraged. Based on data gathered nationally by each member nation (Article 19), it aims to confirm the development of the trafficking phenomenon and assess the efficacy of the preventive policies implemented (Article 20).[177]

In the European context, Directive 2011/36/EU is a key instrument for stepping up EU initiatives to prevent and fight trafficking in human beings and to protect victims. This was a crucial step towards harmonising the relevant regulation in all Member States. Over time, however, a number of problematic issues have emerged or have become particularly important, which the amendment of the Directive aims to address specifically. Since the forms of exploitation have evolved since 2011, the proposed amendment to the Directive by the European Commission at the end of 2022 establishes a series of measures to improve the prevention and suppression of trafficking in human beings and to protect victims within the legal framework in force in the European Union.[178] Human trafficking's primary aims, as previously

[177] Ibidem art 11-20.

[178]Proposta di direttiva del Parlamento Europeo e del Consiglio che modifica la direttiva 2011/36/UE concernente la prevenzione e la repressione
della tratta di esseri umani e la protezione delle vittime, Bruxelles 19.12.2022

said, remain sexual exploitation and labour exploitation but trafficking for other purposes has grown in importance over time, encompassing both forms of exploitation already covered by the anti-trafficking directive (begging, exploitation of illegal activities, and organ removal) and those not explicitly covered (forced marriage and illegal adoption). However, the amendment attempts to broaden the definition of exploitation to include forced marriage and illegal adoption, ensuring that national legal systems take into consideration an increasing number of trafficking targets. Furthermore, it should be noted that traffickers' methods of operation, which frequently involve organized crime, have evolved, increasing the seriousness and gravity of human trafficking. Indeed, technological improvements enable traffickers to recruit and exploit victims from a distance, as well as broadly spread exploitation-related material online. The same technological tools make it more difficult to detect the crime, identify the perpetrators, and trace the money used to perpetrate it as well as the profits made from it. One of the proposal's goals is to address the issues that arise when human trafficking becomes more digitalized, as well as to improve the criminal law reaction to crimes assisted by technology. While ensuring that sanctions are effective, proportionate, and dissuasive, the proposed amendment seeks to strengthen the criminal justice response to trafficking offences by replacing the optional penalty system with two separate compulsory schemes applicable to simple and aggravated offences.

2.12 Conclusion

In conclusion, this chapter analysed the evolution of the international and European legislation on trafficking, focusing on the most relevant instruments that led to the creation of a definition of the phenomenon and a set of tools that could ensure the support and protection of victims. It is also important to point out that the instruments analysed so far have

available at https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=CELEX%3A52022PC0732#:~:text=Le%20modifiche%20mirate%20della%20direttiva,successivamente%20all'adozione%20della%20direttiva. (accessed December 2023)

improved each other thanks to the fact that over time it has been possible to adapt them to the historical period and therefore to recent forms of exploitation. All the instruments analysed in this second chapter are important in that they are aimed at ensuring greater protection of human rights and the creation of mechanisms capable of preventing and protecting victims of exploitation. The progressive development of legislation on trafficking in persons, represents a significant step towards building a strong and shared regulatory framework to counter this serious violation of human rights. Through joint efforts the international community has demonstrated a common will to fight trafficking, recognising its complexity and the need for a multilateral approach. The normative history outlined in this thesis underlines the complex and articulated path that the international community has taken in an attempt to deal with human trafficking. The conventions examined serve as fundamental pillars for the construction of a legal framework that aims to prevent, repress and protect the victims of this crime. In this context, it is clear that there is a need to strengthen the mechanisms for implementing existing legislation, ensuring that they are effectively translated into concrete actions and that they are accompanied by adequate resources. Furthermore, cooperation between States, international organisations and civil society is essential to ensure a holistic and sustainable approach to the prevention, fighting and protection of victims of trafficking.

CHAPTER 3 - THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON TRAFFICKING

3.1 Introduction

With its recent judgements, the European Court of Human Rights has repeatedly attempted to compensate for the lack of a specific prohibition on trafficking in the text of the ECHR, which is not surprising given that the Convention is based on the 1948 Universal Declaration of Human Rights, which contains no provisions on trafficking. However, the Court interprets the Convention as a "living instrument", which requires a constantly evolving interpretation capable of making the provisions contained therein appropriate to social changes. In particular, the Court considered that it could make up for the lack of a specific prohibition on trafficking by means of an extensive interpretation of the prohibition on slavery and forced labour, contained in Article 4 of the ECHR.[179] Trafficking, which is currently a global phenomenon and constantly growing, is considered the new slavery of the 21st century because of the significant similarities it shares with the old slavery and the slave trade. The latter became the subject of a specific prohibition whose nature is customary, by virtue of the existence of a universally recognized rule that prohibits the enslavement of human beings[180].

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[179] Article 4 of the Convention – Prohibition of slavery and forced labour
"1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this article the term 'forced or compulsory labour' shall not include: (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 recognised, 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; (d) any work or service which forms part of normal civic obligations."

[180] As for the instruments of international law against slavery, the first is the Declaration on the abolition of slave trade contained in the Final Act of the Congress of Vienna of 1815; it was followed by the Treaty of London of 1841; the General Act of the Berlin Conference of 1885; the Brussels Conference of 1890; the Saintgermain-en-Laye Convention of 1919. The conventions to stop the trafficking of white women

In light of this, this chapter aims to examine the evolution of the case law of the European Court of Human Rights with particular attention to Article 4 of the ECHR. In this context, the focus will be on a number of key cases that highlighted and outlined the meaning and application of this article. The cases considered are: *Siliadin v. France*, *Rantsev v. Cyprus and Russia*, *L.E v. Greece*, *Chowdary and others v. Greece* and *S.M v. Croatia.*

The purpose of analysing these cases is to explore how the ECHR has developed and interpreted Article 4 over time, addressing new challenges and adapting its jurisprudential framework to changing social and ethical dynamics. In particular, I will examine the fundamental legal issues raised by each case and the principles of interpretation applied by the Court, trying to contribute to the understanding of the important role played by the Court in shaping and defining the parameters of protection against unfair practices and violations of human dignity.[181]

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and children for the purpose of sexual exploitation date back to the early 1900s: the Paris International Convention for the suppression of the white slave traffic of 1904; The international Convention for the Suppression of White Slave Traffic and the protocol of 1910; the Convention for the Elimination of Trafficking in Women and Children of 1921; the Convention for the Elimination of Trafficking in Adult Women of 1933; the Slavery Convention signed in Geneva by the Legue of Nations in 1926; the Declaration of Human Rights, adopted in Paris by the United Nations General Assembly in 1948; the supplementary Convention on the Abolition of Slavery, the slave Trade, and Institutions and Practices Similar to Slavery , adopted in 1956; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted in 1949; the European Convention of Human Rights of 1950; the Charted of Fundamental Rights of the European Union, adopted in 2000; with regard to human trafficking there are the Additional Protocol to the United Nations convention against Transnational Organised Crime to Prevent, Suppress and Punish trafficking in Persons in particular Women and Childre of 2000; the Council of Europe Convention on Action against Human Beings, signed in Warsaw in 2005; and the Istanbul Convention adopted by the Committee of Ministers of the Council of Europe in 2011.

[181] For the purpose of my thesis in this chapter only the case law of the ECHR will be analysed, although it is not the only existing jurisprudence in this field.

3.2 Case-law of the ECHR

3.2.1 Siliadin against France

Until the 2000s, the jurisprudence of the ECHR's organs of control was limited to paragraphs 2 and 3 of article 4. In the few circumstances when the applicants condemned their reduction into slavery or servitude, the control authorities denied it, establishing the contested cases to forms of legitimate work in accordance with art. 4, paragraph 3. It took until recent years for the Strasbourg Court to expressly identify the infringement of the prohibitions on slavery and servitude, in light of a new evolutionary and teleological interpretation of the first paragraph of Article 4.

The first sentence that condemn a violation of the prohibition on servitude dates back to 2005, issued in the case *Siliadin against France*[182]. In this case, the European Court of Human Rights condemns the French government for failing to meet its positive obligations under Article 4 of the ECHR. For the first time, the Strasbourg Court ruled that failing to comply with the obligation to integrate effective provisions to fight slavery and forced labour into the penal code constituted a violation of Article 4's prohibition, as well as any direct action that resulted in the construction of similar behaviour. Specifically, the case involved a Togolese girl, Siwa- Akofa Siliadin, brought to Paris in 1994, entrusted by her father to a French citizen, on the false promise that she would be responsible for the regularisation and education of her daughter, then a minor. The girl was forced by the woman to work as a maid and nanny in a French family, in working conditions of exploitation and isolation, which compromised her social integration and personality development. She was forced to work 15 hours a day every day, she was not allowed to go out, did not go to school, did not receive a monthly salary, and her documents had been seized by the family. Because of that, she turned to the Committee against Modern Slavery, and from there denounced her exploiters to the judicial authorities. To be found responsible for the former charge under Article 225-14 of the French Penal Code, the applicant's working and

[182] ECHR, Siliadin v. France, Application n. 73316/10, Strasbourg 26 July 2005.

residential situations must be “incompatible with human dignity” and the defendants must have been aware of her “vulnerability or dependency”.[183] Regarding the latter charge, Article 225-13 of the law requires proof that the couple exploited her fragility or state of dependency by obtaining her services for free. However, the final judgement of the Court of Appeal of Versailles ruled that she did not meet the criminal code's standards, citing the fact that many individuals did not have their own rooms, her living conditions were clean, and she had limited freedom. The defendants were not imprisoned and they were judged accountable for breaching Article 225-13 rather than violating the applicant’s human dignity. However, with respect to salary arrears and holiday leave, the applicant was only required to get a minimal amount of compensation from the pair.[184] After that Siliadin decided to appeal to the Court of Strasbourg for violation of Article 4 of the ECHR. In fact, France failed to ensure crime prevention and the repression of criminals because it lacked specific and definite national legislation that would have allowed for a definition of the phenomena, and as a result, the victim was not given tangible and effective protection against illegal conduct. Article 4 establishes a general prohibition but does not specify the concept of slavery, servitude, forced, or compelled work. Although these phenomena are all linked by the condition of subordination they produce in the victims, slavery and servitude have a higher level of gravity than forced or compulsory labour, which is only transitory and impacts one area of a person's life. Given the lack of a definition for Article 4, the Court recalled the definitions included in other international treaties, which must be considered in light of the contemporary circumstances. In this approach, the concept of slavery is characterised as the “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”[185] While servitude is identified as “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another

[183] The French Criminal Code, as amended by the Law of 18 March 2003.

[184] NICHOLSON, Andrea. Reflections on Siliadin v. France: slavery and legal definition. *The International Journal of Human Rights*, 2010, 14.5: 705-720.

[185] Convention to Suppress the Slave Trade and Slavery (1926), art 1.

person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status"[186]. Finally, the ILO Convention on Forced Labour of 1930 defines forced or compulsory labour as " all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[187]

In this instance, the Strasbourg Court determined that the Convention must be used as a living instrument, to be interpreted evolutionarily in the light of current living conditions affirming that the girl had been maintained in servitude because she had been subjected to a substantial deprivation of freedom. The irregular nature of her stay in France made her the object of a persistent threat of punishment, in this case compulsory return as an irregular migrant, exacerbating a pre-existing vulnerability due to isolation and youth. Therefore, the Court acknowledged the existence of the central element of servitude, that is, the impossibility for the victim to modify the condition. The European Court distinguished between servitude and slavery, holding that servitude is a kind of exploitation that does not need the victim to be objectified as property. The court determined that the applicant was not subjected to slavery, but rather to servitude, as her treatment did not reduce her to the condition of chattel slavery.[188] However, the Court's statement has drawn criticism for demonstrating an extremely limited interpretation of slavery, given that *de jure* slavery has been abolished globally and that the reference to a person's legal ownership[189] restricts the applicability of the prohibition on slavery to situations in which slavery is no longer legally possible[190]. On this occasion, especially in light of the observation that today's "slaves" are mainly immigrant

[186] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), art 1.

[187] Forced Labour Convention (1930), art 2.

[188]NICHOLSON, Andrea. Reflections on Siliadin v. France: slavery and legal definition. *The International Journal of Human Rights*, 2010, 14.5: pp. 710.

[189] ECHR, Siliadin v. France, Application n. 73316/10, para 122.

[190] PIOTROWICZ, Ryszard. States' obligations under human rights law towards victims of trafficking in human beings: positive developments in positive obligations. *International Journal of Refugee Law*, 2012, 24.2: pp 189-190.

women who work in private as domestic servants, the Court affirmed that art. 4 necessarily give rise to positive obligations for Member States, in the sense that they must adopt criminal rules capable of criminalising and effectively repressing any act aimed at keeping a person in slavery or servitude.

3.2.2 Rantsev v. Cyprus and Russia

With regard to slavery, and particularly its most sadly widespread contemporary version, that is, the trafficking of human beings, it is necessary to wait until 2010 to see the first case qualified by the Court as "trafficking in human beings". The Court's judgement in the case of Rantsev v. Cyprus and Russia[191] of 2010 is of primary importance, since for the first time it adopts an extensive interpretation of Article 4 of the ECHR, including that of trafficking in human beings. With Rantsev v. Cyprus and Russia, the European Court of Human Rights entered the legal debate against human trafficking. Trafficking in human beings threatens human dignity and fundamental freedoms, undermines the right to life protected by the article and cannot be considered compatible with a democratic society and the values of the ECHR. Like slavery, trafficking also involves the exercise of powers linked to the right of ownership, which are based on close surveillance of victims and the restriction of their movements, threats and use of violence, in a commodification of human beings[192]. Therefore, Member States have a positive obligation to adopt a legislative and administrative system which is adequate not only to prevent slavery and forced or compulsory labour (Siliadin v. France), but also to prevent trafficking. However, in comparison with previous judgements, the Strasbourg Court interprets Article 4 as the source of an additional obligation on States, namely to provide effective protection for victims of trafficking, including potential victims.

[191] ECHR, Rantsev v. Cyprus and Russia, Application n. 25965/04, Strasbourg 7 January 2010

[192] ECHR, Rantsev v. Cyprus and Russia, Application n. 25965/04, para 280.

In the present case, the applicant is the father of a young Russian girl, Oxana Rantseva, who went to Cyprus to work as a dancer in a cabaret on an artiste visa. According to the Cypriot legislation, an artiste is defined as "any alien who wishes to enter Cyprus into work in a cabaret, musical-dancing place or other night entertainment place has attained the age of 18 years".[193] However, in 2003, following the death of Oxana Rantseva, the Cypriot Ombudsman conducted an ex officio investigation[194]. The examination centred on "artiste" visas. According to the Ombudsman's report, the term "artiste" has become synonymous with "prostitute" in Cyprus. However, the Cypriot artiste visa is not the same as a prostitute visa, as it requires "AIDS and other contagious disease tests for temporary residency and work permits."[195] In the mid-1970s, the 'artiste' dictatorship allowed hundreds of foreign women to work in Cyprus' cabarets and nightclubs under immigration and employment rules[196]. A few days after entering the Cypriot state, Oxana Rantseva moved away from the house where she lived and left the cabaret where she had started working. One evening while she was working in another discotheque, she was found by the manager who, in retaliation, reported her to the Cypriot police for illegal residence. However, the police did not immediately carry out the necessary investigations, and asked the manager to return the following day together with Rantseva for a deep investigation on the status of immigrant. The cabaret manager took Rantseva to another employee's apartment, where she fell from the sixth floor and died in circumstances never fully clarified. A Cypriot autopsy determined that the injuries she sustained were compatible with the fall that caused her death. The autopsy conducted into Ms. Rantseva's death found no evidence of third-party criminal culpability. A later autopsy revealed a different finding. In May 2001, an autopsy was performed in Chelyabinsk (Russia)[197] at the request of Ms. Rantseva's father after her body was

[193] Rantsev v. Cyprus and Russia, at para. 113.
[194] Rantsev v. Cyprus and Russia, at para.80.
[195] Rantsev v. Cyprus and Russia, at para. 116.
[196] ALLAIN, Jean. Rantsev v Cyprus and Russia: The European Court of human rights and trafficking as slavery. *Human Rights Law Review*, 2010, 10.3: pp 547.
[197] Rantsev v. Cyprus and Russia, at para. 316.

returned home.[198] The autopsy confirmed that the injuries were inflicted while she was alive and occurred in a short period of time before her death.[199]

Following the second autopsy, Nicolay Rantsev tried to reopen his daughter's case in Cyprus. However, Russian and Cypriot authorities failed to cooperate, leading to misunderstandings. In 2004, Nicolay Rantsev filed an application with the European Court of Human Rights, citing violations of Articles 2 (right to life), 3 (prohibition of torture), 4 (prohibition of exploitation), and 5 (right to liberty). The Court holds Cyprus responsible for the breach of its obligations under Article 4 because the lack of legislation and the existing rules on immigration and visas for artistic reasons have encouraged trafficking in women from the former Soviet bloc countries, a phenomenon that has increased over the years and that has been denounced on several occasions also in the reports of the Commissioner for Human Rights of the Council of Europe. In addition, the Cypriot authorities did not take any measures to protect the girl, although the circumstances indicated the potential victim status. The judges of the Court pointed out several investigative deficiencies implemented by the local police, which only verified her position as an illegal immigrant, without subjecting her to a questioning and then again entrusting her to his manager. In April 2009, with the dispute ongoing before the Court, Cyprus made a unilateral declaration recognizing violations of positive obligations under Articles 2, 3, 4, and acting inconsistently with Article 5(1) of the ECHR. They offered to pay € 37,000. On January 10, 2010, the First Section of the European Court unanimously rejected a unilateral declaration, citing the case's serious allegations and the need for the Court to clarify and develop the rules established by the Convention[200]. The Court's decision stated that Cyprus violated its procedural requirements under Article 2 by failing to undertake an effective investigation into Ms Rantseva's death[201].

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[198] ALLAIN, Jean. Rantsev v Cyprus and Russia: The European Court of human rights and trafficking as slavery. *Human Rights Law Review*, 2010, 10.3: pp 548.

[199] Rantsev v. Cyprus and Russia, at para.41.

[200] ALLAIN, Jean. Rantsev v Cyprus and Russia: The European Court of human rights and trafficking as slavery. *Human Rights Law Review*, 2010, 10.3: pp 549.

[201] Rantsev, supra n. 1 at para 5.

Regarding Russia, the European Court of Human Rights determined that there was no breach of article 2 of the Convention because the young woman's death occurred outside of Russia's territorial jurisdiction, hence the Russian authorities were under no legal obligation to investigate. Additionally, the Russian authorities cooperated with the Cypriot authorities and have asked them several times to investigate the case. As for Article 5, the Court determined that Cyprus violated article 5(1) because "the detention of Ms Rantseva at the police station and her subsequent relocation and imprisonment to the flat constituted to a deprivation of liberty"[202] which was both unconstitutional and arbitrary. Regarding the hypothetical violation of art. 3 ECHR the Court considered that it was not necessary to examine the case separately, since there was no evidence to suggest that the woman had been subjected to torture or to inhuman and degrading treatment. Moreover, the Court found that the efforts made by the Russian Government and relevant authorities to identify the dangers associated with trafficking through media awareness campaigns were adequate, even though the country's criminal code does not specifically address the offense of trafficking. As a result, the Court emphasized that the legal system in place at the time was enough to ensure protection for trafficking victims, including potential victims. The Strasbourg Court further observed that, despite being aware of the widespread issue of young women being exploited for prostitution in other countries, the Russian authorities would not have had any proof of Rantseva's potential immediate death threat prior to her departure for Cyprus. For this reason, the Court did not consider that Russia had violated art. 4 ECHR in terms of the positive obligation to take operational measures to protect women. Furthermore, the Strasbourg judges stressed that cross-border trafficking of human beings is punishable both in the country of origin and in the country of destination, under the Palermo Protocol and the Convention against Trafficking in Human Beings, and therefore the recruitment of victims has also been included in the phenomenon of trafficking, which required a more effective investigation. The Court ruled that Russia failed to fulfil its procedural obligations under Article 4 by not supporting Cypriot authorities in

[202] Rantsev v. Cyprus and Russia, at paras. 322-325.

investigating the recruitment aspect of accused trafficking. This allowed an integral portion of the trafficking network to act with impunity[203]. In light of all of this, the Court determined that the measures enacted by Member States' national laws should ensure effective protection for victims of trafficking. An evolutionary interpretation of Article 4 thus requires Member States, in addition to criminal law measures to punish human traffickers, to implement all necessary measures to prevent trafficking and protect its victims. Only a holistic approach that incorporates the three elements of prevention, repression, and protection can be regarded truly effective and adequate. Ultimately, the Court concluded that Member States should engage in active and positive policies, such as preventing, fighting and protecting victims of human trafficking from their countries of origin, ensuring adequate training for law enforcement and judicial officials, and investigating potential trafficking situations using autonomous operational procedures that disregard victims' complaints. Finally, given that trafficking is a transnational phenomenon that transcends national borders, Countries must collaborate effectively to adopt an effective and cohesive global strategy to combat trafficking, involving the victims' countries of origin, transit, and destination.

3.2.3 L.E v. Greece

As discussed in paragraph 3.4, in 2005 the European Court of Human Rights first applied article 4 to harm caused by private parties in *Siliadin v. France.* This decision represented the first time the European Court had the opportunity to clarify that Article 4 imposes positive obligations on states. In Rantsev v Cyprus and Russia, the Court broadened the scope of art.4 to include human trafficking and expanded the positive obligations for States, requiring them to implement effective measures aimed at preventing and fighting trafficking while also providing adequate protective measures for victims. In light of this, *L.E. v. Greece* expands on previous judgments and clarifies States' positive

[203] ALLAIN, Jean. Rantsev v Cyprus and Russia: The European Court of human rights and trafficking as slavery. *Human Rights Law Review*, 2010, 10.3: pp 550.

responsibilities under Article 4. It is an important decision because it is a further step toward addressing the lack of judicial engagement with structural issues such as serious forms of migrant exploitation in Europe and the need for States to create a legal framework for effective protection of victims and potential victims of trafficking[204]. The L.E. v. Greece case[205] involves a Nigerian national who was born in 1982. K.A. took her to Greece in June 2004, promising to find her work in bars and nightclubs in exchange for an agreement from her to pay him 40,000 euros and not alert the authorities. Upon arrival, K.A. took her passport and pushed her into prostitution, which she did for two years to repay the loan. She requested asylum in July 2004 but did not visit the receiving centre assigned to her. In the period between August 2005 and November 2006 the applicant was arrested several times for prostitution but was acquitted each time. Her irregular status in Greece led to her detention in April 2006, pending expulsion. In November 2006 L.E with the support of Nea Zoi (a non-governmental organization that supports women who have been coerced into prostitution), filed a criminal complaint against K.A. and his partner D.J., saying that she and two other Nigerian women were victims of human trafficking and forced into prostitution. This was rejected by the Athens Criminal Court. In January 2007, she appeared as a civil party in the case and later requested that the criminal complaint be re-examined. In August 2007, she was formally recognized as a human trafficking victim, and the public prosecutor launched criminal procedures. From 2008 to 2011, criminal proceedings were conducted at the national level but the authorities were only able to find D.J. and prosecute him. The national court ruled that D.J. was not K.A.'s accomplice, but rather a victim of sexual exploitation.

[204] STOYANOVA, Vladislava. LE v. Greece: Human Trafficking and the Scope of States' Positive Obligations Under the ECHR. *Greece: Human Trafficking and the Scope of States' Positive Obligations Under the ECHR (May 2, 2016)*, 2016, 3: 290-230, pp 4.

[205] L.E. v Greece (App. No.71545/12), judgment of 21 January 2016.

The Court, when it came to determining whether Greece has an efficient legal and administrative framework used a very superficial approach[206]. In fact, the Court was convinced that the national legislation criminalized human trafficking and that the concept of this unlawful activity was consistent with the definitions in the UN Trafficking Protocol and the Council of Europe Trafficking Conventions, which Greece had ratified. The Court was likewise convinced that Greece had national legislation in place to provide special protective measures for victims of human trafficking. It was also observed that Greek legislation allows for the delay of repatriation procedures for aliens who are considered victims of human trafficking and are illegally present. Finally, the Court took into account that Greece had incorporated into its national legislation the Council of Europe Convention on Action against Human Trafficking CETS No. 197 (the CoE Trafficking Convention) and Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (the EU Trafficking Directive). As a consequence, no failure was found in the Greek legal and regulatory framework.

The Court then had to verify that Greece had fulfilled its obligation to take effective operational protection measures to protect victims of human trafficking. In this regard, it is to be noted that art.10 of the CoE Trafficking convention states that "Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2".[207]

[206] STOYANOVA, Vladislava. LE v. Greece: Human Trafficking and the Scope of States' Positive Obligations Under the ECHR. *Greece: Human Trafficking and the Scope of States' Positive Obligations Under the ECHR (May 2, 2016)*, 2016, 3: 290-230, pp 7.

[207] Council of Europe Convention on Action against Human Trafficking, art 10.

According to the Explanatory Report made by the Group of Experts in Action against Trafficking in Human Beings national authorities have to "ensure that the identification of victims of THB in not made conditional on their cooperation in the investigation and criminal proceedings or the initiation of criminal proceedings […]"[208]. From this point of view, the Court considered that Greece had failed to fulfil its obligation on the ground that the time elapsed between the complaint and the recognition of the victim status of the applicant had been unreasonable and no form of protection had been in the meantime recognized to the victim. In fact, it is noted that L.E informed the authorities that she was a victim of human trafficking on 29 November 2006 but she was not formally recognised as having the status until around 9 months later. Moreover, it is also noted that there were a number of deficiencies in the authorities' ability and diligence in probing her complaints. For example, the case file for her initial complaint, which was dismissed, did not include a statement from the director of the non-governmental organization that assisted her. There were also considerable delays in the criminal processes, and it was unclear what actual actions the domestic authorities had done to identify and prosecute K.A. Furthermore, the Greek police had not taken into account the information provided by the applicant to facilitate the capture of the accused and had not even taken any further information from the latter. Additionally, the court noted with disappointment that the Greek authorities had never asked for the cooperation of the Nigerian authorities, but this was an essential element in the investigation of human trafficking. The Court held that there was a lack of urgency, and that Greece had failed to fulfil its positive obligations under Article 4 ECHR, resulting in a violation. Finally, the Court also determined that delays in the length of proceedings since the applicant joined proceedings as a civil party were unreasonable, in violation of Article 6(1); and that the Greek legal system did not provide an effective remedy to complain about the length of proceedings to enforce her right to a hearing within a reasonable time, in violation of Article 13.

[208] Report Sweden, 27 May 2014, GRETA (2014)11, para. 142.

3.2.4 Chowdury and Others v. Greece

The recent case Chowdury and others v. Greece of 30 March 2017[209] constitutes a further contribution of the European Court of Human Rights to the interpretation, in an evolutionary key, of art. 4 of the European Convention on Human Rights. In that occasion the First Chamber held that there had been a violation of Article 4(2) of the Convention.[210] This judgment is particularly notable for the attempt to clarify the scope of application of the key notions of "slavery", "servitude" and "forced or compulsory labour" in their relation to "human trafficking" with particular reference to the spread of the phenomenon of illegal recruitment of workforce in Europe as a result of the growing wave of migration.

The applicants were 42 Bangladeshi nationals employed, in irregular conditions, to harvest strawberries in the Greek region of Manolada. Employers offered them a daily wage of 22 euros for 7 hours of work, despite significantly longer actual work shifts under the supervision of private armed guards. After six months of rigorous harvesting without receiving the promised wage, with only enough money to subsist in deplorable conditions, the workers went on strike and complained. The insurrection had even escalated into acts of armed violence against certain workers, which ended up seriously injuring many of them. The revolt had even degenerated into acts of armed violence against some workers. The trials before the Greek Assize Court had led to the conviction of the armed guard and one of the employers for grievous bodily harm and unauthorized use of guns, whereas the allegation of trafficking in human beings was rejected on the grounds that the workers would spontaneously accept the proposed working conditions and the lack of evidence of any physical constraint by the land owner. Additionally, their prison sentences were reduced to a financial penalty, and they were forced to pay 43 euros to each of the 35 workers identified as victims. The applicants therefore turned to the European

[209] ECtHR, Chowdury and Others v. Greece, No. 21884/15, 30 march 2017.

[210] ASTA, Gabriele, et al. The Chowdury Case before the European Court of Human Rights: A Shy Landmark Judgment on Forced Labour and Human Trafficking. *STUDI SULL'INTEGRAZIONE EUROPEA*, 2018, pp 194.

Court to complain about the restrictive interpretation of the concept of trafficking in human beings adopted by the Greek Court, from which would have been excluded the most subtle forms of psychological threat suffered due to the situation of irregularity and poverty in which they were living and the consequent improbability of receiving the promised remuneration if they had left work. The applicants' argument was upheld by the European Court, which found that the landowners had taken advantage of the vulnerability of the victims to continue to exploit their work, at a time when consent to work could no longer be considered free and spontaneous. In fact, according to the Court their conduct complemented the case of trafficking in human beings that, in the light of art. 4 of the Council of Europe Convention on Action Against Trafficking in Human Beings, is defined as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". In light of that, the Strasbourg Court ordered Greece to pay 588,000 euros in damages for failing to meet its positive obligations under Article 4 of the ECHR.[211]

In the judgement *Rantsev v. Cyprus and Russia* the Court had come to the conclusion that the prohibition of trafficking in human beings is included within the scope of art. Article 4 of the European Convention.[212] In this case, the Strasbourg Court had interpreted the "provision in the light of present-day conditions", promoting the need to counteract a phenomenon now widespread globally.[213] However, the Court linked the definition of trafficking to that of slavery, stating "the Court considers that trafficking in human beings, by its very nature and purpose of exploitation, is based on the exercise of powers related to

[211] ASTA, Gabriele, et al. The Chowdury Case before the European Court of Human Rights: A Shy Landmark Judgment on Forced Labour and Human Trafficking. *STUDI SULL'INTEGRAZIONE EUROPEA*, 2018, pp 196.
[212] Ibidem pp 197
[213] ECtHR, Chowdury and Others v. Greece, No. 21884/15, 30 march 2017. At para 278.

the right to property".[214] As it was stressed before the Court had considered trafficking in an evolutionary notion of slavery, that is, along with other forms of "contemporary slavery" such as, for example, the sexual exploitation of women and minors, sex tourism, debt bondage etc. In this judgment too the Court adopted a broader interpretation of the concept of trafficking, which is not linked either to the notion of slavery, defined as the exercise of property rights over victims or to servitude, which implies the exercise of coercive power over the victim. In particular, the Court linked the case of trafficking to the prohibition of forced and compulsory labour provided for in Article 4.2 of the European Convention. However, the Court relied on the definition contained in the International Labour Organization Convention No. 29 on Forced or Compulsory Labour, which states: "all work or service which is exacted from any person under the threat of any penalty and for which the said person has not offered Himself voluntarily."[215] In the Chowdury case, the Court emphasized that the constitutive factor in the instance of forced labour is the physical or moral restraint caused by the threat of a penalty, which forces the workers to perform an activity or service against his will. The Court then noted that the criterion of the spontaneity of the consent to labour has relative value and must be evaluated based on the facts of the case.[216] Considering that trafficking, like forced labour, does not always imply the restriction of the victim's physical freedom or the imposition of coercive measures, the Court stressed the existence of a "relation intrinsèque" between the two types of offence based (in this case) on the element of labour exploitation.

Furthermore, in the judgment in comment, as in the previous *Rantsev v. Cyprus and Russia*, the reference to the Convention against Trafficking also aimed to promote the need for a global approach for the fight against this criminal phenomenon as well as all of the positive

[214] ECtHR, Chowdury and Others v. Greece, No. 21884/15, 30 march 2017. At para 281.
[215] ILO Forced Labour Convention 1930 article 2(1).
[216] ECtHR, Chowdury and Others v. Greece, No. 21884/15, 30 march 2017. At para 90

obligations imposed on the contracting States[217]. They include obligations to prevent the misconduct by developing an appropriate legal framework, to protect victims by taking effective operational measures (such as, for example, coordination between public authorities in charge of identifying victims) and for combating violations through effective police and judicial procedures. Therefore, the Court found that Greece had violated both prevention obligations by failing to intervene with effective operational measures despite being aware of the exploitation of migrants in the Manolada region, as well as repression obligations by failing to establish liability and effectively penalize those responsible.

3.2.5 S.M. v Croatia

In the judgments of the Chamber and the Grand Chamber of the European Court of Human Rights in the case *S.M. v. Croatia*[218], trafficking in human beings and sexual exploitation for the purpose of forced prostitution have been traced back to violations of Article 4 of the European Convention on Human Rights.[219]

The applicant, S.M, filed a complaint in 2012 against T.M., a former police officer, claiming that the year before he forced her into prostitution, forcing her to have sex with several men in the apartment where they lived placing her in a vulnerable condition. S.M., who had been contacted via social media with false promises of work as a waitress or saleswoman, complained that refusing to provide sexual services resulted in physical punishment. A friend of her, M.I., who eventually testified at the trial, helped her escape. After leaving him, the man continued to threaten her and her family. The prosecutor's office opened an investigation, leading to the search of T.M.'s apartment, where weapons and numerous mobile phones were seized. The

[217] ECtHR, Chowdury and Others v. Greece, No. 21884/15, 30 march 2017. At para 104

[218] ECtHR, *S.M. v. Croatia. No* 60561/14, 25 June 2020.

[219] DE VIDO, S., Della tratta di donne e ragazze nel diritto internazionale ed europeo: riflessioni sulla nozione giuridica di "sfruttamento sessuale" alla luce della sentenza SM c. Croazia della Corte europea dei diritti umani. *GENIUS*, 2021, 2: pp 15.

applicant was therefore questioned by the police and explained that her reluctance to turn to the authorities stemmed from her fear of the man. In 2013, investigations were launched, focusing primarily on the offended person's statements. While S.M. received psychological assistance, T.M. was tried for the crime of "trafficking in human beings" and acquitted, as the victim's accusations proved unreliable and contradictory. According to the Croatian Judicial Authority, such declaratory contradictions were mostly related to the victim's escape from the exploitation activities to which she had been exposed by T.M. The Croatian Judicial Authority determined that the offended person willingly provided the sexual services to which she is objecting. The State prosecutor filed an appeal, which was dismissed by the county court of Z., who confirmed the Court of First Instance's rationale. An appeal to the Constitutional Court was rejected as inadmissible. Hence the complaint to the European Court of Human Rights for breach of Articles 3, 4, and 8 of the ECHR. The Court's Chamber issued a decision in 2018, followed by the Grand Chamber in 2020. Both determined that Croatia had broken the procedural responsibility to investigate by failing to pursue the appropriate investigations[220].

In 2018, the Chamber rendered a decision based on Article 4, which, from a legal perspective, characterizes the facts under appeal as violations of Article 4 solely, rather than Articles 3 and 8. On this, Judge Koskelo strongly protested, stating that the "Convention does not permit the Court to seize on facts that have not been adduced by the applicant and to examine such facts for compatibility with the Convention" and that the Court lacked authority to investigate Article 4[221]. The Chamber argued that both trafficking and the exploitation of prostitution fall within the scope of Article 4 of the Convention as they threaten the human dignity and fundamental freedoms of victims. Furthermore, the Chamber has declared, based on earlier decisions[222], that States have a duty to enact laws and regulations that forbid and

[220] HUGHES, Kirsty. Human Trafficking, SM v Croatia and the Conceptual Evolution of Article 4 ECHR. *The Modern Law Review*, 2022, 85.4: pp 1049.

[221] ECtHR, *S.M. v. Croatia. No* 60561/14, Dissenting opinion of Judge Koskelo.

[222] *Rantsev v. Cyprus and Russia, Siliadin v. France, L.E v. Greece and Chowdury and Others v. Greece.*

penalize human trafficking, safeguard victims, provide police officers with the training they need, and guarantee the proper handling of investigations that must be able to identify the perpetrators of the crime.[223] In light of this, the Chamber acknowledged that Croatia had enacted a regulatory framework of sufficient legislation to address cases of human trafficking and that the victim had received support. However, from a procedural point of view, the Croatian courts had too easily judged the applicant's testimony as inconsistent and insufficient to demonstrate coercion, failing to consider the victim's psychological trauma and without hearing further witnesses[224]. As a result, the Chamber found Croatia liable for violating article 4 of the ECHR's procedural obligations. A referral was made to the Grand Chamber after the verdict was issued, and on June 25, 2020, the Grand Chamber rendered its decision.

In considering the referral, the Croatian government presented preliminary objections to the scope of the matter before the Court, as well as the complaint's admissibility. The Government objected that the applicant did not base her application on Article 4 of the Convention, citing instead Articles 3 and 8[225]. The Court rejected this argument, citing the jura novit curia principle, which states that the Court is not bound by the legal justifications presented by the applicant and is able to determine the legal interpretation that should be applied to the facts of a complaint by reviewing it in accordance with different Convention articles or provisions than those the applicant relies upon. Moreover, in response to a query on the substantive reach of Article 4 of the Convention, the Court determined that any circumstance in which the three components of the international definition of trafficking (action, means, and purpose) are present qualifies as a human trafficking

[223] ECtHR, *S.M. v. Croatia. No* 60561/14, para 58.

[224] DE VIDO, S., et al. Della tratta di donne e ragazze nel diritto internazionale ed europeo: riflessioni sulla nozione giuridica di "sfruttamento sessuale" alla luce della sentenza SM c. Croazia della Corte europea dei diritti umani. *GENIUS*, 2021, 2: p 15.

[225]STOYANOVA, Vladislava. The Grand Chamber Judgment in SM v. Croatia: Human Trafficking, Prostitution and the Definitional Scope of Article 4 ECHR. *Strasbourg Observers*, 2020, 3.

incident for the purposes of Article 4[226]. This is a good clarification that covers cases of both internal and domestic trafficking of persons within national borders. The Court additionally decided that forced prostitution may be included by Article 4, specifically under the definition of "forced or compulsory labour," regardless of whether it is connected to a human trafficking situation or not. In this regard, it is important to remember that the Court acknowledged that human trafficking might occur outside the purview of "organized crime," in addition to acknowledging that it could occur totally within a State.[227]

The Court further pointed out that Article 4 refers to the three distinct notions of forced labour, slavery, and servitude, each of which has been construed in light of pertinent international legal agreements. The Court made this observation in response to a group of GRETA researchers who contended that there was a possibility that States could avoid classifying some situations as exploitation through their national legislation because there was no definition of sexual exploitation[228]. Concerning the "exploitation of prostitution" and its connection to forced labour and human trafficking, the Grand Chamber clarified that the existence of coercion is the determining factor when assessing whether prostitution is included by Article 4[229].

Regardless of whether the term is used in relation to human trafficking or not, the Court's ruling in this case established that the concept of "forced or compulsory labour" provides protection against forms of exploitation, including prostitution. Essentially, if prostitution is associated with human trafficking, it is covered by Article 4 of the Convention because of an evolutionary interpretation of the provision. While, if prostitution is forced, but not linked to trafficking, it can still fall into the category of "forced and compulsory labour"[230]. In conclusion, the Grand Chamber upheld the first verdict regarding Croatia's breach of the procedural duties derived from Article 4 of the

[226] ECtHR, *S.M. v. Croatia. No* 60561/14, para 296
[227] Ibidem, para 296a
[228] DE VIDO, S., 2021, 2: p 17.
[229] S.M. v. Croatia (Grand Chamber), para. 298.
[230] DE VIDO, S., 2021, 2: pp 17-18.

ECHR, noting that the ineffective handling of the case by the authorities had made it more difficult for the domestic authorities to ascertain the applicant's true nature of relationship with T.M.

3.2.6 Conclusion

The cases examined by the European Court of Human Rights, *Siliadin v. France*, *Rantsev v. Cyprus and Russia, L.E v. Greece, Chowdury and others v. Greece and S.M v. Croatia* provide a comprehensive look at the complicated task of defending human rights, particularly in the context of human trafficking and modern slavery. The European Court of Human Rights has played an important role in defining the outlines of these issues, establishing rules and standards that help shape the European legal framework in this area. Clear convergences between cases emerge, emphasizing the Court's critical role in enhancing the regulatory system and assuring comprehensive protection of human rights. However, there are also specific contexts that necessitate careful consideration in order to adapt the laws to the peculiarities of each situation.

The case *Siliadin against France* was the first judgment that condemned a violation of the prohibition on servitude, the European Court of Human Rights condemns the French government for failing to meet its positive obligations under Article 4 of the ECHR. Therefore, the Court's judgment encouraged an interpretation process that considers evolving societal requirements as well as the need to safeguard and promote human rights. The *Rantsev case* expanded States' positive responsibility to address human trafficking under Article 4, following Siliadin's path. Two states, Cyprus and Russia, were held accountable for failing to fulfil positive obligations. The Court acknowledged that States must protect victims of human trafficking and implement preventive measures, including in the victim's home country. To effectively combat trafficking, prevention, victim protection, and criminal prosecution are necessary. *L.E. v. Greece* is a step forward expanding State’s positive obligations and the scope of article 4 in order to include human trafficking. In fact, it was found that Greece failed to fulfil its positive obligations to take effective operational protection measures. In the *Chowdury and Others v. Greece*

the ECHR found that Greece had breached article 4(2) on the Convention concerning the human trafficking perpetrated against 42 citizens of Bangladesh. The Court determines that, as is evident in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings, forced labour is one type of exploitation covered by the definition of trafficking. Finally, in the case *S.M v. Croatia* concerning a woman that was forced into prostitution the Court held that Croatia breached article 4 of the ECHR by failing to meet the procedural obligations to investigate. The case represents a significant decision, which allows a broad interpretation of art. 4 of the Convention particularly, the clarification that the article only applies to "forced prostitution".

In conclusion, while these cases represent significant steps in the path towards safeguarding human rights in contexts of exploitation, open challenges and new questions remain to be faced. The European Court of Human Rights has laid the foundations for stronger protection, but additional effort, the promotion of coordinated policies and widespread awareness are needed. These decisions are an urgent call for the international community to strengthen its efforts in the fight against trafficking in human beings, thus preserving the dignity and fundamental rights of every individual.

Conclusion

In conclusion, the intention of this thesis was to demonstrate, on the one hand, how international legislation has evolved over time to take into account new forms of exploitation and on the other to draw attention to an increasingly phenomenon that severely violates human rights.

This research has investigated the phenomenon of trafficking in human beings for the purpose of sexual exploitation with particular attention to the Nigerian context, examining a number of social, political and economic factors contributing to its persistence and expansion. Moreover, through an analysis of the evolution of International and European legislation, and the examination of

judicial cases dealt with by the European Court of Human Rights (ECHR), several key points emerged that deserve consideration.

Research conduct into the Nigerian context of trafficking in women for the purpose of sexual exploitation has provided an in-depth overview of the complex social, economic and political dynamics contributing to this devastating phenomenon. The following conclusions emerge from the analysis. First of all, extreme poverty and lack of economic opportunities are key factors that make Nigerian women particularly vulnerable to trafficking for sexual exploitation. In fact, precarious socio-economic conditions push many women to seek work abroad, thus becoming easy targets for traffickers. Moreover, gender inequality and systematic discrimination against women contribute to their vulnerability to trafficking. Women are often subjected to violence and abuse in domestic and community environments, with limited opportunities for access to education and employment. Further attention was then focused on criminal organisations and how they manage to exploit the vulnerabilities of Nigerian women and girls to recruit, transport and exploit them. These organisations are often well organised and escape justice because of their international connections and lack of cooperation between states. Finally, the fragility of the legal system and institutions in Nigeria creates an environment that is favourable to human trafficking. The corruption and inefficiency of the government authorities undermine attempts to prevent and persecute traffickers, allowing them to operate with impunity. Trafficking in Nigeria is a serious violation of human rights and requires urgent and coordinated efforts by the government, international organisations, civil society and the international community as a whole. Only through a comprehensive and adequate approach is it possible to protect victims, prosecute those responsible and prevent this horrible crime. The second chapter dealt with the evolution of the international and European legislation on human trafficking, which allows important aspects to be observed and analysed in a fundamental area. Indeed, the various international conventions and treaties have provided the legal basis for trafficking in human beings. Furthermore, at European level, all the various instruments adopted

have placed greater emphasis on the phenomenon and the importance of ensuring assistance, protection and access to justice for victims. Therefore, it can be said that the evolution of international and European legislation to be effective requires continuous commitment and collaboration to ensure the right measures of protection and prevention to victims.

Finally, in the last chapter of the thesis, attention was drawn to the jurisprudence of the ECHR. The analysis of these cases has highlighted the impact that trafficking in human beings has on people's lives. The stories of victims of trafficking, who often come from vulnerable contexts such as the Nigerian one, highlight the need to protect and guarantee fundamental rights. The ECHR in pronouncing these cases stressed the responsibility of States in implementing the appropriate measures to ensure protection for victims, ensure respect for human rights and prosecute those responsible.

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