

ARTICLE 18:

PROTECTION OF VICTIMS OF TRAFFICKING
AND FIGHT AGAINST CRIME
(ITALY AND THE EUROPEAN SCENARIOS)

RESEARCH REPORT

Project "Osservatorio sull'applicazione dell'art. 18 del D. Lgs. n. 286 del 25/7/1998" – STOP Programme, European Commission - Promoting Organisation: Regione Emilia-Romagna - Co-ordinating Organisation: Associazione On the Road

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On the
Road

Edizioni

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Project

"Osservatorio sull'applicazione dell'art. 18 del D.Lgs. n. 286 del 25/7/1998
nel contesto delle norme di contrasto della criminalità contro i migranti"

STOP Programme

European Commission - Justice and Home Affairs

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Associazione On the Road

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Table of contents

Preface	11
Introduction	23
CHAPTER I	
General guidelines: placing the research in the context of general observations concerning Article 18	29
1. Analysis of Art. 18 within the framework of legislation concerning immigration and measures aimed at fighting organised crime. The history and rewarding nature of present and previous legislation, by <i>Davide Petrini</i> and <i>Valeria Ferraris</i>	29
1.1 The law preceding Article 18: decree no. 477 of 1996	30
1.1.1 The provisions of the law: the conditions and procedure for the issuing of the residence permit	32
1.1.2 The regulations governing the residence permit: duration, extension and revocation	34
1.1.3 Survival of the regulations, despite the lack of reiteration of decree no. 477 of 1996	35
1.2 Art. 18 of the legislative decree no. 286/1998: residence for reasons of social protection of victims and to combat crime	37
1.2.1 The identification and importance of the dual social and juridical path for the issuing of the residence permit for reasons of social protection	41
1.2.2 Prerequisites for the issuing of a residence permit: violence, exploitation and concrete danger to personal safety	45
1.2.3 The proposal	46
1.2.4 The opinion of the Public Prosecutor and other necessary conditions for the issuing of a residence permit for reasons of social protection	47
1.2.5 The duration, conversion and revocation of the residence permit for reasons of social protection	48

1.3 Article 18 as a rewarding norm?	49
2. Article 18 within the framework of social policies concerning prostitution and immigration, by <i>Franco Prina</i>	56
2.1 Some introductory remarks	56
2.2 Construction of the issue through research, direct knowledge on the phenomenon and rhetorical simplifications	59
2.3 Policies on prostitution at the intersection between rhetoric and interests	64
2.4 Article 18 as part of policy-making on prostitution and immigration issues	67
2.5 The relevance of the local dimension	68
3. Article 18 within the framework of criminal legislation aimed at combating crime against migrants, by <i>Maria Virgilio</i>	73
3.1 Law concerning immigration (1998-1999)	75
3.2 Law against paedophilia	75
3.3 The <i>Legge Merlin</i> concerning prostitution	76
3.4 The "Rocco" Criminal Code of 1930	79
4. National data concerning residence permits, projects and procedures, and connected juridical routines, by <i>Valeria Ferraris, Davide Petrini, Franco Prina, Maria Virgilio</i>	86
4.1 Data concerning residence permits	86
4.2 Data on projects and individual experiences	88
4.3 Data on relevant judicial activities	93
5. Enquiry methods: choices, tools, problems, by <i>Davide Petrini, Franco Prina, Maria Virgilio, Chiara Bertone, Valeria Ferraris, Isabella Orfano</i>	97
5.1 General aspects and problems of the enquiry	97
5.2 Study of juridical aspects	100
5.3 Study of reception and support projects	102
5.4 Study of the relevant judicial activities	103

CHAPTER II	
The study of sentences	107
1. The judicial activity aimed at combating crimes against migrant, by <i>Maria Virgilio</i>	107
1.1 The selection of sentences	107
1.2 Modena	110
1.2.1 Collection criteria	110
1.2.2 The authors of the crimes	111
1.2.3 The injured parties	113
1.2.4 The charges made: the prevalence of Art. 3 of Law no. 75/58	115
1.2.5 Authority involved	118
1.2.6 The outcome of trials for defendants	118
1.2.7 Aggrieved party	121
1.2.8 Two cases of obligation to slavery	121
1.3 Bologna	122
1.4 Ravenna	123
1.5 Rimini	124
1.6 Lecce	128
1.7 Turin	129
1.8 Rome	131
1.9 Common aspects	132
1.9.1 Comparison with protection measures	132
1.9.2 Cognitive elements	132
1.9.3 Trial outcomes and the role of reports	133
1.9.4 Special evidence pre-trial hearing (<i>incidente probatorio</i>)	134
1.9.5 The constitution of the aggrieved party	135
1.9.6 Free legal aid paid by the State	135

CHAPTER III	
The comparative dimension	137
1 Introduction, by <i>Maria Virgilio</i>	137
2. A comparison with the Spanish legal system, by <i>Mercedes García Arán</i>	139
2.1 Introductory remarks	139
2.2 Art. 59 of the law on foreign citizens	142
2.3 The ambit of application	143
2.4 Co-operation of the victim or witness with the authorities	146
2.5 The reward	147
2.6 The different prospects for migrants who have already been sanctioned	148
2.7 The importance of the regulation from a social point of view	148
2.8 Conclusions	149
2.9 Proposals on the co-operation of victims in the repression of criminal organised networks	151
3. A comparison with the German legal system, by <i>Dagmar Oberlies</i>	153
3.1 Preliminary remarks	153
3.2 Prostitution: a social normality in Germany	154
3.2.1 The legality of prostitution	155
3.3 Trafficking in women	157
3.3.1 Definition: trafficking in women and trafficking in human beings	158
3.3.2 The trafficking of human beings in the German legal system	160
3.3.3 The extent of the trafficking in human beings in Germany	162
3.3.4 The penalties foreseen for trafficking in human beings	164
3.3.5 The legal situation of women under the laws on forei- gners (<i>Ausländerrecht</i>)	164
3.3.6 List of indicators	166

3.3.7 Stays during court cases	168
3.3.8 Witness protection programmes	169
3.3.9 The <i>Frauenhandel</i> (trafficking in women) Interministerial Working Group	171
3.3.10 The specialised consultation centres	173
3.3.11 Deportation	175
3.4 An overview	176
4. Transnational comparisons and prospects, by <i>Maria Virgilio</i>	179
CHAPTER IV	
A comprehensive overview	189
1. Results and problematic crux identified by the research under legal outlines, by <i>Davide Petrini</i>	189
1.1 Social path and judicial path: criticism of the idea of contrast	189
1.2 Residence permit for reasons of social protection within the system of rules on foreigner's entry and stay in Italy	192
1.3 Circulars of the Ministry of Interior	192
1.4 Routine procedures in some police-headquarters (<i>Questure</i>): attitudes of open-mindedness towards the issuing of permits for reason of social protection	194
1.5 Conversion of residence permit	194
1.6 The revocation of the permit: when a woman goes back to pro- stitution	195
1.7 The residence permit granted to a foreigner who was senten- ced for crimes committed when s/he was underage	196
2. The projects and the forms of implementation of the law: organi- sational models, systems of meaning, articulation of practices, by <i>Franco Prina</i>	197
2.1 Areas of the case-studies and the organisational models	198
2.2 Users' distribution and individual reasons to access the oppor- tunities provided for by Art. 18	199
2.3 The cultural and ideological dimensions in the development of the forms of presence and engagement in the sector	203
2.4 Consequences of the ideological and cultural approaches on practices	206

2.4.1 Access to programmes and accusation	208
2.4.2 Types of shelters	210
2.4.3 Vocational training and job insertion	213
2.4.4 Approaches as to affective relationships	214
2.4.5 Dialectics between support and control	216
3. Results and crucial points of legislation and crime policies, by <i>Maria Virgilio</i>	218
3.1 The absence of conflict between the two approaches	218
3.2 The instrumental use of Art. 18	219
3.3 Judicial policies	220
3.4 Emerging lines of legislative and criminal policy	223
Conclusions, by <i>Davide Petrini, Franco Prina, Maria Virgilio</i>	225
Appendix 1 <i>Oltre la strada</i> . The Art. 18 Project of the Emilia-Romagna Region	233
Appendix 2 <i>Associazione On the Road</i>	241

Preface

by *Vincenzo Castelli*

The phenomenon of trafficking in human beings

In spite of the continuing difficulties in collecting statistical data, most of the operators engaged in the fight against trafficking in human beings agree on the fact that the magnitude of the phenomenon is increasing. According to world-wide estimates every year as many as 700,000 women and children cross international borders via the channels of trafficking in human beings. Some non-governmental organisations believe that the number is even higher, especially if one considers trafficking aimed at other forms of exploitation.

For years a constant flow of people has been recorded between a number of developing countries (Northern and Central Africa, Latin America, Asia) and western countries of destination. But the most troubling aspect is the rise in the number of women and children arriving in EU countries from Central and Eastern Europe. The deterioration of economic conditions in this geographic area has had a direct impact on the trafficking of women. It is calculated that every year up to 120,000 women and girls are brought to Western Europe illegally. This is a reality (to a higher or lower extent) in all EU Member Countries. In the last few years, in particular, along with the development of the sex industry, a considerable increase has been recorded in trafficking for the purpose of sexual exploitation, but in spite of a number of data collected by public authorities and NGOs, no reliable global estimates are available.

In order to analyse the phenomenon in Italy, we will focus our attention on the final decade of the 20th century, because it was a sort of divide between local prostitution (Italian women, sex workers, and drug addicts looking for money to buy their dose of heroin) and migrant prostitution. This has gradually led to a paradoxical situation: streets have been taken almost completely by female migrant prostitutes (up to 85-90% of the numbers recorded) and, conversely, to a progressive withdrawal of Italian prostitutes who have moved to "different places" (flats, hotels, clubs, etc.). It was indeed in the early 90s that the phenomenon of prostitution - which in this period began to be correlated to that of trafficking - started to change due to the introduction of foreign women on the sex market, thus replacing the multifaceted world of Italian prostitution. After these short considerations, let us discuss how this phenomenon has been evolving in the last 10 years. Through the channels of smuggling (that is the illegal entry of foreign citizens into a State Party without complying with the necessary requirements), Italian streets have been gradually taken up by coloured prostitutes from the "South" (Central Africa, especially Nigeria). This is perhaps how the phenomenon of trafficking for the purpose of sexual exploitation began in Italy to such a marked extent. Trafficking was no doubt a revolutionary change in the approach to the world of prostitution: while for a long time there used to be "sex workers", now there are also "forced" prostitutes - namely victims of trafficking.

Both the number and spread of Nigerian prostitutes have been rather constant in time throughout the Italian peninsula: about 5,000 to 6,000 women, equal to 30% of the migrant prostitutes working in Italy in the streets. In fact, Nigerian women can be found in large metropolitan cities such as Turin, Milan, Genoa, Florence, Bologna, Rome, Palermo, as well as in "strategic" suburban and peripheral areas such as Baia Domizia in the Campania region, rural areas of Umbria and Tuscany, the typical locations of "Bruciata" near Modena or "Bonifica del Tronto" in Abruzzo, suburban areas of the Piacenza-Parma-Reggio Emilia triangle, or the classic provincial roads of the Veneto and Friuli-Venezia Giulia regions.

On the other hand, coloured prostitution is peculiarly different when

compared to the traditional world of street prostitution in general. First, in structural terms, very few experts in this field have tried to analyse the relationship between Nigerian prostitutes and their environment, family, or community; we know very little, apart from individual reports by the women themselves, about the symbolic/ritual aspects conditioning the women both as individuals and as members of a group; also, it is difficult to understand why these prostitutes are exploited - a distinctive instance - by women of the same ethnic group and frequently from the same community. Secondly, in strategic terms, some modalities adopted by Nigerian prostitutes are quite unique: they live rather far from their work locations, generally in a community or group, and use trains to go to work.

After the occupation of streets by coloured women, white women began arriving from Eastern Europe: Albanian girls first, then women from Central Europe (Romania, Bulgaria, Slovakia, etc.) and then, finally, from the countries of former Soviet Union, especially from the small Republics of Moldova and Ukraine. Many things could be said about women from the East. First of all, they certainly brought about another substantial change, in particular with reference to "race". No more "black" prostitutes (thus, different, foreign, perhaps exotic), but white ones, as white as European women (and therefore less different, even though distant). Secondly, they have definitely contributed to drive Italian prostitutes away from the streets. Finally, they have increased supply (of sex services) very much compared to demand, resulting in the saturation of the street sex market.

Albanian prostitution (especially from 1992 to 1996) has been the most violent form of "using" women for the purpose of sexual exploitation. The large number of Albanian women victims of trafficking (due to geographic proximity and easy access via the coasts of Apulia) and the brutality with which they are treated by Albanian pimps (local Italian criminals being accomplices) have led the Italian public to debate "forced" prostitution and analyse the difference between prostitution and trafficking. Above and beyond the way in which the mass media have often treated the theme as "sensational" (sometimes using this tragic problem to increase audience) and setting aside commonplaces (such as seeing victims of trafficking everywhere)

and oversimplifications (considering prostitution and trafficking as the very same phenomenon, without possible differences), Albanian prostitution in Italy has drawn the attention of public institutions, local authorities and non governmental agencies engaged in the fight against social exclusion to the tragedy of women and minors submitted to trafficking for the purpose of sexual exploitation.

Considering the geographic proximity, it might have been possible to know more about Albanian women brought to Italy to work in the streets. We did not grasp since the beginning how the patriarchal, "macho" Albanian society, after many years of social, political and cultural isolation, would "produce" a kind of women (victims of trafficking) capable, very often, to suffer vexation, blackmailing, humiliation and violence of all sorts. The obsolete "Kanun" (the medieval code governing family law) favours males to an incredible extent and leaves very little to the presence (not to speak of the self-determination) of Albanian women, who have started only recently to try and achieve changes between genders. The phenomenon of Albanian prostitution might be interpreted in terms of gender as well as in terms of misery and poverty. Its features, at least in part, have been devastating. In the years from 1994 to 1998 there was a sort of street occupation by Albanian women (a number of investigations by movements of Albanian women report 6,000-9,000 Albanian girls in Italy only), accompanied by pimps, false relatives and fiancées. This, more than Nigerian prostitution, has resulted in the emergence of marked intolerance on the part of the "invaded" local communities and the acceleration of social unsafety processes (very frequently "represented" rather than real) on the part of citizens who find it difficult to cope with this type of street prostitution.

In the last few years, the number of Albanian women in our streets has been markedly reduced: this is partially due to the effects of the bilateral agreement signed by Italy and Albania (1997), based on which Albanian citizens found on the Italian territory are immediately sent back to Albania; it is also due to better information on the dangers of trafficking in Albania, and to the fact that other groups of women, coming from the former Soviet Union, are now present on the sex market. They too are white, physically

more “showy” and “attractive”, perhaps “better company” and, above all, for the same price (the mechanisms of competition prevail here as in other areas of production). It would be very interesting, in a few years, to start an in-depth analysis of the influence of Albanian prostitution in Europe and in particular in Italy, trying to go beyond the classic interpretation systems that we have created (we: the operators, the saviours, they: the Albanian prostitutes, the victims; we: the supporters, they: the supported) working out different approaches and adopting, for instance, different parameters as to gender (male and female), to the relationship, in Albanian culture, between adolescence and adulthood, between “family clan” and individual person, etc.

The arrival of women from some former Soviet Union republics (in the years from 1996 to 1998) is especially remarkable. After the first few tentative and short appearances (from 20 to 30 days), when they often reached Italy by means of the so-called “love charter flights” landing in Forlì, Rimini and Ancona, in the last five years they have developed strong roots in the Italian territory and partially replaced Albanian prostitutes. They are at present the largest and best established group of white prostitutes in the different areas of our country.

We refer in particular to women from Moldova; their massive presence, after a thousand vicissitudes and through the most varied routes from a far-away, very small and poor country of about 4 million people, is certainly peculiar and worth studying. The phenomenon of Moldavian and Ukrainian prostitutes (who arrived in Italy earlier), completes the picture of the so-called “invasion from the East” of migrant prostitution (“voluntary” or, mainly, “forced”). Perhaps, this type of prostitution, much more rooted in the areas of work compared with Nigerian and Albanian women, brings about a new change in the paradigm of classic prostitution (made of very clear rules, such as distance from the client, no intimacy, etc.). The fact that many clients always look for the same prostitutes, the creation of households by the clients and Moldavian or Ukrainian prostitutes are simply possible indicators that prostitution is shifting towards a different modality (that of the “lover”).

After the arrival of this last Moldavian-Ukrainian contingent, entries from Eastern Union have rapidly been changing: in particular, almost all the

areas of Balkan countries (Serbia, Montenegro, Macedonia and Bosnia), as well as Central European countries (Bulgaria, Czech Republic, Poland and Romania) are involved. In practice, this hides the specific ethnic dimension and makes it increasingly difficult to carry out an accurate contextual analysis (as to the countries of origin) which would contribute to understand the phenomenon also in the countries of destination (such as Italy and Western Europe in general).

Lastly, a new phenomenon is to be added to the above scenario: arrivals from the West (mainly from Central and South America). In past years prostitutes from Central and Latin America were to be found especially in Spain and Portugal, but now they have become quite numerous also in Italy; in particular, many Colombian women were reported to arrive in rather distant areas (for example, Trieste and Catania). I believe that different parameters from those adopted for Eastern countries should be used when we deal with the Western and Southern worlds. Also, it should be noticed that Colombia means other aspects as well (for instance the world of cocaine).

Considering all the above, which routes are changing?

Until a short time ago, the Adriatic coast, especially in Apulia, was the point of arrival, very often unilateral, for trafficked women. This continues up to the present time, but also Slovenia is becoming one of the most important transit places, as underlined by the police forces. There are other routes, less well-known to the public, more decentralised and transversal (for instance the Basilicata region), for the transit of illegal migrants before they proceed to the various regions and countries of Europe. On the one hand, therefore, we can speak of new planetary routes (West-East) and, on the other, of decentralized routes where it becomes difficult to understand how this movement changes. I would like to describe such change as "traffic surfing", meaning by this expression that the girl/woman is not collected and brought to a single destination, but she is brought to several places; a sort of almost nomadic "surfing" whereby for instance a person is taken from Moldova to Romania, where she stops for some time before being sold again in Poland, where she stays some more time before leaving for Albania, and so on. All these movements, all the selling and buying are quite difficult to trace due to the nomadic nature of the phenomenon.

The STOP Programme

The fight against trafficking in human beings has become an increasingly important political priority for the European Union. Since 1996, the European Union has been actively engaged in the formulation of a global and interdisciplinary approach to prevent and combat trafficking for the purpose of sexual exploitation. For this reason, an incentive and exchange programme, called STOP, was launched in November 1996 to support actions promoted by public officials and NGOs responsible for the prevention of and fight against trafficking in human beings and the sexual exploitation, especially, of children and women. In particular, the objectives of the STOP Programme are: to promote, support and strengthen the networks and practical cooperation between the different people responsible, in EU member Countries, for the fight against trafficking in human beings and the sexual exploitation of children and women as well as to improve the training and skills of the operators involved. The programme is addressed to magistrates, court officials, police officers, public officials working in the fields of immigration and border control, civil rights, fight against trafficking for the purpose of sex exploitation, care of the victims and penalties for offenders.

During the five years of its implementation (1996-2000), the programme co-financed 85 projects. Apart from the improvement of cooperation between the police and magistrates in said areas, special importance has been attached to the development of cooperation and methods of victims' assistance and the prevention of trafficking and sexual exploitation of children and women.

The vital context of the project: the Art. 18 of the Legislative Decree, no. 286/98

Four years after the approval of Article 18 of the *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, D.lgs. n. 286/98, 25/07/1998 (Consolidation Act on provisions concerning immigration discipline and rule on the foreigner condition, legisla-

tive decree no. 286, dated 25 July 1998) and two years after its practical application, one can start to evaluate whether the mechanism provided for in the norm has proved efficient and effective based on the objectives set. The objectives were two: offering the victims of trafficking the actual opportunity to escape subjugation and improve the quality of the results of the criminal repression of trafficking. The originality in the approach of Art. 18 is that both objectives are placed on the same level, by not considering social protection of trafficked persons as a mere tool of criminal action and by considering the protection of the victims' rights as a priority, at the same level of importance, for the State, as the punishment of those who have committed such horrible crimes as trafficking in human beings.

The foundation of the whole Article 18 is the idea to support trafficked persons who choose freedom by granting them fast access to residence permits and the opportunity of vocational training. Therefore, Art. 18 offers trafficked persons also the possibility to regularise their positions in Italy. This is the most significant and original element in the Italian experience when compared to those of other European countries such as Belgium and The Netherlands.

Supporting trafficked persons means first of all respecting the relationships and life paths of the victims, who almost always do not trust institutional officials and find it easier to interact with social operators, often through linguistic-cultural mediators. This was the reason for the creation of the so-called "double path", whereby local authorities or the NGOs recorded in an *ad hoc* register can file the applications for residence permits on behalf of the victim taken care of.

The complexity of the provisions contained in Article 18 (*Residence for reasons of social protection*) and the articles in the *Regolamento di attuazione del Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, 4/11/1999* (Regulation to carry out the Consolidation on provisions concerning immigration discipline and rule on the foreigner condition, legislative decree dated 4 November 1999) making reference to it (no. 25, 26, 27, 52, 53, 54), together with the great complexity of the issues addressed by the norm, make it necessary to accurately monitor the

implementation phase locally and check the results obtained; it also makes it necessary to consider the impact within the wider context of the fight against crime, which in our system - as well as other European systems - relies on new "social protection" tools on the one hand, and the traditional criminal repression methods on the other.

Based on this scenario, in 2000 the Emilia-Romagna Region, in collaboration with the Associazione On the Road, proposed to create an observatory of the state of implementation of Art. 18 and the social protection programmes to monitor the effects of such a new legal tool on the important issues of social integration of trafficked victims and fight against crime. The work presented in this publication focused on various realities and categories of professionals. Though using different tools and methods, they are engaged every day in the fight against trafficking in human beings. Therefore, we collected the experiences of social operators, local authorities officials, law enforcement officials - in particular those working in the Immigration Offices and Crime Squads of *Questura* (police headquarters) - and the contributions by prosecutors and magistrates of several Italian Public Prosecutor's Offices.

The project discussed in this study was developed based on the elements mentioned above: the phenomenon of trafficking for the purpose of sexual exploitation, the implementation of the legislation on such phenomenon (Art. 18 of Legislative Decree no. 286/98), the STOP Programme promoted by the European Union.

The added value of the research project

This research work was the first attempt in Italy (and in Europe, thanks to the contributions by the Universities of Barcelona and Frankfurt) to verify the state of implementation of Art. 18, the results achieved and established, and the problems yet to be solved to make the norm successful. Promoting this type of investigation (about both legal and social aspects) was needed to find indicators for the validation of the innovation represented by the "Social Assistance and Integration programmes."

Assembling and disassembling the legal-normative and social aspects, trying to grasp the necessary correlation between the two levels in order to build sustainable action programmes; relying on strategic actors (all of them playing leading roles) in the implementation of projects (the victims of trafficking themselves, social operators, agencies responsible for the management of social protection, magistrates, heads of police headquarters and immigration offices, police forces); comparing different geographic areas (North and South of Italy, coasts and hinterland, metropolitan cities and small decentralised areas); finding the international variables of the phenomenon of trafficking (starting from the comparison between Italy, Germany and Spain and extending it to other EU countries such as: Belgium, The Netherlands, France, United Kingdom, and Sweden) has produced the value added of a research work which can represent a great tool to evaluate the social innovation (such as the social protection programme provided for by Article 18 of the Legislative Decree no. 286/98) in order to reformulate it in the light of the current evolution of trafficking in Italy (and in Europe), to reveal all the elements of the “puzzle” that have yet to find their places. We are referring, for instance, to the difficult coexistence of legal and social provisions (and all the implications therein), to the sharing of goals by key-actors with very distinct training backgrounds (public prosecutors, police officers, social operators and even victims of trafficking), to positioning this “legislative oasis” (Art. 18) within the new legislative philosophy of immigration (after the approval of the Bossi-Fini Bill); differences in the implementation of social protection programmes between the North and South of Italy, different *Questure*, magistrates, local authorities and, to the financial resources supplied by the State to ensure the implementation of social protection programmes.

Finally, we also refer to the possible future scenario (especially for the victims of trafficking) that social protection programmes have envisaged: the opportunity to stop being victims and become fully-fledged citizen, living in a territory, having the same rights and duties, feeling as real persons (women) within a local community.

These are the all-important results offered by the research to the recipients of such product (Italian Government, competent Ministries, local

authorities, Public Prosecutor's Offices, *Questure* and Immigration Offices, NGOs engaged in the fight against trafficking): many open questions, a number of validated good practices, shared experiences and tools, identified future prospects.

Starting from this work it is now possible (and desirable) to redesign the scenarios developed after the implementation of Article 18 stressing the interrelation between normative and social aspects and hope that the European Commission will go beyond its Communications of February, 12, 2002, proposing, as was repeatedly said, to issue short term residence permits to victims of trafficking offering to collaborate with the authorities.

If it is true that norms can promote innovative social policies, then the above Communication is certainly not the most desirable evolution: in fact, it does not take into consideration the continuous changes in the modalities of trafficking and, above all, it does not attach enough importance to the social dimension.

The research work shows, in fact, that the real added value of Article 18 is the presence of both repression and integration functions, where by the integration and self-determination of foreign victims is favoured.

Unless the social dimension is adequately considered in the legislation, it will be very difficult to promote change and combat such a complex phenomenon as trafficking in humans beings.

Introduction

The complexity of the provisions set by the Article 18 of the Legislative Decree no. 286 dated 25 July 1998, (*Residence permit for reasons of social protection*) and by the Regulation (11/04/1999) referring to the aforementioned article (Articles 25, 26, 27, 52, 53, 54), together with the extreme importance of the issues dealt with - such as the reception, social support and integration of foreign women victims of trafficking in human beings and of severe forms of exploitation and violence - calls for a necessary monitoring of the implementing phase in the local contexts and of its outcomes, also with reference to the actions taken to combat crimes against migrants.

On the other hand, the measures contained in the Regulation (Art. 25 and Art. 26) provide that the local authorities "*submit a report to the Commission every six months*" to "*monitor the stage of implementation of the programmes and their efficacy*" and that the private organisations which set up contracts with local authorities implementing assistance and social integration programmes "*submit a six-months report on the implementation of the programmes, as well as on the intermediate goals attained, to the contracting authority*".

As a flanking measure, independent research works are very useful to thoroughly analyse the mechanisms in which the rule works and is implemented, in order to allow better evaluation of the results and impact of the rule itself (as for its effectiveness and effects).

The research project developed within the framework of the STOP Programme of the European Commission was designed to have the above-mentioned characteristics and to contribute, thus, to ameliorate the knowledge on trafficking in human beings for the purpose of sexual exploitation and to evaluate the legislative, social and political interventions implemented in

order to fight such phenomenon in Italy.

Sponsored and co-ordinated by the Emilia-Romagna Region, the research work "Observatory on the application of Article 18 of legislative decree no. 286/1998 within the framework of the regulations aimed at combating crimes against migrants" was carried out by researchers and scholars of the following universities: *Alma Mater Studiorum* University of Bologna - Faculty of Law; University of Turin - Social Sciences and Juridical Sciences Departments; *Universidad Autonoma de Barcelona* - Faculty of Law; and *Fachhochschule Frankfurt* - University of Applied Sciences. In particular, the last two universities dealt with the comparison of legislations and related juridical issues.

As the monitoring of the application of the aforementioned measures implies many different levels of analysis, the research work pursued various goals.

In a few words, the initial project aimed at attaining the following results:

1. The identification of the background characteristics of those issues, within the different territorial contexts, on which the legislative provisions intend to be effective (serious forms of exploitation - in particular, sexual - and violence, fight against organised crime, etc.).
2. The analysis of the situations of those people applying for a residence permit "*for reasons of social protection*" and being the recipients of "*Social Assistance and Integration Programmes*", as regards their individual characteristics, living conditions, expressed problems and emerging needs.
3. The identification of the procedures established for the application of said provisions in the different local contexts, in particular with reference to:
 - The specificity of the relations between the different institutions invol-

- ved (*Questura*, Public Prosecutor's Office, local authorities, associations and NGOs which set up contracts with local authorities);
- The criteria for accepting or rejecting the applications;
 - The timing of procedures;
 - The handling of information concerning the stage of development of the individual projects;
 - The management of difficulties of the programme and of emerging problems;
 - The criteria adopted to withdraw issued residence permits;
 - The disputes that may be started following rejection of applications or withdrawal of permits.
4. The analysis of the characteristics of the resources mobilised to implement the programmes for the "*assistance and social integration*", as regards:
- The institutional nature and organisational structure of said resources;
 - The operational strategies adopted with relation to specific functions;
 - The available and involved resources;
 - The problems tackled during the implementation of the programmes (for instance, those experienced by migrants, those concerning safety of the operators, as well as those emerged in the relations between the institutions or with the receiving communities, economic problems, etc.).
5. A comprehensive overview of the application of said provisions on some sample-areas, with reference to:
- Difficulties in accessing the services provided by the regulations;
 - Difficulties emerging from the relationship between the programmes supporting the victims and the judicial proceedings concerning the people they report;
 - The outcomes of individual programmes;
 - The consequences resulting from the interruption of programmes and the choices which led to withdrawal of residence permits;

- The organisational aspects of the services and the resources activated for the implementation of the projects;
 - The overall results in relation with the phenomena dealt with in the regulations.
6. An overview of criminal law and of law cases and decisions which, in our legal system, are aimed at combating trafficking in persons (particularly that aimed at their sexual exploitation) through the analysis not only of the letter of the law, but also of its interpretation on the part of both judges and all those who have to enforce it (legislation derived from law cases).
7. An analysis of penal measures originating from or related to the filing of a complaint by foreigners benefiting from Article 18, taking into consideration all the stages of the trial, from investigations to the final verdict, in order to point out:
- Specific cases used for reference in practice;
 - Trial outcomes;
 - Role of the victims and of the evidence they produced, as well as other aspects of the trial;
 - Efficiency of the measures for the protection of victims provided by our legal system;
 - Other descriptive and cognitive elements of the phenomenon.
8. A comparative study on the internal legal order of other European countries (Spain and Germany, but also Belgium, The Netherlands, France, the United Kingdom, Sweden), aimed at identifying:
- Regulations similar to Article 18, or other rules for the protection of people reporting traffickers and exploiters;
 - The specific cases which, in countries other than Italy, are part of the provisions for combating trafficking in persons for the purpose of sexual exploitation.

9. A comprehensive study of the different trends in legislative reforms emerging not only at national level (to analyse whether it would be possible for other countries to adopt Article 18 or similar regulations), but also on an international scale (bearing in mind the strong inter-connections with the legislative policy concerning immigration and prostitution).

Chapter I

General guidelines: placing the research in the context of observations concerning Article 18

1. Analysis of Art. 18 within the framework of legislation concerning immigration and measures aimed at fighting organised crime. The history and rewarding nature of present and previous legislations

by *Davide Petrini* and *Valeria Ferraris**

In this section, we will analyse the residence permit for reasons of social protection, as specified in Article 18, legislative decree no. 286/1998, underlining the fundamental differences, not only in the regulations, but, more importantly, of *rationale* and objective with respect to previous laws, especially law decree no. 477/1996. Particular emphasis will be placed on different interpretations of the rewarding in the two above-mentioned laws, one aiming towards the integration of the migrant in society, the other strictly linked to the requirements of the court, concerning statements made in connection with legal proceedings.

* Valeria Ferraris is the author of paragraphs 1.1 and 1.2, Davide Petrini is the author of paragraph 1.3.

1.1 The law preceding Article 18: decree no. 477 of 1996

A special residence permit for foreigners exposed to serious danger caused by collaboration and statements made in the course of preliminary investigations or in court, was emitted, for the first time in Italian legislation, by urgent decree in the period 1995-1996. This decree introduced numerous changes to law decree no. 416 of 12/30/1989, which had been converted to Law no. 39 of 02/28/1990, better known as the "Legge Martelli" (Martelli Law).

The decree in question is no. 477 dated 13 September 1996. It was passed by the Government after a series of 5 decrees - all modifying decree no. 39/1990 - which was never converted, but whose content was always reproduced in successive regulations.

The decree - as well as reflecting the previous decree 376/1996 with slight alterations - introduces, in Art. 5, three new commas to Art. 3 of decree 416/1989, which was converted to Law no. 39/1990:

comma 8-ter: "If, in the course of proceedings for one of the offences described in Art. 3 of Law February 20th, 1958 no. 75, or those contained in Art. 380 of the Criminal Code, the citizen of a country not belonging to the European Union is under serious danger as a result of collaboration or of statements made in the course of preliminary investigations or in court, the chief of police can issue a special residence permit for the Italian State territory, if the following conditions are fulfilled:

- a) A return to the country of origin could endanger the personal safety of the person concerned;
- b) The contribution made is of exceptional importance for the identification and capture of those responsible for an offence or for the exposure of a criminal organisation;
- c) The circumstances mentioned in Art. 7, comma 5¹ do not apply."

1 Art. 7, comma 5, law decree no. 416/1989 becoming Law 39/1990 states the following: "The Ministry of the Interior, by motivated decree, can for reasons of public order or State safety request the deportation and accompaniment to the border of any foreigner or resident within the State territory, through a *nulla osta* issued by the judicial authorities on which it is stated that the foreigner is subject to criminal proceedings. The Prime Minister and the Foreign Secretary are previously notified of the decree."

comma 8-quarter: "For the purpose of the application of comma 8-ter, the Public Prosecutor notifies the competent public safety authorities of the elements from which to determine the relevance of the contribution offered and those concerning the seriousness and immediacy of the danger."

comma 8-quinquies: "The residence permit referred to in comma 8-ter is valid for the exercise of the activities permitted and has a duration of one year, provided that the juridical or safety requirements are still valid. It is revoked whenever the circumstances relating to comma 8-ter or the juridical and safety requirements cease to exist, or when the person concerned conducts him/herself in a way that is incompatible with his/her remaining on the Italian State territory."

This measure is clearly rewarding, as underlined by the Ministerial Report accompanying the decree: "This is a type of 'rewarding measure', aiming, above all, at ensuring the security and safety of the 'collaborating' foreigner..." and as, indeed, it has been confirmed on many occasions in the doctrine, despite much perplexity²; it is equally clear - even from the heading of the article "Repression of direct activity favouring the illegal entry of foreigners" - that the main aim of the law is to fight criminals and not the protection, or redemption of the victims.

However, the provisions of the law, which are both vague and full of loopholes, have led to a variety of interpretations.

2 On this point see: M. Morello "Sesto decreto legge sull'immigrazione", in *DirPenProc*, 1996, p. 1189, who underlines the "meanness" of the legislator who offers, as a reward for collaboration, a residence permit that only lasts for one year and can only be extended for reasons of safety or for the requirements of the court; S. Menichelli "Nell'attesa di una nuova disciplina per l'immigrazione e la condizione dello straniero", in *DirPenProc*, 1997, p. 360, who identifies in the insertion of this recompensing criminal law the mark of a concrete desire to expose criminal organisations profiting from the illegal trafficking of immigrants; S. D'Amico, "Il 'soggiorno per motivi di protezione sociale': un compromesso legislativo tra esigenze investigative ed umanitarie", in *Gli Stranieri*, 1998, no. 2, p. 1; M.G. Giammarinaro, "Il permesso di soggiorno per motivi di protezione sociale previsto dall'art. 18 del T.U. sull'immigrazione", in *DirImmigrCit*, 1999, no. 4, p. 37, who underlines the lack of success of an instrument that is strictly linked to the dual concept of reward-collaboration, when dealing with people who have been smuggled into the country and who have little confidence in the institutions of that country and have been subject to such brutality and violent means of coercion that they will be terrorised by the idea of denouncing their own exploiters.

1.1.1 *The provisions of the law: the conditions and procedure for the issuing of the residence permit*

The articulated conditions for the issuing of the residence permit, inferable from the provisions of the law, are as follows:

- The existence of **criminal proceedings** for one of the offences specified in Art. 3 law no. 75/1958 or those indicated in Art. 380, Code of Criminal Procedure. Therefore, the provisions are not limited to offences linked exclusively to the exploitation of immigration;
- To be a **citizen of a country not belonging to the European Union**;
- To be exposed to **severe danger** caused by the collaboration undertaken or because of statements made in the course of the preliminary enquiries or the court case. From comma 8-*quater* - which concerns notification given by the Public Prosecutor to the chief of police - one can presume that the danger must be immediate, or that it will be incurred as soon as the judge takes a decision which is then transmitted to the authorities for public safety;
- To be in danger in the case of **returning to the country of origin**. It is not clear whether the danger caused by a return is a further prerequisite to be added to the danger caused by the statements and collaboration offered, or whether the type of danger contemplated by the law is exclusively localised in the territory of the country of origin.
- Arguments supporting both hypotheses are contained in the provisions for the law. On the one hand, it is not clear how the Public Prosecutor can assess any potential danger in the country of origin³ and why, moreover, this requirement should be a prerequisite for the issuing of the residence permit. On the other hand, the only measure considered in favour of the collaborator-declarant is the

3 On this point see: M. Morello, "Sesto decreto...", p. 1189.

residence permit itself, from which one can deduce that the sole danger contemplated by the law is that of the country of origin⁴, since the concession of a valid residence permit has not been accompanied by any programmes for protection and assistance on Italian territory, or any other measures able to fight the danger to personal safety on Italian soil;

- To have rendered a **contribution of exceptional importance** for the identification, or the capture, of those responsible for a crime, or the exposure of a criminal organisation. It is certain that the collaboration must be of "exceptional importance", but there is no explanation provided within the provisions of the law to clarify what form this contribution should take, and how the judge or the police authorities are expected to behave in the case of a contribution that results irrelevant, due to "unforeseen circumstances". The only solution is to refer to the regulations governing collaboration in the context of organised crime;
- The inexistence of conditions legitimating the **deportation** of the foreigner on the part of the Ministry of the Interior for reasons of public order or State security.

This ends the considerations concerning the main prerequisites for the issuing of a permit.

The duty of notification is then placed firmly on the shoulders of the Public Prosecutor, in relation to the elements from which the importance of the contribution offered can be deduced, and to the seriousness and immediacy of the danger. This release of information - for assessment by the Public Prosecutor - therefore contradicts the duty of secrecy during the phase of the preliminary enquiries *ex* Art. 329, Code of Criminal Procedure, and the con-

4 In support of this interpretation, see: M. Meneghello, S. Riondato, "Commento articoli 2, 3, 4 l. 39/1990 - II). Profili penalistici" in B. Nascimbene (ed.), *La condizione giuridica dello straniero*, 1997, p. 248; F. Oberdan, "Nasce il 'collaboratore extracomunitario': incertezza sul ruolo e sulla procedura", in *GD*, 1996, no. 38, p. 23.

sequent prohibition of the publication of the Acts⁵.

1.1.2 *The regulations governing the residence permit: duration, extension and revocation*

The duration of the residence permit is only determined as a minimum period (1 year) and the possibility of prolonging this period is contemplated only if "juridical or safety requirements" persist. No other reasons for extension are contemplated by the law, from which the impossibility for the foreigner to remain in Italy, once these "juridical or safety requirements" cease to exist, can be deduced.

What exactly are the "juridical or safety requirements"?

It is easy to assume that the "juridical requirements" are those requirements that emerge in the course of criminal proceedings, but it is much more difficult, on the other hand, to envisage what the "safety requirements" actually consist of.

In fact, Art. 5 decree 477/1996 repeats the term "safety requirements" among the causes of revocation of the residence permit, as a secondary and further reason, different from the fulfilling of the expected requirements for the issuing of the residence permit. Among these prerequisites for the issuing of the permit, we find security relating to severe danger to personal safety, but if the safety requirements - indicated as a motive both for renewal and revocation of the residence permit - are not those linked to severe danger to personal safety, what else can they be?

The causes of revocation of the residence permit are, as we have already partly explained:

1. When the circumstances for the issuing of the permit as provided in comma 8-ter no longer apply;

5 Regarding secrecy and the prohibition of publication, see, for example, M. Scaparone, "Indagini preliminari e udienza preliminare" in G. Conso and V. Grevi (eds.), *Compendio di procedura penale*, Cedam, Padova, 2000, p. 487.

2. When the requirements of the court or of safety have ceased to exist;
3. When the person applying for the residence permit observes a conduct that is incompatible with his/her remaining on the Italian State territory.

Our doubts concerning the failure to fulfil the “requirements of the court or of safety” have already been expressed. The third cause of revocation raises further questioning, because of its total lack of definition, leaving the field completely open to the discretion of the public safety authorities and the judge concerned, in deciding what constitutes conduct that is incompatible with remaining on Italian territory.

Finally, and even more vaguely (if possible), the law states that the residence permit “is valid for the exercising of the activities permitted”. Perhaps the foreigner is expected to infer and interpret from the various types of residence permit what rights will be guaranteed by this special residence permit?

1.1.3 *Survival of the regulations, despite the lack of reiteration of decree no. 477 of 1996*

Decree 477/1996 was not “converted” into a law, but it was the last of the decrees modifying Martelli Law (none of which has become law) and its contents have not been transferred to a successive government Act.

Its lack of reiteration has placed in serious difficulty all those foreigners who had started the procedure of legalising their position on the basis of the regulations once in force, and subsequently expired, and, more importantly in this context, it has left in a limbo “those foreign collaborators of justice who had already obtained a special residence permit *ex Art. 5* of decree no. 477, or whose position was, at the moment when the decree expired, under consideration by those authorised to grant it”⁶.

In order to avoid untoward consequences, the Government presented

6 See: M. Meneghello, S. Riondato, “Commento...”, p. 245.

a Bill aiming to cover the effects produced and the juridical positions that arose as a result of the decrees that were passed after November 18th, 1995. In the delay in approval of the Bill - which became Law no. 617 of December 9th, 1996 - a Ministry of the Interior Circular letter of November 13th, 1996⁷ was sent in order to keep on hold, and therefore not to compromise, the juridical positions that had arisen as a result of the expired decree.

As far as the residence permit for foreign collaborators is concerned, the circular letter established that “regarding the circumstances until now defined by Art. 5 commas 8-*ter* and following, of decree no. 477/1996, the residence permit can continue to be issued even subsequently to the expiry of the regulations concerned, as long as the safety or court requirements, that the regulations presently in force also contemplate, are fulfilled”. It was clear that the provisions of the circular letter could not disappoint the legitimate expectations that the urgent decree had created concerning the granting of the reward - the residence permit.

Law no. 617/1996, consisting of a single article, was confined to reiterating that “the acts and procedures adopted” remained valid, on the basis of the decrees not converted into laws, and that “the effects produced and the juridical positions that had arisen” would be safeguarded. Moreover, it safeguarded “the causes of impunity and the extinction of crimes committed, those that exclude the application of administrative and civil sanctions and those that exclude the effects of the administrative measures provided in the above decrees”.

No specific and clear measures were taken by legislators to protect the position of the foreign collaborator: neither those who had already undertaken to collaborate, and had already requested a residence permit, nor those who already benefited from a residence permit and were no longer covered by the regulations⁸.

7 The Circular letter is published in *DirPenProc*, 1996, p. 1439.

8 For a highly critical assessment of the provisional Law passed by Parliament and the totally inadequate solution with respect to the constitutional dictates of Art. 77, see: M. Morello, “Dopo la mancata conversione del decreto-legge sugli immigrati”, in *DirPenProc*, 1996, p. 1442.

With the promulgation of Art. 18 of the legislative decree no. 286/1998 in some cases residence permits for reasons of justice have been awarded and been included in the new regulations with some specific adaptation.

1.2 Art. 18 of the legislative decree no. 286/1998: residence for reasons of social protection of victims and to combat crime

The most precise and detailed regulations are certainly those contained in the legislature under Art. 16 of law no. 40 dated 6/3/1998, which became Art. 18 of the legislative decree no. 286/1998 (“Consolidation on provisions concerning immigration discipline and rule on the foreigner condition”). This last one was subsequently integrated by the decree of the President of the Italian Republic no. 394 dated 31 August 1999, as its Regulation (regulatory system of implementation).

However, it is important to bear the following in mind. The delay in implementing the regulations⁹ has left many unsolved problems regarding the rules determining residence for reasons of social protection, which can be given precise meaning and overcome the numerous doubts that the legislative provisions themselves have raised only if interpreted as a combination of the law and the regulations themselves.

In fact, this single law article had led scholars to fear¹⁰ or suppose¹¹ that once again a rewarding law had been passed, linking the residence permit “bi-univocally” to collaboration in court cases. The provisions of the executory regulation, in particular Art. 27, and the text of the government circular let-

9 On the basis of Art. 1 of Law no. 40/1998 the regulations should have been issued within 180 days from the enforcement of the law.

10 In this regard, see: V. Castelli, *Commento all'articolo 16: Prime riflessioni...ad alta voce!*, in www.regione.emilia-romagna.it/oltrelastrada/materiali_lavoro/legislazione/commentoarticolo16.htm

11 See: S. D'Amico, “Il ‘soggiorno per motivi di protezione sociale’: un compromesso legislativo tra esigenze investigative ed umanitarie”, in *Gli Stranieri*, no. 2/1998, p. 1.

ters successively issued¹², together with the very few elements provided on this subject¹³, allow us to state that two separate ways of obtaining the residence permit actually exist. The first one is a judicial procedure (“judicial path”), in which the Public Prosecutor has an important role to play, and the second one is a social procedure (“social path”), involving the local authorities, associations and NGOs as main reference points. Both methods lead, in the end, to a residence permit for education or for work, allowing the foreigner to remain in Italy in conformity with the regulations governing the presence of non-European Community foreigners.

This is an important starting point, not only because it places the main emphasis on the protection of the victims and on providing a means of escape from illegal exploitation, whether sexual or labour, but also because, from the point of view of fighting crime - which has found the trafficking of migrants a lucrative *business* as those of arms or drug trafficking, but much less risky, for a variety of reasons¹⁴ - obtaining the trust of an exploited individual and providing him/her the opportunity to start a new life in Italy is the first step in overcoming fear, threats of vengeance by traffickers, distrust towards institutions and fear of deportation, which often prevent the victim from reporting his/her exploiters¹⁵.

12 See: “Circolare Ministero dell’Interno 17/04/2000 no. 300/C/2000/276/P/12.214.18/1^Div.”, in *DirImmigrCit*, 2000, no. 2, p. 207 and “Circolare Ministero dell’Interno - Dipartimento di pubblica sicurezza - Direzione centrale per la polizia stradale, ferroviaria, di frontiera e postale - Servizio immigrazione e polizia di frontiera 4/08/2000 no. 300/C/2000/526/P112.214.18/1^Div.”, in *DirImmigrCit*, 2000, no. 3, p. 243.

13 On this subject see the more detailed assessment by M.G. Giammarinaro, “Il permesso di soggiorno per motivi di protezione sociale previsto dall’art. 18 del T.U. sull’immigrazione”, in *DirImmigrCit*, 1999, no. 4/1999, p. 34; considering the authoritative and official government origins of the source, see also: A. Finocchiaro, “Prefazione”, in F. Carchedi, A. Picciolini, G. Mottura, G. Campani (eds.), *I colori della notte. Migrazioni, sfruttamento sessuale, esperienze di intervento sociale*, FrancoAngeli, Milan, 2000, p. 12-13.

14 See: A. Finocchiaro, *op. cit.*, p. 14; J. Salt, “Reconceptualising migration space and migratory phenomena”, quoted by G. Campani in “Traffico a fine di sfruttamento sessuale e sex business nel nuovo contesto delle migrazioni internazionali”, in F. Carchedi et al. (eds.), p. 39.

15 In similar terms see: M.G. Giammarinaro, “Il permesso di soggiorno...”, p. 36 and by the same author “La rappresentazione simbolica della tratta come riduzione in schiavitù”, in F. Carchedi et al. (eds.), p. 92.

Obviously such ambitious objectives would require a strong cooperation between the various countries of emigration and immigration¹⁶, and also between the various police forces, local authorities, social services, non-governmental organisations and the judiciary within the Italian context, in order to prevent measures aimed at safe-guarding victims from being reduced to emergency assistance¹⁷, rather than representing the promotion of a means of escape from exploitation and a positive appreciation of the individual, or to prevent the investigative and judicial proceedings undertaken from failing because of lacking co-operation by the victims¹⁸.

Finally, a better understanding of the frame of reference on which Art. 18 on immigration rests would also be necessary.

The issues acting as a background to Art. 18 are actually quite complex.

First of all, the laws regarding the entry and residence of foreigners from outside the European Community must be considered.

Italian regulations, in line with European laws, do not allow unauthorised or clandestine foreigners who are discovered on Italian territory to legalise their position, even if they have all the prerequisites required by law

16 It is common knowledge that the phenomenon of trafficking and smuggling of human beings is almost impossible to deal with at a national level and that it is essential to work towards a collaboration between the various police forces and the judicial authorities and, at the same time, to obtain the stipulation or reinforcement of bilateral agreements, in the context of existing international conventions, with the countries of origin, in order to simplify even the procedures of extradition. Due to the partial failure of an important investigation into changes of nationality made by the authors of the crimes see: Chris De Stoop, *Trafficienti di donne*, Edizioni Gruppo Abele, Torino, 1997, p. 5. Not surprisingly the United Nations Convention Against Transnational Organised Crime (adopted by the U.N. Assembly on 15 November and signed in Palermo by various countries in December 2000) is completed by two Additional Protocols, relating to the trafficking and smuggling of human beings. To see the texts of the Convention and of the Protocols, go to www.odccp.org

17 For a discussion of this risk, see: M. Virgilio, "Le 'nuove schiavitù' e le prostituzioni", in *DirImmigrCit*, 2000, no. 3, p. 42; M.G. Giammarinaro "Prime valutazioni sull'attuazione delle norme sul traffico di persone", in *DirImmigrCit*, 2000, no. 3, p. 53.

18 The experience of courts in this matter, not only in Italy, indicates that official denouncement by the victim is essential in supporting the prosecution: the ability of traffickers, their connections and international connivances often make it extremely difficult to obtain any evidence other than direct testimonies. On this point see: E. Moroli, R. Sibona, *Schiave d'occidente. Sulle rotte dei mercanti di donne*, Mursia, Milan, 1999 and also Chris De Stoop.

in order to obtain a valid residence permit. The only regulation which, under certain conditions and after fulfilling specific prerequisites, at present allows a non-European Community citizen already staying in Italy to obtain a residence permit, allowing that person to live and work legally on Italian territory, is, in fact, Art. 18. This shows the obvious sensitivity of this article within a closed system of regulations governing the entry of foreigners through a so-called system of "quotas".

In the second place, the trafficking of migrants - a subject which European legislation has found itself generally unprepared for and about which international publicity, starting from the 90s, seems to have reached a peak during the last 2 years - does not coincide with the trafficking of women for sexual exploitation, although this is one of the main and most lucrative forms. Indeed, it now generally regards the international trafficking of the labour force, and the consequent exploitation of workers in job contexts or domestic service¹⁹. It therefore follows that Art. 18 is a tool that must be used to its full potential in situations of violence or exploitation of foreigners, and not only in the field of the sexual exploitation of foreign women.

Thirdly, the *sex business*, of which prostitution in all its various forms²⁰ represents only one of the lucrative activities, is increasingly becoming more like a company-run business at a transnational level, characterised by massive investments and fluctuating on the border between legality and illegality, so that it is now increasingly difficult to ascertain the offences that have been committed.

Finally, there is the question of organised crime in the country of ori-

19 It is noted (G. Campani, p. 46) that the accomplice of this trafficking is, on the one hand, "a capital without frontiers and the global markets of consumption and services and a work force that is still enclosed within the frontiers" and, on the other hand, the presence within the economies of developing countries of a "grey area of undeclared employment for which a docile and flexible workforce is necessary, such as clandestine workers".

20 It must be underlined that the sector of female immigration directed towards prostitution does not exclusively concern street prostitution as such: many foreign women are employed, having a greater or lesser degree of decisional and organisational autonomy, also as "call-girls", entreneuse, ballerinas, hostesses, escorts. On this subject see: F. Carchedi, "La prostituzione straniera in Italia: analisi dei risultati della indagine sulle protagoniste e i modelli relazionali", in F. Carchedi et al. (eds.), p. 133.

gin. It is very active in the trafficking of persons, by now able to benefit from links with local organised crime²¹, and sometimes even with the institutions themselves (e.g. the well-known case of visas obtained by Nigerian women thanks to the complicity of officers at the Italian embassy in Lagos, which underlines the need to control the issuing of visas, especially tourist visas, or those for humanitarian reasons) and the economic, political and professional personalities²².

1.2.1 *The identification and importance of the dual social and juridical path for the issuing of the residence permit for reasons of social protection*

As already mentioned, the existence of two distinct “paths” for obtaining the residence permit for reasons of social protection, one juridical and one social, has raised many unanswered questions, due to highly ambiguous legislative provisions.

Art. 18 of the legislative decree no. 286/1998 establishes that the *Questura* may issue a special residence permit “enabling the foreign citizen to escape from a situation of abuse and conditioning perpetrated by a criminal organisation and to participate in a social assistance and integration programme”. The requirements can be identified in the existence of situations of violence or serious exploitation and of concrete danger for the personal safety of the foreigner, because of his/her attempts to escape from the criminal organisation, or because of statements made in the course of criminal proceedings.

These prerequisites must be ascertained in the course of police opera-

21 G. Campani, p. 42 and F. Carchedi, p. 150: they both underline the importance of the collaboration of the indigenous mafia organisations for the reinvestment of the profits of the activities of exploitation of prostitution in drug trafficking and money laundering.

22 This refers to doctors, lawyers and, in general, professionals able to “simplify the existence” of traffickers in their country of arrival: on this point see the investigation conducted by Chris De Stoop, dealing mainly with the trafficking in women for sexual exploitation in Northern Europe.

tions, investigations, proceedings undertaken concerning specific offences²³, or in the context of assistance provided by the social services.

Up to this point, the regulations appear to be clear. They indicate, in fact, that the main prerequisites could emerge in the course of measures taken by the social services and, additionally, that the danger to personal safety does not derive solely from statements made in the context of criminal proceedings, but also simply from an attempt to escape from a criminal organisation.

The interpretative problems arise in the second part of the norm, which identifies the procedure through which the issuing of a residence permit is to be obtained, specifically in relation to the wording "also when proposed by the Public Prosecutor or with a favourable opinion by the same authority". It is unclear, due to the economy of this single legislative provision, whether it is always necessary to gain the approval of the Public Prosecutor, even if the situation of violence, exploitation and danger to which the foreigner is exposed has emerged during assistance provided by the social services.

If the opinion of the Public Prosecutor were to be considered always necessary (obviously in alternative to his/her proposal) this would mean that its involvement - unless we admit the possibility of asking for an opinion a subject who has no knowledge of the matter - must be made through the instigation of criminal proceedings and a possible interview with the victim.

If, in order to arrive at the concession, it is always necessary to involve the Public Prosecutor in the official documentation, the possibilities for and importance of the social path would be strictly limited: the victim would necessarily become involved in relations with the judicial authorities before obtaining a residence permit, in the same way as in the judicial path, and this would "lead to the absurd situation of completely nullifying the dual path regime"²⁴.

23 These are the offences indicated in Art. 380, Code of Criminal Procedure, which concerns cases of obligatory arrest in flagrant crime and those provided by Law no. 75 of 20 February 1958 "Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui" (known as "Merlin Law").

24 See also: M.G. Giammarinaro, "Il permesso di soggiorno...", p. 42.

This contradiction is justified by those who have opted, in the doctrine, for an interpretation that views the opinion of the Public Prosecutor as always essential, and who maintain that the “real aim of the regulations is to aid the investigation, which represents the primary aim to be safeguarded by the regulations”²⁵. In fact, it is argued, no provision identifies the powers of intervention or the duties to be carried out by the social services, while comma 2 of Art. 18 contains the regulations defining the role to be taken by the Public Prosecutor. At this point, one may add, it is to be assumed that the intervention of the Public Prosecutor will always be necessary²⁶.

The provisions of Art. 27 of the “Regulation to carry out the Consolidation on provisions concerning immigration discipline and rule on the foreigner condition” appear at this point to be less ambiguous. Art. 27 comma 1 letter a) of the Regulation clearly indicates that the proposal for the issuing of the residence permit can also be made “by the social services of a local body, by associations, bodies or other organisations enrolled in the register contained in Article 52 comma 1, letter c)²⁷” whenever situations of violence or serious exploitation are discovered, and that the *Questura* in this case must assess the existence of danger also on the basis of the elements contained in the proposal without requesting any opinion from the Public Prosecutor, which is only necessary if criminal proceedings have been brought²⁸.

To further complicate the picture, on 25 October 1999 - already, therefore, at a time following the issuing of the regulations of the decree - the Ministry of the Interior drew up a circular letter that seemed to support an interpretation which was opposed to the indispensable nature of the Public Pro-

25 Quoted from S. D’Amico, “Il ‘soggiorno per motivi di...”, p. 5.

26 It is necessary to specify that the author contradicts himself in the fact that he states that the *Questura* has special autonomous power, not dependent on the intervention of the Public Prosecutor’s Office, in cases in which the behaviour of the foreigner “has not yet been awarded a precise juridical value, but is clearly useful in contrasting with these serious criminal acts”.

27 This is the register of the associations and local authorities carrying out activities in assistance to migrants provided by the new law concerning immigration; the register is located at the Presidency of the Council of Ministers.

28 See the combined regulations contained in Art. 27 co. 1 and Art. 27 co. 2 lett. a).

secutor's approval: "The local social services will be responsible for a preliminary verification of the existence of the circumstances contained in Art. 18 of the Consolidation Act on the basis of a proposal coming from the Public Prosecutor - in cases in which criminal proceedings have been brought - or of the local social services and, after acquiring the Public Prosecutor's opinion in cases in which the proposal has come from the above social services, the latter will provide the foreigner with a residence permit for reasons of social protection [...]"²⁹. A few months later, in a circular letter dated 17 April 2000 concerning the residence permit for reasons of social protection, the Ministry went back to its original viewpoint, stating: "following numerous requests for clarification concerning the issuing of residence permits, it is necessary to explain [...] that the opinion of the Public Prosecutor, under the hypothesis provided in Art. 27, comma 2, letter a) must be acquired, according to the provisions of comma 1, lett. b) of the above article, in cases in which criminal proceedings have been brought relating to episodes of violence or of serious exploitation, in the course of which the foreigner has provided statements"³⁰. Finally, in a circular letter issued on 4 August 2000: "In the case in which any initiative should come from the subjects indicated in comma 1 lett. a) of the same Art. 27, in order for this to be assessed, there is no requirement that the initiative should originate in a reported crime. In these cases, the competent *Questura* must assess the seriousness and immediacy of the danger, also taking into account what has been reported in relation to the proponent association or body, and can issue a residence permit for humanitarian reasons, with no obligation to obtain an opinion from the Public Prosecutor"³¹.

It can therefore be stated that even the most recent indications from the Ministry of the Interior support the idea of a dual path, either social or

29 Ministry of the Interior, "Circolare 25/10/1999 n. 300/C/1999/13/P/12/214/18/1^Div." in *DirImmigrCit*, 2000, no. 1, p. 216.

30 Ministry of the Interior, "Circolare 17/04/2000", p. 207.

31 Ministry of the Interior, "Circolare 4/08/2000" - Dipartimento di pubblica sicurezza - Direzione centrale per la polizia stradale, ferroviaria, di frontiera e postale - Servizio immigrazione e polizia di frontiera, p. 244.

juridical, to arrive at the concession of the residence permit for reasons of social protection.

Finally, the indications deriving from the Legislative Office of the Department for Equal Opportunities are even clearer. In an explanatory note to the *Comitato per i Diritti Civili delle Prostitute* (Committee for the Civil Rights of Prostitutes) of April 21st, 2000, which contains information about the results of a meeting between the Minister and the Chief of Police on April 19th, the document confirms that the novelty contained in Art. 18 is that it separates the concession of a residence permit from the fact of collaborating, allowing for the immediate issuing of a permit “independently from the reporting of a crime to the tribunal, which will follow a different time schedule”.

1.2.2 *Prerequisites for the issuing of a residence permit: violence, exploitation and concrete danger to personal safety*

The main prerequisites for obtaining a residence permit for social protection, defined in comma 1 of Art. 18, are the existence of situations of violence or of serious exploitation, together with the presence of danger to personal safety.

The prerequisites of violence and exploitation are considered by the legislator to be alternative, so that the presence of only one of these two prerequisites is to be considered sufficient. The scope of the provisions is therefore wide-ranging, and able to cover not only cases of sexual exploitation often accompanied by violence, but also cases of exploitation of labour or domestic service, in which there is frequently no form of particularly violent conduct³².

Violence or serious exploitation must exist together with a situation of “concrete danger” to personal safety. This situation of danger is explained in

32 See also: M.G. Giammarinaro, “Il permesso di soggiorno...”, p. 38.

greater depth in the second comma of the decree, which indicates, referring to danger, the prerequisites of seriousness and immediacy.

Both of these can be indicated as specifications of the concept of concrete danger, which was already mentioned in the first comma. An interpretation designed to reflect the reality of the situation should make reference to danger not only to the foreigner requesting the residence permit, but also to the family involved, who, whether abroad or on Italian territory, is placed in a dangerous situation.

1.2.3 The proposal

The proposal for the issuing of a residence permit can be submitted - according to the indications contained in Art. 18 of the legislative decree no. 286/1998 - whenever situations of violence or of serious exploitation of a foreigner have been discovered together with concrete danger to his/her personal safety. This type of situation can emerge in the process of "police operations, investigations or a court case" for the offences described in law no. 75/1958 or Art. 380, Code of Criminal Procedure, or when the social services of a local administration perform their social assistance work".

Clarification of the contents of the legislative provisions is provided by its executory regulation, which, in Art. 27 comma 1, expressly shows that the proposal for the issuing of the residence permit is made by the Public Prosecutor's Office in the cases in which criminal proceedings have been brought, and by the social services belonging to local authorities, associations or non-governmental organisations in the other case, provided that they are enrolled in the register of associations and bodies carrying out assistance to migrants set up by the Regulation to carry out the "Consolidation on provisions concerning immigration discipline and rule on the foreigner condition" at the Presidency of the Council of Ministers.

In this way, the possibility of setting up a procedure under the supervision of the social services is guaranteed, in a simple and transparent way, through the register of associations and bodies carrying out assistance to

immigrants, identifying subjects able to set up projects of assistance and integration³³.

1.2.4 *The opinion of the Public Prosecutor and other necessary conditions for the issuing of a residence permit for reasons of social protection*

In cases in which a so-called “judicial path” has been activated (when a formal complaint has been filed by the foreigner) and the Public Prosecutor has not already autonomously formulated a proposal for the issuing of a residence permit for social protection, and the proposal does not provide any indications regarding the seriousness and immediacy of the danger, the request made by the social services must be accompanied by a request on the part of the *Questura* to the Public Prosecutor’s Office for a favourable opinion to the concession of a residence permit.

The opinion of the Public Prosecutor must be based on the existence of a situation of danger connected to the statements made by the foreigner. The indication that this *nulla osta* is required in cases of the lack of a proposal on the part of the Public Prosecutor, or of an omission of the motivation of danger, is clear evidence of what must be the main objective and concern of the opinion expressed by the Public Prosecutor.

The assessment made by the Public Prosecutor to ascertain danger to personal safety will be binding for the *Questura* for the issuing of a residence permit: a negative opinion will prevent the permit from being issued, a positive opinion will, on the other hand, prevent the immigration officials at the *Questura* from making an autonomous, discretionary and defective assessment.

Besides the opinion of the Public Prosecutor, when required, the police authorities must obtain, in order to issue a residence permit for reasons of social protection:

33 For a more detailed examination of the functioning of the register see: Oberdan Forlenza, “Stranieri: a dieci anni dalla legge Martelli una disciplina adeguata alle mutate esigenze”, in *GD*, no. 46, p. 106.

- The programme of social assistance and integration (which will normally be attached to the request for the issuing of a residence permit by the social services and associations involved);
- The foreigner's formal acceptance to take part in the programme, after due information of the consequences as specified in legislative decree no. 286/1998 in the case of interruption of the programme or of conduct that is incompatible with the aims of the programme;
- Formal acceptance of the duties connected with the programme on the part of the person responsible for the structure that has set up the programme.

1.2.5 The duration, conversion and revocation of the residence permit for reasons of social protection

The residence permit Art. 18 has a duration of 6 months and enables access to the social services and to schooling, enrolment in the unemployment lists and the possibility of being hired in regular employment. Therefore, foreigners are given the concrete possibility of socio-professional integration, as soon as they obtain the permit for reasons of social protection.

The residence permit can be renewed for reasons of social protection for a maximum period of one year, unless a longer time period is requested by the judicial authorities, on the basis of the requirements of the court case concerning the foreigner.

It may successively be converted for education or work reasons.

The letter of the norm only indicates conversion for education, and states that "if, on the expiry date of the residence permit, the interested party is under employment, the permit may be extended further or renewed for the duration of the period of employment, or, if this is a permanent post, within the accepted regulations governing residence for these reasons".

The literal meaning is not very clear: even in the light of the regulations governing the issuing of the various residence permits, it is not clear

what other meaning the use of the wording “extension or renewal” could have as opposed to the word “conversion”. More particularly, in the case of a permanent position of employment, the provisions of the law seem to refer back to the regulations stipulated in the decree no. 286/1998 in connection with the issuing of residence permits for reasons of employment.

Given the aim of social integration and the humanitarian rationale on which these measures are based, conversion due to employment must be considered absolutely legitimate³⁴.

Finally, concerning the negative aspect of the regulations under examination, it is immediately clear that the legislator has identified two causes for the revocation of the residence permit, one that is very precise and the other that leaves room for considerable discretion in its interpretation.

The first cause of revocation consists in the interruption of the programme of social assistance and integration. The local authorities or private bodies will be responsible for notifying the pertinent *Questura* of the interruption that has taken place in the programme, and the *Questura* will proceed with revocation of the residence permit. It will be necessary to determine what causes have been identified by the authority or private body as constituting an interruption of the programme.

The cause of revocation due to incompatible conduct are much more difficult to define. The legislator does not provide any further indications to assist in interpreting the meaning of this phrase. Everything is left to the discretion of the bodies that have set up the programmes of assistance and social integration, and to the *Questura*.

1.3 Article 18 as a rewarding norm?

The first issue a jurist - and especially a criminalist - has to face when dealing with Article 18 concerns the very nature of the institution.

As a matter of fact, the specific residence permit issued to victims of

34 See: M.G. Giammarinaro, “Il permesso di soggiorno...”, p. 51.

violence or heavy exploiting situations shows at first sight common features with the instruments for witness protection in a criminal case: from the special rules given for the crossed examination of a victim of sexual violence actions, to the provisions regulating the protected hearing of a minor involved in criminal proceedings.

Particularly, importance is given to the norms to protect a "justice witness", a new figure being introduced by the law no. 45 dated February 13th, 2001 in the section II *bis* of the law decree 8/91 (converted to law no. 82/91), Articles 16-*bis* and 16-*ter*³⁵. Even before the novelty, the norms protecting justice co-operators - and in particular the protection programmes - could also be envisaged towards witnesses or people knowing the events³⁶. Yet, thanks to the new provisions, the position of a witness needing a particular protection acquires an independent significance and is duly differentiated - also considering the complex underlying political and criminal topics - from a defendant who co-operates because "repentant".

However, the residence permit for social protection reasons differs from such mechanisms, as its objective is not so much the witness protection to guarantee the authenticity of witness declarations, but rather the standing out to lawfulness by a foreigner (usually a woman) who is a victim of trafficking in human beings.

Obviously, such assumption deserves an exhaustive demonstration through an analysis of the various constituent parts of the institution. In any case, this is implicitly confirmed by the analysis of proposed bills on trafficking in human beings (no. 5839, 5350 and 5881 by Italian Lower House), where there is a constant reference to measures protecting the victims who cooperate during investigations. Now, these measures *would stand next to* Article 18 that unavoidably has other nature and aim.

Moreover, right now there is nothing excluding that the protection

35 A. Bernasconi, "Riforma della legge sui collaboratori di giustizia (l. 13.2.2001): profili generali e intersezioni con le tematiche del 'giusto processo'", in *Leg. pen.*, in print.

36 D. Manzione, "Commento agli articoli 9 e 10 del d.l. n. 8 del 15/1/1991 (Rapimento ai fini di estorsione e pentiti)", in *Leg. pen.*, 1991, p. 681.

programme in favour of justice witnesses could also be applied to a foreigner who is victim of trafficking in human beings and has to testify in a criminal trial, when at the same time there are no social needs; in other and more explicit words, when there is no need to envisage social integration, standing out to lawfulness and acquisition of citizenship rights, but retaliations or revenges for accusatory declarations made by the witness must be prevented³⁷. Think about a victim of exploitation events who already had - before such events - a valid residence permit: in such cases, if the person is exposed to a serious and actual danger because of declarations made to the judicial authorities (as offended party, person knowing the events or witness), there will obviously be recourse not to Article 18, but to the provisions on justice witnesses.

Now, we cannot deny that Article 18 - at least in some literal expressions - may recall the rewarding norms towards people guilty of organised criminal actions³⁸. To that effect, the risk of false declarations, that may have heavy relapses on erroneously-accused people, imposes a serious evaluation on accusatory declaration credibility and puts forward again the central issue of judge professionalism when verifying those declarations through further factual elements. However, in Article 18, the "agreement" provides that the beneficiary of a residence permit receives something positive not only from his/her individual and personal point of view but also with respect to community interests: standing out to lawfulness and full acquisition of citizenship rights. This agreement is not "shameful", like in the case of a repentant

37 To that effect, M. Virgilio, "Recenti strumenti di contrasto della violenza sulle donne: nei dintorni del diritto penale", in G. del Giudice, G. Barbara, C. Adami (eds.), *I generi della violenza. Tipologie di violenze contro donne e minori e politiche di contrasto*, FrancoAngeli, Milan, 2001, p. 148.

38 See: A. Callaioli, "Il testo unico delle disposizioni sull'immigrazione e delle norme sulla condizione dello straniero: una legge organica per la programmazione dei flussi, il contrasto alla criminalità e la lotta alla discriminazione", in *Leg. Pen.*, 1999, p. 281. We speak instead about "unjustified association with the position of justice collaborators", which would come from an unjustified exclusion of an independent social path, in ASGI (ed.), *Dal permesso alla carta di soggiorno. I nodi problematici di un percorso di integrazione*, Minali, 2001, p. 75. Criticism on the language that evokes justice collaborators, in M. Virgilio, "Recenti strumenti...", p. 146. Compare also: S. D'Amico, "Il 'soggiorno per motivi di protezione sociale': un compromesso legislativo tra esigenze investigative ed umanitarie", in *Gli stranieri*, 1982, no. 2, p. 1.

Mafia member where pragmatic needs to fight against crime take priority.

The real nature of a residence permit for social protection reasons reveals itself in this connection. Two objectives stand next to this permit and support each other: social integration, with consequently the possibility of converting the permit for employment or self-employment or education reasons, as well as the identification, arrest and possible conviction of people being guilty of exploitation. Anyway, these two objectives are not conflicting and it is useless to discuss about which objective should prevail or had priority - maybe to the detriment of the other objective - in the legislator's mind³⁹.

The interlacing of these two moments is particularly clear in the norm structure. As we were saying, by analysing this norm you can find crucial elements for a correct identification of the nature and purposes of a social protection permit:

- a) the requirements to issue a residence permit (heavy exploitation or violence situation) can be fixed in two different and alternative areas: police operations and judicial investigations on the one hand and welfare interventions by accredited local authorities, associations and NGOs on the other;
- b) in turn, the dangerous situation - justifying the issuing of a permit for social protection reasons - can originate from the victim's attempt to escape the power of a criminal association (i.e. to emancipate oneself, to get out of a subjugating condition and to stand out to lawfulness), or from the declarations the victim made during preliminary or judgement investigations: in other words, we have a danger that comes from starting an integration process or from the accusatory declarations made on the judicial level;
- c) finally, the proposal to issue the permit can come from accredited local authorities, associations and NGOs (Article 27 of Italian Presidential Decree no. 394/99, regulation implementing the legislative decree no. 286/98) or ("also", it is said in Article 18 of the le-

39 M. Virgilio, "Recenti strumenti", p. 149, speaks about a progressive passage from the single parapsychological model to a social practice model.

- gislative decree no. 286/98) from Public Prosecutor's Office;
- d) moreover, in the second paragraph of Article 18, aspects linked to the personal situation of the victim are interlaced with investigation and penal repression needs: the police headquarters must evaluate with particular attention (through their own investigation activity or more commonly by taking advantage of the results from Public Prosecutor's opinion) both the seriousness of the dangerous situation the victim is experiencing and the importance of the victim's accusatory contribution to fight against the criminal organisation and to favour the identification and arrest of criminal offenders;
 - e) even the renewal and revocation move on two parallel levels: the renewal is admitted to continue the programme (up to 1 year) or for justice reasons (and in this case, the renewal can last longer); the revocation is decided when the programme is interrupted or the victim has an inconsistent behaviour that cannot allow continuing the programme. A possible check on the inconsistency of the declarations made by the (supposed) victim may produce permit revocation when it shows the requirements for its issuing are no longer present (for example: it may be inferred that the person was not really a victim of violence and exploitation).

It is interesting that, contrary to what we have analysed up to now, the purpose and possible outcome are identified by the law in merely "social" terms: a permit is not issued to remain at judicial authorities' disposal or to allow the victim to testify or to confirm during the hearing the charges brought against during the investigation without running too many risks, but just "to escape violence and conditioning by the criminal association" (where the reference to freedom of deposition against exploiters - besides being merely implicit - is highly faded), as well as to attend a social assistance and integration programme.

Yet, the really fundamental aspect is the possibility of converting the title that legitimates the residence: irrespective of the outcome in the trial

matter - being set up with the denunciation by the victim (in the judicial path) or as a result of a *notitia criminis* coming from the *Questura* (in the social path) - a foreigner will have the possibility of getting his/her permit for social protection reasons converted into a residence permit for employment or self-employment reasons (or education, even though in the cases being examined during the research, this outcome appears to be absolutely minor). The real outlet, the final objective is the full acquisition of citizenship rights⁴⁰.

As we saw in paragraph 1.1, it is possible to give a contrary demonstration on this assumption, by analysing the law decree (never converted) no. 477/96, Article 5, which is structured following quite different phases. As a matter of fact, in that provision the residence permit to a co-operating victim was issued for reasons just relating to the meaning of his/her accusatory declarations and in particular to the extraordinary importance of the contribution, besides a time pace being just targeted on investigation times⁴¹. The very Report to the law decree no. 477/96 expressly declared its nature as "rewarding measure"⁴².

However, apart from the remarks that came out of the research results and will be the object of further investigation in this report, it is of course important to emphasise that the very particular nature of the residence per-

40 F. Pastore insists on the peculiarity of the Italian experience as a model that places the purposes of social and reintegrating nature before judicial needs, see: "L'azione internazionale per la lotta al traffico di persone: tendenze e problemi", in F. Pastore, P. Romani, G. Sciortino, *L'Italia nel sistema internazionale del traffico di persone. Risultanze investigative, ipotesi interpretative, strategie di risposta*, Centro Studi di Politica Internazionale, Rome, 1999, p. 99-100, this investigation also presents interesting transnational comparisons.

41 Compare M. Meneghelli, S. Riondato, "Commento articolo 3", in B. Nascimbene, *La condizione giuridica dello straniero*, Padova, 1997, p. 245; S. Menichelli, "Nell'attesa di una nuova disciplina per l'immigrazione e la condizione giuridica dello straniero", in *Dir. pen. proc.*, 1997, p. 360; Morello, "Sesto decreto legge sull'immigrazione", in *Dir. pen. proc.*, 1996, p. 1189; —, "Dopo la mancata conversione del decreto-legge sugli immigrati", in *Dir. pen. proc.*, 1996, p. 1442; F. Oberdan, "Nasce il 'collaboratore extracomunitario': incertezza sul ruolo e sulla procedura", in *Guida dir.*, 1996, no. 38, p. 22. M. Quiroz speaks about "discontinuity with the discipline previously in force" in "Comunicazione", in Dipartimento per le pari opportunità (ed.), *Vie d'uscita. Atti del seminario nazionale di formazione per operatrici e operatori dei progetti di protezione sociale e del numero verde contro la tratta delle donna*, Rome, 2001, p. 85.

42 In *Guida dir.*, 1996, no. 38, p. 20.

mit for social protection reasons - and particularly the clear purpose of social integration and standing out to lawfulness for the victims of exploitative conditions - should be preserved from any contamination (lexical but also substantial ones) with rewarding-type models to fight against organised crime. Dangerous confusions between victims and guilty people do not really help the correct justice administration, especially when there are cases where aspects linked to female sexuality, prostitution practice and violent exploitation of individuals in highly vulnerable situations come into play.

2. Article 18 within the framework of social policies concerning prostitution and immigration

by *Franco Prina*

2.1 Some introductory remarks

In which scenario of policies on prostitution - at national and local levels - can we place the Article 18?

Before answering this question, it may be useful to recall some terminology and concept distinctions referring to the word we are going to use for our analysis, that is the word "policies".

In a general sense, speaking about policies naturally means referring to the orientations a State (in its breaking down into powers and institutions) adopts in a specific matter through its legislation, government and administration functions in the various territorial contexts.

However, it is important to make immediately clear that *law making* and *policy making* do not coincide⁴³, even in a country like Italy that assigns to laws an important role in defining public policies and where a new law is called for to solve any problem. In other words, we have to make a distinction between policies *being formulated* - often defined by norms and laws - and policies *being practised*.

This distinction is important because in any field - and the one we are

43 G. Regonini, *Capire le politiche pubbliche*, Il Mulino, Bologna, 2001, p. 26.

speaking about is an interesting example - we arrive at different remarks if we evaluate the impact the laws regulating this field have or instead the impact the policies brought about to cope with it have. It is enough to think that laws can be basically non-applied or, the opposite, that you can develop clear-cut policies even without a specific law or when there is an obsolete law. Generally speaking that means "the extension and precision of norms have no links with the extension and precision of policies"⁴⁴. In the particular case we are dealing with, policies are obtained by referring to a range of regulatory provisions that are partly specific (mostly obsolete) and partly (in fact, mostly today) "*a-specific*", i.e. aimed at achieving other objectives.

When speaking about policies we thus have to refer to:

- orientations (considered as constraints and as resources and opportunities⁴⁵) in the penal or administrative *regulations* (such as those of social and health nature) that regulate the matter or even indirectly may concern some aspects of it;
- *application* processes for each specific norm, that is the formal compliance with its purview, even without paying attention to the effects this may produce and to the achievement or non-achievement of the declared objectives;
- *implementation* processes for each specific norm, that is the execution by institutional actors (from the local decision-maker to the social worker involved in the services) of action strategies that by interpreting the norm reason and indications and pursue the objectives being defined in the purview formalised in a legal instrument;
- the coming up by different institutions with a whole set of resources, techniques and actions that, in a sort of impromptu "*do-it-yourself*" drawn from different regulating sources, allow pursuing given objectives;
- *innovating practices* that force the boundary of existing norms (in

44 Idem, p. 27.

45 This is an important concept discussed in the book by O. De Leonardi, *Il terzo escluso. Le istituzioni come vincoli e come risorse*, Feltrinelli, Milan, 1990.

different ways and levels, up to what is explicitly defined as “administrative deviance”) or anticipates (when there are no norms) which institutional orientations may be adopted in the future.

Some other distinctions come from these first remarks.

We can speak about “*policies*” in a *strong* way as “governing of a problem”, starting from a clear, univocal and consistent definition of the objectives, instruments and resources needed to achieve them. Or in a *soft* way (which is not for that less meaningful and maybe in some cases is more appropriate to the problem complexity and structure) as a whole amount of approaches, projects and practices that tend to affect a certain phenomenon.

A second necessary distinction is between *national* policies and *local* policies. These two levels can be interdependent or independent: in general, we have national policies that are implemented, that is executed, at local level but there are also cases - as our recent history shows in many social fields - where on the contrary we witness a development of local policies that - and not always - obtain afterwards a recognition at national level.

Moreover, we have to avoid thinking wrongly that policies are just a concern for the institutional system and public institutions: there are *public* policies - that is policies being directly managed by public bodies - and policies we could define as *semi-public*, which are developed by private entities (movements, associations and non-profit organisations) but they act within the public interest.

In the field of exclusion and deviance and, in a more general way, in the field of social problems, we face then the matter of relationship between *emergency* policies - often episodic ones - that are created following the wave of sensations and worries that become worries shared at general level, and instead *systematic*, solid and structural policies that start from less emotional analyses and more validated data and that are far-sighted.

A further distinction is between *real* policies - actually oriented to the declared purpose - and *symbolic* policies aiming at objectives that are different from the declared ones, the main objective being consensus aggregation:

where there is a problem that is perceived as worrying, the political system or the individual protagonists of the political system are strongly tempted to develop policies that are just aimed at getting consensus and may not have any impact on the problem.

Of course, you find basic differences as for policy contents. For the prostitution issue as well as for other social problems, there are policies that favour *repression*, *exclusion* and *control* (repression and exclusion to wipe out and control to restrain) and policies that instead tend towards *prevention*, *support* and *inclusion* (for example, through risk factor removal, defence of one's rights and giving opportunities for receiver emancipation).

2.2 Construction of the issue through research, direct knowledge on the phenomenon and rhetorical simplifications

Once made these distinctions that are going to guide us in evaluating the instrument the Article 18 and its application when we show research data and conclusion, we can remind you that the contents of a policy are always expressing an intersection of objective elements and *social construction* aspects of the same problem. With this expression we mean to refer to how that problem is interpreted within specific scientific patterns, how it is represented by the media, how it is the object of common sense talks and how it becomes the object of political system's attention. Such social construction defines and outlines the positions confronting each other, brings about different-sign reactions and has an effect on actually-developed policies.

To this effect, we can say that a policy on prostitution is always the fruit of the way you perceive and define problem features, problem evolution and the characteristic features of people being the protagonists and, at the same time, of the way the needs and requests by those having a closer look at problem signs or those considering themselves victims of some situations correlated to that phenomenon come up.

Moreover, the following elements play a crucial role:

- the explanations that are given to those behaviours by scientific

- community members and the ability of the community itself to be listened to by the public opinion, *opinion leaders* and representatives of the political class;
- the common-sense explanations that coagulate around the phenomena themselves as outcome of media representations;
 - the interests of political system protagonists and public decision-makers at different levels;
 - the interests and practice expressed by institutions that have to put into effect the various policies;
 - culture and orientations of people working in those institutions.

In the development of control systems and contents that have imbued the institutional reactions to prostitution issue, it is possible to see how the weight of each above-mentioned factor is - with the passing of time and in the comparison of different environments - extremely changeable and depends on a set of circumstances and events that have to do with the standing features of specific social systems (and the underlying intersection of interests). Of course, there are periods and domains where operators' culture is predominant, others where consensus worries by the political system prevail, moments and domains where public opinion pressure imposes emergency solutions, others where the impact of the indications expressing the scientific culture is crucial.

If we consider the reality of contemporary Italy, it is quite easy to observe that we have multiple and conflicting orientations that can be largely traced to the burning dialectics - especially within local environments - between prostitution market structures and non-client citizens, and to the correlated media representations of that issue. Other orientations are expressing more serious and articulate analyses on the problem connotations, just as they are pointed out in some scientific researches and mainly in the examinations made by those working on the spot (from outreach units to many reception centres).

However, in this regard it is worth indicating that, whereas researches converge on some essential points we are going to speak about immediately,

operators' interpretations are not always homogeneous. The most evident case is the gap in some positions between those working on the spot and the results of the researches on the relationship between migratory routes and prostitution practice conditions. In general, such studies have pointed out that there is no ground for the schematic distinction between free prostitution - being essentially practised by Italian people - and forced prostitution that would feature the presence of foreign women, thus suggesting the need to place the matter of coming to prostitution experiences within a framework where there is understanding of migratory project contents, of expectations and interests that supported the migratory projects, of their execution modes and of the ways for adaptation to experimented situations and change of life conditions, in the course of events. The Parsec research⁴⁶ has already pointed out that the condition of trafficking in human beings - today so intensely treated as a topic - concerns a minority of the foreign women. All the following empirical remarks just confirmed this discovery. Nonetheless, from the operating point of view, more schematic views of the problem persist and become established and often they reveal a certain confusion between the phenomenological level and the judgements on the value of the phenomenon in itself.

Another example of gap between what emerges from the scientific analyses and media representation of the problem is the way in which the researches dwell upon social effects and reactions for the phenomenon presence and extension, whether when they specifically treated the problem perception within given territorial environments⁴⁷, or when they dealt with the problem within wider investigations on insecurity perception and on social worries of male and female citizens⁴⁸.

46 Parsec - University of Florence, *Il traffico di donne immigrate per sfruttamento sessuale: aspetti e problemi. Ricerca e analisi della situazione italiana, Rapporto di ricerca*, Rome, 1996; F. Carchedi et al. (eds.).

47 As an example, see: L. Malucelli, M. Pavarini, *Rimini e la prostituzione*, Quaderni di Cittàsicure, no. 13, 1998.

48 M. Barbagli, *Reati, vittime, insicurezza dei cittadini*, report commenting upon ISTAT survey, Rome, 1998; T. Pitch, C. Ventriglia, *Che genere di sicurezza. Donne e uomini in città*, FrancoAngeli, Milan, 2001.

Of course, these researches testify that responsibility is ascribed to prostitution (and organisations managing it), as it has an important role in fuelling insecurity feelings because of the high supply concentration in some places, the shameless showing of the “product” on sale, the aggressiveness in territory “occupation” and the nearly complete indifference to non-client citizens’ rights (residents in the streets where bargaining takes place or simple street users), so that we have common feelings of uneasiness, social alarm, requests for resolute measures.

But also in this case, the studies point out with sufficient clarity that the common orientation - differently from the representations of this aspect we find in the media - does not appear as univocal⁴⁹: in the behaviours and requests there are at the same time a “culpabilisation” of individual behaviours, requests for lawfulness and public order respect, requests to fight against international trade and trafficking in human beings, expressions of understanding and “sympathy” for the events occurred to exploited girls and consequently requests for humanitarian interventions.

In short, the research seems to grasp the issue complexity under different profiles and suggests an articulate approach that considers the facets and boomerang effects of impromptu or demagogical choices. However, in the policy definition, the “scientific” position has to deal with - and often loses out - the power of schematisations and simplifications made by the media (that we define in terms of public position rhetoric), with some visions of social protagonists (especially in the world of voluntary work and third sector) having a particular ability for self-representation, and finally with the interests of the political system.

The schematisations and simplifications made by the media stand out as they are featured by a rhetorical emphasising. As a matter of fact, different types of rhetoric are getting coagulated around the topic of prostitution. In turn, these different kinds of rhetoric fuel and permeate the common sense

49 Among the most significant attitude differences, Roberta Tatafiore reported some years ago the difference between men and women: R. Tatafiore, *Sesso al lavoro*, Il Saggiatore, Milan, 1994.

and the requests for solutions that are put forward to the political system (in its subdivisions). In the media and public debates, at least four images and interpretations of the problem clash, face one another and more often overlap so much that they get mixed up:

- Prostitution as guilty and provoking behaviour by individual people and organised groups, which is a *threat* for public order, health and morality, to be repressed and/or “restrained” in controlled areas and domains. In the *threat* rhetoric - a cornerstone in the policies that were first prohibitionist and then more and more regulationist - a new reference to illegal and clandestine immigration is added to the traditional ones, together with fear of “invasion” and “contamination” and concern for the violence of the gangs managing the trafficking and exploitation of human beings;
- Prostitution as *uneasiness* and *need* condition to be dealt with through social prevention and treatment policies. The rhetoric of prostitution as *uneasiness* and *need* puts forward again the idea of inferiority condition of the protagonists who are usually considered as weak people, victims of exploitation and anyway longing for liberation from an existentially and socially difficult situation. In this rhetoric, you find the expression of those never-forgotten tendencies to consider prostitution a bad thing in itself to be eradicated with not-well-specified preventing initiatives, and to treat a prostitute as a misfit person having difficulties and needing help, to whom specific interventions and services must be envisaged, with “therapeutic” or assistance purposes;
- Prostitution as a paradigmatic place for violence and exploitation, to such an extent that it gets the features of a modern *slavery* form to be radically fought, by punishing the evil people and “*setting the victims free*”. The rhetoric of *slavery* can either be correlated to the previous perspective or express - next to the right indignation for intolerable conditions - the need to identify a border that works as

50 M. Pavarini, “The ‘control’ on prostitution and regulatory illusions”, in V. Ferrari, P. Ronfani, S. Stabile, *Conflitti e diritti nella società transnazionale*, FrancoAngeli, Milan, 2001, p. 535.

a “*new regulating criterion*”⁵⁰, between an acceptable (free) prostitution and an unacceptable (forced) prostitution. In any case, it prevents recognising that many people are in an uncertainly-outlined condition, that a large number of migratory projects do not exclude - considering the radical feature of material needs or the perception of relative depriving situation⁵¹ - the recourse to prostitution, that the ties between victims and exploiters are often more complicated than you may see at first sight⁵² and that liberation from the most hardly violent conditions does not necessarily mean to wish to quit what is considered an advantageous activity or to quit bonds that are in any case important;

- Prostitution as way of expressing legitimate *freedom* rights to be protected like other forms of individual activities performed in the labour market, apart from regulating some of its aspects to guarantee its fruition. Like the previous one, even the rhetoric of *freedom* and choice of prostitution to be considered as “*sex work*” - a job like any other - seems to ignore many factual conditions real people are facing, and just enhances the abstract rights of the market and people entering and leaving the market at will.

2.3 Policies on prostitution at the intersection between rhetoric and interests

The interests of the political system are inserted in the above-mentioned types of rhetoric. In its subdivisions, of course the political system

51 It is possible to refer to this concept, following Barbagli’s trail, to explain why many migrants place themselves within unlawfulness and deviance environments, with reference to the expectations that fuel their migratory project. See: M. Barbagli, *Immigrazione e criminalità in Italia*, Il Mulino, Bologna, 1998.

52 In the above-mentioned Parsec report (now in F. Carchedi et al., you find in a schematic way five dimensions of the relationship between exploiter or pimp and “victim”, which can be placed in a *continuum* of possible degrees of independence and compulsion, of compromising, contractual, compatible, instrumental and shared nature respectively.

refers to different cultures - and so different sensitivity to one approach or another - but it more and more expresses itself with respect to the consensus margins that each approach guarantees at short term.

In other words, the matter does not escape from a more general situation of policies in the contemporary phase where the State role is cut down considering its regulatory function of social dynamics, a wide crisis in governance, a concentration of the attention and decisions on the contingencies emerging from time to time, importance of moral topics, a search for consensus at all costs and the cancellation of the differences among political-system parties.

Consequently, in this moment there is no systematic thinking and positioning of the matter within a unitary and regulatory framework that allows speaking about Italian policies on prostitution in its “strong” meaning. The system seems to be paralysed in a comparison between positions of principle coming from the various kinds of rhetoric that are facing one another and can be schematically represented in the following table:

Relationship between rhetoric and norm and policy options	
Type of Rhetoric	Norms - Policies
Uneasiness and need	Preventive-welfare
Slavery	New-prohibitionist
Freedom	Fully abolitionist
Threat	New-regulationist

Starting from these so far-away views, the components of the central political system (it would be better to say the system of Political Parties) have continued in a cyclical way to propose positions and projects for a regulatory organisation of the matter without being capable of finding a synthesis.

This does not mean there are no policies in their “soft” meaning, as they are urged by the deep change in the phenomenon, by its visible presence in specific territories, by the opposition of rights and interests being often mutually incompatible, by the resulting outburst of unrest at local level and

by the expression of social requests for control and restraint. Once stopped the confrontation on the possible regulatory framework change, the various protagonists on the scene have been urged anyway to define their own positions, to make their choice and to make interventions.

At a more general level, the role of the traditional State controlling agencies was thus played in different directions:

- repression of exploitation;
- control on the prostitutes working in a way that is incompatible with the dictates of the Merlin Law (in its most ambivalent parts being left to the discretion of control institutions);
- commitment as for the prostitution - immigration relationship.

As for the first direction, the general agreement on the need to fight against exploitation - particularly when committed towards minors - found in 1996 a regulatory outlet in the law no. 66 on sexual violence⁵³, but particularly in the only specific regulation passed in the last few years: the law no. 269 dated 03/08/1998 and meaningfully named "Norms against exploitation of prostitution, pornography, sexual tourism to the detriment of minors, as new forms to reduce to slavery". The need to fulfil the commitments required by the various international organisations (United Nations, European Parliament, Council of Europe), induced the Italian Parliament to make a legislative decision.

For the control objective - besides the often-discontinuous and fully-discretionary application of the norms on tolerance, abetting or soliciting in the Merlin Law - we also have recourse to a very heterogeneous body of a-specific norms that are applied to a prostitute, by affecting some of the prostitute behaviours (lack of identification papers, holding up the traffic and disguise) or by using for example the prostitute condition of irregular foreigner as an excuse.

This very large body of a-specific norms affects the prostitutes, leaving

53 In particular, Articles 3, 4, 8 and 9 concerning the constraint to perform or undergo sexual acts by means of violence or by limiting personal freedom.

them at the mercy of changing evaluations by the controlling agencies that adopt discretion criteria and so can satisfy the recurring requests for public order.

2.4 Article 18 as part of policy-making on prostitution and immigration issues

On the other hand, the meaning of the Article 18 can be better specified with reference to the third element in this approach, i.e. the connection between immigration/exploitation/prostitution, in order to combat trafficking in human beings (with special emphasis on the coercive means as ingredients of crime of “*enslavement*”).

The implementation of a system of measures and incentives with the aim of ensuring freedom to people who endure harsh and violent conditions, cannot be achieved in a one-way policy-making process, while the procedures and the actual constructions of laws are often conditioned by this process.

As evidenced by a common core of principles, in which the definition and implementation of specific social policies are deemed crucial and inevitable, protection and support are to be given to the victims of prostitution, whose specific *suffering* and different *needs* are to be carefully considered. Then this approach encompasses a wide range of strategic options, such as the “salvation” theory which is based on the rhetoric of “*slavery*” as an element always present in life and history of prostitutes, or the “harm reduction” theory in which support is provided to people in their life and work with the aim of dealing, at least partially, with their needs in terms of health and safety, and in terms of service availability and problem-solving. More realistically, the Article 18 is to be considered within the framework of the various opportunities which may be available, thus in compliance with the principle of self-determination of persons.

Besides these trends, the Article 18 is undoubtedly perceived as an instrument to combat prostitution, within the framework of the fight to counter international and supranational trafficking in human beings, with its

connotation of criminal phenomenon which has to be destroyed through a wide range of different tools, including the cooperation by the victims, who are the weaker party subjected to the threat of retaliation.

The EU strategies, both at national and supranational level, make a distinction between the "trafficking in human beings" in connection with exploitation and the simple assistance or aiding and abetting in illegal migration ("smuggling"). In fact the trafficking in human beings is more and more extensively perceived as a global issue, which requires an integrated and multidisciplinary approach, on both sides of supply and demand.

An integrated approach concerns strategies of action (prevention, fight and assistance to the victims), prosecution (on both sides of supply and demand) and policy-making (with the involvement of law enforcement agencies and the judiciary but also the civil society) and the international cooperation.

The residence permit under the Article 18 is an instrument of action which is provided on the side of supply, aiming at protection to victims and in this framework it is a crucial element of an integrated strategy to counter trafficking for exploitation of human beings on a global scale.

2.5 The relevance of the local dimension

The Article 18 projects have undoubtedly emphasized the role which is being played in recent years and in order to control prostitution by local authorities on one hand and by the private sector and the grassroots movements on the other.

In recent years, the role of local authorities has significantly developed since prostitution in streets and urban areas has given origin to warfare and conflicts, often on ethnic basis⁵⁴, whose settlement requires the involvement

54 Many are the publications on the issue of ethnic conflicts, it is worth to cite: V. Cotesta, *Sociologia dei conflitti etnici. Razzismo, immigrazione e società multiculturale*, Laterza, Bari, 1999; A. Dal Lago, *Lo straniero e il nemico. Materiali per l'etnografia contemporanea*, Costa & Nolan, Milan, 1998; D. Della Porta, "Immigrazione e protesta", in *Quaderni di sociologia*, vol. XLIII, 1999, no. 21, p. 14-44.

of local government. The general opinion is that the local authorities are increasingly and directly responsible for, and could have a significant impact upon, the feeling of unsafety which is perceived by citizens. They are also considered as potential mediators in local conflicts which affect urban areas⁵⁵, though public policy and order issues are within the competence of the State decentralised operative organs.

In addition, the local authorities have a tendency to develop strategies in this field for purely political reasons, i.e. to gain the support of the public, by means of strategies aimed at gaining consensus and by developing actions (often symbolic).

Midway between devolution and substitution of powers, between the real concern for the rights of citizens and the desire to be protagonist, the search of a pragmatic approach to harm reduction theories, etc., the political systems and the local authorities have embarked upon a major programme which includes a wide range of policies dealing with prostitution, and which could be expressed by means of three metaphorical key-roles: the "*police officer*", the "*good samaritan*", and the "*mediator*".

The local authorities (*Comuni* - namely Municipalities) which present themselves as "*police officer*" are something of a novelty in the area of measures to control and fight prostitution. Since the very beginning the State and its bodies (the vice squad in particular and the magistracy, in a more limited way) have been keeping control on such policies.

A clear illustration of the role of "*police officer*" that the *Comuni* intend to play is provided by the contents of municipal ordinances issued when the wave of social protest and the attention focused on the problem of prostitution by the media encountered the need for a better legitimacy and sanction of the public government.

It has to be considered that any policy aimed at reducing the demand by means of sanctions and penalties, i.e. for breaking the street regulations, is rather ineffective and is often perceived as a mere announcement or kind of a symbolic remedy, as evidenced by the constitutional perplexities and the

55 M. Pavarini, p. 538.

practical problems which arise shortly after its enactment. However, owing to its reiterated initiatives and extensive debate, such a policy-making is among the main orientations which are being offered at local government level.

The "*good samaritan*" is at present the most common approach. It was urged upon local authorities by many parties, i.e. by socially involved movements, by religious organisations, women's movements and prostitutes' and transsexuals' self-defence groups.

Its guidelines are inspired by the policies on harm reduction (outreach units, drop-in centres, etc.) and are aimed at protecting trafficked persons (through social protection paths for young trafficked women, specific programmes and special training for police and private and public officials, etc.).

In a few cases, which are becoming more and more frequent, the local authorities have dealt with this multi-faceted issue through a *project approach*, which is being developed through a public policy, which is not exclusively to be identified with the State policy-making, but which requires a common effort and involvement to which the public and private local agencies must contribute. On the other hand, the development of effective local policies was meant, since its very beginning, to provide citizens with public services which were designed for many purposes and which were supposed to tackle with this new and different issue too.

The third approach - the "*mediator*" - has a complementary value which is not antithetical in comparison with the role of the "*police officer*". It can be defined as a matter of principle and of practical consideration (although not always realistic).

As a matter of principle, it is connected with the self-determination of persons (of prostitutes, of their clients, of any other person) and with the duties and obligations of the local authorities, which consist in the management, mediation and negotiation together with the different actors⁵⁶, in order to settle conflicts of prevailing interests.

The practical consideration results from a clear recognition of failure, which is evident where policies are exclusively based on penalties and pu-

56 M. Pavarini, "La filosofia del progetto", in L. Malucelli, M. Pavarini.

nishment, and from the recognition of the limited capabilities of public aid and support policies. On the other hand, we shall consider the investment required by any project that is based on social mediation and negotiation with the prostitutes (as a way to change their conditions on the streets) along with some projects that are based on actions at the community level (with a special work on the social representations of this phenomenon and the close cooperation with citizens on this topic, and on proper interventions targeted at prostitutes' clients). So, some local authorities are not only trying to enable the general services already existing to cope with this phenomenon in its various aspects, but they are also trying to develop some *specific actions* within the same conceptualised framework we have mentioned before. For instance - thanks to the social workers who are present where conflicts are emerging - they are trying to carefully watch and listen to the needs and feeling of discomfort claimed by citizens in urban areas, along with carefulness, support and help to prostitutes.

According to the different models for its interpretation and implementation, by those who are actual actors in the above mentioned projects, Article 18 makes it possible to develop both the "*mediator*" and "*good samaritan*" policies, while the "*police officer*" policy could be adopted only in a restrictive way.

As far as the *grassroots movements* and NGOs in the *third private sector* are concerned, procedures and actions are remarkably diversified. This diversification, which is to affect inevitably the consideration and implementation of Article 18, is among other things the result of:

- the ideological characterisation of grassroots movements or NGOs: for instance, the Catholic and heterodox components, or the difficulties (but also growing awareness) arising from the need for mutual understanding between different associations or agencies that have different values and a different culture, although they work on the same objects;
- the definition of objectives and mission: within this framework, specific actions and tasks are compared in a comprehensive view, with a significant determination to act in different ways (i.e. to

- protect legal rights, to facilitate emancipation, to raise awareness among the local community, etc.);
- the will and ability to play a role as a political subject of those carrying out specific interventions. Also in this field, opinions differ on the opportunity to take an active part or not in a dialogue between politics and culture, and the opportunity either to be involved in a “political” debate on these topics, or simply to provide people with response and services they need.

3. Article 18 within the framework of criminal legislation aimed at combating crime against migrants

by *Maria Virgilio*

The text of Article 18 itself provides the connection between the legislation and the activity of the judiciary, aimed at combating crime. It contains dual reference to this subject.

One is direct and explicit. We find it in the “juridical” dimension of the legislation: the activity of the criminal police force, the investigation, or the proceedings must involve “one of the offences listed in Art. 3 of Law no. 75 of 20.2.1958 or those provided for in Art. 380 of the Code of Criminal Procedure”.

First of all, we must consider the offences provided for in Art. 3, Law no. 75 of 20.2.1958, that is - through the technique of reference to the regulations - all the various criminal acts provided for in the *Legge Merlin* (Merlin Law) to “combat the exploitation of prostitution of others” (recruitment, exploitation, aiding and abetting, trafficking in human beings, etc.). The most minor offences contained in Art. 5, (libertinage and solicitation) are not included, and, in fact, today, under Art. 81 legislative decree no. 507 of 30 December 1999, these offences have been decriminalised and now carry only administrative sanctions.

Reference to Art. 380 in the Code of Criminal Procedure indicates offences that are considered more serious under Italian legislation, those

requiring immediate arrest in cases of flagrant crime: offences for which the law has established life sentencing or a prison sentence of no less than a minimum of five years and a maximum of twenty years, and the whole series of offences listed in the law (organised crime, reduction to slavery, offences connected with terrorism or eversion, etc.).

Therefore, the offences covered under Art. 18 are wide-ranging and, in fact, the accepted interpretative praxis includes among the relevant offences even those to which no specific reference is made in Art. 380 of the Code of Criminal Procedure. As an example, we find Art. 12 against illegal immigration.

The second reference, contained in Art. 18, is much more indirect. This is the “social” aspect of the legislation, for whose application it suffices to ascertain a “situation of violence or of serious exploitation of a foreigner”. In this context, the range of crimes is enlarged even further, although only general reference is made.

We can therefore conclude, on this point, that the connection between Art. 18 and the perpetration of an offence is understood and taken for granted by the law, and that the latter, in its dual dimension, can refer to a wide and undefined range of offences.

Therefore, in the process of identifying the regulations contained in the Italian legal system designed to combat crime against migrants, the indications deriving from the text of Art. 18 can only be used with general reference, and recognition could be extremely wide-ranging, thus going beyond the scope of Art. 380 of the Code of Criminal Procedure, because they are legitimised by Art. 18 itself in its dual dimension and by applicative praxis that this has engendered.

However, we will not be concerned with the provisions of criminal law in an abstract context, but rather take into account, from the start, the question of the jurisprudence involved. In Italy, in fact, the innovative enthusiasm that legislation in other countries and international connections have demonstrated, comes up against conservatism in proposing innovation, which is compensated by innovative jurisdiction. In fact, the judiciary, considering the lack of or delay in solutions from the legislators, have taken the

opportunity to reinterpret old laws, that had been considered outdated and inadequate, in order to anticipate new legislation and to take on the task of “creating” the law. This is the so-called “jurisprudential law”, which considers that the laws must be examined not only from the point of view of what has been explicitly stated, but also considering the concrete applications deriving from them, and so, how they are to be interpreted by the judiciary and all those who have to make use of them (law in facts).

3.1 Law concerning immigration (1998-1999)

We will start with the most recent law, implemented under the previous legislature, that is the legislative decree no. 286 of 07.25.1998, “Consolidation on provisions concerning immigration discipline and rule on the foreigner condition”, integrated by the “Regulation to carry out the consolidation on provisions concerning immigration discipline and rule on the foreigner condition (D.P.R. 31 August 1999 no. 394), which created new serious offences. At present Art. 12 (“Measures against illegal immigration”) punishes those who carry out *direct activities to facilitate the entry of foreigners on Italian State territory*. Moreover, the provisions made under the third comma contain heavier penalties - prison sentences of between 5 and 15 years, equivalent to those given for the crime of reduction to slavery under Art. 600 of the Criminal Code - if the offence is committed *with the aim of recruiting persons for the purpose of prostitution or for the purpose of the exploitation of prostitution or regarding the entry of minors to be employed in illegal activity with the purpose of facilitating exploitation*.

3.2 Law against paedophilia

Law no. 3 August 1998, no. 269, “Regulations against the exploitation of prostitution, pornography, child sex tourism, as consisting of new forms of reduction to slavery”, as well as introducing some new elements into the

criminal justice system, has modified the Merlin Law, by increasing the sentences given to “whosoever induces into prostitution any person under the age of eighteen or whosoever facilitates or exploits prostitution” (Art. 600-*bis*). The previous law against sexual violence, no. 66 of 1996 also contained innovations. In fact, it redefined the age limits for the sexual act within the Italian legal system, now fixed at the age of sixteen, and introduced a measure that is quite definitely innovative in the system, which, for the first time, punishes the client of sex work. In fact “any person is punishable for carrying out sexual acts with a minor of between fourteen and sixteen years of age in exchange for money or for any other economic advantages”.

3.3 The *Legge Merlin* concerning prostitution

The so-called *Legge Merlin* of 20 February 1958 no. 75 “Abolition of the regulations concerning prostitution and measures to combat the exploitation of prostitution of others” is the law that *must* be referred to in this matter. The so-called abolitionist model inspires the law, that is, according to the historical meaning of the term, it states the principle of non-discrimination against and the equality of citizens of both sexes, and therefore tends to eliminate the incrimination and/or regulation of a matter that is considered to be private, such as prostitution. The main purpose of the Law of 1958 was to guarantee freedom and equality to women, by eliminating any form of medical or police control. For this reason, it was forbidden to impose any kind of record-keeping or health treatment (Art. 7). Consequently, the Merlin Law abolished brothels and imposed the closure of existing brothels. To guarantee abolition, the Law declared that no person could be the owner of a brothel (Art. 3, no. 1). It also classified the following conduct as criminal behaviour:

- Renting for use as a brothel (Art. 3, no. 2);
- Habitual tolerance (Art. 3, no. 3);
- Recruitment or facilitation (Art. 3, no. 4);
- Inducement or procuring and connivance (Art. 3, no. 5);

- Trafficking in human beings for the purposes of prostitution (Art. 3, no. 6). The *Legge Merlin* effectively contains two regulations against “trafficking in human beings for the purposes of prostitution”. These consist in Art. 3, which punishes, at no. 6), “whosoever induces a person to move to another country, or alternatively, to move to a place other than their habitual place of residence in order to practice prostitution, or whosoever is involved in facilitating this departure” and in no. 7), “whosoever undertakes an activity in national or foreign organisations and associations involved in the recruitment of persons for the purpose of prostitution or the exploitation of prostitution, or whosoever, in any form and with any means, aids or facilitates the actions or aims or the above-mentioned associations and organisations”;
- Aiding and abetting or exploitation (Art. 3, no. 8).

All these offences are given the same punishment, a prison sentence of between two and six years, contradicting the emphasis placed on the specific aim of combating exploitation, which is differentiated from aiding and abetting, and therefore from the conduct of those who encourage and facilitate prostitution, but this difference is then abandoned in terms of sentencing.

The law also included less serious offences, such as incitement to libertinage and solicitation (offences provided for in Art. 5 nos. 1-2, and, at present, in Art. 81 legislative decree 30 December 1999 no. 507 which have been decriminalised to administrative sanctions, and that are still used by the police authorities according to the *Comitato per i Diritti Civili delle Prostitute*). These punishable provisions already represented a contradiction with respect to the principle of non-intervention in the practice of prostitution. In fact, the law has never resolved its fundamental ambiguity: abolition of the regulation of prostitution or abolition of prostitution itself? This is demonstrated by the fact that, together with the regulations designed to combat the trafficking in human beings for the purposes of exploitation, the law contains some provisions that constitute a source of discrimination and, directly or indirectly, sanction the offer of payment for sex, such as the offence of solicitation, that clearly offered a way of criminalising subjects who practiced prostitution,

betraying the abolitionist idea in its fundamental aspect of safe-guarding the position of the prostitute.

The offence of aiding and abetting is even more ambivalent. This has legitimised applications - by the police authorities and the judiciary - aimed at damaging the prostitute through the incrimination of subjects coming into contact with the prostitute for affective reasons. The first to be penalised are the husbands, co-habitants, or partners, who, through receipt of money or gifts, are accused of profiting from illicit gains. Alternatively, the following conduct is considered incriminating: accompanying a partner to dinner with clients whom she receives in a hotel; accompanying or taking her by car to the place of work; carrying out surveillance; making a car available as a kind of changing room, so that changes in location, and therefore also the prostitute's activities, are made easier and quicker (Cass., Sect. III, 26 March 1983 no. 2704 and 29 May 1982 no. 5318).

In support of this trend in interpreting the law, some recent sentences have established that the aim of financial gain is not necessary in order to establish the offence, but that it is sufficient to demonstrate any participation connected with the earnings or profits resulting from the practice of prostitution. In this way, through the offence of aiding and abetting, it has been possible to charge those offering coffee and soft drinks to prostitutes in the street or, by providing wood, enabling them to light fires on the pavement.

These types of interpretation have even led to the punishment of prostitutes practicing in co-habitation (so-called, reciprocal aiding and abetting). The prostitutes themselves can also be incriminated for aiding and abetting in cases in which they assist or help each other, by accompanying each other to work by car, or sharing the costs of an apartment, or sub-letting the apartment (Cass. Sect. III, 9 July 1998, no. 2525). It is clear that the jurisprudence in question represents a strong obstacle to potential self-management initiatives for the organisation and improvement of the conditions governing the practice of prostitution, which would help them to move from the street, where they are highly exposed, to an apartment.

In this case, we report a phenomenon of a distortion of rights: regulations created to safeguard those practicing prostitution are interpreted and

used against the persons safeguarded.

This is illustrated by the most recent interpretation (GIP Perugia 08.18.2000), which recognized the offence of aiding and abetting in the conduct of a street client who accompanied the prostitute after the sexual act to her place of work. This was construed as aiding and abetting the exercise of her activity with the next client. What is more, the accusation was accompanied by the cautionary measure of sequestering the client's car, as the means permitting the offence to take place. In actual fact, this interpretation was immediately blocked by the appeals tribunal, which revealed that the offence must structurally presuppose a third party relation, with respect to the subjects of the sexual act, for a person to be guilty of aiding and abetting. However, in this application of the law, an attempt to adapt the *Legge Merlin* to a policy of incrimination of the client, which was certainly not intended by the law, has significantly been revealed. It is clear that the inspiration comes from the Swedish model of incriminating the client, in order to reduce the demand for trade in sexual acts.

This same philosophy of a policy of incrimination must be at the basis of action taken by various city mayors, who have passed specific injunctions imposing administrative sanctions for parking or obstructing the traffic on the part of clients' cars while bargaining over trade in sexual acts. The purpose of this action, which is highly lucrative for the municipal coffers (the fine is never contested and is almost always paid immediately!), is that of combating the visibility of prostitution, with the pretext of transforming a social problem into a problem of public order and public safety.

3.4 The "Rocco" Criminal Code of 1930

As far as the Criminal Code is concerned, it is obviously important to consider the plurality of the regulations safeguarding the individual from violence (in the various specific forms in which it occurs: physical, moral, sexual and economic violence, etc.), including violence against the individual, threats, injury, brutality, interruption of pregnancy without consent, kidnap-

ping, rape, etc.

To these forms we should add some specific regulations, aimed at combating organised crime.

Here we refer particularly to the offence of criminal association, referred to in Art. 416 Criminal Code - punishable with a prison sentence of between three and six years - designed to combat criminal organisations, to which Art. 18 actually makes specific reference, both when it describes the conditions of danger ("caused by an attempt to escape from the conditioning of an organisation committing one of the above-mentioned offences"), and when stating the aims of the residence permit ("to allow the foreigner to escape from a violent context and from the conditioning of criminal organisations").

But at present it is also important to bear in mind the contents of Art. 416-*bis*, the offence of association in a mafia-type organisation. It is interesting to note that the prerequisites for this type of offence have been identified in particularly savage Albanian organisations (3° comma: "An organisation can be considered to be of mafia-type when those taking part use the intimidation of the organisation, and of the conditions of subjugation and complicity deriving from it, in order to commit offences"). Note that, from a purely juridical point of view, Art. 416-*bis*, in accordance with Art. 51, 3-*bis* in the Code of Criminal Procedure, enters into the sphere of competence of the *Direzione Nazionale Antimafia* (National Anti-Mafia Authority), and that investigations in cases concerning this type of offence are directed by the *Direzione Distrettuale Antimafia* (District Anti-Mafia Authority). Moreover, in this context, it is possible to apply the special measures of protection provided to repress mafia-type criminality, which provide much greater guarantees than Art. 18 of the Consolidation on provisions concerning immigration discipline and rule on the foreigner condition.

The provisions of the Criminal Code deserve to be discussed in greater depth in relation to slavery, because there are considerable differences between the law and its interpretative application, since it was formulated and drawn up in 1930.

Offences against slavery, provided for in Articles 600 to 604, being the

competence of the Court of Assizes, are considered in the context of the safeguarding of the individual, seen as an expression of individual freedom. Various type of offence are provided for, all centred around the concept of slavery or conditions approximating to slavery: "reduction to slavery or analogous conditions", "trafficking in human beings and the slave trade", "alienation and the buying of slaves". The offence of "moral subjugation" was also included until 1981, when, in the context of the famous Braibanti case, brought to the Constitutional Court, it was removed from the legal system because of the lack of clarity and precision of the regulations.

Originally these laws were designed to repress acts of juridical slavery, which was therefore punished only if the offence was committed abroad against an Italian citizen, in countries in which the juridical status of slave still existed. It is claimed that these laws had been drawn up to fulfil the international obligations taken on by Italy at the Geneva Convention, held on 25 September 1926, which defined the state of slavery as "the condition of an individual on whom the attributes of property law, or some of these, are exercised". From this restricted context the concept was enlarged to include *practices analogous to slavery*, thereby also encompassing the other conditions and practices that reduce an individual to a state of subjugation ("servitude in lieu of debt, serfdom, cession of minors, promise, cession in marriage, cession of a woman without gaining or against her consent, in accordance with the authorised jurisdiction", according to the definition integrated and enlarged at the supplementary Geneva Convention held on 7 November 1956).

Art. 601 ("whosoever commits the offence of trafficking in human beings or the slave trade or of persons in conditions analogous to slavery is punishable with a prison sentence of between five and twenty years") referred to *trafficking in human beings* and to *the slave trade* as they had been organised at the beginning of the last century, consisting of a very different phenomenon, and sometimes even the reverse of the present phenomenon: this was, in fact, the deportation of white women towards colonial countries for the purpose of prostitution.

These offences were not applied for more than fifty years, and only from the end of the 80s have they been taken up by the judiciary, which has

used them in the context of the so-called “new” forms of slavery. Today, considering that slavery, as a juridical condition, is no longer recognised, and is even expressly forbidden by the legal system, the concept of “slavery or analogous conditions” has been adapted to fit practical situations approximating to it, that is, to those situations in which a person finds him/herself in a state of subjugation to the dominance of others, such as to provoke the annihilation of his/her personality and the reduction of the victim to the status of an object.

The crucial development, with the respect to former regulations, consists in a sentence from the *Cassazione a Sezioni Unite* (translator’s note: the Court of Cassation i.e. the Italian Supreme Court of Appeal) (20 November 1996 - 16 January 1997, no. 261 Ceric. and others) which has brought in to the regulations the condition of “an individual who - in regard to activity undertaken by others on his/her own person - finds him/herself (although nominally preserving the status of subject within the legal system) reduced under the exclusive domination of the agent, who materially uses him/her, obtains advantages or profits from him/her and disposes of him/her, in a way that is similar - according to our knowledge of history, that has filtered into the socio-cultural consciousness of modern society - to the way a ‘proprietor’ once exerted his own domination over a slave”.

After this interpretative innovation, the judiciary did not hesitate to apply the offences, while limiting its sphere of reference to the condition of slavery in cases of underage victims who are subjugated to exploitation in the field of employment, and not sex. A case was also brought on behalf of adults, drug addicts forced to do illegal work as cobblers (Cass. Sect. III, c.c. 7-24 September 1999, Catalini, Gazz. Giur. Giuffrè ItaliaOggi no. 39/99).

Therefore, the judiciary - at first - hesitated to use these offences to counter the phenomenon in its most common and actual aspect of adult female prostitution. As far as trafficking in human beings (and the exploitation of prostitution) is concerned, Public Prosecutors preferred to use other jurisdiction at their disposal for their investigations: the offences provided for in the *Legge Merlin*, criminal association, and individual offences, such as kidnapping and rape, as well as the new and heavily penalised offences con-

tained in the law on immigration.

However, in a second phase, the laws against slavery were applied even in a few cases referring to adult women. In this way, the sphere of applicability of Art. 600 of the Criminal Code has been enlarged to include charges that are compatible with the maintenance by the victim of a limited sphere of autonomy, provided that this was exercised in the context of control by a *dominus*, revocable at their discretion. More particularly, Sentence no. 1115 at the Court of Assizes in Rome of 23 February 2001, Bilbilushi (Cass. Pen. 2001, p. 1212, then confirmed by the Court of Assizes of Appeal on 25.10.2001) identified the object of safeguarding in the *status libertatis* of the person, for the purpose of preventing and punishing relations of domination and ownership causing an individual to be deprived of his/her ability to take decisions, with psychological subjugation and total negation of moral freedom. This does not exclude the concession, on the part of the dominator, of a reduced sphere of freedom and the maintenance of a highly limited sphere of autonomy for the subject, which may be the result of a concession on the part of the dominator, and which is exercised, in any case, within his/her sphere of control. Sometimes, more than violence or continual and repeated threats, the concession of minimal freedom - but still under the observation of the agent - can better infringe upon the will of the victim, inducing him/her to undergo the condition of subjugation more willingly. It results that the condition of affliction and constraint go beyond both the violence used in order to induce or coerce the victim into prostitution and the exploitation of the proceeds of this activity. This hypothesis also derives from an awareness that the coercion and subjugation of an adult will rarely and only in a limited number of cases prove to be total, and that, normally, as well as the compression of the ability to exercise self-determination by the victim through physical and psychological violence, other methods can be used, "obtaining, at the same time, some form of consensus and/or resignation on the part of the offended party, even through various forms of flattery or promises".

At this point we have completed our discussion of the regulations on this subject, illustrating a complex but heterogeneous panorama.

Various offences can be used as a means of combating crime in this

field. First of all, there are various spheres of competence: some requiring a single judge, some requiring a board of judges. As far as offences against the personality of the individual are concerned, these are the competence of the Court of Assize (Crown Court), and not of the Tribunals. Investigations in the context of Art. 416-*bis* are the competence of the *Direzione Antimafia* (the Antimafia Authority) and not of the ordinary courts. These courts all differ in matters of the safeguarding of rights and in the objectives and policies involved. For laws contained in the Criminal Code, it is, to all intents and purposes, unimportant whether the State has become involved by legal or illegal means; even the *Legge Merlin* is unconcerned with legality, at least in initial involvement, whereas this aspect becomes crucial in the context of the law on immigration.

On the other hand we need to bear in mind the complexity of the subject, which is collocated in a grey area on the fringes of various laws, which differ both in subject and collocation. National laws exist alongside international ones, criminal laws overlap with administrative ones, laws belonging to the Criminal Code must be read together with the provisions of laws existing outside the Code but that cover specific sectors, such as the Merlin Law on the subject of prostitution, or the Law of immigration (Consolidation on provisions concerning immigration discipline and rule on the foreigner condition).

However, it is undeniably true that in Italy the legal system at present regulating the subjects of prostitution and the trafficking of human beings refers to laws made a considerable time ago. The so-called *Legge Merlin* on prostitution goes back to 1958, and the Criminal Code regulating reduction to slavery and trafficking in human beings was written in 1930.

The legislators - at the time of writing - have only marginally intervened on this subject, in 1998 in the context of the Law on Immigration and in the so-called Law against Paedophilia. But the structure of Criminal Law has undergone no significant changes, except for introducing the tool under examination in this research, the residence permit for social protection, which is certainly innovative.

Already in the previous legislature a programme of reform had been drawn up, referring to the offence of reduction to slavery, which is actually planned for implementation during the present legislature, in the version approved on 12/21/2001 by Parliament and at present being discussed by the Senate Commission, as no. 885, "Measures against trafficking in human beings". As for prostitution, programmes of reform have been provided by representatives from all the parties, as well as a popular bill for reform promoted by the Radical Party.

Therefore the need to re-examine the possible options for legislation and policies regarding these subjects is obviously recognised, even, where possible, through a comparison with other systems, although both the legislation in other countries and the international regulations have already registered the need to impose new policies regarding prostitution and to combat, through new jurisdiction - including Art. 18 - trafficking in human beings for the purpose of sexual exploitation, and for other purposes. We refer, in particular, to the proposal by the EC Commission for a Council of Europe directive (Council directive "on the short-term residence permit issued to the victims of action to facilitate illegal immigration or trafficking in human being who cooperate with the competent authorities").

4. National data concerning residence permits, projects and procedures, and connected juridical routines

by Valeria Ferraris, Davide Petrini, Franco Prina and Maria Virgilio

4.1 Data concerning residence permits

The only available source of statistical data relating to Article 18 residence permits has been carried out by the Department for Equal Opportunities⁵⁷.

In fact, Istat (the Central Statistics Institute), when dealing with foreigners living in Italy, only distinguishes between data concerning residence permits on the basis of certain types of permit (for work, family, religion, study, tourism, political asylum), while residence permits for social protection are included under the heading "other", which also contains many other types of residence permit, of considerable statistical importance. Consider, for instance, that the heading "other" contains all the permits given to minors. Moreover, the data now being published refer to the year 1999, which was the very first period of enforcement of Article 18.

57 This lack of quantitative information has been emphasised in the supplementary Report presented to the United Nations by the working party for the Convention on the rights of minors, relating to violations regarding children's rights, particularly as regards the problems of underage prostitution, exploitation of child workers, poverty and discrimination against foreign minors living in Italy.

The statistical data provided by the Department for Equal Opportunities indicate that, out of 5,577 users placed under social protection programmes in the course of the first year of implementation, many of these users did not make a formal request to be given a residence permit for social protection.

Only 1,755 requests were received, consisting of 31,5% of the total number of cases undertaken by the social assistance and integration programmes.⁵⁸

Chart 1 – Participation in the programme of social assistance and integration

Participation in the programme	Users
Request for participation in a programme	1,755
Request for residence permit	1,148
Number of residence permits issued	833
Requests withdrawn or incomplete	95

Source: Department for Equal Opportunities, 2001

According to what has emerged during monitoring carried out by the Inter-ministerial Committee for the implementation of Art. 18, most of these requests are supported by charges submitted to the *Questura*. Therefore, Art. 18 judicial proceedings amount to approximately 70-80% of the total number.

Out of the total number of requests for a residence permit, 833 were granted, corresponding to approximately 72,6%.

According to the statistical data provided by the Inter-ministerial Committee, the average time period needed to obtain the residence permit is about 8-12 months. Therefore, some of the requests made in the course of the period relating to the first year of the Art. 18 Programme (March 2000-February 2001) are still waiting for a reply.

⁵⁸ For an analysis of the reasons why almost 70% did not request a residence permit, Commissione Interministeriale per l'attuazione dell'art. 18, *Analisi conclusiva dei dati relativi al monitoraggio dei progetti di protezione sociale art. 18 (T.U. n. 286/98), Avviso 1999 (periodo marzo 2000 – febbraio 2001)*, Rome, 2001.

4.2 Data on projects and individual experiences

The data presented herein are those taken from the final analysis on the monitoring of projects carried out by the Art. 18 Interministerial Committee. Data refer to March 2000-February 2001⁵⁹.

The analysis concerns the data collected from the monitoring of 47 projects aimed at the support and integration of victims of trafficking of human beings for the purpose of sexual exploitation. Projects were co-financed by "Avviso 1999" and put into effect between March 2000 and February 2001 all over Italy, although with some differences in their geographical distribution: 24 in the northern regions (24), 13 in the central regions and 13 in the south of Italy (islands included).

The report drawn up by the Commission highlights the following elements:

- 1) Many are the ways through which women targeted by the projects establish a contact with the different types of support structures and institutions involved. This means that the initial contact occurs under different forms: either it is the result of the personal, voluntary initiative of women themselves or it is promoted by social organisations, police forces, single citizens and, for the most part, clients. During the period under examination, 5,577 sexually exploited women have been taken in charge, meaning with that the progressive build-up of a constructive relationship. However, this process did not always result in further protection measures granted to the women involved or in their emancipation. Summing up the items "clients" and "citizens" (among whom there could be clients as well) the percentage totals to 22%, that is about one fifth of the total.

59 Idem.

Chart 2 – Ways of contact and persons/organisations involved

	N.	%
Police forces	777	13.9
Local institutions/authorities	285	5.2
Other no profit organisations	538	9.6
Clients	906	16.2
Citizens	333	6.1
<i>Numero Verde</i> (Toll free number)	590	10.6
Street units	762	13.6
Voluntary contacts	654	11.7
<i>Numero Verde</i> advertisement	215	3.8
Not specified	322	5.8
Other	195	3.5
Total	5,577	100.0

Source: Department for Equal Opportunities, 2001

- 2) The analysis of nationalities shows that the main country of origin is Nigeria (more than 50% of the total). The Commission explains this high percentage both with the fact that Nigerian migrants account for a considerable portion of total immigrants in general and that the women who come in contact with social support structures are those belonging to the first generation of women inducted to prostitution (those who have been living in Italy for many years), who, after the financial dependence based on the paying back of the sum obtained to enter Italy is over, could be looking for a different way of life, through the legalisation of their stay in the country of arrival.
- Other countries of origin are Albania, Moldavia, Romania: these women generally look for support to escape from the violent dominance of their oppressors or try to rebel and abandon prostitution.

As to the age of the women involved - a general distinction was made between minors and adults only - the analysis underlines that although minors account for only 4.3%, this figure is nevertheless worrying as it includes 240 very young women victims of the trafficking of human being for the purpose of sexual exploitation (mainly from Albania and Romania).

Chart 3 – Countries of origin of the trafficked women and information about their age, whether adults or minors (absolute values and %)

Country of origin	N.	%	Minors	%
Albania	864	15.4	89	37.1
Bulgaria	82	1.5	3	1.2
Colombia	124	2.1	1	0.4
Morocco	97	1.7	-	-
Moldavia	408	7.3	40	16.7
Nigeria	2,896	51.8	40	16.7
Romania	293	5.3	45	18.8
Russia	122	2.1	1	0.4
Ukraine	308	5.5	3	1.2
Italy	41	0.6	2	0.8
Other countries	378	6.7	16	6.7
Total	5,577	100.0	240	100.0

Source: Department for Equal Opportunities, 2001

- 3) Practical activities included, on the one hand, street work, social secretariat activities, accompaniment to social services and, on the other hand, the taking in charge of the women involved.

Street work involved direct contact with women in the street, through the recourse to specially equipped cars or campers, as well as the distribution of leaflets advertising the opportunities offered by local support structures. Women contacted by street units total to 18,880, but only one third of them had a further interview at the main office that supports units activities and only 3,573 women accepted the proposal to resort to local social structures.

Social secretariat activities, that is counselling/information activities about the possible resources available at a local level, resulted in 9,000 interviews. About half of the women contacted in this way subsequently had longer and in-depth interviews aimed at establishing short-term as well as long-term needs and priorities or at presenting and offering different support actions in the view of integration. During the period under examination, 1,180 women chose to resort to local social support structures for long-term help.

The report underlines that "out of the total women taken in charge (that is 5,777 cases), 38.7% of them (2,196 cases) received immediate support while the remaining 61.3% was handed over to local support structures". The accompaniment to local social and sanitary services is not always easy, as staff professional skills, their ability to communicate with this type of users and to win their confidence play a major role. On this point, the report stresses the importance of cultural mediators.

Social protection programmes and the issuing of a residence permit for social protection reasons do not apply to all the women contacted.

Here it is worth reminding that only about 30% of the women taken in charge by social support structures has asked to enter into the programmes, as listed by the Committee, because of: family members exposed to the risk of retaliation by women's "protectors", the hope that exploitation relationships develop into negotiable ones, with subsequent advantages for the women involved, lack of minimal pre-requisites necessary to the application of Art.

18 (possession of a residence permit, expulsion order, relapse into crime, etc.); scarce understanding of the opportunities offered by regulations, no intention to drop prostitution.

- 4) The reception and accommodation of women who asked for support can occur either in specific structures, such as communities or 'flight homes' or families.

Specific protected structures accommodated 1,185 women while 287 voluntary families accepted to participated in the programme. In this case figures correspond to those concerning women who applied for a residence permit (that is 1,148) and this is due to the fact that the women admitted to reception and accommodation programmes are those who intended to abandon prostitution networks. In some of the aforementioned structures, women can enjoy self-managed spaces (406 cases), while almost everywhere community dynamics are put into practice and supervision is carried out. Also in this case, cultural mediation is a must, as communication is often difficult.

Reception represents the main phase of the recovery process of women's social, cultural and professional identity as well as the strengthening of their capacity to react against past life conditions and to build up self-awareness and self-esteem.

- 5) All professional counselling activities often involve analysis and balance of competences, psycho-social counselling, teaching of Italian language, vocational training courses. As to the job market, activities involve finding a job, proposing internship, identifying private or public enterprises (volunteers organisations, social cooperatives, production cooperatives, etc.). However the report underlines that this is still a weak point, as the number of recruitments in private enterprises, with regular contracts is still low (about 15% of the total).

Social and professional counselling is sometimes a permanent

service offered by the structure in charge of the support programme, while in other cases it is an external service which operates on the job market (although mainly resorting to its 'protected' segment, such as social cooperatives, and only partially to ordinary private enterprises).

As to methodology, this set of activities involves four phases: identification of user's needs, evaluation of user's abilities (analysis/balance of competences) and local connections (family/friendly relationships, opportunities offered by Provincial Employment Centres, etc.), personal counselling in order to identify the most suitable opportunities and provide information on how to approach the job market, finding a job opportunity (contact with potential employers, trial periods, training on the job under the supervision of social operators, etc.).

4.3 Data on relevant judicial activities

At national level, no complete data concerning repression of crimes against migrants are available and the same may be said for data related to Art. 18.

Some partial data have been collected by the Interministerial Committee for the implementation of Article 18, only referring to the first year of the Programme for social assistance and integration.

The "Final report on the monitoring of social protection programmes set by Art. 18 (March 2000-February 2001)" drawn up in June 2001, quotes the "Answer of Public Prosecutor to the PNA circular no. 1147/g/99 of the 8 July 1999, by the National Antimafia Authority". It is stated that for the following crimes:

- Mafia association;
- Criminal association;
- Prostitution;
- Abduction;

- Kidnapping for the purpose of extortion;
- Reduction to slavery - trafficking,

legal proceedings have been initiated against 890 persons whose country of origin is:

Chart 4 – Data concerning the nationality of people undergoing criminal proceedings (up to June 1999, absolute values)

Nationality	no. of people
Italian	349
Albanian	293
Nigerian	37
Moroccan	33
Slav	19
Chinese	17
Pakistani	17
<i>(Omissis)</i>	

Source: National Antimafia Authority, Circular letter PNA no. 1147/g/99, 8 July 1999

The number of legal proceedings totals to 407 while the main Public Prosecutor's Offices involved were those of Lecce (135); Modena (39); Ancona (31); Busto Arsizio (22); Arezzo (21); Bolzano (17) Trani (16).

The answer to a similar circular no. 8516/G/98 of 5 June 1998 reported 170 judicial proceedings, referring to the following crimes:

- Mafia association: 1
- Criminal association: 12
- Abduction: 27
- Reduction to slavery - Trafficking: 5
- Kidnapping for the purpose of extortion: 6
- Regarding prostitution: 158

Reports from Public Prosecutor's Office also stated that for these judicial proceedings there were 240 female plaintiffs, mainly coming from Albania.

In that same year, before the enforcement of Art. 18, pending proceedings were (we limit our analysis to the most significant realities and underline that Lecce recorded just one pending proceeding): 22 in Venice; 15 in Prato; 13 in Lucca; 12 in Treviso.

The National Antimafia Public Prosecutor's Office presented the data referred to the pending investigations of public prosecutor. Up to February 2001 there were 17 pending investigations which involved 159 suspected persons, all of them Albanians, charged with the accusation of mafia association (Art. 416-*bis*), however no data classification is available on this issue.

Another source of information is the Data Processing Centre of the Ministry of Interior, which, therefore, only acquire data concerning investigation initiatives of judicial police.

Both these surveys do not highlight their connection with Art. 18, they just record judicial activities concerning specific domains.

The same holds true for Istat⁶⁰ judicial statistics, which also take into account, beside investigations, the sentences pronounced. Istat judicial statistics of the year 2000 show that crimes concerning the exploitation and favouring of prostitution *reported* to judicial authorities total to 3,511 for the year 2000, with an increase of 39% from the previous year. For these crimes, individuals *sentenced* in the year 2000 (divided by type of crime and sex) were 758, out of which 212 women. For the same year further 13 individuals were sentenced for reduction to slavery (or for trafficking and commerce of human beings for the purpose of slavery or for conveyance and purchase of human beings for the purpose of slavery). Istat statistical data are also processed by the Ministry of Interior which made them available in its annual "Report of the Ministry of Interior on Security in Italy, 2001". Here we find data concerning "cases of induction to and exploitation of prostitution, for which judicial authorities initiated penal proceedings, years 1970-1999". We also

60 *Istituto Nazionale di Statistica* (Italian National Institute of Statistics).

find data on “people arrested or people charged of favouring illegal immigration, still free”. People accused, but still free (Art. 12, paragraphs 1, 3 and 5, legislative decree no. 286/1998); people arrested in 1999: 925; people arrested in 2000: 1061; people accused, but still free in 1999: 960; and people accused, but still free in 2000: 993.

Summing up, there are no national data available to highlight the connection between Art. 18 and the repression of crimes against migrants.

5. Enquiry methods: choices, tools, problems

by *Davide Petrini, Franco Prina, Maria Virgilio, Chiara Bertone, Valeria Ferraris and Isabella Orfano*

5.1 General aspects and problems of the enquiry

The inquiry was carried out according to the following criteria and procedures:

- a) acquisition and analysis of data concerning the residence permits issued, refused, withdrawn by police headquarters;
- b) acquisition and analysis of data relating to the judicial proceedings (if available);
- c) acquisition and analysis of relevant court proceedings and their results;
- d) acquisition and analysis of social protection programmes carried out by those structures interested in participating in the programme;
- e) acquisition and analysis of reports (as requested by Art. 25 and 26 Art. of the regulations);
- f) comparison with other Member States' penal systems, analysis of international regulations and collection of legal norms destined to combat crimes against migrants, with specific attention to similar institutions to Article 18;
- g) in-depth studies concerning the aforementioned analysis in sample areas, through the collection of the aforementioned data, inte-

grated with:

- data on the specific phenomenon and analysis of local specificities;
- distribution of questionnaires to the different institutional 'actors' involved;
- interviews with key-informants;
- collection and filing of the full text of sentences.

The following phases were planned:

- Set up of a research group;
- Study of the existing literature and collection of data at national level;
- Survey conducted in the sample areas (case studies and gathering of sentences);
- Collection of legal texts and regulations of other Member States, necessary to perform a comparative study;
- International meeting aimed at comparing provisional results;
- Draw up of a final report.

The five case studies have been carried out in Turin, Venice, Modena, in the regions Marche, Abruzzo, Molise and in Lecce¹. These areas have been chosen according to two main criteria. First, different situations have been considered, as far as geographical location, local contest and related problems were concerned, with the purpose of presenting a wide range of modes of application and impact of Art. 18. Secondly, areas have been selected taking into account the presence of structures involved in the management of projects devised by Art. 18 and characterised by well-known and long-lasting experience as well as effective organisation.

In the following paragraphs the tools used are presented, making a distinction between the three aspects under examination. Firstly, it should be

1 The case studies can be found in the Italian version of this Research Report (Chapter II). The authors of the case studies are: Valeria Ferraris, Chiara Bertone and Isabella Orfano.

pointed out that the inquiry encountered difficulties, limits and many problems. In all the areas under examination we had to tackle problems concerning both the helpfulness of bodies and institutions (often and more simply of the persons who, within these bodies and institutions, played specific roles) and the nature of the data provided by them and available to researchers.

Some difficulties emerged at organisational level, as far as material availability and 'cultural' attitude of these bodies are concerned, vis-à-vis of considering themselves the target of enquiry and research. Although the difficulties shown by certain bodies and people - sometimes reluctant to external examination (let's think about police forces for example) or which are often requested to collaborate with various studies and supply data (associations involved with problems the public opinion is interested in) - are generally understandable, nevertheless our enquiry suffered from limited access to data, difficulties in making comparisons, crosscheck information, getting satisfactory answers to our requests, etc.

Although these obstacles are frequently encountered by enquiries on police forces and by enquiries aiming at comparing data on public policies (data which are supplied by different sources) or analysing and evaluating the activities of service providing structures, attention must be drawn on two points.

The first one focuses, at a general level, on the need to promote an 'openness culture' and a common effort to harmonise data collection systems by all subjects involved in the application of an innovative policy, as the one examined herein. This would facilitate comparative analysis of data and evaluation of projects and actions as well as the effectiveness of the policy itself.

The second one focuses on the great efforts made by our research team to collect the data presented herein. Their nature is such that only a series of trends can be drawn as to the meaning and effectiveness of the actions undertaken.

By saying that, we refer to the general result of our enquiry, considering all the areas under examination. Within each case study, specific attention will then be given to the adjustments made and the problems encountered in

each specific area, so that a better understanding of our research study can be achieved.

5.2 Study of juridical aspects

As to the juridical aspects, we focused on the research of data collected by police headquarters about the residence permits issued through the application of Art. 18, legislative decree no. 286/1998 and by associations about the juridical aspects of social integration and data on court cases.

Beside the collection of quantitative data, some interviews have been conducted to facilitate the interpretation of data themselves. Interviewees were: layers, judges, police forces staff (police headquarters flying squad and immigration department, judicial police).

Data collected were not homogeneous for all the areas under examination.

As to police headquarters involved in the survey, the following data have been required:

- number of applications for the issue of residence permits Art. 18 according to the country of origin, sex, age of the applicant and outcome;
- Number of applications for the renewal of residence permits Art. 18 according to the country of origin, sex, age of the applicant and outcome;
- Number of applications for the conversion of residence permits Art. 18 according to the country of origin, sex, age of the applicant and outcome;
- Number of complaints reported to the police headquarter year by year.

The data collected are not homogeneous. Part of them have been supplied only by some police headquarters (for example the number of application for residence permits for social protection were supplied by Turin and Venice police headquarters only) and the period they refer to is not the same.

This is partly due to the absence of structured data and, consequently, to the need to resort directly to police headquarter staff involved with the issue of residence permits as well as to collect data according to specific criteria. Furthermore, data referring to the first years of regulations enforcement are not available (1998 and 1999).

This difficulty could not be overcome by resorting to the researcher in charge of examining juridical aspects as files Art. 18 contain secretive information pertaining to police investigations still under way, which are not available to researchers. However, apart from specific, isolated cases, police headquarters were generally helpful, even when complete data could not be obtained.

As to data supplied by different bodies on the juridical aspects of the integration and social protection programme, we must note that the absence of personnel expert in juridical matters made these data scarcely significant and that data available were hardly reliable and often incomplete.

For the collection of data by relevant bodies and associations, a form had been prepared, but it could be successfully used only for the *Associazione On the Road* and partially for the *Servizio Città e Prostituzione* of the Municipality of Venice-Mestre.

The collection of quantitative data concerning judicial proceedings related to Art. 18 of the legislative decree no. 286/1998 was hindered by the absence of precise indications concerning the existence of the residence permit for social protection in the databases of Public Prosecutor's Offices as the issuance of a residence permit for women who reported a crime and the necessary authorisation of the magistrate are phases of a *sub*-proceeding within the main penal proceeding, and therefore it is not the object of any statistical survey.

We tried to overcome this difficulty by analysing the number of pending penal proceedings related to the matter under investigation.

As to the specific problems concerning the quantitative and qualitative study on penal proceedings directly related to the issuance of a residence per-

mit for reasons of social protection, this subject is dealt with in a specific paragraph.

5.3 Study of reception and support projects

The study of the specific features and modes of action of projects financed in order to develop support and social integration programmes as provided by Art. 18, involved different kinds of tools.

Firstly, we analysed existing studies on the issue of prostitution and trafficking in human beings for the purpose of sexual exploitation in the areas under examination as well as any related written material produced by the structures and bodies involved in the project: from the reports about the implementation of the project itself to the list of the rules characterising reception shelters. On the basis of this material, we were able to outline the framework of the projects themselves and to start an in-depth study by interviewing key-informants and filing all relevant data concerning the women enjoying supporting and social integration programmes.

The interviewees involved persons in charge of the projects related to Art. 18 within the bodies and structures that developed them and aimed at collecting information on the practical implementation of the projects themselves and outlining the network activated to carry out all required activities, including informal contacts with police headquarters and public prosecutor offices. The interviews also aimed at understanding how people in charge of the projects perceive the problems related to the phenomenon of migrant prostitution, the needs of women participating in the programmes and the role assigned to the activities connected to Art. 18 as an answer to these needs or as a way to mitigate the phenomenon itself.

Single experiences have been filed starting from the material provided by competent bodies and institutions. In the five areas under examination researchers drew up 361 personal files. The aim was to outline the itinerary experienced by single individuals: from illegal immigration to prostitution and their present experience within the social protection and integration pro-

grammes. To this purpose information was gathered about the events related to their accommodation, training, social and professional integration, affective relationships, procedures connected to the residence permit (issuance, renewal, conversion). Timing and duration of these experiences were also taken into account in order to highlight their interconnection. One of the main purposes of the research was also to identify the connection existing between the issuance of a residence permit and the acquisition of emancipation through the finding of a job and an accommodation.

This method highlighted some problems, partly due to the method itself and to the nature of the data collected. The data provided by the people in charge of the projects were often:

- *Not homogeneous*: personal files or databases provided by bodies and institutions gather different types of data and information, so that elements such as school diplomas, date of arrival in Italy, date of contact are not always available;
- *Not precise*: the same information or datum is not precisely defined, so that date of contact can refer to the first contact with street units or to the date at which the woman was taken in charge by institutions;
- *Not correspondent* to data gathered by police headquarters in the area under consideration.

Despite these difficulties, comparison between information given by interviewees and data gathered through the study of personal files allowed to understand the development of different situations. It was also possible to identify the differences between the models described by interviewees and the development of personal experiences, through data gathered by individual files.

5.4 Study of the relevant judicial activities

The purpose of the study of judicial activities related to the issuing of a residence permit for social protection reasons is to set the institution of Art.

18 within the framework of regulations aiming at combating crimes against migrants.

We intended to identify the connection existing between the application of Art. 18 and the repression of specific crimes as well as the dynamics of the connection existing between administrative and penal procedures.

To this purpose it would have been necessary to monitor court proceedings, thus going beyond the phase of judicial investigations promoted by the Public Prosecutor's Offices and the judicial police on the basis of the cases reported by individuals who obtained a residence permit for social protection reasons, find out the relevant judgements and the results of possible further instances. This was only partially achieved, also when completeness was theoretically possible.

The idea was to start from single procedures concerning the request and issuance of the residence permit Art. 18 and to reconstruct judicial proceedings. It was then necessary to identify each single case of application of Art. 18 and follow it in its chronological development, from investigations to court decision. Unfortunately this method was impossible to implement and it was also impossible to gather data at national level. It was certainly important to understand which kind of crime repression originates from the application of Art. 18 and, subsequently, from the collaboration of clandestine immigrants and which ones is independent from it. But, on the one side, police headquarters only provided quantitative and not specific, individual data and on the other, associations and structures involved are not generally obliged to compile a personal record, devised at national level, which would allow to reconstruct the itinerary followed by each single case, including judicial proceedings and their outcome. This is why no records are available on this matter.

This gap of information at national level was filled in through the carrying out of specific research studies at judicial offices and the gathering of some court decisions. The gathering, filing and analysis of court decisions (we gathered 450 judgements) was supplemented by interviews to the staff of associations involved in the projects, police headquarter officers, public prosecutors, lawyers of plaintiffs and defendants. The gathering of court deci-

sions occurred through a crosscheck: from Art. 18 to court cases and vice-versa. This procedure encountered considerable problems.

Starting from Art. 18, we first contacted associations and *Questura* and found out that to the same procedure involving Art. 18 may correspond several defendants and judicial proceedings, with their court decisions. As a matter of fact, it may occur that for each request of a residence permit (and then for each passive subject) correspond not only several defendants who acted together in the criminal actions, but also several judicial proceedings and consequently several court decisions. Court proceedings can then imply the separation of the same court case in different parts, for example when some of the defendants are minors or some of them ask to resort to alternative forms of trial settlement (plea bargaining or abbreviated procedures).

The same holds true for problems concerning local competences: it may happen that an administrative procedure for the application of Art. 18 which falls within the competence of the police headquarter of a province (such as Bologna) concerns one or more judicial proceedings which fall within the competence of different judicial offices (such as Trieste).

Difficulties were also encountered when research started from judicial offices. From court decisions it is impossible to go back to Art. 18. As a matter of fact, despite the connection existing between the procedure for the issuance of a residence permit and the judicial proceeding, court documents reveal no trace of this connection. Judgements do not make any reference to Art. 18 and more often than not, the examination of the whole court material does not reveal any reference to the administrative procedure, whose acts (such as the proposal or the opinion of public prosecutor) are not filed by the judicial authorities or, sometimes, are filed separately from the documents referring to the relevant court proceedings.

This outlines the existence of "watertight compartments" between judicial proceedings and procedures for the issuance of the residence permit. Consequently, starting from the judicial proceedings, it is impossible to identify the cases concerning the correspondent administrative procedure.

This is why we decided to rely on a substantial criterion, according to the type of crime: we identified and gather information about all those judi-

cial proceedings concerning prostitution and/or trafficking of human beings, regardless of their connection with Art. 18 administrative procedure.

Another difficulty we encountered was connected to the time factor and, subsequently, to general results and evaluations. As court proceedings can last a long time, there were very few definitive decisions between 1999 and today. This holds true also as far as trials in which defendants are present (because of the expiry of custody measures). This means that jurisprudence on this matter is still evolving. On the other hand, application of Art. 18 is not certainly a static matter. Art. 18 has been implemented since 1999, and its importance is increasing as it involves crucial political and social issues, such as immigration and prostitution.

From the technical point of view, the issue concerns different norms: penal laws, administrative regulations, norms on the penal code and extra-code norms which regulate specific sectors such as the Merlin law on prostitution or the legislative decree no. 286/98, national and international regulations.

Chapter II

The study of sentences

1. The judicial activity aimed at combating crimes against migrant

by *Maria Virgilio**

1.1 The selection of sentences

As previously mentioned in Chapter I, 5.4, the methodological problems of legal research activities connected with the issuance of residence permits for social protection reasons required to develop the work using the study of sentences, selecting them according to the main criterion of type of charge notified by the Public Prosecutor (indictment).

The consultation of indexes, registers and sentence collections and the photocopying of the entire text were performed in accordance with the organisational requirements of the relevant legal departments. And therefore, despite the willingness of magistrates and civil servants, the collection is a bit incomplete for a number of the legal offices considered.

The most complete is the one of Modena, which was also the subject of the case-study on Article 18. Here it was possible to cross-check legal

* The research on sentences and data processing were performed by Teresa Degenhardt and Nadia Del Frate. Research on child prostitution issues was conducted by Teresa Degenhardt.

information with the gathered data on Art. 18 supplied by project workers, as well as interviews with key-informants (lawyers, magistrates, police officers).

Systematic collections conducted according to more limited and targeted criteria were carried out in areas that coincide with the case studies: Lecce and Turin.

Other offices examined in the research were chosen within the framework of the "Oltre la strada" project, run by the Emilia-Romagna Regional Authority, and covered, in addition to Modena, by Bologna, Ravenna and Rimini.

Decisions were also gathered randomly from other legal offices, because information was made available, and was believed to be significant, these were: Rome for the reduction to slavery; Trieste under Art. 416-*bis* of the Penal Code, "mafia-type association"; Perugia for the application of favouring the client of prostitution and more that together provided an interesting jurisprudence observatory (as well as the reality of facts brought to the judge's attention).

The forthcoming table includes the cities and trial offices involved in the research project. The number of received decisions and the year of reference (year in which the motivation of the sentence is deposited) is shown for each trial office. The last column bears the received rulings involving cases of under-aged prostitution, which it should be pointed out, in addition to cases in which persons under eighteen years of age were the injured party, also include certain cases referring to subjects under twenty-one, in accordance to the aggravating circumstance under Art. 4, no. 2 of the Merlin law, later amended by Art. 18 of law no. 269/1998, which eliminated the clause "if the deed is committed against a person under twenty-one years of age".

Summarising table of the sources used for the selection of sentences

Place	Law Court	Year of deposition	Number of sentences	Minors
Bologna	Criminal Court	1997-2000	72	17
	Crown Courts (<i>Corte di Assise</i>) ¹	1997-2000	3	1
	Magistrates' Chambers (<i>G.I.P.</i>) ²	1998-2000	36	10
	Magistrates' Chambers	2001	22	Not specified
Modena	Criminal Court	1997-2000	39	9
	Crown Courts	1997-2000	2	2
	Magistrates' Chambers	1997-2000	55	5
Ravenna	Criminal Court	1997-2000	58	17
	Crown Courts		0	0
	Magistrates' Chambers	1998-2001	34	3
Rimini	Criminal Court	1998-2000	41	7
	Crown Court	1996	1	1
	Magistrates' Chambers	1998-2000	24	3
Torino	Crown Courts	1998-2001	3	
	Crown Courts of Appeal (<i>Corte di Assise d'Appello</i>) ³	1998-2001	2	
	Magistrates' Chambers	2000-2001	5	
Lecce	Magistrates' Chambers	2000-2001	3	
	Court of Appeal	2000-2001	3	
	Crown Court of Appeal	2000-2001	1	
Catanzaro	Tribunal	1999	1	
Brindisi	Crown Court	1998	1	
Como	Crown Court	2000	1	
Cagliari	Crown Court	2000	1	
Perugia	Criminal Section	2000	2	
Roma	Crown Court	2001	1	
	Crown Court of Appeal	2001	1	
	Magistrate	2001	1	
Total			413	75

- 1 The *Corte di Assise*, in the Common Law system, partially corresponds to the *Crown Court* (Great Britain) and to the *Federal Judicial District* (United States). *Corte di Assise* can also be translated as "Court of Assize" (De Franchis, 2001), in this Chapter we will adopt the British term "Crown Court".
- 3 *G.I.P.* (*Giudice per le Indagini Preliminari*) is the Responsible Magistrate for preliminary investigations.
- 4 *Corte d'Assise di Appello*: "Crown Courts of Appeal" or "Court of Assize of Appeal".

1.2 Modena

1.2.1 Collection criteria

The Modena collection was conducted in the following trial offices:

- G.I.P. (*Giudice per le indagini preliminari*: Responsible Magistrate for preliminary investigations);
- Criminal Court - trial;
- Crown Courts (*Corte d'Assise*).

The first phase was composed by the consultation of the General Register of Sentences pronounced between 1997/2000 in each office.

The sentences were selected in reference to the indications given in the register and, in particular, to the notes on the type of charge (which could be different from the crime title given in sentence).

The crime titles considered are:

- Art. 3, L. 75/58 (*Abolition of the prostitution regulation and fight against the exploitation of prostitution of others*);
- Art. 416, Penal Code (*Criminal association*);
- Art. 519, Penal Code (*Rape*);
- Art. 521, Penal Code (*Indecent assault*);
- Art. 581, Penal Code (*Assault*);
- Art. 582, Penal Code (*Personal injury*);
- Art. 600, Penal Code (*Reduction in slavery*);
- Art. 600-bis, Penal Code (*Child prostitution*);
- Art. 600-tris, Penal Code (*Child pornography*);
- Art. 600-quater, Penal Code (*Possession of pornographic material*);
- Art. 600-quinquies (*Tourist initiatives aimed at the exploitation of child prostitution*);
- Art. 601, Penal Code (*Slave trading*);
- Art. 602, Penal Code (*Transferring the ownership (of property) to*

- another and purchase of slaves);*
- Art. 605, Penal Code (*Kidnapping*);
 - Art. 609-bis, Penal Code (*Rape*);
 - Art. 609-*quater*, Penal Code (*Sexual intercourse with minors*);
 - Art. 610, Penal Code (*Violence*);
 - Art. 612, Penal Code (*Threat*);
 - Art. 12, Legislative decree no. 286, dated 25 July 1998 (*Consolidation act on provisions concerning immigration discipline and rule on the foreigner's condition* - Law no. 40, dated 6 March 1998, Art. 10).

A large number of sentences were therefore selected and then 96 were short listed as being in some way pertinent to the subject of prostitution:

- 55 sentences passed by Magistrates' Chambers;
- 39 sentences passed by tribunals;
- sentences passed by Crown Courts.

For each sentence, the copy of the entire text was extracted and a summary sheet was compiled.

We would like to point out immediately that the sentences collected in this way gives extremely *varied and heterogeneous* prostitution situation, which ranges from cases of paedophile to cases of exploitation of prostitution of spouses, to hypotheses of prostitution of Italian women in private lodgings and gypsies that exploit the prostitution of female family members.

Out of 96 sentences, 63 refer to cases of street prostitution (33 Magistrates' Chambers, 28 Tribunal, 2 Crown Courts).

1.2.2 *The authors of the crimes*

Defendants: 203 in 96 sentences, broken down by nationality and age as specified:

Nationality

of the author of the crime	<i>Men</i>	<i>Women</i>	<i>Total</i>
Italian	72	14	86
Albanian	55	3	58
Nigerian	6	11	17
Slav	10	1	11
Other	19	12	31
Total	162	41	203

Age

of the author of the crime	<i>Men</i>	<i>Women</i>	<i>Total</i>
Between 18 and 25	44	12	56, of which: 40 foreigners, 16 Italians
Between 26 and 30	41	6	47, of which: 38 foreigners, 9 Italians
Between 31 and 35	28	9	37, of which: 31 foreigners, 6 Italians
Between 36 and 40	17	7	24, of which: 6 foreigners, 18 Italians
Between 41 and 50	14	3	17, of which: 2 foreigners, 15 Italians
Between 51 and 60	13	2	15, of which: 0 foreigners, 15 Italians
Between 61 and 70	4	2	6, of which: 0 foreigners, 6 Italians
Over 70	1	0	1, of which: 0 foreigners, 1 Italian
Relation to passive subject: 34	Strangers: 169		

The majority of the authors of crimes were male, between 18 and 40 years of age, belonging to non-EU countries or Italian, strangers and relatives to the passive subject.

Regarding the 63 sentences for street prostitution, the total number of defendants was 130, broken down by nationality and relation to passive subject as followed:

Nationality**of the author of the****street prostitution crime**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
Italian	29	1	30
Albanian	52	3	55
Nigerian	6	10	16
Slav	10	1	11
Other	12	6	18
Total	109	21	130

Relation to passive subject

	<i>Total</i>
Husband	4
Fiancée	3
Cousin	1
Stranger	122
Total	130

1.2.3 The injured parties

Offended persons: 209 in 96 sentences, broken down by nationality and age as followed:

Nationality**of the injured parties**

	<i>Total</i>
Italian	22
Albanian	17
Ukrainian	8
Nigerian	10
Moldavian	6
Other	19
Not specified	127 (of which 74 foreigners)

Age of the injured parties	<i>Men</i>	<i>Women</i>	<i>Total</i>
Under 10	5	7	12
Under 14	0	3	4
Under 18	0	6	6
Under 21	0	10	10
Youths	0	98	98
Not specified	0	79	79
Total	5	204	209

The narrative of the sentences would suggest that the injured parties whose nationality are not specified can be presumed to come from non EU countries: the crime is described as having been committed, in general, against persons originating from Albania or ex-Soviet Union countries (Russia, Ukraine, Moldavia) or Eastern European or Central African countries.

In sentences where the age of the injured party is not specified, terms such as “young woman”, “minors” and “girls” are used.

The profile of the typical passive subject suggested by the data available is that of a young woman originating from a non-EU country. Out of the 63 sentences for street prostitution examined, 154 were women involved as passive subjects of the following nationalities:

Nationality of the injured parties for street prostitution	<i>Total</i>
Albanian	17
Ukrainian	8
Nigerian	8
Moldavian	6
Other	21
Not specified	94 (of which 67 foreigners)
Total	154

1.2.4 *The charges made: the prevalence of Art. 3 of Law no. 75/58*

Crime title according to count of indictment:

Art. 3, Law 75/58 (Abolition of the prostitution regulation and fight against exploitation of prostitution of others): 381, broken down as followed:

Art. 3, no. 2, L. 75/58	Rental of property for prostitution purposes	7
Art. 3, no. 3, L. 75/58	Tolerance of prostitution within a place open to the public	2
Art. 3, no. 4, L. 75/58	Recruitment of persons for prostitution purposes	68
Art. 3, no. 5, L. 75/58	Induction to prostitution in public places or place open to the public	37
Art. 3, no. 6, L. 75/58	Induction to transfer in another nation or place different from usual residence for prostitution purposes	58
Art. 3, no. 7, L. 75/58	Participation in domestic or international associations or organisations dedicated to the recruitment of persons for prostitution purposes or for the exploitation of prostitution	32
Art. 3, no. 8, L. 75/58	Abetment: 154 and exploitation of prostitution: 149	177

Aggravating circumstances under art. 4, L. 75/58:

Art. 4, no. 1, L.75/58	Violence, threat, deceit	147
Art. 4, no. 2, L. 75/58	Against person under 21	48
Art. 4, no. 3, L. 75/58	By close relative	14
Art. 4, no. 4, L. 75/58	By guardian	1
Art. 4, no. 5, L. 75/58	Against employee	1
Art. 4, no. 7, L. 75/58	Against more than one person	175

Art. 3, d.l. 416/1989 conv. in L. 39/1990 *concerning regulations on political asylum, entry and residence of non EU citizens and regularisation of non EU citizens and stateless persons already present in national territory:*

Art. 10, L. 40/98 (<i>Dispositions against illegal immigration</i>):	5
Art. 12, d.lgs. 286/1998 (<i>Dispositions against illegal immigration</i>):	12
Art. 13, d.lgs. 286/1998 (<i>Administrative deportation</i>):	1
Art. 378, Penal Code (<i>Assisting offender</i>):	2

Art. 416, Penal Code (<i>Criminal association</i>):	60
Art. 416, comma 1, Penal Code:	42
Art. 416, comma 2, Penal Code:	18
Art. 482, Penal Code (<i>Counterfeit committed by individual</i>):	4
Art. 489, Penal Code (<i>Usage of counterfeit documents</i>):	3
Art. 424, Penal Code (<i>damage followed by fire</i>):	4
Art. 519, Penal Code, comma 2 (<i>Rape</i>):	1
(close relative against person under 16 years of age)	
Art. 527, Penal Code (<i>Indecent act</i>):	2
Art. 567, Penal Code (<i>Forgery of personal status</i>):	2
Art. 572, Penal Code (<i>Maltreatment in family or towards children</i>):	4
Art. 582, Penal Code (<i>Actual bodily harm</i>):	4
Art. 600, Penal Code (<i>Reduction to slavery</i>):	10
Art. 600-bis, Penal Code (<i>Child prostitution</i>):	8
Art. 600-quarter, Penal Code (<i>Possession of pornographic material</i>):	1
Art. 605, Penal Code (<i>Kidnapping</i>):	16
Art.609-bis, Penal Code (<i>Rape</i>):	2
Art. 609-quarter, Penal Code (<i>Sexual intercourse with minors</i>):	30
Art. 610, Penal Code (<i>Violence</i>):	5
Art. 612, Penal Code (<i>Threat</i>):	4
Art. 628, Penal Code (<i>Robbery</i>):	4
Art. 629, Penal Code (<i>Extortion</i>):	3
Art. 648, Penal Code (<i>Handling of stolen goods</i>):	6
Art. 697, Penal Code (<i>Illegal possession of arms</i>):	1
Art. 3, L. 110/1975 (<i>Forgery of arms</i>):	1
Art. 4, L. 110/1975 (<i>Possession of weapons or object for assault</i>):	2
Art. 23, L. 110/1975 (<i>Illegal weapons</i>):	4
Art. 4, L. 895/1967 (<i>Dispositions for checks on weapons</i>):	2
Art. 18, comma 1, L. 194/1978 (<i>Regulations on the social protection of motherhood and the voluntary termination of pregnancy</i>):	1
Art. 73, D.P.R. 309/1990 (<i>Illegal production and trafficking of psychotropic or mind-altering substances</i>):	3
Total counts of indictment:	624

Street prostitution:

Art. 3, L. 75/58 (*Abolition of prostitution regulation and fight against the exploitation of prostitution of others*): 281

Art. 3 no. 2, L. 75/58	Rental of property for prostitution purposes	1
Art. 3, no. 3, L. 75/58	Tolerance of prostitution in a place open to the public	/
Art. 3, no. 4, L. 75/58	Recruitment of persons for prostitution purposes	56
Art. 3, no. 5, L. 75/58	Induction to prostitution in public places or place open to the public	32
Art. 3, no. 6, L. 75/58	Induction to transfer in another nation or place different from usual residence for prostitution purposes	56
Art. 3, no. 7, L. 75/58	Participation in domestic or international associations or organisations dedicated to the recruitment of persons for prostitution purposes or for exploitation of prostitution	12
Art. 3, no. 8, L. 75/58	Abetment: 105 and exploitation of prostitution: 99	124

Aggravating circumstances under Art. 4, L. 75/58:

Art. 4, no. 1, L. 75/58	Violence, threat, deceit	111
Art. 4, no. 2, L. 75/58	Against persons under 21	38
Art. 4, no. 7, L. 75/58	Against more than one person	109

Art. 3 d.l. 416/1989 conv. in L. 39/1990 <i>concerning regulations on political asylum, entry and residence of non EU citizens and regularisation of non EU citizens and stateless persons already present in national territory:</i>	18
Art. 10, L. 40/98 (<i>Dispositions against illegal immigration</i>):	5
Art. 12, d.lgs. 286/98 (<i>Dispositions against illegal immigration</i>):	12
Art. 416, Penal Code (<i>Criminal association</i>):	41
Art. 416, comma 1, Penal Code (<i>Association conduct</i>):	23
Art. 416, comma 2, Penal Code (<i>Participation in association</i>):	18
Art. 600, Penal Code (<i>Reduction to slavery</i>):	10
Art. 600-bis, Penal Code (<i>Child prostitution</i>):	8
Art. 605, Penal Code (<i>Kidnapping</i>):	8

Art . 609-bis, Penal Code (<i>Rape</i>):	2
Others	49
Total counts of indictment:	434

In the vast majority of cases, recruitment, induction and trafficking (charges no. 4, 5 and 6 of the Merlin Law) can be linked to the exploitation of street prostitution. By contrast, organised crime - under Art. 4, no. 7 of the Merlin Law - also operates in other types of prostitution.

1.2.5 Authority involved

Authority involved	Number of trials	Total amount of defendants involved
State Police	21	104
Carabinieri	13	34
Municipal Police	2	6
Municipal Police and Carabinieri	1	4
Highway Police	1	1
Not specified	31	61

1.2.6 The outcome of trials for defendants

Plea bargains: total 71 (of which 20 Italians and 51 foreigners), of which:

Plea bargains with magistrates: 53 (14 Italians and 39 foreigners)

- Sentences of max. 1 year:	8
- Sentences of max. 18 months:	26
- Sentences of max. 2 years:	20
- Fine of up to L. 1.000.000:	18
- Fine of up to L. 2.000.000:	5
- Fine of up to L. 3.000.000:	1

- With suspended sentence: 38
- Overall prison sentence: 76 years and 6 months
- **Average prison sentence: 1 year and 5 months**

Tribunal plea bargains: 18 (of which 6 Italians and 12 foreigners)

- Sentences of max. 1 year: 5
- Sentences of max. 18 months: 1
- Sentences max. 2 years: 9
- With continually increased sentence: 2
- Fine of up to L. 1.000.000: 10
- Fine of up to L. 2.000.000: 3
- With suspended prison sentence: 15
- Overall prison sentence: 23 years and 8 months
- **Average prison sentence: 1 year and 3 months**

Magistrate conviction using shortened procedure: 12 (of which 4 Italians and 8 foreigners)

- Sentences of max. 2 years: 4
- Sentences of max. 5 years: 7
- With continually increased sentence: 1
- Fine of up to L. 10.000.000: 9
- Fine of up to L. 30.000.000: 1
- With suspended prison sentence: 1
- Overall prison sentence: 26 years and 8 months
- **Average prison sentence: 2 years and 2 months**

Overall convictions: 72 (of which 31 Italians and 41 foreigners)

Tribunal convictions: 64 (of which 29 Italians and 35 foreigners)

- Sentences of max. 2 years: 9
- Sentences of max. 5 years: 39
- Sentences of up to 10 years: 15
- Sentences of up to 20 years: 10

- With continually increased sentence:	1
- With fine of up to L. 10.000.000:	39
- With fine of up to L. 38.000.000:	1
- With fine of L. 46.700.000:	1
- With fine of L. 60.000.000:	1
- With fine of L. 70.000.000:	2
- With suspended prison sentence:	-
- Overall prison sentence:	390 years and 4 months
- Average prison sentence:	5 years and 8 months

Crown Court convictions: 8 (of which 2 Italians and 6 foreigners)

- Sentences of max. 2 years:	4
- Sentences of max. 10 years:	3
- Sentences of 12 years:	1
- Sentences of 28 years:	1
- Fine of up to L. 20.000.000:	5
- Fine of L. 22.000.000:	1
- Fine of L. 350.000.000:	1
- With suspended prison sentence:	3
- Overall prison sentence:	33 years and 2 months
- Average prison sentence:	4 years and 1 month

Magistrate acquittal with shortened procedure: 3 (Italians)

- Because no crime exists:	3
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Tribunal acquittal: 38 (of which 26 Italians and 12 foreigners)

- Because no crime exists:	35
- For not having committed the deed:	4

Magistrate discharge: 9 (of which 5 Italians and 4 foreigners)

- Because no crime exists:	2
- Because the deed does not constitute a crime:	3
- For not having committed the deed:	2

- Due to death of offender: 2

Tribunal discharge: 4 (Italians)

- Due to death of offender: 3
- For prescription of crime: 1

Tribunal transmission of deeds to Public Prosecutor under Art. 521 of the Penal Code for the deed being different to the accusation: 1 (Italian)

1.2.7 *Aggrieved party*

The aggrieved party is involved in 15 sentence:

compensations paid:

- of L. 100.000.000 (provisional) in favour of 14 aggrieved parties each;
- of L. 65.000.000 (provisional) in favour of 1 aggrieved party;
- of L. 20.000.000 (provisional) in favour of 5 aggrieved parties each;
- of L. 10.000.000 (provisional) in favour of 1 aggrieved parties each;
- of L. 5.000.000 (provisional) in favour of 1 aggrieved party;
- of L. 50.000.000 (settlement payment) in favour of 1 aggrieved party;
- to be paid in separate judgement in favour of 2 aggrieved parties.

1.2.8 *Two cases of obligation to slavery*

In conclusion, it seems fitting to consider two Crown Court sentences, both involving the crime of reduction to slavery, with different outcomes.

The first sentence involves two Slavs and two Italian defendants accused of deeds committed against two Moldavian women. The Court excludes reduction to slavery because it believes that in order to qualify for this crime, elements other than the recruitment for, induction to and exploitation of prostitution are required. More precisely, it was believed significant that the injured party had left its country of origin declaring its intent to exercise prostitution in Italy and that the sum paid was not for the purchase of the two women, but rather for the agency fees paid for the service of contacting young people willing to become prostitutes. On appeal, the defendants made a plea-bargain.

The second sentence, in chronological order, concerns Albanian defendants and injured parties. On several occasions, the reasons for the ruling underlines the absolute passivity and inferiority of the women “by culture and family tradition used to follow the person that in any given moment decides their life and takes care of their primary assistance requirements”: the subjects involved are illiterate and even incapable of making a telephone call.

The symptomatic elements of reduction to slavery are thus identified:

- acquisition of power over the woman through purchase or violent ways;
- deprivation of freedom of movement;
- threats or violence from the protector for intimidation goals;
- heavy labour;
- deprivation of all financial resources.

The sentence is particularly interesting due to the role of a woman co-defendant who is convicted of concurrence in slavery with a mitigating factor of the slightest importance under Art. 114 of the Penal Code.

1.3 Bologna

The detailed illustration of the research conducted in the Modena area makes it possible to be briefer in presenting the results obtained elsewhere, for which we will only report the most significant and specific data and that

contrast with those examined thus so far:

131 sentences gathered of which:

- 72 in the Criminal Court (1997-2000);
- 3 in the Crown Court (1997-2000);
- 58 by Magistrates (1998-2000), of which 22 in year 2001.

This last datum is particularly significant as it demonstrates the gradual increase in legal initiatives following the entry into force of Art. 18.

The data gathered do not contrast significantly with those collected for Modena.

In the Crown Courts no procedure was recorded for so-called slavery crimes under Art. 600 of the Penal Code and subsequent amendments.

Generally speaking, the hypotheses contested are all those of the Merlin law, and Art. 12 of the Legislative Decree no. 286/98 ("Consolidation on provisions concerning immigration discipline and rule on the foreigner's condition"). Crimes of kidnapping and extortion are also recorded.

In the cases in which defendants were convicted, the following compensation was settled:

- L. 50.000.000 (provisional) in favour of 2 aggrieved parties each;
- L. 25.000.000 (provisional) in favour of 1 aggrieved party;
- L. 5.000.000 (provisional) in favour of 1 aggrieved party.

1.4 Ravenna

Research in the Ravenna offices resulted in the collection of 92 sentences, 58 in the Criminal Court (1997-2000) and 34 in Magistrates' Chambers (1998-2001).

The data correspond to those collected in Bologna, with just one difference, which we will highlight: the gender of the injured party. Out of the 136 injured parties, 16 were transsexuals. This trial information obviously

underscores a particularity of the commercial sex market in Ravenna. Once more in Ravenna, the use of model fact situations, which have now become traditional, is accompanied by charges of crimes against personal protection, and include threats and bodily harm.

In the cases in which defendants were convicted, the following compensation was settled:

- L. 25.000.000 (provisional) in favour of 1 aggrieved party;
- L. 1.000.000 (provisional) in favour of 1 aggrieved party.

1.5 Rimini

Research in the Rimini offices resulted in the collection of 66 sentences of which 10 referred to cases of underage prostitution. An Observatory on Child Prostitution has recently been established in Rimini, run by the Local Health Unit of Rimini (Help Project), within the Emilia-Romagna Regional Authority's "Oltre la strada" project.

General data correspond to averages for other parts of Emilia-Romagna.

In this area, we analysed in particular the 10 cases of prostitution of minors:

- 7 Criminal Court (1998-2000);
- 1 Crown Courts (1996);
- Magistrates' Chambers (1998-2000).

Rimini law courts: the total number of offenders is 35, of which 28 were men and 7 women. There were 10 cases of street prostitution.

Nationality of the author of crime	<i>Men</i>	<i>Women</i>	<i>Total</i>
Albanian	20	3	23
Slav	7	2	9
Italian	1	1	2
Spanish	0	1	1
Total	28	7	35

Age of the author of crime	Total
Between 20 and 25	16
Between 26 and 30	8
Between 31 and 40	9
Between 41 and 50	0
Over 50	2
Total	35

Nationality of injured parties	<i>Men</i>	<i>Women</i>	<i>Total</i>
Albanian	0	3	3
Slav	0	1	1
Ukrainian	0	2	2
Romanian	0	1	1
Not specified	0	6	6
Total	0	13	13

Age of injured parties	Total
Under 18	5
Between 18 and 21	8
Total	13

Qualified relation with passive subject: 6, not specified: 4

Cautionary measures: 24 out of 35 defendants

Crime title according to count of indictment:

Art. 3 L. 75/58 (*Cancellation of regulation on prostitution and fight against exploitation of prostitution of others*): 28

Art. 3, no. 8, L. 75/58	Abetment and exploitation of prostitution	21
Art. 3, no. 4, L. 75/58	Recruitment of persons for prostitution purposes	4
Art. 3, no. 6, L. 75/58	Induction to transfer in another nation or place different from usual residence for prostitution purposes	2
Art. 3, no. 3, L. 75/58	Tolerance of prostitution within a place open to the public	1
Art. 3, no. 5, L. 75/58	Induction to prostitution in public places or place open to the public	0
Art. 3, no. 2, L. 75/58	Rental of property for prostitution purposes	0
Art. 3, no. 7, L. 75/58	Participation in domestic or international associations or organisations dedicated to the recruitment of persons for prostitution purposes or exploitation of prostitution	0

Aggravating circumstances under Art. 4, L. 75/58:

Art. 4, no. 2, L. 75/58	Against person under 21	12
Art. 4, no. 7, L. 75/58	Against more than one individual	8
Art. 4, no. 1, L. 75/58	Violence, threat, deceit	5
Art. 4, no. 3, L. 75/58	By close relative	0

Other counts of indictment contested:

- Art. 648 c.p.	3
- Artt. 482-477 c.p.	3
- Art. 378 c.p.	2
- Art. 582 c.p.	1
- Art. 19, co. 3 and 5, L. 194/78	1
- Art. 12, co. 1 and 3, d.P.R. 286/98	1
- Art. 3, co. 1, L. 40/98	1
- Art. 604 c.p.	1
Total counts of indictment:	41

Trial outcomes for defendants:

Acquittal for counts of indictment:

- Art. 3, no. 6, L. 75/58	1
- Art. 3, no. 8, L. 75/58	5
- Art. 378, p.c.	5
- Art. 604, p.c.	2
- Art. 648, p.c.	2
- Art. 477, p.c.	1
- Art. 482, p.c.	1
- Art. 10 L. 40/98	1

Out of 41, 18 counts of indictment not considered

Plea bargains: total: 5 (all foreigners), of which:

Magistrate *plea bargains:* 3

- 1 year sentence and L. 400,000 fine;
- 1 year and six month sentence and L. 600,000 fine;
- 2 year sentence and L. 4,000,000 fine.

Tribunal *plea bargain:* 2

- 2 year sentence and L. 2,000,000 fine:

Magistrate *conviction using shortened procedure:* 0

Total tribunal convictions: 21

- 10 months imprisonment and L. 800,000 fine	2
- 2 years imprisonment:	1
- 2 years and 1 month imprisonment and L. 800,000 fine:	1
- 2 years and 3 months imprisonment and L.3,000,000 fine:	6
- 2 years and 6 months imprisonment and L. 4,000,000 fine:	2
- 3 years imprisonment:	1

- 3 years and L. 700,000 fine:	1
- 3 years' imprisonment and L. 3,000,000 fine:	1
- 3 years and 6 months imprisonment and L. 5,000,000 fine:	1
- 4 years imprisonment and L. 6,000,000 fine:	2
- 4 years and 2 months imprisonment and L. 1,200,000 fine:	2
- 4 years and 6 months imprisonment and L. 2,000,000 fine:	1
- Total imprisonment:	79 years and 9 months
- Average imprisonment for 30 convictions:	2 years and 9 months
- Suspended sentence:	1

The Crown Court sentence, in 1996, concerns a case of obligation to slavery and trading in slaves against an association of 17 Nigerians (12 women and 5 men) who exploited 14 young women, some of whom were minors and almost all Nigerian (1 Liberian, 1 Jamaican and 1 from the Ivory Coast), in street prostitution, some of whom were blood relatives or spouses of the defendants. The main defendant, who was also charged with criminal participation and conspiracy and under Art. 3, no. 7 of the Merlin law, was condemned to a sentence of 8 years and 6 months.

1.6 Lecce

Research in the Lecce trial offices focused on sentences on slavery before December 2001 only. The seven sentences gathered refer to five cases. They all also contain the charge of assistance in illegal immigration under Art. 12 of the Consolidation Act on Immigration.

The first case is of the Magistrates' Chambers with shortened procedure and refers to an Albanian defendant and a Moldavian injured party. In addition to obligation to slavery, charges were also made under Art. 601 - slave trading - and the assistance to clandestine immigration. The injured party was sold various times and was also raped. The conviction was for 7 years imprisonment plus compensation of L. 80,000,000 to the aggrieved party. On appeal, with a plea bargain, the sentence was reduced to 5 years and 8 months.

The second case involves an Albanian defendant for deeds against three women, two Romanians - of whom one was a minor - and one Moldavian woman. Once more this case also brought to light a series of sales. In actual fact, the women had been obliged to prostitution in Albania and suffered sexual assault from their protectors. Under the shortened procedure, the Magistrate passed a sentence of 4 years and 6 months imprisonment. On appeal, the sentence was reduced to 4 years and 2 months.

The third case involves two Albanians and an Italian facing the same charges as in the other cases, in addition to criminal participation and conspiracy, abduction and exploitation of prostitution. Under the shortened procedure, the magistrate sentenced the main defendant to 6 years imprisonment, and was acquitted of charges of criminal conspiracy.

The Court of Appeal of Lecce hears the case of an Albanian man convicted to a first-degree prison sentence of 8 years and 6 months for assistance in clandestine immigration and recruitment of foreign women for prostitution purposes. The conviction is confirmed. This is the highest sentence given, despite the fact that there were no charges for slavery-linked crimes.

None of these cases included charges of rape, despite the fact that it is highlighted in the ruling and is considered a symptomatic element of reduction to slavery.

Rape charges were however made in the last case, together with other crimes that appear frequently in those cases described above as well as forgery of identification documents. Both defendant and injured party were Albanians. Brindisi Crown Court convicted the defendant to a sentence of 12 years imprisonment for all the charges brought against him. Following a plea bargain, Court of Appeal of Lecce reduced the sentence to 9 years and 6 months.

1.7 Turin

Research in the Turin trial offices resulted in the collection of ten sentences referring to eight cases. Cases involving model fact situations concerning reduction to slavery were sought in Crown Courts (and Crown Appeal Courts).

The first case involved 10 Albanians accused of the reduction to slavery of two Albanian minors, as well as induction to and exploitation of prostitution, criminal participation and conspiracy and assistance against a number of Albanian women.

The main defendant was convicted for reduction to slavery and received a prison sentence of 8 years and 6 months. In 1998, the sentence was confirmed following appeal. The absolute subjection of the two girls and the stringent control and violence used against them, whose earnings were all taken from them and, most of all, their position of absolute subordination were considered of fundamental importance during the trial.

The second case (the sentence is dated 2000) involved charges of reduction to slavery brought against an Albanian man and his sister (he was a criminal on the run and she was in prison) where the damaged party was a thirteen year old Albanian girl, sold by her father. The case is interesting from the point of view of the active female role, because the male defendant made no appeal against the 13 year prison sentence, whereas the woman was incredibly acquitted following appeal, of charges of obligation to slavery only, for not having committed the deed, but the conviction for exploitation was confirmed. Amongst other lines of defence, the court heard how, at the same age as the injured party, she had consciously undertaken the road to prostitution in Italy for economic reasons. The compensation to the injured party was confirmed at L. 200,000,000.

The third case involves charges of obligation to slavery, with the injured party being a Serbian boy, sold by his father and exploited for purpose of begging. The case falls into the traditional case of slavery reduction.

In the Magistrates' Chambers, five cases of forced prostitution of women of various nationalities: Romanian, Nigerian (the defendants were individual women or groups of women), Albanians (in one case the boyfriend of one of the injured parties) were found. All cases involved either the shortened procedure or plea-bargaining. It is interesting to note the wide range of charges, which, in addition to those most frequently encountered during the research work, include attempted murder, abduction, extortion and traditional individual protection crimes.

1.8 Rome

In Chapter I, 3, in which we positioned Article 18 within the framework of criminal legislation aimed at combating crimes against migrants, in examining the legal evolution on the application of Penal Code regulations concerning the condition of slavery, we examined a previous case of Rome (Crown Court of Rome, no. 115 of the 23 February 2001) in particular detail, referring to the condition of adult women. It was therefore only right that the study should also involve the Roman Crown Court, in order to verify the holding of that innovative approach.

The decision was confirmed by the Crown Court of Appeal on the point of law, although the Attorney general concluded for acquittal of Art. 600 of the Penal Code. Of the two Albanian defendants, the first was confirmed a sentence of nine years' imprisonment, whilst the second - who in turn had been a prostitute in the past - was acquitted for the crime of reduction to slavery, due to a lack of the subjective element, having been unable to perceive the mental condition of subjection of the injured party. She was sentenced to a prison term of two years and four months for assistance to prostitution.

The legal direction was confirmed in a further case of criminal conspiracy, separated into two trials by the choice of the shortened procedure for a part of the 25 Albanian defendants. In the first place, the Magistrates' Chambers (06/14/2001) passed a sentence of ten years imprisonment with a preliminary for damages of L. 1,000,000,000. Subsequently, the Crown Court (01/25/2002), passed a sentence for the remaining 14 Albanians of a main conviction of 14 years imprisonment. During the trial, it was permitted that the aggrieved party was constituted by the *Associazione Differenza Donna* and the injured parties were admitted to free legal aid paid by the State.

1.9 Common aspects

1.9.1 *Comparison with protection measures*

One datum is immediately obvious: none of the legal decisions gathered and examined refers in anyway to the fact that the injured or reported party had used the residence permit for reason of social protection. We have already examined the situations of separation between the administrative procedure for the issuance of the residence permit and the criminal trial, when in Chapter I we examined the problems concerning research on the connected legal activities.

Likewise, an examination of rulings also does not show the application of the special protection measures provided for by the anti-mafia legislation, and even less so the measures under Law 02.13.2001, no. 45, which at article 12, dictates the "Regulations for the protection of legal witnesses".

1.9.2 *Cognitive elements*

From the sentences and data given above, we can obtain some important descriptive elements of the actual situation, which must be known in order to draw operative implications free from prejudices and stereotypes.

The considerable number of Italians amongst defendants and those convicted highlights the factual role and support of Italians, a sign of co-operation between foreigners and local crime. And the number of female co-defendants in the handling that a ruling rightly defines as the role of victim/executor, considering that many female defendants had a past in prostitution.

The injured parties were almost without exception female and of a young age. However, there were also local particularities, such as that observed in Ravenna where there were a number of transsexual parties.

Recruitment methods are often based on deceit and a false description

of the occupation to be exercised when in the foreign country, or on the violence of sale by the woman's father. However in many cases, sometimes indirectly, the injured party is aware that the plan to move abroad also included prostitution, despite the fact that this knowledge tends not to be admitted by the women, not so much in itself as to not discredit themselves with any "client-saviour" they might encounter.

1.9.3 *Trial outcomes and the role of reports*

Injured parties play a central and decisive role. The characteristics of the sentences show that accusations are strongly, and in some cases, exclusively based on the declarations of the injured parties, the analysis of whose credibility forms an important part of the development of rulings during trial.

The conciseness of rulings in plea bargain sentences, at least in first degree cases, do not appear in references to the trial, and it is therefore not possible to evaluate the contribution to investigations (and other trial outcomes) of accusatory statements made by the injured party, although the choice of plea-bargaining eventually assumes, in fact, the meaning of an admission of responsibility.

This element appears explicitly in the decisions assumed by the judge at the preliminary hearing under the shortened procedure, whose adoption is justified on the basis of the probatory elements acquired by means of the injured party.

This situation is also illustrated indirectly by the acquittals, caused by the absence of probationary support from the women, due either to the impossibility of the reporter to access the trial phase or to the lack of identification of the trafficked women.

1.9.4 *Special evidence pre-trial hearing (incidente probatorio)*

In certain rulings, the performance of the special evidence pre-trial hearing provided by Art. 392 of the Penal Procedure is present.

During the preliminary investigations, the Public Prosecutor (one could refer to the person subject to investigations, however, in practice and with time, this has proved to be counter-productive because the victims never withdraw testimony) can ask the judge that special evidence pre-trial hearing be permitted from a person exposed to violence or threats in order that he/she does not give false evidence. The testimony is taken in the same way as it would be during trial. Therefore the evidence thus obtained is usable in court, and thus the person can perform his/her role in the trial avoiding remaining and undetermined period of time waiting to give evidence in the public trial, in a situation of danger, blackmail and uncertainty; the having already testified serves to limit threats, blackmail and intimidation that have the aim of quietening the main voice of the accusation.

There have been a number of legal policies on the matter, which have changed over the years. In an initial phase, Modena was an example of special evidence pre-trial hearing and Bologna was the opposite. The drawbacks include the use of energy that special evidence pre-trial hearing can bring through notifications, translation of deeds in foreign languages and other matters that take up precious time whilst the pre-trial custody time passes.

Certain clamorous cases led to a general rethinking that saw the expiry of the permitted pre-trial custody period, with the consequent end to pre-trial custody and freeing of the suspects. These can be added to by certain trial alterations that took place that could bring about, by example in the presence of deposition of investigative activities by the defence, the need to re-summon the passive subject who gave special evidence pre-trial hearing to the trial hearing. Legal policies would now appear to be better structured.

1.9.5 The constitution of the aggrieved party

In all the situations examined, the legal trials entail the constitution of the aggrieved party. In one Roman case, we saw how the Association that manages the project and follows the woman in the Art. 18 programme successfully attempted constitution. This usually happens for the most serious cases. Usually, those are the procedures for the heaviest crimes.

1.9.6 Free legal aid paid by the State

There are extremely few rulings in which the injured party is granted free legal aid by the State. However indications during sentencing is not compulsory. The reading of the trial report or file only could give certain data. It could, in fact, have been requested by the defence without that the fact be mentioned in sentencing.

Chapter III

The comparative dimension

1. Introduction

by *Maria Virgilio*

The research was also conducted on a comparative level. Once again, the aim was to consider two aspects: the specific institution of the residence permit for social protection reasons and the context of penal norms aimed at combating crimes against migrants. It was therefore decided not only to research similar legal institute to Art. 18 in other European countries, but also to widen the legal horizon to the identification of substantially important legal regulations in the subject in question.

As far as Germany and Spain are concerned, where we were able to operate in co-operation with particularly well-qualified partners (Mercedes García Arán of the Universidad Autonoma of Barcelona and Dagmar Oberlies of the University of Frankfurt), the investigation was more thorough and led to the creation of two reports (paragraphs 2 and 3), which, despite their necessary brevity, focus actively on the effectiveness on the norms, concen-

trating on the solidity of applicative reality, rather than the abstract concept of legal texts.

The other countries (The Netherlands, Belgium, Sweden, France and the United Kingdom) were chosen in order to include the legal systems that have recently introduced significant and innovative legislative reforms.

For such countries, the resources of the Stop Project did not consent us to go beyond the level of norm identification; and, in any case, this task was assigned to experts for each country considered, as well as experts on specific sector issues.

For each of the countries examined herein, it was therefore possible to gather information on the relevant norms according to the criterion of considering the specific nature of each legal system. In particular, we focused on norms concerning prostitution and those on immigration and our outlook was widened beyond the repression of the exploitation of sexual practices, to take in labour exploitation, or other forms of exploitation provided for by the individual legal system¹.

We have taken the liberty of including certain concluding comparisons, especially on the recent proposal, made on the 11 February 2002, by the European Commission “on the short-term residence permit issued to the victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities”.

1 Please note that the full version of this chapter containing the selected norms for each examined country can be found in the Italian version of this Report (Chapter IV).

2. A comparison with the Spanish legal system

by Mercedes García Aràn

2.1 Introductory remarks

There are two ways of considering the phenomenon of mass immigration that characterises countries with dependent economies or developing countries. Both commence from the recognition that a “problem” exists and differ not only in the way in which it is tackled, but also by the identification of the responsible parties.

The first prospect is that of the migrant as a transgressor and where immigration is considered as a problem for the internal order of the country of destination: what must be protected is the immigration policy of the nation towards the *en masse* arrival of foreign citizens that can cause unbalance in the domestic labour market and, moreover, generate uncertainty if immigrants arrive and stay on the margins of the community. From this point of view, the subject that generates the problem is the immigrant, a potential transgressor of rules, and solutions are mainly of a police nature. The second prospect considers the foreigner as a victim, thus positioning the problem within the sphere of the degradation of human rights that are violated or threatened in areas where large-scale migration occurs.

The migrant formally or materially becomes a “good” that is transported from one place to another, according to productive requirements and, therefore, what must be protected are his/her rights as human being. From

this point of view, the subject that causes the problem is the person who obtains economic benefit from the situation, as exploiter or trafficker in human beings, or both at the same time, as often occurs in the trafficking in human beings for the purpose of sexual exploitation. In this case, the answer lies in the legal repression of traffickers-exploiters and in social support to the victim.

In general, internal European legal systems and the norms issued by the European Union overlap the two prospects. They adopt rigorous administrative norms on border control in order to protect immigration policy and punish acts of trafficking and labour or sexual exploitation of people that harm or threaten the fundamental human rights. Spanish legislation follows this trend with a norm that regulates the entry and residence of foreigners in Spain, and by which immigrants are considered transgressors, whereas the Spanish penal code recognises various different types of behaviour as criminal, both with regards to labour and sexual exploitation and the trafficking of immigrant workers, people who are destined for prostitution or foreign citizens in general.

This overlapping of approaches contains the rules that regulate the co-operation of victims for the repression of organisations aimed at the trafficking and exploitation of human beings, such as, for example, Art. 18 of the Consolidation Act on Immigration or art. 59 of the Spanish law on foreigners (Ordinary Law 4/2000 of the 11th January) in which the transgressor's condition and the victim's condition of the immigrant are combined. In an irregular condition, the migrant is a transgressor, however, as victims of trafficking and exploitation of human beings, the subject can co-operate with the authorities in persecuting such crimes: in short, he/she is offered integration in return for co-operation.

At this point, a preliminary reflection on this kind of norms can be made. They are, in reality, tools aimed at an *exchange* between the party that offers legalisation or integration and that offering co-operation; they are therefore norms that contain a certain degree of negotiation between unequal parties. This situation must be recognised as a source of potential problems deriving from the fact that the Police is in a position to use its advantage over

the immigrant, when it requests his/her co-operation in persecuting the criminal networks that operate in the trafficking and exploitation of human beings.

It is essential that these problems are recognised honestly. As a general rule, all victims of exploitation and trafficking should be rewarded with social integration. This is just one *further* tool that can be used for persecuting those that exploit such victims. The aim of obtaining their co-operation is a licit one, but there are certain risks in making it the *only* aim.

For this reason, a differentiation must be made between the two possible uses of this type of tool. These are two distinct outlooks that differ with one another according to where one places the emphasis: they consider the migrant as a victim that either desires to integrate with the community, or as a transgressor from whom to seek co-operation.

The first case sees the predominance of support to the migrant as a victim and the offer of collaboration in exchange for the legalisation of his/her stay is considered as a way towards social integration used to compensate for his/her having been deprived of basic human rights. On the other hand, in the second case, the immigrant, who is principally considered as a transgressor of immigration rules, is used as a tool for police investigations. Once he/she is considered above all a transgressor, the authorisation of his/her stay is presented as a reward for his/her co-operation, which includes "pardon" for having breached certain rules. Both options could be functional in fighting trafficking activities, however, the effects that they produce for the co-operating migrant are considerably different. In comparison with Spanish laws, the Italian norm is essentially different in this basic option, which is even reflected in its title: Article 18 of the Italian Consolidation Act describes its content using the expression "permit for social protection reasons", whereas Article 59 of the Spanish law on foreign immigrants starts with the words "co-operation against organised criminal networks".

This initial declaration of the Spanish law already gives clear signs on the main aim of use in police investigations and therefore belongs to the second of these outlooks. As we will see, this is confirmed by the content of the texts and brings about considerable problems.

In the paragraphs that follow, we will move on to an in depth analysis of the Spanish situation through a thorough examination of current laws, in order to formulate a number of proposals concerning the co-operation of victims in the repression of organised networks.

2.2 Art. 59 of the law on foreign citizens

The content of Art. 59 of the Spanish law on foreign citizens is given below, in order to facilitate the comprehension of the questions raised subsequently. Within the text of the law, the matters that will then be examined are highlighted in italics. As readers will note, the four points of Art. 59 correspond respectively to (no. 1) the ambit of application, presumption and legal consequences, (no. 2) to the proposal and resolution of the procedure, (no. 3) to the consequences of exemption of administrative responsibility and, lastly, (no. 4) to the particular hypothesis of migrants that have already been sanctioned.

“Co-operation against organised criminal networks.

1. Any foreigner who has crossed the Spanish border outside the passages destined for this purpose or that has failed to fulfil his/her *obligation* to declare his/her entry into the country and *is in Spain illegally* or is working in the country without permission to do so, without documents, or with insufficient/invalid documents, *due to his/her being a victim, damaged person or witness of an act of illegal trafficking of human beings, illegal immigration or illegal labour force trafficking or exploitation of prostitution through the abuse of a situation of need, may be considered exempt from administrative responsibilities and will not be deported if he/she reports the authors of said trafficking to the competent authorities*, or those who co-operate with them, or who co-operate and work with *police staff competent* for dealing with foreign immigrants, by supplying them with *essential elements* or, if necessary, giving evidence in trials against the authors of such

crimes.

2. The competent administrative bodies that are assigned *the instruction of legal proceedings* will further the due proposal to the authority with decision-making powers.
3. Foreign citizens who have been relieved of administrative responsibility obligations may choose to accept facilitations in *returning* to their country of origin or staying and residence in Spain, *together with* work permits and facilitations for their social integration, according to the provisions of this law.
4. When the public prosecutor is aware of the fact that a foreign citizen, against whom *a deportation order has been issued*, is involved in *legal proceedings* as a victim, damaged person, or witness and considers his/her presence *essential* for the fulfilment of *court activities*, will make the fact known to the competent government authorities in order that they might evaluate the possibility of his/her *not being deported* and, in the event that deportation goes ahead, provisions will be made for him/her to return to Spain for the time required *to fulfil the necessary court activities*, on the condition that the possibility to adopt some of the measures provided for by O.L. 19/1994 of the 23rd December, for the protection of witnesses and experts for legal trials”.

Starting from this text, we will proceed with an examination of its most salient points.

2.3 The ambit of application

The text of the law reported above confirms that this law was envisaged primarily as a police tool. The subject of the law are foreign citizens who have gained illegal access to Spain or who subsequently found themselves in an irregular position and, for these reasons, are subject to legal proceedings, in short, the foreign citizen is in the hands of the Police, with the likelihood of

expulsion or a situation that could lead to such action. This requisite gives meaning to the entire regulation: any co-operation supplied by the migrant is produced in a situation in which he/she is under the formal or material threat of expulsion.

We use the terms 'formal' or 'material' threat because, in practice, legal sanctions are not always pending. Moreover, victims in clandestine situations, that approach the police in order to report exploitation, are often not subjects of pending legal sanctions precisely because the authorities are not aware of his/her presence in Spain from other sources. This is especially frequent in cases of sexual exploitation of women, who are under the dominance of their exploiters (and in clandestine conditions) who decide to approach the police in order to report such facts.

In such a situation, the authority with decisional power is the *Brigada Provincial De Extranjeria Y Documentacion* of General Police Management. According to the specific case, the police organisation makes one of the following decisions: not to start expulsion proceedings; to close expulsion proceedings already underway; or to request that the *Subdelegado Del Gobierno* suspends proceedings that have already been defined. In other words, if there is no deportation order pending, the police decides whether to initiate one or not and, if there is a pending deportation order, the police can decide whether or not to close it. However, the police is free to make such decisions at its own discretion, according to the specific circumstances of the case and the criteria of tolerance or opportunity, which may, obviously, lead to misuse. In any case, even if the procedure has not been initiated, the threat that it could be opened exists. In contrast, Italian legislation, which is aimed at social integration, starts from the hypothesis that news of the situation of exploitation is gleaned from legal investigations or intervention of social services. Victims in irregular positions obviously run the risk of being expelled all the same, however, Italian law does not explicitly establish a formal correlation between legal sanctions against immigrant transgressors and the consequences of co-operation, as in the Spanish case. In other words, despite the fact that both laws can lead to similar applications, their initial philosophy and formal characteristics are considerably different. However, in addition to this, the

Spanish law introduces another somewhat peculiar element. The foreign citizen must be in an irregular situation *as a consequence* of his/her being a victim or defendant or witness of illegal trafficking of persons, clandestine immigration, trafficking of labour force or illegal exploitation of prostitution. In other words, there must be a random relationship between his/her condition of victim/witness and the situation of irregularity. This requirement is incomprehensible in that it restricts the ambit of application of the law and excludes immigrants that entered the country illegally and *subsequently* became victims of exploitation or trafficking, for example, those women who freely enter Spain in search of work and later fall victim to sexual exploiters who abuse the situation of need.

However, it is even more puzzling that the law can be applied to those who are in an irregular position due to their having been a *witness* to one of the above mentioned crimes as it is unlikely that being a witness could be the *cause* of illegal residence in the country. However, this hypothesis makes sense if one considers the general philosophy of the law. In fact, each victim is therefore only a witness to facts and thus it would not be necessary to mention the witness together with the victim as well, however the aim of the law is to produce a police tool and therefore witnesses are also useful, even when they have not been victims. The aim of the law is to find a witness in a situation of irregularity, which means that this situation can be used as a means of pressure in order to obtain co-operation. In short, this law is not only aimed at victims, but rather at any co-operator threatened with deportation, because this situation makes obtaining his/her testimony easier. A testimony that often bears risks to he/she who makes it.

More worrying still is the list of acts to which illegal immigrants may be "victims or witnesses". The law does not consider merely "crimes" but also "deeds" and therefore includes breaches of administrative obligations. The problem is that the deeds mentioned include "illegal immigration", as well as trafficking in human beings, labour and sexual exploitation with an abuse of a situation of need. In Spain, illegal immigration is an administrative breach (not a crime) committed by a person who enters or stays in the country without respecting current laws on the subject. Therefore, in theory, cooperation

with administrative authorities in order to obtain a legal position can include being a “witness of an act of illegal immigration”; in other words, if a clandestine immigrant reports others in the same position in which he/she finds him-/herself, *whilst threatened with expulsion*, he/she can avoid being deported.

We do not have access to information on the way in which this law has been applied so far in order to pursue illegal immigrants, and hope that it is not used in such a way. However, this dangerous interpretation is possible and can only be avoided by remembering that the regulation starts with the title “cooperation against organised criminal networks”. In any case, the proposed European Commission Directive of the 11 February 2001 “on the short permit issued to the victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities” criticised the Spanish regulation in particular, indicating that Spain is the only country that deals with the matter that includes reference to clandestine immigration being an act that can be investigated within the ambit of this kind of co-operation.

2.4 Co-operation of the victim or witness with the authorities

Co-operation can take place by reporting facts to the competent authorities or supplying essential information or giving evidence in legal proceedings against the authors of the facts. If the text of Article 59 is taken literally (see paragraph 2.2), one notices a slip of the pen that highlights the underlying police philosophy of this law. In fact, point 1 of the article refers explicitly to those who “co-operate or work with *competent police staff*” when it is obvious that co-operation could also take place with judicial authorities, in cases where there is already a legal procedure in progress against the exploiters.

The co-operation that Article 59 seeks from migrants is important because, together with reports, it mentions the contribution of *essential* information and evidence giving in court. In practice, this requisite is only realised

to a certain degree. Thus, in order to grant a special residence permit for the victim, General Police Management requires a “copy of trials that include the foreigner’s statement accredited with its *importance* in the breaking up of an organised illegal immigration or prostitution network”. In other words, internal police norms reach a similar situation to that of the Italian norm, which refers to the “importance of the contribution offered by that foreigner”. In any case, statistics show that victims of trafficking in human beings are very rarely in a position to provide essential information or identify those responsible, especially if they are in their country of origin.

2.5 The reward

Under Spanish law, the judicial consequence of co-operation can be considered mainly a “reward” because it is essentially the “pardon” of administrative responsibility and non-deportation. From this point of view, the foreigner is offered the choice between the opportunity to return to his/her country of origin or whether to acquire legal stay or residence in Spain, as well as a work permit and “facilitations to social integration”. In Article 59 of the law on foreigners there is no time limit established for the authorisation of the residence permit. However, for regulation reasons a limit is established so that these permits are considered temporary permits for exceptional cases. Art. 41 of the Regulation (R.D. 864/2001 of the 20th July) of the execution of laws on foreigners grants permits with durations from 90 days to 5 years “to persons who have co-operated with Spanish legal or Administrative authorities or if they qualify for national interest or national safety that justify the need to authorise residence in Spain”. Furthermore, the vague mention of facilitations to social integration is insufficient. The Italian law is more precise concerning this aspect in referring to social integration programmes whose nature must be notified to the Chief of the local police headquarters (*Questore*), which therefore supposes the involvement of local authorities.

In any case, the Spanish law states very clearly that immigrant co-operators “can” avoid deportation, but does not oblige the Police to regularise the

position of immigrants that have co-operated with it, it merely grants it the faculty to do so.

2.6 The different prospects for migrants who have already been sanctioned

We will now take a look at the case in which the irregular migrant has already been sanctioned with deportation and the Public Prosecutor requires his/her assistance for investigative reasons as a victim, defendant or witness. In accordance with the role attributed to him/her, the migrant's role will differ.

The Public Prosecutor will request that the administrative authority suspends the deportation order, if it has yet to be performed, or to authorise re-entry into Spain for deported migrants, in order that they may co-operate with the legal system. In this case, nothing is offered in exchange and deportation is suspended or re-entry into Spain is granted "for the period of time required to fulfil the necessary court activities", as Art. 59.4 of the law states. The difference between the police and judicial visions is evident. On police deposition and threatened with deportation, the irregular migrant faces unequal negotiations: delation in exchange for avoiding the penalty. However, when an irregular migrant has to co-operate with a court case or there is no threat of deportation because it has already been decided, his/her co-operation is expected without a reward. It should be pointed out that the manoeuvring abilities of Police are far greater than those of the Public Prosecutor: probably because Police pursues the organisers of trafficking, but also the illegal immigrants; whereas the Public Prosecutor "only" pursues the organisers of trafficking and exploiters.

2.7 The importance of the regulation from a social point of view

The Spanish law on foreigners is a recent law and there are therefore no clear data or statistics available on the effectiveness of the application of

Article 59. For the drafting of this report, we requested data from the Police and the Public Prosecutors of Seville and Barcelona. Despite the fact that there are no significant data available, Art. 59 of the law on foreigners is applied by the police force in investigations on criminal networks, whereas the offices of the Public Prosecutor we consulted had no experience of concrete episodes of co-operation with victims in court cases.

On the other hand, Art. 59 has not caused experience in the social integration field in Spain. What we mean by this is that there are no significant support initiatives nor social organisations that use this option of legal co-operation as a way out of exploitation, be it sexual or of other kinds.

2.8 Conclusions

In short, the following considerations can be made.

Firstly, that, although it mentions both concepts, the Spanish rule puts the co-operation of the migrant before his/her social integration.

However, this search for co-operation is dominated by the concept of the migrant as a tool to be used in police investigations. In order to ensure the effectiveness of the instrument, the rule is only aimed at those migrants who are threatened with deportation, which, in any case, reduces the effectiveness of the rule, because it reduces its ambit of application.

However, above all, this police approach to co-operation with the authorities is based on a *do ut des* between the two parties that is very unbalanced. The weak party (the clandestine immigrant) is faced with the threat of deportation and can avoid it by co-operating with the strong party (Police). If he/she chooses to co-operate, he/she may avoid deportation, but this is not a certainty. It will most probably depend on how important the strong party considers the co-operation to be.

The insistence of applying the norm to migrants who, in turn, are transgressors of the law on immigration produces, as a main effect of co-operation, a pardon from this responsibility. The norms that establish the pardon of transgressors that co-operate with the authority are usually based on the

“penitent” philosophy and are regulations that have proved to be ineffective in the past.

Lastly, we would like to clarify the numerous key points of the excessive role of the Police in Art. 59. Prevention towards this kind of protagonism is not due to causes based on past mistrust in the Police, but rather to structural reasons of the diversification of public functions that can influence the conception of these forms of co-operation of the victim and his/her social integration.

The police is currently responsible for both the initiative of deportation and regularisation of migrants and the majority of investigative initiatives of the networks that traffic and exploit human beings. It is therefore a cause of the main consequences that can affect the migrant in irregular situations and is also the main subject interested in the investigation of crimes. In this way, the police can use deportation and/or regularisation as tools for its own investigative ends. This concentration of the initiative favours the fact that the co-operation of the victim is considered mainly an investigative tool, rather than a means of social integration. In other words, if the police is involved in investigations on crimes and can use the threat of deportation in order to ensure the co-operation of victims, there is a risk that it will do so.

On the other hand, the police force is a subject that is legally involved in the defence of the nation’s migration policy and in border controls. This involvement does not consent sufficient independence to administrate exclusively one tool that may lead to the deportation of the migrant or to his/her social integration.

The reasons for granting greater involvement to the public prosecutor or judicial authorities derives from the abovementioned matters. The public prosecutor has investigational competence when pending legal proceedings already exist. However, it does not have any particular interest in pursuing illegal immigration that does not constitute a crime, nor does he/she exert direct competence in the administrative control of the Spanish borders. Both the public prosecutor and the judicial authorities are therefore in an independent position with regards to administrative interests on migration and therefore, there is no important threat that these interests can interfere with decisions concerning the immigrant.

Lastly, the constitutional function of the defence of legality and the guaranteeing of rights and the freedom that the public prosecutor and judicial authorities enjoy is sufficient reason to grant them greater involvement in this type of procedure.

2.9 Proposals on the co-operation of victims in the repression of criminal organised networks

The co-operation of victims of trafficking or exploitation of human beings, compensated by social integration, is useful in the persecution of organisations that concentrate on such crimes. It should therefore be considered as one of the possible tools of social integration and must not be transformed into a simple police tool to be used in negotiations whereby the victim is threatened with deportation. Having made these general comments, the following indications may prove useful:

In order to avoid excessive police involvement, it is advisable to diversify the initiative for the integration and co-operation procedure of the victim. The integration proposal of the co-operating victim must be recognised by the victim him-/herself, but also by any other party that learns of the situation of exploitation. And these include the many social support bodies and associations as well as the public prosecutor.

Co-operation is destined for the persecution of crimes and in most cases will lead to a trial. Therefore, the public prosecutor or the judicial authority must be informed of the involvement of the victim in the investigations. If the inquiry is already under the competence of the judicial authority, it is this authority that must assume the initiative. In this way, we can attempt to prevent these norms from becoming a simple negotiation instrument for use by the police force.

The regularisation of the victim's appeal must not be conditioned by the importance of his/her co-operation, nor can it be used as a means of pressure. For this reason, regularisation must not be assigned to the absolute discretion of the administrative authorities. Once the situation of exploitation

has been discovered, the immediate temporary permit to stay in the country must be issued, and the migrant should be offered means of social support and integration. Authorisation will eventually be converted into a reasonable exchange, if the victim co-operates as far as he/she is able and accepts the offer of social support and integration. His/her residence in the country will therefore be definitively authorised by the public prosecutor or judicial authorities.

The norm must clearly establish that it is destined for the persecution of those responsible for trafficking in human beings and exploitation that sees migrants as victims. In no case should it be used for the delation of illegal migrants.

The norm must be completely linked to the existence of a deportation procedure or sanction against the accused. It must also have effect even in situations where the deportation order does not exist or when it has already been concluded.

The norm must explicitly refer to those institutions assigned with the social integration of the victims (social assistance, local authorities, etc.). Once the integration-co-operation procedure has commenced, the victim must count on the assistance granted if requested and with the protection that is reserved for witnesses that take on risks by co-operating.

3. A comparison with the German legal system

by *Dagmar Oberlies*

3.1 Preliminary remarks

It is somewhat ironic that we are here to discuss matters on which, in reality, we know relatively little. In a similar way to violence in general, the “iceberg theory” applies to trafficking in women: only 20% of the problem is visible, whilst the remaining 80% remains hidden below the surface.

To continue with this analogy, I will firstly briefly examine the visible part of the problem and give some indications on the probable dimension of prostitution and trafficking in women in Germany. I will then continue with a brief illustration of the regulation situation in Germany, before moving on to compare it with the situation that has been created in Italy thanks to the effect of Article 18 and finally give some concrete proposals for both systems.

However, before doing this, just one more preliminary remark: I have already had the opportunity to co-operate with Prof. Virgilio on another European project¹, which also focused on violence against women. One of the lessons gained from this project was, undoubtedly, that comparisons must concentrate on effective practices rather legal theory. Each nation has its plans and strategies of action; and this makes it important to understand one another’s aims (which is easier said than done). At a later stage we can “borrow” ideas from one another, however it is very difficult to borrow written texts.

1 Comparative research in the context of violence against women, STREIT 2001, p. 69-71.

3.2 Prostitution: a social normality in Germany

Official estimates are based on the idea that in Germany some 200,000 women² work in the prostitution field. The prostitutes' movement, however, claims that the real figure is double this - including a large number of housewives, who simply desire to earn a little money. In order to see things in perspective: the German car production industry employs approximately 415,000 workers³.

In Frankfurt, my home city, there are allegedly 600 beds in brothels of various types, in which some 1,500 prostitutes work⁴. Of these, experts estimate that some 95% could be foreigners⁵. The *Ausländerbehörde* (competent authority for foreigners) estimates that the number of foreign prostitutes is just above 1,000. In Hamburg, which is well known for its sex industry, approximately 2,000 foreign prostitutes are estimated to work⁶.

Many of them live in Germany illegally, in the sense that they are not permitted an occupation and could be deported from one moment to the next: following a police raid, some 800 foreign prostitutes were discovered in Frankfurt, of whom less than a fifth were capable of producing a residence permit⁷.

Every day in Germany, approximately one million men⁸ turn to prostitutes, with prices that vary between 15 and 150 Euros and with a combined

2 Geisenhanslüke, Ralph: Unterm Strich in: *Zeit/Leben* 03/2002; see also: Bundestagsdrucksache 14/5958, p. 1.

3 <http://www.vda.de/de/service/jahresbericht/auto2001/fakten/>

4 Estimates range from 75% (Kießl, Anne-Margret: Projekt Jiskra: die Situation mittel- und osteuropäischer Frauen in Frankfurt am Main und Umland: eine Bestandsaufnahme, in: *agisra* [u.a.], Frankfurt am Main 1996, p. 44) to 95% - at least as regards crime in the context of brothels (Rosner, Judith: Frauen im Schatten der Gesellschaft in: *agisra-Rundbrief* 15/1999, p. 13; ähnlich Howe, Christiane: Migrantinnen in der Prostitution in: *agisra-Rundbrief* 28/9/2000, p. 15).

5 Declaration made by the Vice-director of Frankfurter Ausländerbehörde, Heiko Kleinsteuber, reported in: *Frankfurter Rundschau* vom 21.3.2002.

6 Press release: Senatsamt für die Gleichstellung, 8 March 1999.

7 Biedermann in: *Frankfurter Rundschau*, 15.2.2001.

8 Bundestagsdrucksache 14/5958, p. 1; cfr. Bundeskriminalamt: Lagebild Menschenhandel 1999, p. 18 (with source references) [quoted in: BKA: Lagebild (Jahr)].

annual turnover of more than six billion Euros⁹. In order to make a comparison: last year the German railway network had a turnover of sixteen billion Euros¹⁰.

3.2.1 *The legality of prostitution*

As a general rule, prostitution is not illegal in Germany; it can be limited in space (Art. 297 *EGStGB*) and this may also include the imposition of given rules of conduct for the so-called “closed areas” (*Sperrgebieten*)¹¹.

Moreover, during the last year, a clarification has been made concerning the effectiveness of civil rights for contracts dealing with sexual services¹². Even prior to legal modifications, a number of German courts had moved away from the opinion that in itself prostitution is contrary to common decency¹³. Following the obligation to pay taxes¹⁴, “sexual workers” have been subject to for some time now, they currently have access to the social security system¹⁵: insurance against accidents¹⁶, invalidity, old age and unemployment¹⁷, as well as the possibility to conclude work contracts with the ma-

9 <http://www.pds-im-bundestag.de/index.php?main=/themen/fepo/prostitution/index.php>

10 <http://de.news.yahoo.com/020313/3/2okxw.html>

11 See: Verwaltungsgerichtshof del Baden-Württemberg NVwZ 2001, p. 1299 and following, concerning a police directive forbidding contacts to be made with prostitutes.

12 Law disciplining the juridical position of prostitutes 20.12.2001, BGBl I, 3983; see also the decision of the Verwaltungsgericht of Berlino, STEIT 2001, p. 11-18 (with note by Bear).

13 See references in STEIT 2001, p. 11-22.

14 In fact, the Bundesfinanzhof had already decided in 1987 that “income from prostitution is subject to taxation at the general income tax rate” (NJW 1988, p. 935 and BStBl II 1987, p. 653). The base income should, when necessary, be determined (as, e.g., Finanzgericht of Hamburg, sentence of 12.12.2000; At: VI 154, 157 and 182/99, unpublished). The fact of being “Contrary to acceptable norms of behaviour” is considered irrelevant (from Bundesfinanzhof NJW 2000, p. 2919 and following).

15 See, on this point, the report of the motivation in Bundestagsdrucksache 14/5958, p. 4 and following.

16 See: Bundessozialgericht, STEIT 2001, p. 20 and following.

17 In order to encourage “retirement”, at any moment, from prostitution, already in 1991 the Sozialgericht of Berlin had admitted that also the job of prostitute is a “professional activity” according to the *Arbeitsförderungsgesetzes* sei (STEIT 1992, p. 84).

nagers of brothels¹⁸ or to join together to form co-operatives and associations¹⁹.

This change of attitude in the social and legal approach to prostitution may also have important repercussions in other legal fields: for example, a Colombian woman made an official request for a residence permit in order to work as a prostitute in a brothel in Frankfurt²⁰. Prior to this episode, the municipal authorities of Frankfurt had highlighted the possibility of granting entry permits in order to consent the independent activity of prostitution, in cases where "local demand" exists: this does not mean random demand but "local demand"²¹ for South American, Asiatic or Eastern European women. For European Union citizens²² and those of the Candidate States such as Poland and the Czech Republic²³, it has been clear for some time that women who independently exercise the profession of prostitution could live in other European Countries where prostitution is permitted by law.

Following clarification on the civil legal system, incriminating regula-

18 Where the employer's decision powers must be kept within the prescribed limits (§ 3 Prostitutionsgesetz).

19 On this matter see, e.g. Verwaltungsgerichtshof of Baden-Württemberg; BauR 2000, p. 1238 or Verwaltungsgericht Berlino, GewArch 1998, p. 200 and following.

20 See the report in: FOCUS 14/2002, Seite 44. In fact, it had been excluded until then, as being activity "Contrary to acceptable norms of behaviour", among which - until legislative modifications - prostitution was also specified, and considered unacceptable for authorisation. "Künstler und Artisten" (§ 5 Nr 9 AAV) had always been excluded, and this was the category to which ballerinas working in bars also belonged (Verwaltungsgerichtshof of Baden-Württemberg, NVwZ-RR 2001, p. 478 and following).

21 Magistrate's Report, 8.1.2002, B 31.

22 See the sentence (which has not yet become final) of the Verwaltungsgerichtshofs of Baden-Württemberg (NVwZ 2000, p. 1070), on the subject of freedom of establishment provided under EC law, referring also to the exercise, as a prostitute, of autonomous paid activity. See, on this matter, also the remission order by the Bundesverwaltungsgerichts at the European Court of the Europäischen Gerichtshof (InfAusR 2002, p. 63).

23 See the European Court decision of 20.11.2001; Rs C-268/99, which states that "Art. 44 of the Convention of Association with Poland and Art. 45 of the Convention of Association with the Czech Republic are to be given the interpretation that prostitution can be included in autonomous paid activities covered by these provisions if it is demonstrated that it is exercised as follows: in the absence of a relationship of subordination, in relation to the choice of activity, to the working conditions and terms, being the responsibility of the person directly concerned and with payment fully and directly made to the person offering the service".

tions, which even foresaw legal penalties against those who were found guilty simply of creating more favourable work conditions and self organisation have also been changed²⁴. However, incriminating rules are still foreseen:

- for the facilitation of the fulfilment of sexual acts by minors (§ 180 *StGB*);
- for sexual exploitation (§§ 180a and 181a *StGB*);
- for trafficking in human beings for the purpose of sexual exploitation (§§ 180b and 181 *StGB*).

3.3 Trafficking in women

Let's start from the supposition that in Germany there are at least two hundred thousand prostitutes and at least half of these are foreigners. We can therefore say that there are some one hundred thousand foreign prostitutes in Germany. However, the statistics available from large German cities paints a very different picture. If we suppose that in a city the size of Frankfurt approximately one thousand to one thousand five hundred foreign women work as prostitutes (in larger cities such as Hamburg this number grows proportionately) and therefore, with reference to a city with more than half a million inhabitants, we have a figure of approximately twenty thousand foreign prostitutes. The "truth" is somewhere between twenty and one hundred thousand.

It would be very wrong to equal the number of prostitutes with the number of women subject to trafficking for sexual exploitation purposes:

²⁴ In this way, the Bundesgerichtshof has, until now, recognised the "understandable aim" of the provisions of criminal law in "preventing from the beginning any further involvement in this job" (BGH StV 1986, 204, 205) and also, according to the opinion of the commentators, this is designed to contrast a "consolidation of the style of life of a prostitute" (Tröndle/Fischer, *StGB*, 50 ed., 2001, § 180 an. marg. 1). In a hearing at the Bundestag I have already expressed my opinion that this cannot represent - after the changes made to civil law - valid criteria for the interpretation of criminal law (Bundestagsprotokoll 14/69, p. 15). After this hearing, the legislator provided further clarification on this subject (see Art. 2 of the law on prostitution of 20.12.2001, BGBl I, 3983 and Ausschuss-Drucksache 14/728).

many of these women already worked as prostitutes in their country of origin, and on their return they will continue to do so, they therefore come to Germany *in order to* work as prostitutes²⁵. We would be doing them a wrong if we were to consider them (or desired to consider them) mere victims: on the contrary, many of these women are extremely strong and enterprising, and maintain their children and entire family in their country of origin. Maybe a large number of them would be willing to exercise a different occupation, but only few of them would probably be willing to earn less: in the Ukraine a prostitute earns the same amount in one night as a teacher earns in a month, despite the fact that she must then give 2/3 to her protector²⁶. I therefore believe that any policy that considers foreign prostitutes merely as victims is fatally destined to fail and, moreover, any policy that does not intend to consider the problem as a whole is destined to the same end. I will come back to this point later.

3.3.1 *Definition: trafficking in women and trafficking in human beings*

Trafficking in women differs considerably from the entry into Germany of foreign prostitutes with the aid and complicity of an organisation.

Within the framework of the European Commission's STOP Project, the trafficking of women is described as the "*transport of women from third countries into the European Union for the purpose of sexual exploitation*", where sexual exploitation would also include cases in which the women are aware that they will work as prostitutes, "*but who are then deprived of their basic human rights, in conditions which are akin to slavery*"²⁷. In the Additional Proto-

25 The BKA-Lagebild Menschenhandel reports that one quarter of the women who are potentially the object of criminal trafficking in human beings practised prostitution before their arrival in Germany, and almost the same number, or rather 18%, had already agreed to work in prostitution on entry in the country (BKA: Lagebild 2000, p. 11) - even if perhaps under different conditions. On this matter see also: Najafi, Behshid and Rosner, Judith: Ausgangslage und Problemendarstellung in: Frauen handeln in Deutschland, herausgegeben von KOK - Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt gegen Frauen im Migrationsprozess e.V., Oktoberdruck Berlin, p. 14.

26 See: Eva Weikert, Natascha ist ein schlimmes Wort in: Frankfurter Rundschau, 16.4.2002.

col to the Convention against Transnational Organised Crime, the UN defines the trafficking in human beings in a similar way; however, this definition goes further because it considers not merely sexual exploitation, but also forced labour or, for example, the removal of organs for use in transplants. The consent of the individual is irrelevant in such cases, when any of the means mentioned in Art. 3 (a) of the Additional Protocol are employed²⁸.

The definition of trafficking in women is therefore based on the existence of a constraint both in the engagement in the country of origin and regarding the existential conditions in the country of arrival.

If I now remind you that approximately 80% of the foreign prostitutes working in Frankfurt's brothels do not possess a residence permit²⁹ and that many more possessed false ones, in other words a visa for holidaymaking that does not permit occupational activities³⁰, we certainly do not know the number of women who are victims of trafficking³¹, but we can have an idea of the potential blackmail available to those who exploit and manage the world of prostitution.

Going by international definitions, we should also add to the victims of trafficking in women and respectively, in human beings, the many women who, due to the fact that they reside in a given country illegally, are held in conditions of social and financial dependence³².

27 European-Commission Stop Project: "Building up a network for monitoring, analysing and combating trafficking in women and children", published by the Finland Home Office, 1999, p. 1.

28 Additional Protocol "to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children", of the UN Convention against Transnational Organised Crime, Article 3.

29 See: Biedermann in: Frankfurter Rundschau of 15.2.2001.

30 KOK - Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess: Schattenbericht unter Art. 6 CEDAW (Frauenhandel) zum Staatenbericht der deutschen Bundesregierung, Januar 2000 (<http://www.kok-potsdam.de/artikel/acrobat/schattenber.pdf>).

31 BKA: Lagebild 1999, p. 11 and 2000, p. 11 and following.

32 For more information on the various definitions of the trafficking of women, Mentz, Ulrike: Frauenhandel als migrationsrechtliches Problem, Europäische Hochschulschriften, Frankfurt am Main, 2001, p. 87-151.

3.3.2 *The trafficking in human beings of the German legal system*

With this in mind, German law is based on a more limited vision of trafficking in human beings: the trafficking in human beings is classified as a crime against sexual self-determination. Two main types of behaviour are punished:

- The conscious exploitation of a condition of constraint, to cause a person to take up prostitution or to continue to exercise it (§ 180b comma 1, part one, *StGB*);
- The conscious exploitation of other people with lower conditions of defence, in view of the performance of sexual activities (§ 180b, comma 1, part two) or the induction to exercise prostitution (§ 180b, comma 2).

Both types of behaviour are motivated by improved economic advantage. In such cases, a maximum penalty of ten years' imprisonment is foreseen.

The lower limit is increased if certain means such as violence, threats or deceit are used (§ 181, comma 1, point 1 and 2 *StGB*); and similarly the minimum sentence is increased when the author or authors act professionally (§ 181, comma 1, point 3 *StGB*). This makes the act a *serious crime* (*Verbrechen*), which is punished with a minimum prison sentence of one year's detention.

As they require the demonstration of the victim's way of thinking, human trafficking crimes are, in practice, considered extremely difficult to prove. Just to give an example: exploitation would not be considered for "weakened defence linked to the condition of being a foreigner"³³, "if the victim is willing to prostitute herself without consideration of her condition in a foreign country"³⁴. On the contrary, punishment would be possible if the victim was informed of *concrete circumstances* of the exercise of prostitution and had not given consent³⁵. The evaluation of the motivation and know-

33 See the definition in BT-Drs. 7/514, p. 10.

34 Bundesgerichtshof, *Neue Zeitschrift für Strafrecht* 1983, p. 262.

35 For more information, see Dencker, Friedrich: *Prostituierte als Opfer von Menschenhandel*

ledge of the woman in question therefore plays a fundamental role. She can, on the other hand, not have any possibility to withdraw from the situation of lowered defence³⁶: this is admitted, in principle, by scarce linguistic knowledge, non-availability of cash funds, and a close dependency on her exploiter³⁷, but may also involve the woman's personal abilities³⁸.

The police and public prosecutor therefore require, according to their own opinion, "a resolute witness"³⁹, which, in reality, in trials for trafficking in human beings, is not always available. And it is also known that the Public Prosecutor's office⁴⁰ (and now the Police⁴¹) rely on transgressions - which are doubtlessly easier to prove - on laws on immigration, such as, for example those provided for by legal norms against traffickers who favour illegal immigration (§§ 92, 92° and 92b *AuslG*)⁴².

(§ 181 StGB), *Neue Zeitschrift für Strafrecht* 1989, p. 249-254, 253; cfr. anche Bundesgerichtshof, *Amtliche Entscheidungssammlung* (BGHSt) 33, 353 und Schreoder, Friedrich-Christian: *Irrwege aktionistischer Gesetzgebung - das 26. StÄG (Menschenhandel)*; *Juristen Zeitung* 1999, p. 231-238 and, more recently, Bundesgerichtshof, *Neue Zeitschrift für Strafrecht* 2000, p. 86-87.

36 Bundesgerichtshof, *Neue Zeitschrift für Strafrecht-Rechtsprechungsreport* 1997, p. 293.

37 Bundesgerichtshof, *Neue Zeitschrift für Strafrecht* 1999, p. 349 and following.

38 See Tröndle/Fischer: *Strafgesetzbuch und Nebengesetze*, Beck'scher Kurzkommmentar 2001, § 180 b n. marg. 9; see also BGH note 38, p. 350.

39 *Idem*.

40 *Ibidem*.

41 See also BKA: *Lagebild* 2000, p. 4, where the reduction in the number of cases concerning trafficking in human beings is explained by the fact that "other measures have been taken by the police force that have been easier to adopt".

42 On this point see: Bundesgerichtshof, *Neue Zeitschrift für Strafrecht* 2000, p. 657-661, with notes by Lauer. Also on the issue of whether, and when, the women involved could also be held criminally responsible.

3.3.3 *The extent of the trafficking in human beings in Germany*

Since 1994 the *Bundeskriminalamt* (the federal department for the fight against crime) has published a report on trafficking in human beings, based on all the investigations conducted by the police force concerning suspected hypotheses of trafficking involving foreign citizens⁴³. This report is about the (organised) trafficking in *women*, because the majority of the victims are women.

However, the trafficking of women is far from being an exclusively male crime: from 1997 to 2000, of those suspected of this crime 15-18% were women⁴⁴.

In the mid-90s, trafficking in women came under fire from investigators into organised crime: "The groups (of authors) are extremely well-organised, they act by passing the border and sharing the work and they often traffic drugs and arms and operate in other sectors of organised crime"⁴⁵.

As far as the trafficking in women is concerned, Germany is a country of destination, but also one of transit. As in previous years⁴⁶, in approximately 80% of cases, the countries of origin are Central and Eastern European countries, especially Lithuania, Russia, Ukraine and Poland, from where more than half the women involved originate. On the other hand, a mere 5% originate from Asiatic countries, mainly Thailand⁴⁷.

One third of all suspects are German nationals born in Germany; a further third originates from countries of Central and Eastern European countries, if we also count the Germans born there, and one in seven is a Turkish citizen⁴⁸.

In 2000, the *Bundeskriminalamt* recorded 321 court cases for the traf-

43 BKA: Lagebild 2000, p. 5: for 10 people gender reference was missing, the others were women.

44 BKA: Lagebild 2000, p. 10.

45 Tolweth, footnote 32.

46 BKA: Lagebild 1999, p. 7 and following.

47 BKA: Lagebild 2000, p. 5.

48 BKA: Lagebild 2000, p. 9.

ficking in human beings with a total of 926 victims, most of whom are women and 837 investigated persons, mainly men⁴⁹.

Compared to 1999, the number women grew to 125 (units) equal to 16%, whereas the number of court cases dropped by 25%⁵⁰.

Far more than 90% of the women involved are aged 18-25.

The report also contains data concerning the situation of engagement and the status of the women involved on the basis of the regulations on foreigners (*Ausländerrecht*)⁵¹:

- More than half the women are deceived on the reason behind the journey of entry. Counselling offices claim that many of these women are brought to Germany with promises of employment, for example in the catering or domestic work market⁵²;
- At the time of the journey, only one in five women knew that she was destined for prostitution;
- In one in ten cases violence is used in engagement.

Almost half the women arrive in Germany legally, the other half illegally⁵³; "legal" entry includes women from States that are exempt from visa obligations for short periods for holidaymaking - until they start professional activities (§ 3, Abs. 1, Satz 1 AuslG i.V.m. § 1 DV-AuslG) [...] ⁵⁴.

49 BKA: Lagebild 2000, p. 3 and 5.

50 Idem and also Lagebild 1999, p. 6.

51 BKA: Lagebild 2000, p. 11 and following.

52 KOK: Frauen handeln, p. 15 and see also: 'Frauenhandel, der zu Zwangsprostitution führen kann' in: <http://www.frauennews.de/themen/weltweit/frhandel.htm>

53 In 2000 the relation was 47,3 to 52,7% as against that of 41,8 to 58,2% of 1999 (BKA: Lagebild 2000, p. 11).

54 See Bundesgerichtshof, Neue Zeitschrift für Strafrecht 2000, p. 657 and following, with further indications.

3.3.4 *The penalties foreseen for trafficking in human beings*

As far as the 837 people investigated in the year 2000 that the *Bundeskriminalamt* mentioned in its report⁵⁵ are concerned, according to the statistics on court cases provided by the German Department of Statistics, in the same year only 148 individuals were sentenced for trafficking in human beings (*schweren Menschenhandels*); further 23 people were accused but not sentenced⁵⁶. Moreover, 144 of the 148 individuals sentenced received a prison sentence, unfortunately the duration of their imprisonment is unknown.

More detailed data is available for one *Land* (Baden-Württemberg) only: in 2000 investigations were opened for 27 cases; in the same year there were 14 sentences of which 13 were granted conditional suspension of the sentence (*Bewährung*); which foresees a prison sentence of less than two years⁵⁷.

Over the last two years, in Baden-Württemberg, almost half of the prison sentences were not executed.

SOLWODI, an organisation that is particularly involved in the fight against trafficking in women, has observed that of the 40 court cases it “monitored”, sentences of more than 5 years were given in two cases only⁵⁸.

3.3.5 *The legal situation of women under the laws on foreigners (Ausländerrecht)*

The legal situation of the women that work (under constraint) in the prostitution field according to regulations on foreigners (*Ausländerrecht*), is particularly difficult:

- If they travel without identification documents or with false documents, entry is not permitted (§ 58 AuslG); they can be deported within six months (§ 61 AuslG);

55 See BKA: Lagebild 1999, p. 9.

56 Source: Statistisches Bundesamt, Strafverfolgungsstatistik.

57 Landtag of Baden Württemberg, Drucksache 13/748, p. 3.

58 Minutes of the 16th sitting of the Arbeitsgruppe Frauenhandel of 12. February 2001, held in Berlin, TOP 1.

- If they come from countries that do not require entry visas for Germany, such as Colombia, Croatia, Latvia, Lithuania, The Netherlands, the Czech Republic or Slovakia (Enclosure I §§ 1 and 9 DVAuslG), stays exceeding three months in duration⁵⁹ or if the woman has an occupation (3.1.2.1.2 AuslG-VwV)⁶⁰, including paid prostitution (§12 DV-AuslG)⁶¹; is in any case, illegal;
- Certain women obtain regular entry as “artists” (§ 5 no. 9 AAV), for example to work as *entreneuses* in night clubs⁶². If they then exercise the “oldest profession in the world” rather than their art, they violate secondary rules (§14 AuslG), which are bound to administrative authorisation and become liable to penalties (§92 Abs. 1 Nr. 3 AuslG). If women repeatedly violate a prohibition of occupation, they can be deported (§46 No. 2 and 3 AuslG) - but not, however, in cases of forced prostitution. (46.3 VwV-AuslG);
- Even women who enter Germany as married women are subject to restrictions on their occupational activities, in particular in the prostitution field⁶³. However, they have an advantageous situation in that in the event of particular difficulties - such as maltreatment (*körperliche Misshandlungen*), or coerced prostitution - at any time they have the right to leave the home shared with their spouse without losing their right to stay in Germany (VvV-AuslG 19.1.2.1).

59 See: Bundesverwaltungsgericht, Informationsbrief Ausländerrecht 1997, p. 21 and following.

60 The administrative regulations relating to the law concerning foreigners establishes that “Exemption according to the law is no longer valid as soon as (...) the foreigner undertakes paid activity” (3.1.2.1.2 AuslG-VwV). Relating to this, the Home Office states that illegal entry occurs only when no kind of entry visa has been issued (circular of 20.5.1996, reported in: Informationsbrief Ausländerrecht 1996, 317), (cfr. Bundesgerichtshof, Neue Zeitschrift für Strafrecht 2000, p. 657 and following, Informationsbrief Ausländerrecht 1997, p. 21 and following).

61 On this subject see: Oberlandsgericht Karlsruhe, Ausländer - und asylrechtlicher Rechtssprechungsdienst 1998, p. 52.

62 See: Verwaltungsgerichtshof Mannheim, Neue Zeitschrift für Verwaltungsrecht-Rechtssprechungsreport 2001, 478-479; and, more generally, Mentz: Frauenhandel [footnote 32], p. 174-191.

63 See, on this point, Mentz: Frauenhandel, p. 204 and following.

In all other cases, the women can only appeal against deportation to their country of origin on the grounds that they can prove “a serious and concrete danger to their health, life or freedom” (§53 Abs. 6 AuslG). This is a direct reference to the victim-witnesses in court cases against trafficking in human beings (53.6 VwV-AuslG). In any case “it cannot be considered an individually concrete danger if there is a reasonable possibility that the same could also occur in German territory”. In other words, when witnesses are also threatened in Germany, they have no right to stay in the country (*Bleiberecht*)⁶⁴.

The only special case is when an individual is used in a court case, for example in the case of the trafficking in human beings.

In the remainder of cases “when concrete circumstances, or other indications suggest that a person forced to leave the country is a victim of trafficking in human beings, a term of voluntary deportation of at least four weeks must be granted”. At the same time “victims are informed of the possibility of consulting specialised consultation centres and obtaining assistance” (42.3.2 VwV-AuslG).

3.3.6 *List of indicators*

The problems concerning this norm emerge in putting it into practice; often, and this is the case in Frankfurt, women who are found to be in an illegal situation are deported without checks being performed as to whether they are victims of trafficking in human beings⁶⁵.

In Berlin, a list of indicators has been drawn up in order to help police recognise women who are victims of trafficking and, above all, in order to

64 See, on this point, also the minutes of 14th sitting of the Frauenhandel research group (Bonn, 25 September 2000, Top 1).

65 Minutes of 15th sitting of the Frauenhandel research group (Bonn, 27. November 2000, TOP 1). According to the Agisra management report, as a result of the 19 checks conducted in Frankfurt in 2000, 170 foreign prostitutes were (immediately) deported from Germany, and approximately 300-350 expulsions were initiated by Immigration Offices in Germany (Frankfurt 2000, p. 25).

undertake subsequent legal actions.

The criteria are, for example:

Information supplied by the woman:

- On the "recruiting" situation (deceit concerning the type of occupation to be practised, violence);
- On restriction of her personal freedom such as being secluded or subject to permanent surveillance;
- Concerning given means of payment (no direct access to personal earnings, serious and undocumented debts with the owner of the brothel or protector);
- On the working situation (no free time, constant presence/surveillance, no possibility to refuse clients or particular services).

Further investigations:

- On the situation of the woman (lack of passport, cash, signs of physical abuse);
- On the knowledge of the police on the work area;
- On the woman's appearance and behaviour (shabby, nervous, scared).

With regards to norms on foreigners, it is therefore possible to distinguish four separate levels of approach by authorities with women who are victims of trafficking⁶⁶:

1st level: the police or other public organisation ascertain - as for example in the event of a raid - irregular occupational activities or irregular stay in the country and investigate and recognise that there is no link with

⁶⁶ See Uta Pioch: Zur aufenthaltsrechtlichen Situation der Opfer von Menschenhandel (written version of the report sent to the Tagung des Auswärtigen Amtes "Europa gegen Menschenhandel", Berlin, 1.10.2001 - unpublished manuscript).

trafficking in human beings. In this case, the woman involved is very often deported before the “true background” emerges.

2nd level: a case of trafficking in human beings can be hypothesised. In this case, the woman involved must be given a voluntary expatriation period of at least four weeks, in order that she has the chance to organise her business.

3rd level: the woman can be considered as a witness in a trial and consents to a longer stay in Germany. In such a case - at least for the entire duration of the court hearing - the deportation order is suspended (*Duldung*).

4th level: the woman is victim of and witness to the activities of those responsible for trafficking in human beings and therefore pertains to a group of individuals in danger. In such a case, not only is it possible to extend the period of stay in the country, but also to participate in witness protection programmes.

3.3.7 *Stays during court cases*

A suspension of the deportation order (*Duldung*) may always be granted “when considerable public interests require further temporary presence within German territory” (§55 Abs. 3 AuslG). This is the case when an individual is used in a court case as a witness (55.3.3.1 VwV-AuslG) or co-operates with the German authorities in the investigation concerning certain crimes (55.3.3.2 VwV-AuslG).

With the introduction of the new law on immigration (*Zuwanderungsgesetz*: BT-Drs. 14/7387), in certain cases further residence permits must be granted (on expiry) under § 25 comma 4, part one, ZuwG⁶⁷; this would make a regular stay possible, instead of the “tolerated” one experienced otherwise.

Provisions are expressed on the woman involved, if she is required to

67 BT-Drs. 14/7387, summary of grounds/motivation, p. 74.

give testimony during a hearing. In such cases, the public prosecutor, presuming the woman consents, must "(inform) the competent authorities for foreigners in order to suspend measures aimed at ending the stay for the duration of the hearing and that the granting of a *Duldung* be examined under § 55 Abs. 3 AuslG" (no. 248 Abs. 3 RiStBV). However, this right is only valid for the duration of the legal proceedings. "If the foreign citizen is no longer required for the legal proceedings, the public prosecutor immediately informs the competent authority for foreigners" (No. 248 Abs. 3 RiStBV).

As "tolerated" persons, the women involved can obtain state aid for "accommodation requirements, meals, heating, clothing and personal health and care, as well as consumer goods used in everyday life" (§ 3 AsylbLG) - on the condition that they are not receiving income from occupation⁶⁸.

3.3.8 *Witness protection programmes*

In the meantime, a law has come into force for the harmonisation of the protection of witnesses at risk (BGBl I, 2001, 3510). This guarantees the protection of "people without whose information court cases would have no outcome or would be considerably more difficult (...), if these, due to their willingness to supply information, are exposed to danger" (§ 1 comma 1 ZSHG). Such individuals may, on request from the competent offices for witness protection (§ 2 ZSHG) be issued temporary documents (§ 5 ZSHG); or may also receive further measures for their protection (§ 2 ZSHG).

Foreign women who are eligible for such a protection programme can be deported or taken out of the country in agreement with the competent witness protection offices (§ 64 comma 3, part two AuslG); the police must therefore inform the competent authority for foreigners of the start and end of the protection programme (§ 76 comma 4, part four AuslG).

However, in the absence of rigid prerequisites for making use of such

68 See, on this point, the Ministry Decree regarding work and social security, 29.5.2001.

programmes, other women can be subject to protection on the basis of a plan of co-operation between specialised consultation centres and police presented by the Trafficking of Women Working Group (*Frauenhandel*)⁶⁹. This plan describes and clarifies, first of all, the common premises and then those differentiated by legal action on the one hand and psycho-social support on the other. It also foresees a range of extremely sturdy measures:

- the *Länder* must create special police squads for dealing with trafficking in human beings;
- the *Länder* should support a network of specialised, qualified and independent specialised consultation centres for supporting victims who give evidence;
- female workers of specialised consultation centres are permitted to assist questioning if the women involved give their consent;
- the police is held to inform the woman on the possibility of obtaining support as well as taking measures to guarantee her protection;
- the specialised consultation centres on their part will assure the recovery and support of the women, as well as medical and therapeutic aid.

The plan is currently subject to discussion by the competent *Länder* ministers, however, in the absence of a formal decision it has already been activated in its current forms in several *Länder*⁷⁰.

Within the framework of the STOP Project, I also conducted an inquiry with the Home Office and Justice Department and the *Länder's* Crime prevention offices, which I asked to provide me with information on the follow-

69 The law governing the protection of witnesses has explicitly left this protection programme unaltered (E-ZSHG, summary of grounds/motivation, p. 16).

70 See, for instance, the reply provided by the *Länd* governing bodies to the issues raised by the CDU in the Landtag dello Schleswig-Holsteinischen, Lt-Drs. 15/1246 (15/988) and the position taken by the Ministry for Social Affairs in Baden-Württemberg on the motion concerning the trafficking of women, Lt-Drs. 13/748.

ing question “if and when are women who are victims of trafficking in human beings subject to protection programmes and how does one proceed with those women who are simultaneously witnesses in court cases”. I was particularly interested to know the number of court cases, the legal status of the witnesses and during and after the court case, the number of witness protection programmes set up and the funding of their stay⁷¹.

Many *Länder* have instituted *ad hoc* competences, attributed in part to police stations specialised in violence against women (Rhineland-Palatinate, Bavaria) and migration crime (Berlin), or witness protection offices (Hamburg).

The number of witnesses subject to protection varies considerably: in Rhineland in North Westphalia, in the year 2000, 89 women were given support, in Hamburg and Berlin approximately 40, and in Saarland only one.

In all *Länder* there seems to be a certain extent of co-operation between specialised consultation centres and the police [...] and even the granting of temporary deportation order suspension (*Duldungen*) by Immigration Departments, is no longer a problem in most cases.

3.3.9 *The Frauenhandel (trafficking in women) Interministerial Working Group*

Since 1997, a Working Group on trafficking in women has been operating, which includes various federal ministers and those of the *Länder*, the *Bundeskriminalamt* and various experts [...]. This group recently held its nineteenth session.

In particular, its tasks include:

- a continuous exchange of information;
- the discussion, and where possible, the solution of concrete problems;

71 See the summary table concerning written replies provided by the single Bundesländern. However - as a result of numerous delays by congress - the available data is no longer very recent.

- the drafting of recommendations for the fight against trafficking in women and for the treatment of victims.

As part of the Stop Project, I had the opportunity to analyse the results of the work produced by this Working Group, and believe the following acquisitions to be extremely important:

- the drafting of an information booklet translated into thirteen languages and distributed to local German embassies;
- the abovementioned Co-Operation Plan between specialised consultation centres and the police for the protection of victims of the trafficking in human beings that give evidence [...];
- The Co-operation Plan was at the origin of the directive, imparted to the regional Employment Departments by the Federal Minister, in order to give the women involved [...] a work permit and to obtain occupation for them⁷²;

Finally, there were two clarifications on legal matters;

- The competence for the granting of social aid has been defined, whereby the woman is found in one place and later transferred to another for safety reasons;
- And it has also been clarified that women, who have illegally entered Germany or illegally remained there, can legitimately remain within federal territory, so long as they are subsequently given temporary suspension of the deportation order (*Duldung*), in order that they [...] can make use of services on the basis of the law on protection in favour of the victims (for example, the refunding of treatment expenses)⁷³.

The Working Group is currently pursuing the long-term aim of the creation of a special fund for supporting the victims of trafficking in human beings, from which money required for covering all the costs to be sustained

72 Ministerial Decree regarding work and social security, 29.5.2001.

73 Ministerial Decree regarding work and social security, 5.3.2001.

during the stay can be withdrawn (for recovery, support, assistance, legal aid, medical visits and treatment) as well as funds to facilitate return to the country of origin.

The fund is to be financed by the use of illegally obtained profits [...] ⁷⁴.

3.3.10 *The specialised consultation centres*

As far as victim support is concerned, the creation of a widespread network of specialised consultation centres funded by public resources has already been extremely important. The “*bundesweiten Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess*” brings together some thirty-four specialised consultation centres, spread across the entire German territory ⁷⁵, with four in Berlin, four in Frankfurt and surrounding area, two in Munich, Hamburg and Hanover and ten altogether in the Ruhr area and in Cologne.

The task of these specialised consultation centres is described in the Co-operation Plan:

“The task of these special counsellors is to support victims of trafficking irrespective of their willingness to give evidence in court. The aim is to favour swift rehabilitation, and maintain good physical and moral conditions. Victims must be able to return to a normal everyday life and develop prospects for their future”.

In particular, their competence covers:

- Preparation to receive the women in suitable structures;
- Guaranteeing psycho-social help and obtaining of the necessary medical aid;
- Attending statement givings by the victims, when the victim agrees

74 BKA: Lagebild 2000, p. 18, where the profits taken from the competent offices regarding organised crime are approximately triple those taken by other offices.

75 General overview in: KOK: *Frauen handeln in Deutschland*, Stichwort: Frauenprojekte, p. 117 and following.

- and supports them when appearing in court;
- Encouraging the victim in training activities in view of the adoption of reintegration measures.

Within the framework of the Stop Project, I requested and examined summaries of all the specialised consultation centres on the activities performed⁷⁶. Of the sixteen centres that answered my request for information, in the year 2000 assistance was given to almost 2,500 women. Of these, however, only a limited number were victims of trafficking⁷⁷. Frankfurt Agisra stated that of the almost 900 women to whom assistance was given, trafficking was only given as a reason in 8 cases. SOLWODI received only 30% of the almost 600 women that had contacted them. Overall, in 2000, SOLWODI gave assistance to approximately 60 women who were victims-witnesses. In 14 cases, the contact was initiated by the police. The federal office for Crime Prevention (*Bundeskriminalamt*) recalled attention to the role that the specialised consultation centres played in ensuring the women's stay in Germany and the start of legal proceedings: it is true that only one in six victim-witnesses made use of the specialised consultation centres, of these, however, only half obtained temporary suspension of the deportation order⁷⁸, while one woman out of 20 obtained the suspension⁷⁹.

Both the Article 6 of the CEDAW "shadow-report"⁸⁰ and the recounts of the specialised consultation centres clearly show that, unfortunately, reality and legal ideals do not yet go hand in hand:

- The four-week "reflection period" provided for by the enforcement regulation of the law on foreigners is often not granted to women who are not willing to give evidence in court;

76 See summary of project report.

77 Since the methods for obtaining information are so diverse and often inaccurate, more detailed information about the contact methods cannot be obtained.

78 See, on this point, BKA: Lagebild 2000, p. 17.

79 Ina Holzngel, footnote 33.

80 See footnote 30.

- To date women are often deported by the authority competent for foreigners without their being given the possibility of making contact with a specialised consultation centre even when the police has identified them as victims of white slavery.

Overall, co-operation with Foreigners' Departments is qualified as long and difficult. In contrast, in many cities, agreements between the police and specialised consultation centres exist. The police only makes contact with counsellors when it carries out raids or first informs the specialised consultation centres' operators on the raids planned, in order to adequately organise the recovery of the other women and other necessary actions.

3.3.11 *Deportation*

The specialised consultation centres also believe that following their traumatising experience in Germany, the victims intend to return home to their country of origin as quickly as possible. The "shadow-report" (*Schattenbericht*) shows that half of all women leave Germany spontaneously; just under one in six is expelled or deported and approximately one in ten becomes clandestine. According to indications from specialised consultation centres, at least one third of the women later return to the country either spontaneously or because they are forced to do so.

Different results are given by the *Bundeskriminalamt* concerning the reports on victims of trafficking crimes recorded by the police: approximately 20% of the victims return spontaneously to their country of origin; to approximately one woman in six - probably aimed at the start of legal proceedings - temporary suspension of the deportation order is granted; but one woman every two is deported or expelled. Less than 5% is admitted to a witness protection programme⁸¹.

81 BKA: Lagebild 2000, p. 15.

3.4 An overview

I would like to conclude these observations with a comparison between Article 18 of the Italian legislative decree no. 286 of 1998, which, as it is well known, foresees a special residence permit for victims of trafficking⁸², and German laws. However, it is only possible to make a comparison between the respective legal disciplines, rather than the reality of laws in force: and, as we are all aware, what is written in the text of a law is one thing and how it is applied is a completely different matter. I also ask you to be tolerant towards a foreigner, who, not understanding Italian perfectly, is unable to capture the subtleties of the law.

In Germany, too, provision is made for the possibility to grant the authorisation of the residence permit for “urgent humanitarian reasons”, which goes by the name of *residence permit* (*Aufenthaltsbefugnis*: § 30 *AuslG*)⁸³. With a quota of 3% of all authorisations⁸⁴, the *Aufenthaltsbefugnis* represents, one might say, the stepchild of the German discipline on residence permits. Its issuance is, as a rule, linked to permanent residence (§ 30 comma 2 *AuslG*)⁸⁵, which is often not the case of women working as prostitutes. It could therefore be said that the German discipline described in paragraph thirty (§ 30) of the law on foreigners (*AuslG*) is a *theoretical* discipline, in that it is connected to a legal situation whereas the Italian one under Art. 18 is a *practical* discipline as it takes its inspiration from a concrete reality.

In Germany however, one has to rely on the *temporary suspension of the deportation order* (*Duldung*), which is not strictly speaking authorisation to stay, but rather a waiving of the organised obligation to return to the country of origin (§ 55 comma 1 *AuslG*). The logical consequence is that despite the

82 See, on this point, the panorama of European jurisdiction on the subject of the trafficking of women in Niesner, Elvira/Jones-Pauly, Christina: *Frauenhandel in Europa. Strafverfolgung und Opferschutz im europäischen Vergleich*, Kleine Verlag 2001, p. 84 and following.

83 In detail, Fleuß, Martin: *Die Aufenthaltsbefugnis gemäß § 30 AuslG im Spiegel der Rechtsprechung und Literatur*, Zeitschrift für Ausländerrecht und Ausländerpolitik 2000, p. 60-68.

84 See Bundesverwaltungsamt: *Ausländerzentralregister* (<http://www.bundesauslaenderbeauftragte.de/daten/tab11.pdf>).

85 Fleuß, footnote 84, p. 61 with further references to the contradictory jurisprudence in cases in which residency subsequently becomes illegal.

possibility of extending the suspension for up to a year, residence is not guaranteed. Residence is rather an accessory to the reasons that prevent deportation. Suspension can therefore also be revoked, when these reasons cease to exist (§ 56 comma five *AuslG*): when the court case finishes or there is no longer a situation of danger in the country of origin, etc.

From another aspect too – and particularly in trafficking including women – Article 18 contains a regulation that is decidedly more favourable, as it provides for the issue of a permit for six months, instead of waiting, as the German system does, for the impossible calculation on the duration of the court case (Nr. 248 RiStBV) and therefore leaves the woman in uncertainty concerning the duration of her stay.

This ultimately means that the stabilisation and support of women subject to abuse are sacrificed on the altar of reserved authorisation, even when a return to the country of origin has been decided. This is infinitely cruel, if one considers that the German State, on average in 1999 and 2000 used the *Gewinnabschöpfung* (the use of illegal funds), to withdraw approximately eight million Euros, from illegal funds deriving from trafficking⁸⁶.

Without a doubt it is right and just to offer these women aid and support. And German specialised consultation centres would doubtlessly welcome the inclusion in the law of a provision such as that contained in Article 18, first comma; however, this would mean that the State would have to finance the infrastructures required. It is also important that the women have access to the work market and the social security system, although this could ultimately represent a very attractive alternative to exploited and underpaid women.

Why connect the special residence permit to the aim of “saving” these women and to the participation in a programme of social integration and support? Making them good Italian ladies or ex-prostitutes (Article 18, comma one), on the other hand, is not one that I find very convincing. Now more than ever, when a type of behaviour - not to mention good behaviour - is connected to sanctions such as the revocation of the special permit in the

86 BKA: Lagebild 2000, p. 18.

case of interruption of the programme or behaviour that is incompatible with the aims of the programme (Art. 18, comma 4). It should be pointed out that, in reality, the law does not indicate these aims either (integration is not an aim, but there must be one). Therefore, it is not possible for the woman to know when her behaviour contrasts with programme aims. Certainly in Germany, many professors would have to rack their brains asking whether a certain regulation is compatible with the "principle of determination".

However, quite apart from this particular aspect, I would not be in favour of the introduction of a similar regulation in Germany: having struggled for a long time to remove the stigma attached to prostitution being against common decency and to recognise it as a social and legal reality, it would seem somewhat counter-productive to indirectly re-introduce that stigma for foreign prostitutes. Until we are, in some way, able to offer these women more advantageous occupations, it is unlikely that we can punish them for doing what even the Italian Prime Minister does: behaving "economically" and earning as much as possible.

In conclusion, I would like to make just one more observation: in Germany, it is usual - especially for many left-wing supporters - to place the right to residence at the centre of policies on foreigners. This appears to me to be yet another form of chauvinism: whilst we Germans willingly visit distant countries on holiday, but are also more than happy to stay at home, it would seem that we believe that citizens of all other countries in the world have just one thing in mind: to come to Germany (or Europe) and stay there for ever. As we have seen, this is often not the case for the foreign women that work as prostitutes. They come to Germany - *oborto collo* - in order to be able to maintain their family. This does not mean that these women like staying in Germany and would willingly remain there. The national and European policy can therefore not be limited to "care for" the women in their country of arrival. It should rather feel responsible for protecting them, wherever they might be, but above all, it should offer help and support to the women who intend to return to their country of origin. Let's help them to start a new life in their country of origin and to remove the "victim" label that we use very willingly when it come to talking about women and trafficking.

4. Transnational comparisons and prospects

by Maria Virgilio

The comparative dimension offers an extremely heterogeneous and non-harmonious picture, especially concerning the tools employed for protecting the victim of trafficking. This can vary from assuming the role of a mere instrument of investigation, the being subject of social integration and the protection of his/her human rights. However, there are also considerable differences in the legal provisions from one country to another, which is a sector of a delicate mixture between criminal policies, prostitution policies and immigration policies.

The position of the condition of clandestinity also varies. It goes from being illegal (from both administrative and penal point of view) to being - in other systems - the legal presupposition for making illegal migrants deserving of special favour, when subject to exploitation, in the various structured combinations on the various aims of exploitation, be it sexual, occupational or otherwise.

The obvious need for European harmonisation has led to the formulation of the proposal - 11 February 2002 - by the European Commission of a Council Directive *"on the short-term residence permit issued to the victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities"*).

The proposed tool is a "juridical-administrative" one and consists in a special residence permit, aimed at combating both the aiding and abet-

ting the illegal immigration and trafficking in human beings, aimed specifically at “ensuring that victims co-operate with the competent authorities”.

This need is balanced by that of avoiding the risk of possible abuse and instrumentalisation. There are therefore three substantial requisites for the issuance of residence permits: the usefulness of the presence of the person, clear willingness to co-operate shown by the victim, and the interruption of all contact with the presumed perpetrators of the crimes.

The procedure can be broken down into three phases:

- 1) the victim is informed that it is possible to obtain a residence permit;
- 2) if, and when, the victim gives the authorities an initial declaration on the facts or makes a formal report, there is a thirty day reflection period, in which the victim cannot be expelled and receives as benefits: care, psychological and social assistance and accommodation;
- 3) decision within the thirty day reflection period plus ten days by the authority, which proceeds with investigations and legal proceedings, of the release of a residence permit for six months, on the condition that the three fundamental requisites foreseen are identified. The permit will be renewable for further six monthly periods, until the legal proceedings are concluded with a judicial decision and the same conditions remain.

This residence permit will give the subject access to the work market, education and professional training, as well as medical care. Finally, Member States can make the victim participate in an integration programme, in the event that the victim intends to establish him-/herself or to prepare his/her for a return to his/her country of origin.

In the hypothesis in which residence is not renewed because the legal proceedings have terminated with a decision, the usual rules for foreigners will be applied and, if the victim requests a different kind of residence permit, the Member State, in examining the application, will take

into account the victim's co-operation in the criminal proceedings.

The text of the proposal sets this instrument clearly apart from those for victim protection (disciplined by the Framework decision of the Council on the 15 March 2001, concerning the position of victims in legal proceedings) and from those on witness protection in the fight against organised crime (including the Council Resolution of the 23 November 1995).

If we compare this short permit with similar institutions, we see that from the opening phase "reflection", the model is rather similar to the Dutch one, which is valid for 3 months and the Belgian one, valid for 45 days, which however starts with the adoption of a deportation order of 45 days.

The person contacted by the police is not deported because he/she is considered a potential witness.

In The Netherlands, the subject is helped and supported during the choice in order to help him/her to report the crimes committed by the exploiters. She/he is guaranteed accommodation, maintenance and assistance, but does not have access to the work market. Residence permits are only granted when a report is made to the Ministry of Justice, and only for the duration of the trial.

In The Netherlands, as in Belgium, and as in the directive proposal, the person must be deported unless she has been able to obtain another type of residence permit.

The Belgian model, however, is similar to the Spanish one, which gives the prosecutor the faculty to proceed with the deportation order.

It is therefore the Dutch system, even more so than our Article 18, the most agile and swift in the initial phase, in which it provides all subjects with immediate shelter from deportation. But only for three months. Then, in the following phases, all types of permit that are given here (including the German model) differ from Article 18 because they are obviously linked to repressive judicial requirements, even sometimes, as in Belgium and Spain, subordinate the permit to the importance or essentiality of the contribution. The best example of this is in Belgian legislation, where, despite the absence of an specific provision, it would seem, accord-

ing to commentators, to impose deportation should the court case not terminate with a criminal conviction.

In France and the United Kingdom, there are no comparable institutions.

Moving on to another regulation sector, that of norms destined to combat trafficking for the purpose of sexual exploitation, we have already mentioned the need for a forceful harmonisation and unification.

The recognition of the legal sources mentioned above brings together extremely different types of crime:

- a) aiding and abetting of illegal trafficking in human beings:
 - Italy - Art. 12, c. 1, Immigration law;
 - Spain - Pen. Cod., Art. 318-*bis*, comma one;

- b) aiding and abetting of illegal immigration for profit making ends exerted with violent ways or by "abusing a situation of need":
 - Spain - Pen. Cod., Art. 318-*bis*, 2 comma;
 - Palermo Protocol - *Smuggling of migrants*;

- c) aiding and abetting of illegal trafficking of migrants:
 - Spain - Pen. Cod., Art. 313;

- d) trafficking intended as the criminal act of forcing others to enter and/or stay in a foreign country where he/she may be "likely to be subject to sexual exploitation" with certain ways:
 - Sweden - Pen. Cod., Chap. 4, §3;

- e) trafficking intended as the criminal activity of favouring the entry, stay or exit from national territory for the purpose of sexual exploitation with determined ways:
 - Italy - Merlin law, Art. 3, nos. 4 5 6 7 (only for illegal entry);
 - Italy - Art. 12, c. 3, Immigration law (only for illegal entry);

- Spain - Pen. Cod., Art. 188, comma 2;
- The Netherlands - Pen. Cod., Art. 250a, ii);

- f) trafficking intended as a kind of criminal behaviour of favouring the entry, stay or departure from national territory for any aims, with determined ways:
 - Belgium - Law 15 Dec. 1980, Art. 77-bis;
 - Palermo Protocol - "*Trafficking in persons*";

- g) trafficking in human beings intended as exploitation - in various forms - for the activities of prostitution of foreign people:
 - Germany - Pen. Cod., § 180b;

- h) exploitation of prostitution, also applicable for foreign citizens:
 - France - Pen. Cod., Art. 225.5;
 - United Kingdom - *Sexual Offences Act 1956*, Art. 22 and Art. 24;
 - Sweden - Pen. Cod., Chap. 4, §3;
 - Sweden - Pen. Cod., Chap. 6, § 8;

- i) laws that make express reference to conditions of slavery:
 - Italy - Pen. Cod., Art. 600, 601 and 602;
 - France - Law no. 2001-434.

This list of specific cases must then be considered with the variable of minors, which has certain other specific cases, or makes the situation more serious. And in certain cases it also has variables of gender when the law refers explicitly to women.

It goes without say that the systematic contexts in which these cases are situated also varies greatly (for crimes concerning prostitution, immigration, common decency, freedom and integrity, against the individual, freedom or sexual self-determination, against workers' rights, against the rights of foreign citizens, crime against humanity - as in France) and, even more obviously, protected legal interest.

The fundamental question of criminal legislative policy on trafficking in human beings therefore emerges, on how to structure norms against trafficking. The alternative is a specific sexed provision that refers to women and for sexual exploitation aims only, or, on the other hand, a neutral provision, widened to take in a range of purposes: forced labour, domestic servitude and removal of organs.

The first road is that practiced in the Statement of the Ministerial Conference held at The Hague on the 26 April 1997, which expressed the "European guidelines for effective prevention and contrast measures against trafficking in women for the purpose of sexual exploitation", which establishes that the "trafficking in women means any behaviour that facilitates the legal or illegal entry of women to other countries, as well as their transit, stay or exit of the country, for profit-making aims of sexual exploitation, by means of persuasion, in particular violence or threats, deceit, abuse of authority or other form of pressure that is such that the interested party has no acceptable or realistic alternative but to be subject to the pressure and abuse in question."

This definition, referring solely to women and solely to sexual exploitation has the advantage that it highlights the close relationship between this theme and that of migration on the one hand and prostitution on the other. The same choice was made by the Spanish Penal Code Art. 188, comma 2, where the legal provision is addressed to one aim only, that of sexual exploitation.

On the other hand, the Statute of Rome, 17 July 1998 of the International Penal Court, introduces the enslavement amongst the crimes against humanity, intending it as the "exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children".

The criminal policy alternative is a single provision of trafficking, with a wide range of illegal purposes, including various types of exploitation and that is suitable for covering, in addition the current forms of trafficking as well as future developments. This choice does not model the law

around female subjects, as though it were the female sexuality and body to make women particularly vulnerable to trafficking. This gendered outlook therefore refrains from emphasising the sexual component, by placing all forms of subjection sexual and non, on the same level. In fact it goes so far as to highlight how it is the male demand for commercial sex to stimulate trafficking due to the high earnings at low costs that organised crime assures.

The same road its travelled by the UN Convention against Transnational Organised Crime - Palermo 2000 - and by the two Additional Protocols: (A) to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and (B) against Transnational organised crime to combat the smuggling of migrants by land, sea and air".

These new acts of international importance are somewhat relevant in that they widen the capacity of the legal terms and correctly tackle the complexity of the current phenomenon of reduction to the condition of slavery. "*Trafficking in persons*" is defined in the former 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 [...]. 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".

"*Smuggling of migrants*" (smuggling, fraudulent introduction, favouring of illegal immigration) is on the other hand defined as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

The "Eurocrime" proposal, aimed at preventing trafficking in persons, on the guidance of the prevision of Article 29 of the European Union Treaty, as altered by the Amsterdam Treaty, includes sexual and labour exploitation and any other aim contrary to personal dignity.

Another problematic issue is the means of constitutive behaviour of the typical figure in the trafficking in human beings. The point is to overcome the traditional forms of constriction and coercion, which are as for example in crime of sexual violence, violence, threat, deceit, abuse of authority.

It is necessary to identify the suitable behaviour to express the lack of effective alternative options, in other words that are able to provide the necessary guarantees of clarity and accuracy to that grey area in which people without alternatives to being subject find themselves. When it comes down to it, how many choices are really free? How many work contracts are freely negotiated?

International tools have attempted to identify certain further forms of behaviour (*actus reus*). One is the abuse of the position of vulnerability. The European Parliament, in its Resolution on the trafficking in human beings of the 18 January 1996 (OJ C 32, 5.2.96) therefore described the illegal behaviour of those who traffic "using deceit or any other form of constriction or abusing a situation of abuse or administrative uncertainty". The Spanish Penal Code in Article 188 also described the abuse "of a situation of superiority or need or vulnerability of the victim". And the 1997 The Hague Guidelines identified subjection as "and form of pressure that gives the person involved no other acceptable or realistic choice but to be subject to the pressure or abuse in question".

Finally, the norms are examined according to the point of view, which is highly symbolical, of slavery and new forms of slavery. The effective symbol is extremely decisive in that it shifts the interest of sexual liberty to that of the *status dignitatis*, or personal dignity. And in any case, this interpretation can be risky in the sense of alterity that it inevitably induces and for the distance that it introduces in relation to a criminal phenomenon that does not live far from us, not only with regards to the forms of organised prostitution, but also in those that are gradually emerging from domestic servitude.

The proposed Italian reform modifies the provisions of slavery and proposes them in a different manner. The new hypothesis includes the

crime of trafficking. However, the term itself, used in international judicial language, is the source of a certain ambiguity. It does not evoke merely the trade of white slaves, and therefore a sexed criminal phenomenon, different and, in part, opposite to the current one, but is also non-univocal due to the etymology of the word, which derives simultaneously from the Latin verbs *trahere* and *tractare*. It therefore varies from the mere behaviour of conducting a person from one place to another, transferring and uprooting him/her from the country of origin, and the trade or marketing in human beings, subject to a sort of ownership over others and therefore instrumentalised and exploited.

This ambiguity also affects legal language, that moves to and from trafficking and trading. However, not in the most recent international legislation (the UN Protocols of Palermo, in English, make a distinction between *trafficking* and *smuggling*), and therefore the need to establish a "clear and harmonized" definition is indicated as a priority in both Community ambits and in international co-operation. By examining the European Parliament's Resolution of the 19.5.2000 "For further actions in the fight against trafficking in women", adopted on the basis of the report by Patsy Sorenson. The resolution contains the following passage:

"21. Believes that the countries of destination should grant temporary residence permit to victims of trafficking in human beings, regardless of whether or not they wish to testify subsequently in court that they have been victims of trafficking in human beings; furthermore, calls on the Member States to grant, in the framework of readmission agreements, a special permanent residence permit on humanitarian grounds to women victims of trafficking; suggests that NGOs, with established credentials in assisting women victims of trafficking, be authorised to give their opinions as to whether or not residence permits should be issued".

Finally, for what concerns the European Council, Recommendation no. 11 of the 19 May 2000 of the Committee of Ministers has as object to combat the trafficking in human beings for the purpose of sexual exploitation (*Recommendation No. R (2000) 11 of the Committee of Ministers on actions against trafficking in human beings for the purpose of sexual exploita-*

tion). It is on the basis of this indication that the European Council is verifying the feasibility of a Convention on trafficking in human beings, which takes in to consideration both the experience of Article 18 and the need to co-operate and harmonise the various criminal counter-measures.

Chapter IV

A comprehensive overview

1. Results and problematic crux identified by the research under legal outlines

by *Davide Petrini*

1.1 Social path and judicial path: criticism of the idea of contrast

The first aspect emerged from the research concerns the need to deny the apparent contrast between the two paths, the judicial path and the social path¹.

On one hand, within the social path, the *Questura* (Police headquarter) must send the "*notitia criminis*" to the Public Prosecutor's Office, actually putting the Court into action also in this hypothesis. Having obviously to do with very serious crimes prosecutable "*ex-officio*", the duty of accusation is in force, whose omission is subject to penalties².

1 For a first interpretation of Art. 18, in order to guarantee the legitimacy of a purely social path, or rather, also for whoever does not offer any judicial contribution, see: A. Callaioli, "Il testo unico delle disposizioni sull'immigrazione e delle norme sulla condizione dello straniero: una legge organica per la programmazione dei flussi, il contrasto alla criminalità e la lotta alla discriminazione", in *Pen. Leg.*, 1999, p. 281-282.

2 M. Virgilio, "Recenti strumenti di contrasto della violenza sulle donne: nei dintorni del diritto penale", in G. Del Giudice, G. Barbara, C. Adami (eds.), *I generi della violenza. Tipologie di violenze contro donne e minori e politiche di contrasto*, FrancoAngeli, Milan, 2001, p. 146-147: it is always a matter of very serious crimes, prosecutable *ex-officio*, for which the *Questura* or vice

On the other, when relations of trust are established between the accredited private or public welfare agencies and the *Questura*, a woman is often granted the time to mature her decision to file a complaint, meanwhile she (as a victim of exploitation) is supported by a local public or private agency, and the *Questura* avoids to execute any measure of expulsion³.

We can therefore assert that paths are two as to the proposal (Public Prosecutor's Office or non governmental organisations and local authorities) and the public prosecutor's opinion, which is demanded (in the case of a prosecution following an accusation) if the request proceeds from public or private welfare agencies; while it is not mandatory within a solely social path, even if the text of Art. 18 would appear to lend itself to a different interpretation, as it establishes to proceed on "the proposal of the Public Procurator, or with the favourable opinion of the same Public Procurator".

We can talk about a doubleness of paths also in relation to victim's accusation, which is omitted in the social path.

However, there is an inevitable and substantial unity as to the institution of criminal proceedings, which can never be omitted, since the duty of accusation hangs over the *Questura*. Also within the social path, a woman can therefore be called to testify, often during an "*incidente probatorio*" (special evidence pre-trial hearing), on responsibilities of individuals, whom, in that case, she has not denounced⁴.

squad will have the duty of accusation. Consequently the path, which at first is social, will always lead to penal proceedings. See: A. Picciolini, "Il quadro normativo italiano sul problema del traffico internazionale finalizzato alla prostituzione e allo sfruttamento sessuale delle donne", in F. Carchedi, A. Picciolini, G. Mottura, G. Campani (eds.), *1 colori della notte. Migrazioni, sfruttamento sessuale, esperienze di intervento sociale*, FrancoAngeli, Milan, 2000, p. 79-89, about a woman's greater willingness to give accusatorial declarations, during penal proceedings that do not result from her accusation but from the *Questura*, if a social path is started.

3 On that account see: M.G. Giammarinaro, "Prime valutazioni sull'attuazione delle norme sul traffico di persone", in *Dir. imm.*, 2000, p. 53.

4 In regards to the identification of the characteristics of the social path, M.G. Giammarinaro, "Prime valutazioni", p. 54, points out that in these assumptions a woman is not obliged to give sworn statements "*in the initial stage* of her way out from trafficking" (italics added), confirming that, in any event, after the inevitable accusation of the *Questura* to the Public Prose-

So: there are two paths as regards proposal and check of dangerous conditions, but the institution of penal proceedings is unavoidable and the woman's involvement as witness is probable.

As we have already mentioned, the contrast between the two paths is made less dramatic (or rather it is denied) by a further datum given by the experience: actually the concession of the residence permit following a judicial path often arrives after a period of solely social intervention, which has to give to the woman the needed time to mature her choices⁵. On that account the experience in Modena is emblematic. Here we can speak about a real "pre-proposal", consequently when the accusation is made, a significant course with accredited ngos or local councils has already been performed.

In other cases, also when a victim's accusation exists, the Public Prosecutor's Office does not submit the application for the permit, merely giving its favourable opinion on the application of the association, in order to avoid that, during the trial, the defendant's lawyers assert the instrumentality of the accusation to obtain the permit. It should be noted that in these assumptions, at least in theory, the regulation would exclude the need of the opinion of the Public Prosecutor's Office, since the proposal proceeds from the association. However the path is considered as "judicial" and not as "social", as an accusation has been made.

Consequently, the conclusion that Italian legislation, which is probably unique in Europe, has adjusted the instruments for the intervention against trafficking in human beings on a clear and strict distinction between "trafficker's responsibility and victim's one" could be shared⁶.

cutor's Office, she shall be heard as witness, during preliminary investigations and probably during the "*incidente probatorio*". By the same author also see: "La rappresentazione simbolica della tratta come riduzione in schiavitù", in F. Carchedi et. al. (eds.), p. 90-99.

5 On that need see: Commissione interministeriale per l'attuazione dell'art. 18, Rome, 2001, p. 13; V. Tola, "La tratta di esseri umani. Esperienza italiana e strumenti internazionali", in G. Zincone (ed.), *Secondo rapporto sull'integrazione degli immigrati in Italia*, Il Mulino, Bologna, 2001, p. 644.

6 V. Tola, p. 624.

1.2 Residence permit for reasons of social protection within the system of rules on foreigner's entry and stay in Italy

A second commonplace, which is fully denied by the outcomes of the research, is the fear that Art. 18 can constitute a sort of picklock to undermine the rigour of the rules on the entry and stay in Italy⁷. It is not true, principally thanks to the role played by the associations and the local authorities (that is the seriousness of the programmes to which women are admitted), when they succeed in establishing a significant relation of trust with the *Questura*.

From this point of view, on the contrary, in the cases of social path (that is to say without an accusation by the woman, and on request of the associations or of local authorities), the *Questura*, after verifying the reliability of the declarations given by the association/local authority on the behalf of the victim through the checking of some actual facts (inspections of the hotels where the victim says she has stayed, on the places where she asserts she was obliged to prostitute herself, etc.) and of the existence of a dangerous condition, grants the permit, relying on the seriousness of the social programme proposed to the victim by the accredited agency. In the hypotheses of judicial path, the application of the Public Prosecutor's Office, indicating the facts from which danger is to be deduced, even constitutes a fact for which the residence permit is almost automatically granted.

1.3 Circulars of the Ministry of Interior

In confirmation of these assumptions, the analysis of the circulars issued by the Ministry of the Interior, which reveal a particular attention to Art. 18, is very interesting.

The initial approach, which preceded the coming into force of the "*Regolamento di attuazione del testo unico delle disposizioni concernenti la disciplina*

7 For M.G. Giammarinaro this baseless fear hampered the procedure of the passage of the law: "Il permesso di soggiorno per motivi di protezione sociale previsto dall'art. 18 del T.U. sull'immigrazione", in *Dir. imm.*, 1999, p. 38.

dell'immigrazione e norme sulla condizione dello straniero" (Regulation to carry out the consolidation on provisions concerning immigration discipline and rule on the foreigner condition), provided that Public Prosecutor's opinion was necessary even when the proposal did not proceed from the Public Prosecutor's Office⁸.

Later, the Ministry's attitude changed considerably. In subsequent measures, in fact, it is pointed out that the residence permit for reason of social protection is placed on a line of thorough breaking in comparison with the preceding provision, that is to say Art. 5 of the decree no. 477/96, which had the characteristic nature of trials, and rewarded the victim's behaviour⁹.

Furthermore, it is explained that in cases of social path, which starts from a proposal submitted by an accredited private social agency or a local authority, without a prior accusation, the Public Prosecutor's opinion is not necessary¹⁰, thus imposing the investigation of the existence of a dangerous situation on the *Questura*¹¹.

Finally, the mentioned suspension of any measure of expulsion is quoted by the circular of the Ministry of Interior dated October 25th, 1999¹², which leaves out the effects of the expulsions ordered for reason of order and public security.

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- 8 "Circolare del Ministero dell'Interno, Dipartimento di Pubblica Sicurezza, 20/3/1998, n. 559/443/227729/12/2071^Div., Disciplina dell'immigrazione e norme sulle condizioni dello straniero", in R. Miele, *Le nuova legislazione sugli stranieri*, Union printing edizioni, 1999, p. 372.
- 9 "Circolare del Ministero dell'Interno, 25/10/1999, n. 300.c/1999/13/P/12/214/18/1^Div.", in *DirImmigrCit*, 2000, no. 1, p. 216.
- 10 "Circolare Ministero dell'Interno 17/04/2000 n. 300/C/2000/276/P/12.214.18/1^Div.", in *DirImmigrCit* 2000, no. 2, p. 207 and "Circolare Ministero dell'Interno - Dipartimento di pubblica sicurezza - Direzione centrale per la polizia stradale, ferroviaria, di frontiera e postale - Servizio immigrazione e polizia di frontiera 4/08/2000 n. 300/C/2000/526/P112.214.18/1^Div.", in *DirImmigrCit*, 2000, no. 3, p. 243.
- 11 "Circolare Ministero dell'Interno 22/05/2000 n. 300c/2000/334/p/12/214/18/1^Div.", in *DirImmigrCit*, 2000, no. 3, p. 241 and "Circolare Ministero dell'Interno 4/08/2000".
- 12 "Circolare Ministero dell'Interno n. 300/C/1999/13/P/12.214.18/1^Div del 25.10.1999", in *DirImmigrCit*, 2000, no. 1, p. 216.

1.4 Routine procedures in some police-headquarters (*Questure*): attitudes of open-mindedness towards the issuing of permits for reason of social protection

The same “virtuous routine procedures”, adopted in some police-headquarters, confirm the perception of their role that is little inclined to limit the possibilities to grant the residence permit for reason of social protection, as if the *Uffici Immigrazione* (Immigration Offices) had become the guardians of the borders, which are threaten by attempts of elusion of the Schengen’s rule.

On the contrary, the research points out many cases in which the *Questura* “widen” the interpretative stitches of Art. 18, sometimes with real analogic extensions.

The *Questura* of Turin, for example, granted the permit to male foreigners, who denounced facts of abetment of clandestine immigration, or other crimes, even if the case is not included in those provided for by Art. 380 of Code of Criminal Procedure (red handed mandatory arrest), such as in the case of Art. 12 of the legislative decree no. 286/98.

In Turin and Venice, even if there is not a definite rule on this matter, the conversion is granted also for self-employment, considering that if the permit for subordinate employment allows to practise the self-employment, it is necessary that also Art. 18 can be converted in that meaning.

Also see the attitude of *Questura* in Lecce as to the previous decree of expulsion, considered as losing for the subsequent, more favourable concession of the residence permit.

1.5 Conversion of residence permit

The main aspect to fully catch the meaning and especially the innovation of Art. 18 is the possibility of renewing and, above all, of converting the permit. This chance discloses the true nature of the permit for reason of social protection, also beyond the aims of the trial and of the fight against trafficking in human beings, as an instrument that enables the emersion towards legality

and the full undertaking of victim's rights of citizenship. As we have previously said, this aim does not contradict or belittle the need to fight organised crime. On the contrary, the widening of the opportunities to turn the residence permit for reason of social protection into another "regular" permit constitutes a main aspect to make the fight against traffickers and exploiters effective¹³.

1.6 The revocation of the permit: when a woman goes back to prostitution

A very delicate and questionable crux regards the revocations of the permit ordered when a woman goes back to prostitution. At this point, the *Questure* tend to abandon their substantially bureaucratic role, for which the permits are granted or revoked on the basis of the opinion of the Public Prosecutor's Office and on the reports of the associations, NGOs or local authorities, to fully undertake the responsibility of the revocation.

Sometimes the same accredited agency denounces the fact to the Public Prosecutor's Office, and then the revocation is ordered upon the abandonment of the programme. However, in other cases, it could happen that during a police raid a woman is found in the act of prostituting herself, consequently the *Questura* revokes the residence permit (always informing the association or the local councils).

Now, how can we interpret this sort of automaticity of the revocation? The law does not include any definite reference to the matter. Then, is the practise of prostitution always to be considered as an "abandonment of the programme"? It is right to call to mind that the permit is not granted to "encourage a sort of moral correction in the victim"¹⁴: consequently, the return to prostitution should be considered within a woman's general behaviour, in the refuse of any automatism of revocation¹⁵ (opportunely not provided for by law).

13 V. Tola, p. 626.

14 M.G. Giammarinaro, "Il permesso di soggiorno", p. 51.

15 M.G. Giammarinaro, *idem*, p. 52.

However, how to reconcile the substantially automatic revocation with the acknowledgement, if any, of the right to prostitute oneself?¹⁶

It is not a matter of “science fiction law” within the Italian legislation: the basic judgement passed by the Court of Justice of the European Communities¹⁷ on November 20th, 2001 recognised the right of some citizens of the East Europe to a residence permit for reason of self-employment in The Netherlands, defining prostitution as an economic activity carried out as self-employed work.

1.7 The residence permit granted to a foreigner who was sentenced for crimes committed when s/he was underage

Only few secondary cases of concession of residence permit according to the sixth paragraph of Art. 18, that is to say to foreigners, who have already served a sentence for crimes committed when under age and have positively participated in a programme of social assistance and integration¹⁸, emerged from the research. The reason is clear: in fact, the rule demands that the foreigner has actually served a term of imprisonment, as the interpolated clause, which establishes the issue of the permit “on the release from prison”, confirms.

All minors who take advantage of the measures for the deflation of the trial, according to the Decree of the President of the Italian Republic no. 448/88, and in particular of the putting to test, that is to say the least dangerous convicts, already entered into a social programme, are paradoxically excluded! It is obvious that on that account only a proper legislative intervention of reform could make the provision provided for by Art. 18, sixth paragraph, effective.

16 See: M. Virgilio, “Libertà sessuale e nuove schiavitù”, in A. Fioravanti, *La tutela penale della persona: nuove frontiere, difficili equilibri*, Milan, 2001, p. 12-13, and the bibliographic references in the footnotes.

17 Court of Justice of the European Communities, sentence dated November 20th, 2001 - case C-286/99 published in *DirImmCit*, 2002, no. 1, p. 119.

18 S. D’Amico, *Il soggiorno*, p. 7 refers to these problems.

2. The projects and the forms of implementation of the law: organisational models, systems of meaning, articulation of practices

by *Franco Prina*

Now let us see the main results of the research as to the part concerning how the principles established by Art. 18 of the Legislative Decree no. 268/98 have been turned into practices to shelter and protect trafficked people for the purpose of sexual exploitation.

We will discuss the characteristics of the contexts of the examined case-studies, the description of the users of the provisions established by the rule and the main aspects of the implementation of the projects, using as analytical hints the project typologies that synthesize the different approaches of the agencies running the Art. 18 projects, resulting from their ideological and cultural framework of reference.

The schematic presentation of trends and approaches, first of all, reflects the methodological difficulties, especially in regard to the comparability, which have been underlined in the *Introduction* of the report. At the same time, the apparent forcing and “caging” of complicated realities allow to get over the more or less true explanation of the work carried out, in order to understand the system of leading trends and approaches that apparently foster common interests and wills, but especially to point out the connections between these trends and approaches and the possibilities to access the programmes by the beneficiaries of the rule, the selection of users, the outcomes of the programmes entered upon by the people who benefit from residence

permits for reason of social protection.

In one word, how the construction of the issue, which is implicitly carried out by the people engaged in the implementation of Art. 18, conditions the evaluation criteria of the construction itself.

2.1 Areas of the case-studies and the organisational models

Comparing the local contexts of the case-studies, different models of structuring the resources and the services engaged in facing the issues of prostitution and trafficking in human beings and, most of all, different models of relation and integration among them have been found.

Although the experiences of social work in local contexts can not be confined within strict limits, for the aims of our analysis it is useful to place the experiences we studied in five idealtypical models of relation and management of the local Art. 18 projects:

- the model of the network of resources and services managed by a coordinating public body (the local authority): that is the case in Modena;
- the model of the network of resources and services managed by a coordinating body, which is the expression of the social private sector: that is the case in the Italian regions of Marche, Abruzzo and Molise;
- the model of the coexistence of autonomous projects, with limited cooperation and partial division of work based on the acknowledged expertise of the involved agencies, but also with more or less explicit dynamics of competition: that is the case in Turin;
- the model of the monopoly of interventions, even if in the articulation of the activated services, by a single managing agency (the local authority): that is the case in Venice;
- the model of the monopoly by a single managing agency, which is the expression of the social private sector: that is the case in Lecce.

The presence of different kinds of organisational models allows to

speak about a significant (although not absolute) “representation” of the areas we studied, in relation to the projects carried out in Italy, with reference to the Northern, Central and Southern areas, but especially to the different approaches implemented by the projects in terms of organisational, ideological and operational schemes, as it will be explained afterwards.

2.2 Users’ distribution and individual reasons to access the opportunities provided for by Art. 18

Considering the nationalities of the people entered into the social assistance and integration programmes, we find some differences among the territorial contexts. We can notice the following trends:

- a strong presence of Nigerian women in Turin (almost half the total amount of people entered in the local programmes);
- in Venice women from Romania and other East European countries prevail, while almost one fifth of the users comes from Nigeria;
- in Modena the group from Moldavia, along with other East European countries, is very large, and also in this case the Nigerian women represent one fifth of the users;
- in the Marche, Abruzzo and Molise regions, the highest percentage of women comes from Albania (approximately equal to 40% of users), followed by a significant number of women from East European countries, while the Nigerian women represent a lower percentage of the target group;
- in Lecce the presence of women from Moldavia is prevalent, but there is also a considerable number of women from Ukraine and Romania.

If we consider, within the different contexts we analyzed, the estimate of the main groups of origin of the people trafficked and forced to prostitution, we can observe that sometimes a proportional equivalence between the presence on the street and the distribution of the applications for residence permits for reason of social protection is lacking.

This leads to consider three matters: the nature of personal motivations, the elements that can affect the will to seek and reach a different life condition, the selection of the target, which is (implicitly or explicitly) carried on by the agencies running the Art. 18 projects by virtue of their ideological, cultural and operational approach to the issues of prostitution and trafficking.

1. With regard to the first point, the research confirms that the persons asking for protection, residence permit and access to a programme of social assistance and integration can be motivated by different reasons. We can roughly assert that the addressees of the rule could want to benefit from its opportunities either for objective conditions, or emotional needs, or rather for rational calculations, of instrumental nature too.

These reasons can be placed along a *continuum*, as follows:

- vital need to escape from unbearable conditions of violence and coercion;
- need to abandon the kind of life carried out and some relationships considered to be no longer acceptable;
- search for more favourable and independent life and working conditions;
- instrumental search for a way to stay in Italy, also through the rearrangement within the framework of the criminal organisation (with a change in the role);
- implementation of the strategy pursued by the criminal organisations aimed at instrumentally using the tool of Art. 18 to renew and redefine new balances within the sex market.

Within these different individual motivations, the “migratory project”, which has been and now is on the basis of the arrival in Italy and of the wish to stay here, has a great importance. As we will eventually see, the managing agencies of Art. 18 projects differently consider the “migratory project” in their development of programmes within the framework of the opportunities granted by Art. 18.

However, it should be stressed that the stages of first application of

the rule seem to avoid that the “instrumental” reasons, which for the moment remain a chance to which proper attention must be paid, to benefit from the rule find significant space beside the “real” reasons. In fact, the findings of the research seem to show that risks of an instrumental use of the programmes of social protection are incidental, since the access to the programmes of social protection is characterized by strict processes of selection. The processes of selection and check, that first of all are carried out, even if with different characteristics, by the associations, NGOs or local authorities responsible for the programmes, the inevitable institution of criminal proceedings, following the accusation, information exchanged with the *Questura*, the long times required by the programme itself, are all elements that do not leave margin to significant distortions of the aims established by the rule.

As some operators have recalled, the instrumental use of Art. 18 remains a possible risk especially for the projects that pay attention only to persons, without the interest or ability to “read” the dynamics of the prostitution market, the most “self-centred” projects, which are less interconnected with other projects implemented throughout the Italian territory.

2. In fact, reading the dynamics of the local market is necessary to better understand the factors that can affect the different personal inclinations as well as the inclinations of “ethnic” groups to benefit from the protection measures.

Even if certainties are lacking on that account, a first analysis of the elements we gathered enables to believe in the hypothesis that the differences in the search for support and in the participation in the programmes should be put in connection not only with the well-known differences in the management of the relations of dependence and coercion according to the group of origin, but also with two other elements.

On one hand, the processes of structuring the ways of rooting in the

territory and of "management" of the pertinent market by the groups of power that run it, in their dynamic dimension, from periods of stability to others of stressed turbulence. On the other, the cultural and ideological approaches and the type of organisational structure presented by the different resources and opportunities, in the articulation of each territorial context, that inevitably affect the definition of the "preferred" target (both in the meaning of ethnic belonging and in the meaning of the reasons required and considered as deserving of admittance).

If it is sure that the characteristics of the exploitation, that is the degree of intensity and the nature of the bond between exploiter and victim (let's think, for example, about the differences between the milieu of Nigerian prostitution and the one of Albanian prostitution), affect victim's personal inclinations to consider her situation inevitable, or even "acceptable", different trends and opportunities can occur also within the same "ethnic" groups.

The estimations made by single exploiters or groups of exploiters about the proper strategies to "manage" the persons who guarantee their expected profits, the change in interests and balances of power in the control of certain areas, the types of pressure exercised by the law enforcement agencies (on the street, but also on the flows that assure the "turnover") probably play a great role.

Thus we can assert that within a static and consolidated market, the attempts to access to the opportunities granted by Art. 18 for reason of "instrumental" nature, or for a need of a generational turnover, or as a way to face difficult life events are more widespread in women who prostitute themselves. On the contrary, within a market where balances are more unstable, conflicts among the groups that try to control it are more burning and competition is higher, the need to escape strong and violent conditions of coercion or to free oneself from very difficult and stressing situations and the wish of an independent settlement in the Italian territory can be prevalent among prostitutes. On the matter we can only advance prudent

hypotheses that could be improved just by a further analysis of the data gathered by the research.

3. Besides this, the characteristics of the system of the resources provided for in the territorial context have a great importance in the definition of personal strategies. This system is based on the Art. 18 projects but also includes other activities (that is the outreach units and the “*Numero Verde contro la tratta 800-290.290*”, namely a toll free number) as well as police that develop different contacts and synergies with this complex system of resources.

We discuss these aspects in the following paragraph.

2.3 The cultural and ideological dimensions in the development of the forms of presence and engagement in the sector

The starting hypothesis was the existence of a connection between the cultural and ideological construction of the issue (reading of its dynamics, definition of aims, nature of intervention) and the possibilities to access the programmes and the activation procedures implemented by the appointed agencies (as regards to the choice of target, thresholds, types of services provided for and tools adopted, etc.).

As to the cultural and ideological dimensions we refer to:

- the different readings of the issue, through strict categories (forced/unforced prostitution) or more complex analyses;
- the ethic opinion on prostitution, which can be considered evil *per se* or as an expression of choices of personal freedom (if it is free from direct or indirect forms of coercion);
- the approaches for the selection of objects (meeting the needs or defending the rights of the target; eliminating the phenomenon or reducing the correlated risks and conflicts) and instruments to achieve them.

In our opinion the complex range of elements characterizing the cul-

tural and ideological dimensions determines some major approaches as to the attention and the aims pursued, that for convenience are summarized in dichotomic categories as in the following scheme:

MAIN APPROACH FOCUSING ON...	CONSIDERED AS...	FOR THE PURPOSE OF...
SINGLE PERSONS	EXPLOITED, VICTIMS OF TRAFFICKING	REDEMPTION, RESCUE, SOCIAL REINTEGRATION
	MIGRANT PROSTITUTES DEPRIVED OF THEIR RIGHTS	SUPPORT FOR THE EMERSON IN THE LEGALITY AND ACQUISITION OF RIGHT OF CITIZENSHIP, PROMOTION OF PROCESSES OF SELF-DETERMINATION
THE PHENOMENON	EVIL PER SE	REMOVAL, EXTIRPATION
	SOCIAL PROBLEM THAT CAUSES CONFLICTS	"MANAGEMENT" OF THE PROBLEMATIC NATURE OF ITS PRESENCE AND MEDIATION OF LOCAL CONFLICTS

It is evident that in some experiences the focus in on the condition of the persons trafficked or forced to street prostitution, while in other experiences the meaning of the prostitution and its impact on the territorial context are more important. Within each category a second dichotomic level, which refers to the pursued aims that can be synthesized respectively in the alternative of redemption/protection of the victims and removal/management of the problem, can be found.

As for any dichotomic scheme, the collocation of single experiences in one of the above-quoted categories often seems a forced action that does not respect the complex approach and identity of each category. At the same time, these categories do not invalidate each other, since for example the support to single persons in one of the above-mentioned forms can be integrating part of a more comprehensive work on the phenomenon and a wider task does not exclude the care to persons.

However, the case-studies we investigated (and, inside them, the different experiences that articulate the local project) can be placed in any of the proposed categories, even if with different levels of "purity".

But it is important to underline that: while the identification of orga-

nisational models refers to the local context we analyzed, under the outline of the above-quoted approaches we make reference not only to the territory (save the case of “monopolistic” models where a single agency manages the system of local policies to face the issue), but also to the connection of the present and active resources (that can show significant differences) inside each of them.

Different approaches influence a series of very important aspects.

First of all, these dimensions intersect the following aspects:

- the approaches of the programmes, through the choice of proposals and instruments to meet the needs and the expectations of the target (type of shelter, quality of vocational training, opportunity of social and working insertion, the levels of income and the life standard, etc.) in competition with the “push factors” towards the world of prostitution;
- their possibilities and results, also in relation to the outcome indicators implicitly or explicitly considered.

Secondly, they affect the aspects that mainly refer to the management of the opportunity offered by Art. 18. In fact, several are:

- the kinds of relations with the persons who have to decide (especially of the *Questura* and the Public Prosecutor’s Offices) about the concession, renewal and revocation of permits, by adapting themselves and/or influencing the different (ideological, “political”, bureaucratic, pragmatic, opportunistic, discretionary, favouritistic) approaches of these institutional authorities to the matter;
- the types of perception of importance, role and meaning of the “bond” of accusation against exploiters, in connection with the primary persistence on the need to implement the so-called “double path” (judicial path/social path);
- the ways of interpreting and practising the two mandates of support and control (and especially the consequences on renewals and revocations of the permit itself) assigned to the appointed managing agencies of Art. 18 projects.

Assuming the above-mentioned distinctions, we can see how the mean-

ing and the potential aspects of Art. 18 can be differently considered, with a clear oscillation between a proper use (that is for the primary purposes established in the rule) and an improper or at least broad use.

So, among the projects addressed to single persons, we can find the use of Art. 18:

- for purposes of "*rescue*", thinking about the opportunities it offers as an instrument of re-socialization, a chance for women who want to "change their life" (for example *Associazione Marta e Maria*, Modena; Municipality of Turin; partly the *Servizio Migranti* of Caritas, Turin);
- for purposes of "*emancipation*", considering its potential elements to acquire rights of citizenship, either as migrant women (for example, *Casa delle donne*, Modena; *Associazione On the Road*, Marche, Abruzzo, Molise regions) or as sex workers (for example Tampep and the *Comitato per i Diritti Civili delle Prostitute*, Turin).

Also among the projects addressed to the phenomenon, two trends concerning Art. 18 can be distinguished:

- its use as instrument of contrast and "*extirpation*" of prostitution and of the criminal networks that profit from its exploitation (for example, Lecce partly);
- its use as instrument of "*management*" of the social dynamics correlated with street prostitution through the fight against its unacceptable aspects (for example, Municipality of Venice).

2.4 Consequences of the ideological and cultural approaches on practices

The consequences of the different approaches implemented in the development of practices can be schematically summarized in following table, where the four main prevailing approaches are compared, with the proper caution needed by the nature of the data we gathered, with the most important contents of the practices.

What follows is more carefully presented in the next paragraphs.

APPROACH PRACTICE	TO THE PERSON FOR PURPOSES OF RESCUE	TO THE PERSON FOR PURPOSES OF EMANCIPATION	TO THE PHENOMENON FOR PURPOSES OF CONTRAST AND EXTIRPATION	TO THE PHENOMENON FOR PURPOSES OF MANAGEMENT OF CORRELATED SOCIAL DYNAMICS
ACCESS TO ART. 18 PROGRAMMES	Assessment of the motivation to change life	Assessment of the intention of “breaking off” with the criminal exploitative organisation	Result of an active task to persuade people to abandon the street	One instrument to manage territorial problems and its conflicts
ACCUSATION AGAINST EXPLOITERS	A requirement necessary as “evidence” of the motivation to change	A necessary requirement to obtain the residence permit	Opportunity connected with the persuasion to cooperate in the fight against the phenomenon	Element for the evaluation of the will to abandon the criminal exploitative organisation
FORMS AND TYPES OF SHELTERS	Centrality of the community, gradual stages, rules and discipline, re-education	Use of shelters allowing more independence but always with rules and limits	With an institutional character, in order to counter risks and reduce exploiters’ proceeds	Diversified types of shelters able to create ties with the territory and change the perception of prostitution of the local community
VOCATIONAL TRAINING AND JOB INSERTION	Search for personal opportunities with the use of personal and “ethnic” skills	Attention to personal interests and resources as well as to the characteristics of the individual migratory project	Any kind, with the consideration of presumed ethnic attitudes; a positive way of spending time	In connection with the opportunities provided for by the social-relational context, giving free play to autonomy
AFFECTIVE RELATION- SHIPS	Priority of the process of reconstruction of moral “values”, possibility of “serious” relationships in the process of redemption	Respect of personal freedom, but attention to relations that reproduce forms of dependence	From strict controls for the fear of “relapses” to the use for an “accommodation” in positive contexts	Respect and use of autonomous relationships as aspects of “normalisation”
MANAGEMENT OF FUNCTIONS OF CONTROL AND SUPPORT	The support is not separated from a strict control of risks of “relapse” into improper behaviours, which are not accepted on principle	Dialectics between support, also for choices that are independent and not conforming, and the necessary caution to avoid prejudicing relations with the <i>Questura</i>	Prevailing function of control to oppose the phenomenon and interest in removing the “supply” from the market	The function of control is aimed at reducing the impact of the phenomenon on the local community and at fighting the exploitation system

2.4.1 Access to programmes and accusation

First of all, it is important to look at the different ways and channels that foster the access by the target to the opportunities provided for by the projects. The main ways are:

- the woman is brought to a public or private agency running an Art. 18 project by the police: mainly in Venice, Turin and Modena (42%), less widespread in Marche, Abruzzo and Molise areas (33%);
- the woman is accompanied to a public or private agency running an Art. 18 project by a client: more widespread in Marche, Abruzzo and Molise areas (especially in Ascoli Piceno);
- the woman is sent by other public or private agencies running Art. 18 projects: mainly in Marche, Abruzzo, Molise areas and Turin (19%);
- the woman approaches the agency running an Art. 18 project as a result of the information passed along by word of mouth among the interested persons: mainly in Modena (15%) and partly in Ascoli Piceno;
- the woman directly approaches the Art. 18 project: few cases, a little more in Turin (9%);
- on suggestion of the *Numero Verde* (Toll Free Number: 800.290.290): where this service has been started and is managed by the same agency running an Art. 18 project, the percentage is relevant, that is the case of the Associazione On the Road in Marche, Abruzzo and Molise areas (24%), while for the remaining areas it is about 5%.

Different kinds of processes of selection to participate in the programmes of social assistance and integration, a different meanings for the accusation against exploiters and different relations between the Art. 18 programmes and other forms of intervention correspond to the four ideal-types of projects.

1. In the case of projects addressed to the person for purposes of redemption and rescue, the main criterion to access to the programme is the woman's motivation to turn over a new leaf and her willingness to a process of re-socialization, which generally involves her entry into a community and her complete acceptance of the rules of the community.
Accusation could be the requirement needed as an "evidence" of this motivation.
The selection can take place on the occasion of the first contacts or after a process of gradual involvement in the agency's activities in order to support the process of "conversion".
Other types of intervention for persons who do not present this motivation are generally not provided.
2. In the case of projects addressed to the person for purposes of protection and emancipation, the selection is connected with real possibilities to obtain a residence permit (the base to acquire rights), her willingness to break her ties with the exploitation system and to achieve economic and housing independence. Accusation could be the requirement to obtain residence permit, according to its necessity.
Other forms of intervention for persons who do not access to the Art. 18 programmes are usually provided for in these kinds of projects. Within this framework, other social interventions are provided in order to support migrant women or to implement harm reduction behaviours within the street prostitutes.
3. In the case of projects addressed to the phenomenon for purposes of its extirpation, we find a trend to a wide use of Art. 18: also in this case the principle of selection is the woman's motivation to turn over a new leaf, but here we find a strong commitment to lead women to this choice, thus getting in touch with as many prostitutes as possible and trying to persuade them to abandon their con-

dition. Residence permit is an instrument to foster this persuasion. In this case the accusation is an object, rather than a requirement, to be cultivated in women, who in this way not only rescue themselves but also cooperate to save other victims of trafficking, and contribute to demolish exploitation systems and organised crime networks.

4. On the contrary, projects addressed to the management of the phenomenon of street prostitution use Art. 18 to support people who want to break off relations with the exploitative systems. So the project selects people exploited by organised crime groups acting within the local territory.

Accusation is an element to clear up positions and distinguish among situations that can be faced with different instruments. Since Art. 18 is considered as one of the instruments to be implemented for the management of prostitution and other social interventions (among which the harm reduction ones) are provided, its use is restricted.

2.4.2 *Types of shelters*

The differences concerning the types of reception provided for, identified accordingly to the implemented approach of intervention, can be summarized as follows:

1. A strong centrality of the placement in communities at the beginning of the programme usually corresponds to the rescuing purpose of the intervention and to the centrality of the objects of re-socialization within the process of social protection. The aim is “the woman’s reconstruction”, which regards not only her self-esteem and social and relational skills but also her morality. Different elements can be brought back to this object:

- definition of strict hours to eat and go out, which represent a form of discipline in contrast with the prostitute's "irregular" life;
 - training to housework;
 - forms of training to the "gratuitousness" of mutual relations, or to the "respect for her own body" in the relationships with men.
2. In projects addressed to the person for purposes of emancipation, the centrality of the independence is not only a goal to be achieved but also a basic element in the relations between user and operators and in the definition of programmes of social protection. This kind of approach usually involves a smaller degree of initial "institutionalisation" and a greater use of autonomous forms of accommodation, self-management in shared flats or one's own housing solutions. The object is fostering decisional autonomy and allowing a free choice of life styles, even if within the limits imposed by needs of safety and control as to the street work and the keeping of relations with people potentially involved in exploitation systems.
 3. In projects addressed to the phenomenon for purposes of extirpation of prostitution, stress is laid on the capacity of a radical abandonment of the context and on the role of a period of strong institutionalisation. Women's removal from streets as well as their access to institutions or communities, under a strict control, have the role of damaging the sex market, countering risks of a "relapse" or allurements by criminal systems and starting a process of redemption that can also include the assisted voluntary repatriation (on the contrary, when cooperation is lacking, the threat of forced repatriation can be an instrument to strengthen weak motivations).
 4. In projects addressed to the phenomenon of prostitution for purposes of its less problematic management, the housing provided for is not only aimed at meeting the needs of the woman sheltered, whereas it is part of a wider strategy to control relations between

prostitution and local community. Therefore forms of accommodation promoting new relations with local community can be preferred (for example family placement, or independent housing). Housing not only allows the development of social bonds, but it also influences the social perception of prostitution and of women who worked as prostitutes in the local community.

More concretely, in places such as Turin and Modena the large majority of social assistance and integration projects starts with the access to a community (80%), while Venice is characterized by a strong trend towards alternative solutions, so the most of women who participate in programmes of protection is not hosted in a community.

In Venice programmes are characterized by the passage to an independent housing solution in short time, while in Turin we observed a long stay in the community, and also a long period of cohabitation with partners. Modena seems to be placed in the middle course.

However, it is important to distinguish between ideal models and existing access procedures, which are greatly conditioned by the availability of accommodations. When forms of intervention are more fragmentary, in areas where a territorial coordination is lacking and in the projects addressed to single persons, ways of admittance and their congruency to ideal patterns are greatly conditioned by the context, that is the system of available local resources. For that reason all projects, regardless of their very different approaches, often refer women to religious institutions.

The risk is using different forms of housing not on the basis of individualised plans, respecting skills and expectations of each user, but in accordance with stereotypes that are often ethnicised (for example, Nigerians are more "difficult" because they do not accept strict rules, so there must be few Nigerians in each community, etc.).

Moreover it should be noticed that also the time needed to pass from "protected" solutions to more autonomous accommodations depends on the achievement of economic independence and, consequently, on the job opportunities of local labour market.

2.4.3 *Vocational training and job insertion*

As we know, vocational training and job insertion are long and complex processes that demand planning ability, good networking and flexibility to adopt many instruments. Especially where labour market offers less opportunities, the approach to single cases usually seems more problematic, in particular as regards the working aspect.

In addition, we can identify some different approaches, first of all as to the work skills assessment of women, who are to be started off on a job, and to their migratory project.

1. The rescuing purpose of re-socialisation involves a process of thorough re-definition of a person's migratory project: therefore the evaluation of proper forms of job insertion is not founded on women's migratory project, while it is based on general skills and characteristics that first of all have been ascribed according to their ethnic origin.
2. On the other hand, the emancipating purpose starts from the assumption that the abandonment of prostitution is one stage of a migratory process that first of all women have to re-define. The evaluation of women's interests and personal resources has a great importance for the vocational training and the search for a job insertion, while the approach as to the different opportunities is defined by a new elaboration of the migratory project.
3. In projects addressed to the phenomenon of prostitution for purposes of contrast and extirpation, quality of the job insertion and its correspondence to women's migratory project are secondary aspects in comparison with the main object of rescuing a person from the street and fighting the sex market proceeds. Starting from the importance of a positive way to spend one's time and of the abandonment of the problematic context, job insertion opportuni-

ties could be developed by considering the presumed “ethnic” abilities.

4. If the purpose is the management of the phenomenon of prostitution within the territory, the connection between the job insertion and the socio-relational inclusion into the local community will have a great importance.

For that reason models of vocational training and guidance, which bring out the opportunities offered by “normal” productive contexts within the territory, could be experimented (a significant example is the *“Formazione Pratica in Impresa”* - Vocational Training in Enterprise - carried out by the *Associazione On the Road*).

2.4.4 Approaches as to affective relationships

In programmes of social protection, there is the problem of which approach the operators have to assume as regards sexual and affective relations, especially in presence of potential elements of contiguity between dimensions that are greatly connected with the experience of prostitution and trafficking: money/market and sex, affective relationships and relationships of dependence/exploitation.

On that account some elements are common to all projects.

First of all, client is considered one important resource for the contact with the agencies, for a woman’s access to the programmes.

Secondly, the agencies usually do not take a prior stand against affective relationships, even with former clients, on the contrary they underline the need to carefully value case by case. The level of optimism or pessimism as to these relationships seems crossing these kinds of projects.

However, there are some differences among the various approaches.

1. We have already seen how in the projects addressed to single persons, in the “rescuing” model, part of “re-socialisation” consists in

the woman's "moral reconstruction". This moral reconstruction is also considered as a reconstruction of an approach towards affective and sexual relationships in which the above-mentioned contiguities, in particular that between sex and money, are absent. For this reason the projects train to the respect of one's own body, to gratuitousness, etc., and are suspicious of relations where elements of reification are present.

On the other hand, "standard" relationships can be considered as a positive element and an integrating part of a process of release from prostitution, of redemption, that is also seen as moral purification. In these kinds of projects, in the framework of an approach where institutionalisation and control are more stressed, very strict rules as to the possibility to go out with men are often imposed.

2. In projects inspired by the model of emancipation, caution towards affective relationships, always respecting personal freedom, is connected with the fear of asymmetric relations and with the risk that the process of women's independence is prevented by bonds reproducing economic, affective and psychological dependence. This worry seems to be particularly evident in projects connected with feminist movement, such as "Casa delle Donne" in Modena. On the other hand, also in this case the project recognises that "good" relationships can represent important resources for a women's social integration.
3. In the former of the two models facing the phenomenon, we can find initial strict controls of affective relationships to avoid "relapses" and contacts with women still inside the groups of exploitation, but then relational resources (in the possible marriage with "honest Italian men") are considered a good way of accommodation that offers women the prospect of a positive and proper life.
4. In the latter case, there is a greater attention to the phenomenon of

prostitution and a trend to consider partners as important elements inside women's system of relations, in the framework of a substantial "normalisation" of their life.

2.4.5 *Dialectics between support and control*

Finally, projects differ for the different ways of interpreting the practise of the two functions (the function of support and that of control), which have implicitly been assigned to the accredited agencies as consignees of mandates like those connected with the concession of rights dependent on the respect of rules and bonds.

The main issue is the attitude of the different agencies in case of infringement of rules and improper behaviour by the women sheltered, with particular reference to some choices of self-determination, such as the restarting of prostitution, once the bonds with exploitative systems have been cut off.

1. In the first of the four models, a strong action of *control* against the return to the street is essential part of the action of re-socialisation. The recourse to the community, where rules of behaviour are in force to restore a correct moral approach also in sexual behaviours, shows that the function of support cannot be separated from a strict control in order to avoid risks of "relapse" into improper behaviours, which are not accepted on principle.
In this model there is an evident convergence between the aims of the agencies and the necessary condition to keep or renew the permit granted by the *Questura*.
2. In the second model, the one of emancipation, a conflict between needs of control, which are explicitly or implicitly rooted in the mandate of the agencies managing Art. 18 programmes, and the role the agency intends to play to promote autonomy can more clearly emerge. Here we can observe a dialectics between the asser-

tion of the principles of respect of personal freedom, that leads an agency to support a person even in presence of non conformist choices, and the need to defend relations with the *Questura* that is the responsible for the issuance of the permits. If the lawfulness of conciliating the Art. 18 permit and, for example, the unforced practise of prostitution was asserted, these relations would be compromised for other situations.

3. The model of the fight against the phenomenon of prostitution presents dynamics similar to those of the rescuing model: the function of control is prevailing, as a useful element to oppose the phenomenon and for the more general interest of removing part of the “supply” from the market of sex exploitation. The importance of the function of control can be also testified by the extension of programmes of social protection and by a limited recourse to the conversion of a residence permit into a work permit, even when bureaucratic and working conditions would make it possible.
4. Finally the same needs of control are important also for the model that intends to develop actions to manage the social consequences of prostitution: the support for people who want to resume street prostitution tends to be broken not for a condemnation of prostitution, but for the breach of the breaking off with the exploitation system. In this case, the function of control is aimed at reducing the impact of the phenomenon of prostitution on the context, fighting the trends to grow again as an organized system and especially avoiding that the same organisations exploit the opportunities offered by Art. 18 as an instrument to run some aspects of the sex market.

3. Results and crucial points of legislation and crime policies

by *Maria Virgilio*

Factors have emerged from the specific area of study on sentences passed which, when combined with those highlighted by other research areas in this Stop Project, give rise to items of synthesis and evaluation which we would like to make clear.

3.1 The absence of conflict between the two approaches

The first result of this research is - we trust - the successful combination of two concepts, two dimensions: the social side, seen as instrumental in terms of social integration, and the judicial aspect, as a contribution to the struggle against crime, on the boundaries of which the provision of Art. 18 is based and which the Stop Project intended to analyse. The elements of comprehensive evaluation on the sentences also group together and synthesise the results which have emerged from research on the legal profiles of Art. 18 and the operational practices of reception and protection.

We can start by revealing the quantity of survey data which have already been collected from studying the sentences. We have only made reference to part of what a thorough reading of the sentences reveals: unfortunately the economy of this Final Report does not provide room for a thorough examina-

tion. Nevertheless the usefulness in terms of knowledge of crime factors and, in any event, the “world” of prostitution is by no means secondary and certainly has not escaped the notice of the most observant of those working in the field. It is also coherent with the results of interviews with members of the police and judiciary, who have both observed how valuable each item of evidence from the victims contacted can be, apart from the fact that their collaboration may lead to a formal charge being made. Even when the information provided was either not sufficient to start new enquiries, not essential or not relevant (to use the standard terms to assess the significance of contributions made), not new, but purely repetitive, this had the important effect of confirming the mapping of crime phenomenon, and was useful in excluding any factors of change or variations in the plans of criminal organisations.

For this aspect, therefore, stressing the value and importance of the charge fades away. This just goes to show, once again, the **non conflict of the so-called two paths in Art. 18**, but rather the need for integration to achieve efficient operations.

3.2 The instrumental use of Art. 18

The suspicion of **instrumental use** of Art. 18 is not confirmed anywhere.

We have already noticed that none of the decisions accepted and examined makes any reference whatsoever to the fact that the injured or accusing party has benefited from a residence permit for social protection. On the other hand other sources - interviews with defending counsels both for the accused and for injured parties - have provided exactly the opposite information: in all proceedings the legal counsels constantly attack the credibility of the injured party, challenging or, considering the results of proceedings, trying to challenge the purely instrumental nature of the accusation. Combining these two elements we must conclude that evidently judges - on reaching the examination stage of the preliminary hearing or the trial - have considered the accusations credible and certainly not invalidated by instrumental factors.

Besides, the association, ngo or local body closely examine the credibility and the non instrumental way the victim follows the programme long before the magistrates intervene.

Neither does the law require any connection with the results of the procedures or taking part in investigations or the procedure by means of testifying, as we have seen in other regulations. The law does not petition for any "legal end" of the residence permit for social protection (in contrast with the short-term residence permit "for legal purposes" as in Art. 5 of the Immigration Law).

3.3 Judicial policies

Judicial policies seem to be rather **heterogeneous** between the various courts. The fact is that this can be noted under the substantive penal profile, as far as concerns the spectrum of **specific cases used**. The jurisdictional choices made seem in certain aspects to be consolidated. Thus Art. 3 of the Merlin Law, in its various hypotheses, on the one hand, and Art. 12 of the Immigration Law, in those places which geographically speaking form the point of entry for the migrants (primarily Lecce), on the other, are widely disputed by all the Public Prosecutor's Offices and held to be valid by the judges in their sentences of conviction.

It can however be noted that some courts also use all the other specific cases of crime which constitute the traditional forms of protecting persons. Such is the case for Turin, where charges are made for sexual violence, extortion, kidnapping, etc. besides the specific offences.

In other aspects the judicial policies do not yet seem to be consolidated, but rather in the process of evolution. Such is the situation for specific cases which, in the Italian Code, protect the "individual personality" (reduction to slavery, trafficking and slave trading, alienation and purchasing of slaves) which are now starting to be applied to the sexual exploitation of adult women.

And here the problem becomes that of the suitability of the penal

instruments prescribed by the Italian legal system to efficiently combat crime.

The Italian penal system is certainly not lacking in specific cases to be applied. And the level of prison sentences which research work has shown to be inflicted by judges in penal cases is certainly not light. If anything there are specific cases which are overlapping and need to be put into order: just consider the various regulations effecting the trafficking in persons today, to the detriment of the protective principle of clear and precise penal laws.

There is in any event a lack, at European level, of a unified definition of the trafficking in human beings, as has been emphasised in all the Community offices we have referred to when facing the comparative aspect of the problem. This is a significant obstacle to the indispensable activity of co-operation at judicial level.

In Italy there is also a lack of a norm to define the exploitation of prostitution (today, substantially, no distinction is made from abetting prostitution) and to penalise it with suitable sanctions with regard to other specific crimes within this sector: Art. 3 of the Merlin Law is punished with imprisonment from two to six years, with the sentence doubled in aggravated circumstances, whereas Art. 12 of the Immigration Law is punished with imprisonment up to three years in basic circumstances and with a sentence of imprisonment from five to fifteen years where the fact is committed to enlist persons for the purposes of prostitution or the exploitation of prostitution.

The need was seen for two-fold legislative intervention, on the question of trafficking in human beings and on the question of prostitution (to be considered later).

It is strenuous business to reconstruct the judicial policies concerning the degree of penalties inflicted and compensation recognised for damages. It is certainly true that we are treading on sensitive ground here with the discretionary powers of the judge concerned, but it is certain that an objective comparison of the figures obtained from the judiciary departments monitored enables the conclusion to be reached that judges have acted in extremely diverse ways within the statutory differentials.

There is also no machinery in place to protect victims of trafficking for the purposes of sexual exploitation.

It is a proven fact that the residence permit for social protection in itself does not guarantee safety for the passive party to the offence or for the witness. On the contrary this person often receives tangible threats and feels that her safety, or that of the members of her family (children, parents, ...) in the countries of origin, is in danger, and Art. 18 does not provide protection in this sense. This is clearly seen to be the case also when considering the motivations for sentencing which pause to weigh up the credibility of the prosecution witnesses, irrefutably and often visibly frightened, even after charges have been made. Moreover the danger for one's safety is a condition for issuing the permit and is increased precisely by having severed the link of subordination with criminal coercion.

Some connection is therefore needed for Art. 18 with the other provisions envisaged, particularly the one for protecting "witnesses of justice" (designed for these on the other hand are the new norms of the Law dated 13 February 2001, no. 45, "Modification of the discipline of protection and punitive treatment of those who collaborate with justice as well as provisions in favour of persons who provide testimonies"). Moreover there are no guarantees of anonymity for injured parties or witnesses. The law does not allow, as envisaged as a rule in some other countries, forms of anonymity or withholding personal particulars or data: domicile and residence addresses are easily accessible for consultation through documents concerning the cases; even those working for the reference associations, called to testify, have often been compelled to indicate not the offices of the association but their own, private addresses. And this needlessly exposes these people to danger as well.

There is the lack of a common, uniform criterion on the part of judiciary departments on the question of conceding legal aid at the expense of the State, as it has emerged above all from interviews with the legal representatives which the various associations running the projects make reference to.

Here we touch on the main problem of **technical legal defence**, which, as the interviews have again shown, becomes particularly important as a form of protection for the women involved. This crucial point has been recognised progressively by the various associations, which are equipping themselves with legal representatives to assist and support the offended parties, even bringing

an action in the proceedings. This kind of technical support is important because it aims at preparing the party for the various stages in the procedure: testifying, special evidence pre-trial hearing ("*incidente probatorio*"), debate. Legal defence tries to use the norms which permit legal representation at the State's expense for the not-well-off. The obstacle here is the difficulty in obtaining documentation on the qualifying income conditions from the embassies. In fact the embassies often reply with silence. In this case only some judiciary departments accept legal representation, and some defence lawyers even complain about different levels of treatment within the same department. It would therefore be necessary to standardise practice on this point.

There is an increasing tendency for the offended party to **bring a civil action**, claiming for the damages or injury suffered. It is difficult for this course of action to meet with success, as the accused are always without property. So it is often clear at the outset that the sentences for compensation of damages or injury will be difficult to enforce. Bringing a civil action however does provide the chance for technical defence to take an active part in the process, giving the woman a chance to speak, ensuring she takes full part in the proceedings and enabling her to sense that the reception association is solidly behind her. This initiative is also considered - by magistrates and at times by the associations - as a way of getting the victims away from the criminal organisation and severing previous ties.

The sentences, as it has already been seen, include the Rome case with an Association, which manages an Art. 18 programme, itself bringing civil action. We are waiting to hear the results of the action brought by the Province of Lecce, in its capacity as managing body for the project.

3.4 Emerging lines of legislative and criminal policy

The results of research on sentences allow decisive indications to be deduced as regards identifying action to be taken concerning **legislative reform on the subject of trafficking in persons and prostitution**.

Structuring the **norm on trafficking** means solving the alternative

between the specific case of sexed and sexualised trafficking, that is, referring solely to women and solely to the purpose of sexual exploitation (as in the Declaration of the Ministerial Conference of the Hague dated 26 April 1997) and the other alternative of a neutral specific case, broadened to cover a multiple range of purposes: forced labour, domestic servitude, removal of organs (as in the Convention of the United Nations against Transnational Organised Crime, Palermo 2000). We have already analysed the question at the comparison stage and now we can add the results of studying the sentences.

The legal system certainly does not highlight the particular vulnerability of women because of their sexuality. In fact this is not stressed at all. Emphasis first and foremost is placed on profit levels for this criminal action. The reform option therefore should head for the second method of reform.

Moreover the sentences - confirming the experience of managing Art. 18 - show that alongside the women who are cheated and subjected to trafficking there are other women who build their project of migration and choice of occupation on prostitution.

All this goes to show how necessary it is not only for these questions to be dealt with on an inseparable basis with the **immigration laws**, but above all to tackle the question of **prostitution on a global scale**, that is without confining it solely to forced prostitution on the street, refusing the logic that all those who prostitute themselves are "slaves".

Among the decisions noted, few seem to be definitive.

The **monitoring and observation** work should therefore be continued, above all in the light of the time proceedings take, which can lead to residence permits not being issued in terms of judges' decisions, and penal sentences being passed only in the long-term. We have seen that Art. 18 only started to work in 1999-2000 and that it was and continues to be subjected to significant modification when it is applied, if only for no other reason than the influence from the effects of the amount of resources invested. Research work therefore should be extended - in all sectors - to cover the years to follow.

Conclusions

by *Davide Petrini, Franco Prina, Maria Virgilio*

Case-study reports and the considerations made in the previous sections require no synthetic conclusions discussing the various positive and negative aspects identified in the implementation of Article 18 of the Legislative Decree 25 July 1998, no. 286. In fact, due to the complexity of the issues involved any attempt of simplification would be dangerous.

Instead, it would seem to be desirable to draw attention to those aspects which have not yet been solved in the actual practice and may give indications at least to identify new models of action and perhaps, in some cases, which changes in the legislation might produce better results.

Firstly, it should be noted that in the case of exploited victims the present legislation does not cover the protection of family members, who may run very substantial risks at home. Therefore, changes to the legislation were rightly proposed to make the issuing permits for family reunion easier, irrespective of income or other requirements, at least for the victims' children¹.

Always with a view to reduce the risks for those who make the decision to start along the path to lawfulness and the full acquisition of the rights of citizenship, some form of coordination should be devised between Article 18 and the rules adopted in the case of witness protection. In fact, an effective

1 M.G. Giammarinaro, "Prime valutazioni", p. 58.

system of protection would be ensured by a model distinguishing between the programmes of social assistance and integration and the implementation of adequate tools for protection against possible retaliation by subjects who have been accused or are already under criminal procedures due to exploitation or violent acts. In this connection, the rules applied for the protection of witnesses should be adopted explicitly also in the case of the victims of exploitation or violence who have submitted (or intend to submit) an application to obtain a residence permit for reasons of social protection.

Moreover, both indications are found among the suggestions addressed to the legislators of Member States in Resolution 19.5.2000 of the European Parliament and Recommendation (2000) 11 of the Council of Europe.

One final aspect deserves detailed discussion: how will the proposals by the Italian Parliament and the Government to change the legislation relative to the entry and residence of non-EU citizens influence Article 18 (even if it is not modified)?²

Clearly, a substantial increase in the number of cases allowing or, even worse, providing for immediate expulsion and escorting to the borders, would make it enormously difficult for the victims of exploitation to apply for social protection. In many cases, as already complained by the associations about the police raids, it will totally prevent the actual opportunity of putting the victim in contact with those who can help her/him to learn and become aware of her/his rights, and, consequently, exercise them. In other words, the so-called phase of "information" and "reflection delay" envisaged by the Commission of the European Communities in its proposed Directive should undoubtedly be favoured.

Furthermore: the research work showed clearly that the certainty not to be expelled immediately is a *sine qua non* to build the necessary trust to

2 These considerations are based on the text (no. 2454) approved by the *Camera dei Deputati* (lower chamber) on July, 4th; said text was again transmitted to the Senate and will be re-examined (as no. 795-B). If it is approved without modifications the text will be transmitted to the President of the Republic for its promulgation and publication in the *Gazzetta Ufficiale*. If it is changed by the Senate it will go back to the *Camera* for further examination.

convince the woman to file a complaint, or at least to accept to join a programme for social assistance and integration. Hence, any tightening of the legal regime of expulsions must inevitably consider the possible consequences in the actual management of the provisions in Article 18.

In this connection, it may be useful to remind what happens in some realities: when an expulsion measure is issued, an "Article 18 permit" is granted by the police not allowing entry to the Shengen countries, but permitting foreign women to go to their countries for short periods of time (for instance, to visit their children) and then go back to Italy. We should therefore stress the need to withdraw the expulsion measures because this is the only way to ensure the success of social integration programmes: to what extent, however, will this be compatible with the new model of legislation on the entry, residence and expulsion of foreign citizens, which our Parliament is discussing in this very moment, while these conclusions are being written?

Finally, it seems reasonable to imagine that dangers may emerge as to the instrumental use of Article 18 if the requirements to obtain a legal permit become too tight. These dangers - it is important to keep it in mind - have been practically avoided by the system in force, as the research indisputably has demonstrated.

Concerning the part of the research looking in depth into the dynamics of building and implementing reception and support projects, conclusions can only be open-ended. As it is evident from reading the reports on case-studies and the considerations therein, the research findings prove useful to stimulate thought and open discussion between the actors involved in those projects. In particular, in connection with the opportunities offered by Article 18, it would be interesting to think and discuss about how different ways of defining and building help relationships in the actual practice, in terms of organisational modalities, relationships between resources, stated and implicit objectives and tools adopted, may involve both limits and opportunities.

Being aware of the potential in certain models and approaches and of the limits involved in certain actions (especially when implicit and/or

denied) may not only allow to better evaluate if the degree to which the tool provided for in Article 18 is effective is ensured by the tool itself and how much is due to its possible different interpretations; it may also contribute to better define its role among the many possible forms of support for persons experiencing street prostitution.

But the story of Article 18, in the minds of those who analysed its practical implementation, also shows that it is essential that the actions of public and private social agencies at local level be not only a sum of actions, but rather - together with any non symbolic/non demagogic work by local administrations and public institutions - the core of an *organic policy*, capable of dealing with the various aspects of the problem.

In other words, starting from the individual local contexts, it is necessary to develop an organic *bottom-up* policy capable of:

- promoting comprehensive *harm reduction* practices to seriously tackle the issue of violated rights and the risky conditions in which the victims live, working to create different conditions for the exercise of prostitution with a view to fighting exploitation and, finally, ensuring the right not to become a prostitute;
- thinking of *reception and solidarity policies* as a supplement (not as an alternative) to harm reduction policies, in the belief that actions aimed at the promotion of solidarity, reception and emancipation for the victims of exploitation or violence are not incompatible with other actions adopted for those who do not want or are not able to emerge from their conditions, where the target is making such conditions more tolerable;
- considering the specific reality of prostitution within the framework of a new definition of *community development policies* - going beyond the marginality of policies addressed to minorities - both if they are concerned with social support or based on repression. No specific discussion about prostitution can in fact lead to any changes and improvements of the conditions of all the persons involved directly or indirectly, if different models of cohabitation are not developed, making the right of citizenship equal for all. To

achieve such objective there is no other way than changing the definitions, representations, approaches to the problems and their actors and, at the same time, working concretely to mediate the conflicts which may arise.

The role of the organisations variously engaged in the field in stimulating the development of a “*strong*” government policy to control the problem, that is a policy which is organic, consistent, thoughtful of the different rights and needs, can be priceless provided these organisations are able not only to bear witness and protest, but also to make themselves available and cooperate with public authorities and institutions in the implementation of integrated strategies and initiatives.

This type of field experiences may give us the significant indication to reform the legislation on prostitution in such a way as to deal with the phenomenon globally, control all kinds of prostitution, protect the interests of prostitutes as well as the social order and, at the same time, create all the conditions needed to help those who wish to leave the world of prostitution. Modifying the legislation on the exploitation of prostitution and obtaining an accurate definition of trafficking in human beings are the two indications about criminal policy emerging from both the analysis of legal decisions and the comparative study of legislations.

Finally, we hope that the outcome of this research work will point out the need to create a permanent observatory for studying the different but interconnected areas of investigation explored by this Stop Project.

Appendixes

Appendix 1

Oltre la Strada

The Art. 18 Project of the Emilia-Romagna Region

The Context

As in many other parts of Italy, Emilia-Romagna has seen a gradual increase in the phenomenon of prostitution and the sexual exploitation of women: a steady presence on the street that is almost completely composed of foreign women (Nigerians, Albanians, Moldavians and Ukrainians being the main groups), many of whom are victims of sexual exploitation; a residual group of Italian prostitutes on the street, part of whom are drug addicts; a strong development of “invisible” prostitution, practised in clubs, saunas and massage parlours; a considerable increase in social conflict in areas affected by substantial prostitution on the street. This phenomenon has also caused situations of diversified discomfort throughout the Emilia-Romagna territory (social unsafety perceived by local communities, public health problems, episodes of violence, etc.).

Oltre la strada

The Emilia-Romagna Region's actions on prostitution and sexual exploitation

Within the aforementioned framework, the Emilia-Romagna Regional Authority and its Department for Social Policy, Immigration, Youth Project and International Co-operation, since 1996, has promoted and managed "The Regional Prostitution Project", eventually named *Oltre la strada* (Beyond the street) project (2000). The project is co-ordinated by the Regional Authority and run by a network of public and private agencies within the Emilia-Romagna territory, which provide support, sheltering and assistance to those prostitutes who intend to abandon the prostitution scene, and offer assistance to sex workers.

The Regional Network

The type of network that covers the entire regional area is the main feature of the "Beyond the street" project: it is composed of 12 local and territorial bodies that function as actuators: the Municipalities of Piacenza, Reggio nell'Emilia, Parma, Fidenza, Modena, Bologna, Zola Predosa, Ferrara; the Local Health Units of Rimini and Cesena, the Social Services of Imola and Ravenna, Cervia, Russi and Local Health Units.

With the aim of co-operation between public and private sectors, other 62 actors (third sector, trade unions, training centres, public bodies) take part into the project; these agencies form sub-networks that are present in each territory and can guarantee support, management and assistance to the project.

These actors are: in the **Piacenza** area, LILA - Italian League against Aids, the Local Health Unit and *Caritas Diocesana*; in the province of **Parma**, two Catholic Associations; in **Fidenza**, the Local Health Unit, the Province of Parma and the *Centro Antiviolenza*; in **Reggio nell'Emilia**, the *Rabbuni* and *Futuro Aprile* Associations; in the **Modena** area, the Local Health Unit and the SerT, the Province, the Centre against Violence against Women, *Marta e Maria*

and Nigerian Community Associations, the Co-operative *Uscita di Sicurezza*, *Ceis*, *Caritas Diocesana*, trade unions, *Modena Centro Formazione Professionale*, the Social Solidarity Co-operative and the *Comitato per i Diritti Civili delle Prostituite*; in **Bologna**, *Caritas Diocesana*, the Centre against Violence against Women, the Papa Giovanni XXIII Association; in the **Zola Predosa** area, the Municipalities of Anzola Emilia, Calderara, Casalecchio di Reno, S. Lazzaro di Savena, the Centre against Violence against Women, the Local Health Unit and the Mosaico Equal Opportunities Commission; in **Imola**, the Papa Giovanni XXIII Association; in the province of **Ferrara**, the *Centro Donna Giustizia* Association, the Local Health Unit, Arcispedale S. Anna Hospital, the Province of Ferrara, *Città del Ragazzo* - C.P.F - E.C.A.P (Training centres), *Centro Servizi per il Volontariato*, the *V.le K* and *N. Frigatti* Associations, the C.G.I.L.; in **Cesena**, *Caritas Diocesana*, Papa Giovanni XXIII Association, the *Lega Suore della Sacra Famiglia* Institute, *Centro Donna*, *Telefono Donna*, *Donne Internazionali* Association and the Municipality of Cesenatico; in the **Ravenna** area, Social Co-operative *Il Mappamondo* and the *Francesco Bandini* and *Città Meticcica* Associations; in **Rimini**, the Papa Giovanni XXIII Association, *Comunità Montetauro*, *Caritas Diocesana*, Institute of the Sacred Heart "D. Masi", *Casa Betania - Istituto Suore di S. Onofrio*. In addition to this network of support and participating bodies, the actuator bodies also make use of the co-operation of an informal network of volunteers and host families. In each area, stable co-operations have also been established with the enterprises, Prosecutor's Offices, Prefectures, Police Headquarters and other law enforcement agencies.

Actions

The Regional project "Beyond the street" is composed of a variety of actions aimed at improving the living conditions of people working as prostitutes (be they forced or sex workers), and at eliminating any form of exploitation.

Harm reduction

The health prevention activities performed by the street units are of fundamental importance because they take on a dual value: these actions do not merely pursue harm reduction, but are also considered a priority strategy for building up contacts and relationships with the target, as well for establishing protection and social integration programmes.

Actions performed by the street units (through operators, cultural mediators, etc.) include health prevention (through the distribution of information material and condoms); assistance and accompaniment to local health and social services; observation and mapping out of the phenomenon; awareness interventions and community's conflict negotiation; and Drop-in centres' management.

Shelter and Social Inclusion

Since 2000, when Article 18 of the Legislative Decree no. 286/98 came into force to run assistance and social integration programmes, the Emilia-Romagna Regional Authority, in collaboration with the local network, continued the work performed in the previous years. By means of a specific project, co-funded by the Italian Department for Equal Opportunities, actions aimed at helping women and minors who are victims of sexual exploitation have been implemented.

As soon as a person is taken into care, an individualised assistance and social integration programme is set up, which includes, above all, the introduction into a protected shelter and, later, the activation of a series of other actions that will foster the person's autonomy and social inclusion. Different forms of shelters are provided (flight care shelters, intermediate care shelters, etc.) and several types of actions are performed by local authorities, such as accompaniment to socio-sanitary services, health and psychological support; vocational training and Italian language classes; orientation classes, counselling and motivational workshops; job insertion ("Vocational Training in Enterprise", job grants, start-up of own businesses); legal counselling, assisted contact with the family and return to the country of origin.

Toll Free Number against Trafficking 800-290.290

Since July 2000, the Emilia-Romagna Regional Authority runs a local centre of the Toll Free Number against Trafficking financed by the Department for Equal Opportunities. The centre offers information and counselling to victims of trafficking, sex workers, public and private operators, and the population in general.

"Transversal" actions

Centro Risorse Accoglienza [C.R.A.] as a reference point for the management of requests for sheltering, transfers request from one territory to another, and for the collection and co-ordination of information concerning the availability of accommodation within the network.

The testing of diversified and specialised sheltering models.

Community actions aimed at sensitising citizens on the phenomenon and the negotiation of social conflicts.

The improvement of operative methods and procedures aimed at ameliorating the effectiveness and efficiency of the implemented actions, in order to better reach the targets.

Information, training, research and diffusion

Research projects, such as the study on "Prostitution between market dynamics and individual paths. A qualitative survey on female street prostitution set-up in three sample cities (Modena, Bologna and Ravenna)"; a research on the application of Article 18 with also a comparative European analysis carried out within the 2000 Stop Programme.

Publications, material, press reviews and websites for spreading awareness and updates on prostitution and exploitation.

Regional observatory on prostitution and exploitation.

Observatory on under-aged prostitution, documentation and specialised database centre run by the Rimini Local Health Unit.

Workshops on themes and issues of common interest (prostitution

and exploitation, intercultural approach, networking actions, social negotiation, job insertion); focus groups on work experience and methods; specialised consultancies with experts who guarantee, both through classroom lessons and online contact, technical assistance and supervision on legal (application of the regulations of Article 18), psychological (handling of care and sheltering), accounting problems.

Training programme for Albanian trainers, through “decentred cooperation actions” in the country of origin, performed in collaboration with the Municipality of Ferrara, the Associazione *On the Road* and the “*Tavolo di Scutari*”.

National and international conferences attended by Italian and foreign academics, politicians and public and private agencies, which deal with prostitution and exploitation.

The tools

Steering Committee

The network activities of the “Beyond the Street” project has led to the setting up of the Steering Committee – that is a working group which brings together the responsible persons for the project of local authorities, (Municipalities, Health Units and Consortiums). This Committee, which meets monthly, guarantees the co-ordination and synergy approach between all the activities that each local body performs on its territory.

Local networks

Each body that participates in the regional project activates on its own territory a network of local resources involving health services (Hospitals, Family Consultation Centres, Ser.T), Municipal Police Office, Immigration Office of the Police Headquarters, the Vocational Training Agencies, etc. The local network, composed of officials, social workers, psychologists, operators, voluntaries and other parties, participating in the project in various ways, guarantees a widespread distribution of support programmes for migrant

women victims of sexual exploitation and assistance programmes for sex workers.

Transversal accompaniment's measures

The transversal measures of accompaniment, assigned to the On the Road Association, involve all the actors of the network and consists of a series of training, updating and supporting actions. The aim of such measures is not the mere transmission of knowledge and information, but the sharing of experience and working methods, with respect to the various fields of expertise, in order to improve the levels of synergy between the various local projects.

Some facts

The "Beyond the Street" project has reached the following yearly results:

- more than 10.000 contacts on the street;
- approximately 1.300 accompaniments to health, social and recreational services;
- approximately 300 new persons in care;
- 500 social protection programmes in progress;
- approximately 150 programmes concluded;
- more than 250 residence permits obtained;
- more than 200 complaints filed against exploiters and traffickers;
- approximately 190 Italian language and culture classes;
- 270 orientation programmes;
- approximately 400 "job grants" and job insertions;
- more than 120 professionals involved;
- approximately 100 volunteers.

For information

Regione Emilia-Romagna

Assessorato Politiche Sociali. Immigrazione. Progetto Giovani.

Cooperazione Internazionale.

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Appendix 2

Associazione On the Road

Voluntary Association ONLUS

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Activities and Services

Mission Statement and Activities' Overview

The On the Road Association has been operating since 1990 through intervention in prostitution and the trafficking of human beings for the purpose of sexual exploitation, with a particular focus on street prostitution of migrant women and minors, often victims of trafficking organised and managed by criminal organisations.

ON THE ROAD intervenes in cases of discomfort and/or cases of risk stemming from prostitution, and therefore also addresses issues faced by Italian prostitutes (including drug addicts) and Italian and foreign transvestites and transsexuals. The association has also widened its fields of action to other and new issues such as marginalization and poverty.

ON THE ROAD develops structured activities and services directly addressed to the people affected by such forms of exclusion, with an approach based on the promotion and protection of individuals' rights.

Simultaneously, *ON THE ROAD*, from a local, national and trans-national perspective, contributes to the promotion of the policies in the field, to the elaboration of models of intervention, of professional profiles and of training curricula; it carries out research-intervention projects and issues a variety of publications.

The volunteers of the Association began the work – which is still being done onsite – in the streets, in particular the “Strada Provinciale Bonifica”, which begins at the Adriatic coast of San Benedetto del Tronto and Martinsicuro and moves towards the inland, running along the two Provinces of Teramo, in the Abruzzo region, and Ascoli Piceno, in the Marche region.

Transvestites and transsexuals (above all Italian and Latin-American) and some autochthonous prostitutes (“historical” sex workers or drug addicts), a number of migrant prostitutes from Nigeria, Albania, and countries of the former Soviet Union and Eastern Europe, and other countries of Africa and Latin America, were and still are present on the Bonifica, as well as in other areas to which *ON THE ROAD* has extended its interventions.

Over a long period, the Association has been widening its range of actions, beginning interventions in other areas of the Marche region where prostitution takes place (in particular on the coast along the axis San Benedet-

to del Tronto, Grottammare, Porto San Giorgio, Lido di Fermo, Porto Sant'Elpidio and Sant'Elpidio a Mare, Civitanova Marche), in the Abruzzo region (Martinsicuro and the coastal area especially along the axis Silvi Marina, Montesilvano, Pescara, Francavilla a Mare), and in the Molise region, in collaboration with local organisations.

From direct intervention on the street and the first steps towards assistance and shelters, the action of the Association has developed into a real network of opportunities and aid structures including counselling, sheltering, social and job insertion, as well as building up an official network of different public and private institutions.

ON THE ROAD works directly with prostitutes to lower risks and to reduce the discomfort connected with prostitution and to increase prostitutes' possibilities for self-protection, liberation from various forms of violence and exploitation, and to offer programs of social and job insertion, of autonomy and self-determination.

Towards this end, stable and structured services managed by trained professionals have been established: outreach units; Drop-in Centres; various types of shelters; information sessions, orientation, counselling and training regarding sanitary, legal, educational, and psychological issues; vocational guidance and vocational training courses, "Practical Training in Enterprise" and job insertion programs are also offered.

Great effort has been invested in the following activities: networking, awareness raising, territorial and institutional involvement, promotion of the policies in the sector, training, research, and publications.

ON THE ROAD has, in fact, committed itself to promoting policies, strategies and interventions in the fields of prostitution and to fight against trafficking at the local, national and trans-national level.

In order to achieve this goal, the Association has contributed to deve-

loping a strong network throughout the areas where it works, which has contributed to the stable working relationships with various public institutions as well as the establishment of the *Table of Coordination of the Marche Region on Prostitution and Trafficking in Human Beings for the Purpose of Sexual Exploitation*.

The activities at the national and transnational levels are intense in addition to participation in the *Inter-ministerial Committee on Trafficking*, with the promotion of national networks such as the *National Coordination Table on Prostitution and Trafficking* and the *Ad hoc Group of the C.N.C.A. on Prostitution and Trafficking*, with projects of research, intervention and training (in Italy, Europe, Albania...), with the publication of books and reports, and with the organisation of conferences and various exchanges.

Furthermore, the work of elaboration is particularly relevant in the circular relationship practice-theory-practice regarding the various models of intervention in the field and the professionals involved: street workers, shelter operators, intercultural mediators, legal consultants, job insertion mediators, and so on. Innovative training activities developed at national level are carried out.

The approach to action-research is constant regarding phenomena both specific to as well as that related to prostitution and trafficking: immigration and illegal residence, drug abuse, new forms and places of prostitution and trafficking, and new areas of exclusion.

This has made *ON THE ROAD* to be a point of reference at the national level, not only for its networking, research and training activities, but also for its activities of technical support and scientific counselling for different institutions and projects. Particularly meaningful in this regard, for instance, is the implementation of the "transversal" measures of accompaniment to the *Oltre la strada* Project of the Emilia-Romagna Region and the scientific supervision of *Strada*, the Equal project of the Province of Pisa.

Such activities are carried out with the co-participation of European institutions, such as the Council of Europe and the European Commission, various Ministries (in particular, the Department for Equal Opportunities and the Ministry of Labour and Social Policies), Abruzzo Region, Marche Region and Molise Region, the Provinces of Ascoli Piceno, Teramo, Macerata, Pescara, a wide network of over 40 Municipalities, the Prefectures, the Police, the N.G.O.s', enterprises, a vast group of partners of European countries, countries of origin and transit of the victims of trafficking of human beings for the purpose of sexual exploitation.

Thus, it is a comprehensive work with the progressive involvement of the institutions and the territorial networks, which testifies to the possibility of activating sensibility and synergies in a meaningful integration between public and private sectors, at the local, national and transnational level.

Registrations and Recognitions

The On the Road Association was formally founded in 1994 and entered that same year into the *Abruzzo Region Register of Voluntary Organisations* with the Regional Committee Decree n° 1040 of 18/10/1994

In 1994 the Association also entered *C.N.C.A. (National Coordination of Care Communities)*, the widest Italian federation of non-profit associations and social cooperatives active in the field of social exclusion.

In 1998, On the Road registered in the *Provincial Register of Associations and Voluntary Organisations of the Province of Teramo* with decree professed on 12/07/1998 Prot. no. 21295. It is also enrolled in the *Register of the Free Associative Forms* of the Municipality of San Benedetto del Tronto (no. 9).

Since 1998, the Association has been a member of the *“Co-ordination Committee for the Government Actions Against Women and Minors Trafficking for Sexual Exploitation”* held at the Presidency of the Council of the Ministers, Ministry for Equal Opportunities and Ministry of Social Affairs, with the participation of the Ministry of Home Affairs, Ministry of Justice, and Ministry of Foreign Affairs.

In 2000, the Association entered the **Third Section of the National Register of the organisations carrying out activities for immigrant people** in accordance with art. 18 of the Consolidation Act on Immigration (D.Lgs. 286/98) and the Art. 54 of D.P.R. n.394/1999 with the number C/5/2000/AP.

The Association is a member of the **NOVA Consortium of innovative actions**, along with the following organisations: Cooperativa Lotta Contro l’Emarginazione (Sesto S. Giovanni, Milano), Associazione Parsec (Roma), Associazione Oasi 2 San Francesco and Cooperativa Compagni di Strada (Trani, Bari).

The *Woman of the year 1997 prize* was awarded to one of the Association's members, Sister Maria Rosario Bolanos (Sister Charo), by ANLAIDS.

The *Solidarity National Prize* was conferred upon the association in 1998 by the *Voluntary Italian Foundation* and by the *Voluntary Work Magazine*.

In 2000, the Association was awarded the Macerata Club's **Soroptimist International prize**.

Various national and European projects realised by *ON THE ROAD* have received recognitions and prizes; inter alia, the project *Prostitution Inclusion Network* in 2000, (P.O.M. 940026/I/1, promoted by Province of Teramo) was awarded by the Department of Social Affairs as a "project of excellence"; and in 2002 the project *New Women Empowerment* (financed by the art. 18 of the D.Lgs. 286/98) was presented by the Abruzzo Region at the "Forum of the Public Administrations", for the *Ragionando prize 2002, The Region and the Young People*, and won the category "Politics of Youth Discomfort and Against Social Exclusion" and awarded the prize and the Plaque for the Conference of the Presidents of the Regions and the Autonomous Provinces.

Areas of Intervention

ON THE ROAD's interventions currently being organised combine the work of professionals with the support of volunteers, and are carried out in the Marche, Abruzzo and Molise regions, in both national and international contexts.

OUTREACH UNITS

(outreach units of professional operators and volunteers with the support of intercultural mediators)

- observation and mapping out of the phenomenon
- contact, listening and needs analysis
- information and health prevention
- accompaniment to health services and educational training to access to local services
- information and assistance in legal, psychological, and housing matters
- offer of aid or aid in response to a request to leave prostitution and violent and exploitative conditions
- awareness interventions and conflict management for local communities
- mapping, contacting and awareness of territorial services
- observation and monitoring of the dynamics of the phenomenon
- production of information materials, in Italian and in the main languages spoken by the target population

DROP IN CENTER

(low threshold centres of information, orientation and counselling, functioning as filters between the street, the services of the Association, and of the territory)

- information, orientation and counselling on health as well as social and legal issues
- accompaniment to health services and educational training regarding access to local services
- offer to or aid in response to a request to leave prostitution and violent and exploitative conditions
- orientation on assistance and social integration programmes
- thematic seminars and territorial animation

SHELTER AND FOSTERING AUTONOMY

(in residential micro-structures: halfway houses and emergency care shelters, secondary care shelters, families)

- co-creation of individualised plans towards social integration with the eventual goal of autonomy
- shelter and protection
- board and lodging
- health services
- psychological assistance
- support in denouncing criminals
- legal assistance and legalisation
- socialisation
- educational and training activities
- Italian language classes
- creative workshops
- vocational guidance
- start-up of social and occupational integration

VOCATIONAL GUIDANCE, TRAINING, SOCIAL AND OCCUPATIONAL INTEGRATION

(Diversified, individualised and flexible systems aimed at eventual employment insertion)

- individual and group vocational guidance
- basic training

- the programme: "Vocational Training in Enterprise"
- direct employment insertion and support
- search, identification and contact with training agencies and enterprises

NETWORKING WITH SEVERAL ORGANIZATIONS REGARDING THE DIFFERENT TERRITORIAL CONTEXTS

Regions, Provinces, Municipalities, Ministries, Equal Opportunities Commissions, AUSL (Local Health Units), Prefectures, Police Headquarters, national police, Families, Volunteer Associations, Social Co-operatives, NGOs, Religious bodies, Enterprises, Trade Unions...

INFORMATION, AWARENESS INTERVENTIONS, AND COMMUNITY WORK WITHIN THE LOCAL CONTEXT

Work with the agencies of the territory and the citizens in order to negotiate the social conflicts and to implement shared responses to emerging problems.

SUPERVISION OF THE TEAMS AND EVALUATION OF THE ACTIVITIES

In order to maintain a constant high quality of work within and among the different areas of the Association, monthly supervision sessions are held by an external supervisor and systems of checks and evaluations for each sector of work are implemented and updated.

INSTITUTIONAL WORK AND NETWORKING AT THE NATIONAL LEVEL

To contribute to the development and implementation of policies and strategies of intervention, in the field of prostitution and to fight against trafficking in human beings for the purpose of sexual exploitation, as described by national institutions, local authorities and private social agencies.

To collaborate with projects of intervention in the same sector: transfer of women and minors within the programs of social protection, integration of the interventions...

RELATIONS WITH EUROPEAN ORGANISATIONS

Through research projects, intervention activity and exchange between N.G.O's and organisations, Universities and institutions at the European level.

RELATIONSHIP WITH THE COUNTRIES OF ORIGIN

Thorough investigation into the possibilities for immigrant women to be repatriated, contacts with families, search for documents, and local development interventions in the countries of origin...

ACTIVITIES OF RESEARCH, DOCUMENTATION AND PUBLISHING

In consideration of the complexity and continuous evolution of the confronted phenomena, projects of research and research-intervention are carried out in order to identify, in a purposeful manner, characteristics, interrelations and transformations. From such a perspective, in terms of prostitution and trafficking, *ON THE ROAD* has widened its range of analysis to include the different and connected forms of social exclusion.

Various publications on the phenomena, the policies and the interventions in such sectors have been produced.

Furthermore, at the headquarters, a Documentation Center has been set up for the themes of Prostitution and Trafficking and all correlated phenomena.

TRAINING OF OPERATORS

To conceive and develop strategies and social projects on dynamic and complex new phenomena, which means paying specific attention to the elaboration of models of intervention, to the professional profiles and to the relative training curricula, in a type of permanent laboratory.

Besides the initial training of the operators - educators, social assistants, psychologists, sociologists, and pedagogues – specialised training and continuous refresher seminars are necessary in order to work in the field of prostitution and trafficking. Since 1997, the Association has organised seminars and training courses for internal and external operators coming from all over Italy and Europe. The courses are developed according to a multi-disciplinary

approach (i.e.: courses for street operators working in the field of drug abuse, prostitution, minors at risk, homelessness; courses for operators of the night world).

The experience and the successes, underscored by operators of both public and private organisations at the local and national levels, have led ON THE ROAD, with the encouragement of the Abruzzo Region and other local authorities, to conceive a laboratory of permanent training: **Opificium - School for Social Advancement**. The school plans to offer: basic courses and courses of qualification, master's degrees, strategic-political laboratories, seminars and events, and publications.

Publications

Since 1998, the Association has produced several publications. In the year 2001, its editorial line was launched: ON THE ROAD EDIZIONI.

All past and present publications currently available are:

- *Articolo 18: tutela delle vittime di traffico di esseri umani e lotta alla criminalità (l'Italia e gli scenari europei), Rapporto di ricerca*, Regione Emilia-Romagna and Associazione On the Road, On the Road Edizioni, Martinsicuro, On the Road Edizioni, Martinsicuro, 2002.
- *STOP TRATTA - Atti del Convegno Internazionale – Bologna 23 e 24 maggio 2002*, On the Road Edizioni, Martinsicuro, On the Road Edizioni, Martinsicuro, 2002.
- *LA TRATTA DI ESSERI UMANI: fenomeno, legislazioni, assistenza; PERSPECTIVES ON TRAFFICKING IN HUMAN BEINGS: phenomenon, legislation, assistance*, brochure published in French, English and Italian edited by CCEM of Paris in collaboration with Payoke, PagAsa and IOM (Belgium), *ON THE ROAD*, Differenza Donna of Rome and Ufficio Pastorale Migranti of Turin; Paris, 2002.
- *WOMEN EMPOWERMENT - Un progetto multiregionale a favore delle vittime della tratta finanziato ai sensi dell'art. 18 del D.Lgs. 286/98*, On the Road Edizioni, Martinsicuro, 2002.
- *DA VITTIME A CITTADINE - Percorsi di uscita dalla prostituzione e buone pratiche di inserimento sociale e lavorativo*, Ediesse, Rome, 2001, in collaboration with Ageform, Tampep and Parsec.
- *KALEIDOS – Materiali per la formazione e l'intervento sociale nella prostituzione e la tratta*, On the Road Edizioni, Martinsicuro, 2001.

- *ON THE ROAD - Manuale di intervento sociale nella prostituzione di strada*, Comunità Edizioni, collana Proposte del C.N.C.A., Capodarco di Fermo (AP), 1998.
- *TERRE DI MEZZO esperienze ipotesi utopie nel Pianeta Prostituzione*, Capodarco di Fermo (AP), 1998.
- Information materials about prevention and rights addressed to migrant women, published also in their languages.
- Intermediate and final reports for all implemented projects.

The following are upcoming publications. Be aware that titles are subject to change:

- *PROSTITUZIONE E TRATTA - Manuale di intervento sociale*, FrancoAngeli, Milano, 2002.
- *PORNEIA - Caleidoscopio sul mondo "osceno" della prostituzione*, 2003.
- *Dipendenze e prostituzione. Un percorso di ricerca-intervento tra prostituzione e uso/abuso di sostanze*, Vol. 1 *La ricerca*, Vol. 2 *I Seminari*, On the Road Edizioni, Martinsicuro, 2003.
- *ENTI LOCALI, IMMIGRAZIONE E DIRITTI DI CITTADINANZA*, Conference Proceedings, Abruzzo Region and Municipality of Martinsicuro, On the Road Edizioni, Martinsicuro, 2002.
- *PERCORSI DONNA - Un progetto pilota di Drop-in Center per donne in difficoltà*, On the Road Edizioni, Martinsicuro, 2002.

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- *GUIDA AI MODELLI DI ASSISTENZA GIURIDICA E SOCIALE ALLE VITTIME DI TRATTA*, publication in French, English and Italian, edited by CCEM of Paris in collaboration with Payoke, PagAsa, IOM (Belgium), Associazione On the Road, Associazione Differenza Donna, Ufficio Pastorale Migranti; Paris, 2002.

 - *MEDIAMENTE - Una ricerca sulle rappresentazioni sociali e sulla mediazione nella prostituzione in Italia, Olanda, Messico, Argentina e Uruguay*, On the Road Edizioni, Martinsicuro, 2002.

In the last few years the fight against trafficking in human beings has become one of the main issues dealt with by international organisations, national governments, local authorities and NGOs.

With the purpose of contributing to combating one of the worse violations of human rights, Regione Emilia-Romagna promoted and coordinated the "Observatory on the application of Article 18 of the legislative decree no. 286/1998, within the framework of the regulations aimed at combating crimes against migrants" project. Financed by the European Commission, within the STOP Programme, the project involved the carrying out of an in-depth enquiry aimed at assessing the results achieved through the application of Art. 18, an institution which is unique in Europe if compared with the different systems developed to fight trafficking in human beings for the purpose of sexual exploitation. In particular, the project aimed at monitoring the implementation of this norm during its first year of application in different local contexts, assessing the results achieved in terms of social and professional integration of the victims of trafficking and evaluating the impact of Art. 18 on the more wide-range fight against organised crime. On this issue, Italian penal system (as well as other European penal systems) provides for new tools of "social protection" as well as traditional means of repression.

Part of the research was devoted to the comparative study of the legal systems of the countries participating in the project (Germany and Spain) but it also considered those countries which have recently introduced particularly significant and innovative legal reforms to fight against trafficking in human beings and protect the victims (Belgium, the Netherlands, Great Britain, Sweden and France).

The study has been coordinated and carried out by the Universities of Bologna and Turin, in collaboration with the Universities of Barcelona and Frankfurt, under the patronage of the Italian Department for Equal Opportunities. Project management was carried out in collaboration with the *Associazione On the Road*.