



---

## **Combating (child) human trafficking: A challenge between repression tools and detection of vulnerability**

OÑATI SOCIO-LEGAL SERIES, VOLUME 11 ISSUE 6(S) (2021), S323–S351: INVESTIGATIONS – INVESTIGACIONES - IKERLANAK

DOI LINK: [HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1206](https://doi.org/10.35295/OSLS.IISL/0000-0000-0000-1206)

RECEIVED 12 JANUARY 2021, ACCEPTED 03 MAY 2021, FIRST-ONLINE PUBLISHED 28 JUNE 2021, VERSION OF RECORD PUBLISHED 22 DECEMBER 2021

DEBORAH DE FELICE\* 

### **Abstract**

The aim of this article is to reconceptualise the notion of child trafficking by seeking to understand child vulnerability and agency. The research approach focuses on criminal judgements pronounced in Italian courts and assesses how institutional interpretations support perceptions of vulnerability or agency that are often promoted or defined by criminal law perspectives. The attempt is to investigate human trafficking both as a multifaceted phenomenon and as a process to link together the functioning of elements of the human trafficking system that as a prism assumes different shapes in a growing complexity.

### **Key words**

Child human trafficking; vulnerability; children's rights; sexual exploitation; crime; institutional actors; social actors

---

The work is part of a research on the concept of vulnerability of minors who are victims of trafficking, and on the way in which the criminal justice system relates to other social systems with the common aim of disclosing and contrasting the phenomenon of trafficking in minors. The research path was developed within the context of three projects: *HanSEL. Legal contexts, citizenship and human trafficking investigation. Improving transnational investigations between Italy and France* funded by the Galileo 2018 program (website <https://hanselproject2018.weebly.com/>); *New migratory flows, minors and second generations in Sicily. Citizenship processes between integration paths and adaptation strategy*, funded by the 2016-2018 Three-Year Research Plan of the University of Catania, Department of Political and Social Sciences, intervention line 2; *G.R.I.D.A.V.I. Risk Management, Decision Uncertainties and Social Vulnerabilities*, funded by the University Research Incentive Plan 2020/2022. The work constitutes only one of the reflexivity levels of the research in progress and, again, comprises work in progress on the level of organization and processing of the collected data.

\* Deborah De Felice, Department of Political and Social Sciences, University of Catania, Italy. Email address: [defelice@unict.it](mailto:defelice@unict.it)

## Resumen

El objetivo de este artículo es reconceptualizar la noción de tráfico de menores, por medio de la comprensión de la vulnerabilidad y agencia de los niños. El enfoque investigativo se centra en sentencias penales de juzgados italianos, y valora cómo las interpretaciones institucionales apoyan las percepciones de vulnerabilidad o agencia que son frecuentemente promovidas o definidas por perspectivas de derecho penal. Se intenta investigar el tráfico de personas tanto en su faceta de fenómeno polifacético como en cuanto proceso que une el funcionamiento de los elementos del sistema de tráfico de personas, que, como un prisma, adquiere diferentes formas de creciente complejidad.

## Palabras clave

Tráfico de menores; derechos de los niños; explotación sexual; crimen; actores institucionales; actores sociales

## Table of contents

1. Human Trafficking as a complex phenomenon.....	S326
2. The growing of the phenomenon regardless of the pandemic case.....	S327
3. Childhood and vulnerability of the child victim of trafficking: two key concepts .....	S328
4. Hints on the regulatory framework.....	S332
5. From the perspective of the Sociology of Law .....	S335
6. Methods of data collection and analysis .....	S336
6.1. The formalization of the charges and the genesis of the investigations .....	S336
6.2. The defence thesis and the compensation.....	S339
6.3. Schematic structure .....	S340
6.4. Complexity of the phenomenon in its jurisprudential emergence .....	S344
7. Conclusions .....	S345
References.....	S347

## 1. Human Trafficking as a complex phenomenon

The first and the second sections of the paper introduce the phenomenon before and during the COVID-19 pandemic. The third section explains a part of the analysis's perspective through two key concepts: childhood and vulnerability. The fourth section explains the phenomenon from the perspective of the legal system. The fifth and the sixth sections feature the sociology of the legal perspective and the methodological approach.

Trading in human beings is a multifaceted phenomenon that, as a process, assumes different shapes in a growing complexity. Work, exploitation, crime, resource management, asylum policies, security, not to mention human rights, are all elements that still today face complex coordination and therefore have different limits with regard to the legal procedures and in the leanings of the nation states.

A photograph of the phenomenon of trafficking and exploitation shows that the trafficking of underage human beings remains a widespread and hidden reality. As has been observed, "we continue to espouse the gravity of human trafficking in *objective* reference terms that serve more to shock and shake the core of our sense of humanity than to inform or frame the issue in definable, quantifiable terms" (Winterdyk 2018, 108).

In terms of the protection of victims, understood in its recent multi-directional developments, an approach of an extra-penal nature has, indeed, become necessary – the so-called "public health perspective" (Todres 2011) – in order to cope with some forms of criminality, starting from the "environmental" factors of the crime and of the victim that inevitably concern, as in this case, different circuits of responsibility and, therefore, also the *welfare system*.<sup>1</sup> Some normative sources, including the main one, the UN Convention against Transnational Organized Crime, 2000 (the so-called Palermo Protocol), do not seem to encourage an extension of the penal system. Yet, identification of risks or elements implemented for prevention would be opportune, together with the predisposition to collaborate, to project the States towards provision of social support for the victims (or potential victims) in a perspective that favours a complementary analysis to the phenomenon (meaning it can capture *ex ante* and *ex post* conditions, and not only deepen the procedural protections for the victim, the action against the culprit or the victim's contribution in defining the phenomenon) (Venturoli 2015). From the viewpoint of the system addressing the issue of HT, it is not feasible to think about its repression independently from non-cohesive regulations and policies. It is also impossible to think of being able to counter a phenomenon favoured by globalisation without a common and international regulatory dimension, aimed at guaranteeing: (a) protection and assistance of victims in quitting the trafficking system; (b) integration into the host social community. The need for an integrated and multidimensional approach is amplified to a maximum degree when the victims in question are teenagers or girls because of a whole series of variables related to the complexity that characterises at any level any intervention thought and acted upon, and which comes into play within the juvenile system.

---

<sup>1</sup> "Whether induced by armed conflict, natural disasters or protracted humanitarian situations, crises are accompanied by a breakdown in public institutions, violations of human rights, the erosion of essential services, inequalities and impoverishment" (UN General Assembly 2017a, p. 6).

So, the challenge that all States are facing does not only focus on the ability to expose the phenomenon of trafficking (which certainly is the fundamental node of the crime-prevention law enforcement system), but also on the capability of the social system to activate a path of “legal socialization” for these young social actors. A path here is intended not only as a process of transmission to the recipient of values, rules, practices but also as an elaboration by the recipient of those same values, rules and practices and acquisition of the awareness of having rights and being able to establish claims on them.

Laws “in books” often diverge from laws “in action”, and this is increasingly documented in the case of child trafficking policies. Policies, as different levels of criminalization, are variously implemented “on the ground”, with local authorities, administrators and enforcers adjusting their implementation according to contextual and localized factors, including the extent of the perceived type of problem(s) posed by trafficking, political interests, the organization of commercial sex and the composition of those involved in it (Di Ronco 2020, 2). In this perspective, the survey proposed aims to study the concrete strategies implemented by various local participants (law enforcement agencies, jurisdictional bodies, social services, non-governmental organizations, associations and private professionals) in the challenging context of fighting trafficking in minors. It has become more important than ever now, because during the COVID-19 crisis conditions of lock-down have forced institutions and non-governmental organisations to deal with greater difficulties in prevention and support activities for victims (UNODC 2020).

## 2. The growing of the phenomenon regardless of the pandemic case

In spite of the law enforcement agencies’ legal and social resources, official statistics show an increasing number of minors involved in the phenomenon of trafficking and exploitation, although, currently, it is still considered to be largely submerged (UNODC 2016, 2020, ILO 2017). This situation has not changed with the global actuality of COVID-19. For children, the danger of falling into the traffickers’ clutches has substantially increased. Job offers through various channels, both formal and informal, appear to be the main approach to recruitment. With children and youths at home and isolated from school services, they are increasingly vulnerable to online predators. Meanwhile, predators have more time to download material and/or produce content if they have a child living with them in their home (Europol 2020, Johansson 2020).

Among the typical elements of the crime of trafficking,<sup>2</sup> in addition to the forms used by single individuals who are not necessarily part of a criminal organization, the aim is the business set up by criminal organizations: to generate illicit gains for the benefit of organizations, meaning crime syndicates that develop coercive illicit activities. We are therefore in the presence, on one hand, of a business organized by criminal gangs in the strict sense<sup>3</sup> and, on the other hand, of strongly asymmetric relational forms that are coercively established between two parties: the one stronger and with dominant powers,

<sup>2</sup> Conduct, means, purpose: the definition provided by the United Nations was later assimilated by the European Conventions and by the European legislation.

<sup>3</sup> Evoking the definition expressed by the UN Convention of Palermo, 2000, it can be defined as an “organized criminal group” when it is “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or... more serious crimes or offences (...), in order to obtain, directly or indirectly, a financial or other material benefit” (article 2).

the other more fragile and substantially vulnerable,<sup>4</sup> forced to subordination and to follow the tormentor and exploiter from one country to another. These are the real new forms of slavery, where violence and deception characterize the relationships between the participants involved (Carchedi 2004, 21).

The social and economic profile of victims of trafficking, and the severe exploitation that ensues, seem to restore the picture of global inequalities: 81% is represented by women and children recruited in countries affected by unemployment, poverty, vulnerability of the welfare systems, institutional transitions and weakness of the rule of law: Africa, Asia, Eastern and South-Eastern Europe, Latin America. People coming from these geographical areas are then recruited in the productive cycles and in the illicit economies of the developed countries, in response to the (market) demand of the criminal groups involved: under-age victims of sexual exploitation and coercion into begging (mainly from Eastern Europe), or co-opted in unreported employment and sexual exploitation (mainly from Asia and Africa) (Save the Children Italia Onlus 2017, 5). Specifically, in Italy “among 2,033 people were taken into care in anti-trafficking operations in 2019, and the most widespread form of exploitation remains sexual exploitation (84.5%), which affects mainly women and girls (86%). As many as one in twelve victims is younger than 18, and 5 percent of the victims is under 14. The girls who are most exposed are Nigerian (87%), Ivorian (2.5%) and Tunisian (1.9%)” (Coppola *et al.* 2020).<sup>5</sup> A photograph of the phenomenon of trafficking and exploitation in this period of emergency shows that the trafficking of underage human beings remains a widespread and hidden phenomenon. The COVID-19 pandemic has had significant repercussions: the criminal networks that manage the trafficking of human beings have readjusted their business models and girls have been increasingly pushed a step further towards invisibility. In some EU Member States, the demand for child pornography has increased by up to 30% during the COVID-19 lock-down (Johansson 2020). More, with COVID-19 pandemic, victims are being subjected to increased pressure and violence from their controllers. The girls have often felt forced to accept lower prices from customers and received incorrect information about the use of the face masks (Coppola *et al.* 2020). In the light of this, any analysis of the protection of victims’ rights must pay particular attention to the measures taken to address the vulnerability of children to trafficking.

### **3. Childhood and vulnerability of the child victim of trafficking: two key concepts**

In line with some of the literature, we discuss child trafficking vulnerabilities within the broader framework of child protection and the recognition of the importance of children’s rights to participate in any decision-making. We provide a focus on the concept of vulnerability, to suggest, and discuss, why there is a need for a more nuanced understanding of trafficking vulnerabilities as part of a continuum, rather than a distinct event, to improve outcomes for children (Adhikari and Turton 2020).

---

<sup>4</sup> As the directive 2011/36/EU (art. 2, co.2) states, vulnerability refers to “a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved”.

<sup>5</sup> To explore further how human smuggling operations are organized, see the recent work of Campana (2018).

---

Up to the mid-twentieth century, international support networks for children focused their intervention on the provision and protection of children's rights to be protected, with an approach to the world of children in terms of differentiation from the adult one (Wyness 2012). This is why children's rights to care were at the heart of the Declaration of the Rights of the Child of 1924 and that of 1959 (Wells 2009). Both documents had a Rousseau-inspired protectionist and welfare-based rights approach, that is, recognizing the child as an object of protection, because a child before becoming an adult is vulnerable and innocent (Rousseau 1762/1969, 69). From the late sixties, initially in the United States and England, a new interpretative paradigm of childhood began to make headway, in which children were seen as competent social beings, with their own vision of the world still relatively unexplored by psychology and social sciences and their own voice still substantially ignored by the adult world, policymakers and social and legal operators. The clear intent of this approach is to deconstruct and deinstitutionalize childhood, especially for that radical and liberationist strand that identifies children as a marginalized social group to be freed from the oppression of adults and the construction of discourses on children (in clear controversy with Ariès and his idea of the discovery of childhood). This has a view to making children active subjects in the process of reproducing society. Liberationists also resort to the language of rights, attributing to children all the fundamental rights acknowledged to adults in all democratic societies, recognizing in self-determination a primary need of children. The strongest criticism of this approach is that the rights identified would be the rights of wealthy companies, which would therefore not express universality, but the values of the industrialized and wealthy West (Ronfani 1995, 80-83).

The UN Convention on the Rights of the Child of 20 November 1989 undoubtedly constitutes the most important international regulatory instrument in marking a fundamental stage in the journey taken by minors towards the full recognition of human rights (Qvortrup 2008). This document, in fact, according to the traditional classification of fundamental rights, attributes to minor subjects the ownership of civil, political and social rights (Ronfani 2013, 7). According to the traditional classification of fundamental rights, the document attributes the ownership of civil, political and social rights to minors. The Convention changes not only the landscape of childhood but also the role that children can play in late modern society, as actors in their process of emancipation. Children are not only considered holders of rights, as the Convention establishes, but they are also a family and state property (Haddon and Vincent 2014).

But how do these orientations of interpreting childhood and the condition of minors correlate to the conditions of extreme vulnerability such as those of child victims of trafficking? What does it mean to be an "extremely vulnerable subject" in a condition of trafficking and exploitation, and at the same time "actor of one's own process of emancipation" on the path of recognition of this condition? Are the minors involved in this type of market once again considered to be an "object" in law, thus confirming the discrepancy between a declared growing *puerocentrismo* (paedocentrism or putting the child at the centre) – as a characteristic sign of modern Western societies – and a progressive preponderance of the principle of protection over that of participation? (Qvortrup 1995, Torrioni 2013, 116).

The notion of vulnerability is strategic, both legally, as an “indicator” of the emergence of the phenomenon, and socially, with respect to the “quality” of intervention programs in support of the victims. It is difficult to dwell on a univocal definition of vulnerability since a subject is vulnerable to a certain condition, or set of conditions.

By vulnerability, the 2011/36/EU Directive of the European Parliament and of the Council of 5 April 2011 concerning the prevention and repression of trafficking in human beings and the protection of victims intends “a situation in which the person in question has no other effective and acceptable choice except to give in to the abuse of which he is a victim”. However, in general, the influence of subjective factors such as age, gender and physical or mental condition can be noted, as well as the influence of external, and therefore “environmental”, factors (relating to the various geographical regions), such as the political instability of a country, poverty, discrimination regimes, the absence of prospects for economic development, the absence of legal guarantees, difficult access to education etc. (so-called “push factors”).<sup>6</sup> A characteristic common to all forms of the human market, namely the profit gained by an exploiter or a criminal network, contributes to heightening a position of vulnerability.

Reflection on vulnerability can also focus on the different moments that make up the contingent situation. It is clear that when referring to elements of vulnerability, the feedback focuses both on the risk factors of the potential victims of trafficking and on the factors that distinguish the actual victim of trafficking in a continuum that moves from circuits of prevention to circuits of protection (UN General Assembly 2016).

Vulnerability first appears as a fundamental element in tracking down the potential victims of trafficking, or at least “those exposed to the possibility of the same”, through the selection of indicators aimed at revealing positions related to the phenomenon of trafficking or the general lack of alternatives to exploitation. It then becomes, instead, a datum that qualifies the victim, expressing an expectation linked to procedures and responses built regarding that specific receiver.

With particular reference to identification practices, multiple indicators must be taken into account to trace vulnerable conditions. Vulnerability manifests itself in the countries of origin (1), where there is a disadvantageous situation (due to poverty, wars, etc.), often leading to trauma in the subjects, who can be influenced in the reconstruction of the event; (2) it then persists in the countries of destination on the basis of certain socio-economic conditions, risk conditions also linked to the presence of criminal networks, a low level of education of potential victims, the condition of minors and unaccompanied minors; (3) finally, it materializes in the victim’s investigation and protection procedures (signs of violence, threats, dependence on adults, etc.). These elements are embraced according to a systemic logic and require a high level of communication (trust); in this sense, they stress the importance of interdisciplinary studies able to highlight the psychological aspects of exposure to trauma of the minor in relation to his/her country of origin, the sociological aspects of involvement of the minor in the contexts of destination and, finally, the legal aspects of the victim inserted within the system of protection and procedural safeguarding. In other words, the system addressing the issue

---

<sup>6</sup> On these factors, an in-depth analysis can be found in Shelley 2010, 37. Some causes are also mentioned in the recent Rapporteur on the Right to Education’s report (UN General Assembly 2017b). The IDMC’s site is also recommended: <https://www.internal-displacement.org/global-report/grid2018/>



of HT represents a difficult challenge because its chances of success are based not only on the ability to manage the already blurred boundaries between protection/autonomy that always characterise the juvenile universe, but also on the ability to operate within a scenario in which communication between systems (legal, social, protection, control) functions with different codes of interchange and strategy that look at differentiated levels of governance.

It is a matter of structuring a system of interventions which must be compared in their implementation (beginning with the identification of the victim and ending, in positive cases, with processes of social integration of the minor victim), and which at the same time must take into account the ambiguities and ambivalences that characterise each system separately.

In terms of the legal system, connected to the judicial system, the reference is to the principles expressed in international legislation oriented towards the best interests of the child, the concrete declination of which has always been the subject of debate between scholars and policymakers, as well as to the notion of “children’s rights”, marked by confusion and contradictions, perennially correlated to a definition and identification of a condition of vulnerability that becomes central.

On the social system level, strictly connected to the welfare system, the reference is to the ambivalence that accompanies the current representation of childhood, stretched between a traditional concept that sees children being protected and a concept, instead, that sees them subjects who can also act and choose “their” protection, that is, their effective degree of autonomy and responsibility.

Understanding the phenomenon then requires a multi- and interdisciplinary profile in consideration of that critical academic debate towards the problem of the conceptualization of trafficking around the notion of victimhood (O’Brien 2013, Lisborg 2014, Vijayarasa 2015) (Figure 1).

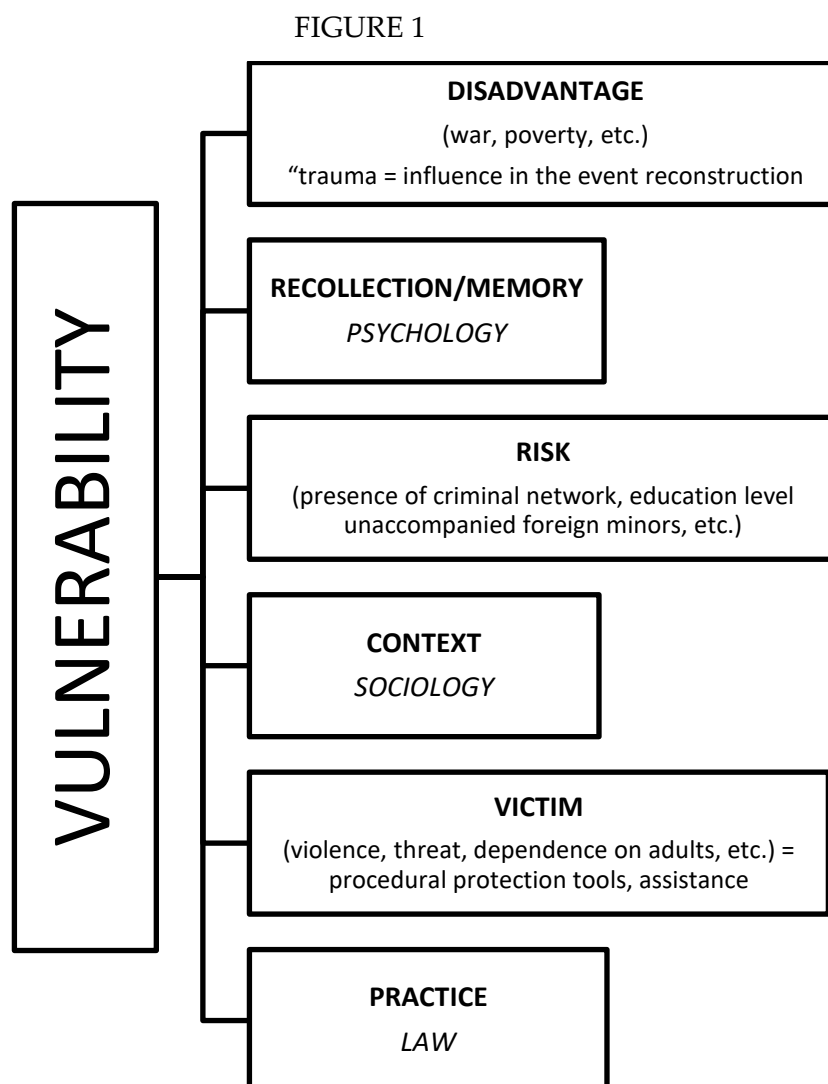


Figure 1. Vulnerability. Dimensions and contexts of analysis.  
Source: De Felice *et al.* 2019.

#### 4. Hints on the regulatory framework

The content of the current European legislation on the trafficking of human beings is the result of a progressive adaptation of the legislation to a phenomenon that has rapidly regained visibility in the last twenty years. This visibility is linked to the emergence of other important challenges, in some way connected, concerning migratory movements, the formation of transnational criminal networks, undeclared work and therefore the links between the European context and the wider international framework in the evolution of studies and agreements on repression, protection and prevention.

Trafficking becomes a European affair through gradual specification of the offence versus fragmented provisions at a national level. The first step in this process was a definition of trafficking in women for the purpose of sexual exploitation in 1996 (COM (96) 567 final). In the same year the Parliament adopted two resolutions, adding the reference to child victims which was then reaffirmed in the Joint Action of 24 February 1997 (97/154/JHA), but the common interest of the States still turns to the struggle at this stage against sexual exploitation as the only constitutive typology of trafficking. It was

---

in fact the Palermo Protocol of the United Nations in 2000 that would provide a clear description of the crime and influence subsequent European legislation.

An important proclamation came in the European Charter of Fundamental Rights (Nice, 2000) in Article 5. Shortly after, the EU Framework Decision of 19 July 2002 took up the question again, underlining the vulnerable condition of children and their greater need for protection and assistance: the Council Framework Decision of 22 December 2003, relating to the fight against the sexual exploitation of children and child pornography, and the Council Directive of 29 April 2004, relating to the residence permit issued to citizens of third countries who are victims of human trafficking.

In 2005, the Council of Europe Convention, no. 197, established (in line with Article 3 of the aforementioned Palermo Protocol) that the recruitment, transport, transfer, accommodation or reception of a minor shall be considered trafficking even if the means provided are not used in the definition (art. 4). The “anti-trafficking” Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 concerning the prevention and repression of trafficking in human beings and the protection of victims can be considered a summary tool with respect to the previous European legislation: it is based on the pre-existing legal frameworks provided by the UN, the International Labour Organization (ILO), the Council of Europe and the EU Charter of Fundamental Rights and formalizes the broader definition of the offence in art. 2.

The Directive promotes collaboration with civil society organizations and recognizes the activity of NGOs engaged in the fight against trafficking of human beings. In addition to the measures available to all victims of human trafficking, the Directive considers it appropriate that Member States should ensure specific assistance, support and protective measures are available to child victims. Those measures should be provided in the best interests of the child and in accordance with the 1989 United Nations Convention on the Rights of the Child. The attention paid by the directive to the phenomenon of trafficking in human beings appears to be a huge milestone for Europe, since the adoption of Union intervention measures in the criminal field is to be considered of an exceptional nature and so far limited only to “crimes particularly serious” and transnational in scope. It is a need for constitutive harmonization of the Union itself which in recent years has managed to extend to those sectors for which contact between European law and national legislation did not seem possible.

From this point of view, the directive represents one of the most incisive sources of law and can be considered an added and complementary value to national criminal systems since, as a (secondary) source of law, it is above all an instrument that “binds the Member State to which it is addressed, as far as the result to be achieved is concerned, without jeopardising the competence of the national bodies with regard to the form and means” (Treaty on the functioning of the European Union, TFEU, art. 288 par. 3). But the added value also derives from the substantial extension of some effects that materialize in favour of a more mature and more effective repression and prevention of the crimes in question. This refers to the principle of loyal cooperation that States are required to ensure in matters governed by European law and which also in the criminal field end up facilitating a practical and cognitive exchange commitment on prevention, data, investigative strategies, definition of the crime, assistance or law enforcement interventions.

The exact extent of the phenomenon, its complexity and transnationality, in fact, poses a challenge with respect to the limits to which national competence is inevitably subjected in the criminal and political sphere, since the objectives and instruments existing at national and European level should configure responses of equivalent importance to HT, thus adopting the so-called comprehensive approach, i.e. interventions aimed at not excluding the dimensions that transcend state borders and therefore, for example, the imputability for the act committed in part abroad, the protection for the act suffered abroad, the strengthening of external action strategies by Europe.

In Italy, a complex system of services aimed at supporting victims of trafficking has been developed for several years now, as a result of the process of implementing legislative choices considered the most innovative on the European scene (Prina 2008). Specifically, in the Italian legal system, human trafficking is punished by Law 228/2003 which rewrote the articles of the criminal code relating to enslavement, Articles 600, 601 and 602. The law, in addition to the penal sanctions, adds administrative sanctions against legal persons, companies and associations for the crimes in question. The most recent changes are due to the transposition of the European Directive 2011/36/EU, with the Legislative Decree 4 March 2014 no. 24, which involves Italy in a broader definition of the crime and the victim, identifying a law enforcement action, starting from the elements that make up the case, namely the conduct, coercion and purpose; but also social action, which imposes on institutions provisions relating to the protection of the victim and coordination on the main mechanisms of emergence and prevention of the phenomenon.

Under the penal profile in Italy, as in other states, the overcoming of the original qualifications involves the concept of slavery. The Legislative Decree 4 March 2014 no. 24, in implementation of the European Directive 2011/36, highlights the implementation of malicious conduct through “deception, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, physical or mental inferiority or necessity (...) in order to induce or force (the victims) to work, indulge in sexual acts or beg, or in any case to carry out illegal activities that involve being exploited or subjected to the removal of organs” (art. 2). This is a definition that is linked to the need for an overall analysis of the phenomenon also understood as “individual assessment of the victim, of the specific situation of vulnerable people such as minors, unaccompanied minors, the elderly, the disabled, women, in particular if pregnant, single parents with minor children, people with mental disorders, people who have suffered torture, rape or other serious forms of psychological, physical, sexual or gender-based violence” (art. 1).

Art. 600 of the Italian Criminal Code traces the subject’s right to access their own life plan through the conscious exercise of the freedoms recognized to the person as a protected legal asset. This is in order to go beyond the expressly punitive measures to become a broader means of contrasting the exploitation of human beings, involving the multiple responsibilities of a legal and institutional context. The criminal law is, in this sense, intended to protect human dignity, and to protect it not only by proceeding against the exploiter, but above all by granting the victim the possibility of choosing a free existence guaranteed by legal paths. This is the reason why vulnerability is measured with a definition of the one “who has no other choice (other than to give in to abuse)” (EU Directive 2011/36).

## 5. From the perspective of the Sociology of Law

The research approach focuses on some Italian criminal judgements regarding a particular trafficking route – that of Nigeria to Italy – and assesses how institutional and social interpretations support perceptions of vulnerability or agency that are often promoted or defined by criminal law perspectives. From the angle of this analysis, the judgements are tools of social regulation (although as the outcome of a trial), and are used as a “magnifying glass” to study mechanisms and contexts from which one can deduce the real balances of power and value hierarchies established by the institutional response to the phenomenon of HT (De Felice *et al.* 2013, Quiroz Vitale 2018). We studied the juridical response to child human trafficking in the east part of Sicily, Italy.<sup>7</sup> We examined the judgements in order to extract the actors involved in the facts and the relationships between them. The actors have been labelled with the following roles: judge, members of the court, prosecutor, defendants, lawyers. Relationships between actors were also extracted in terms of close co-occurrence in the text. An outcome of our result is the study of a social network with several familiar properties, which suggests that the combination of an interdisciplinary profile may provide novel insights into HT as a social phenomenon.

In the analysis of the jurisprudence, a judgement is the result of a reconstruction process of reality that depends on the purpose for which such reconstruction is made (that to judge), and on the (juridical) strategy adopted in order to arrive at qualification of the facts. The judge must make an appraisal according to the current law, and therefore his action is limited to the possibilities contemplated by the law. This inevitably implies, on one hand, that the qualificatory process influences the way the reality is reconstructed in the judgement and, on the other hand, that the outcome of the judgement will depend upon what the judge will deem significant for the application of the relevant norm to the concrete case (Pennisi and Giura 2009). Moreover, difficulties emerge because while juridical constructs live on infrequency, that is, they are not ascribable to dogmatic constructs in which one can make out methodologies and objectives, in contrast, they are the result of a juridical culture that uses proximity models followed by the judge (De Felice *et al.* 2013).

The construction of the juridical reality as expression of the complexity of a social phenomenon that comprises, or at least, interacts with the juridical phenomenon is far from being ascribable to a paradigm oriented for the understanding of basic mechanisms; it is rather mainly oriented to the construction of meta-theorization which tends to overlook the observation of the phenomena (Abbamonte 2001). In this context, however, the debate raises awareness of the unilateral perspective employed until now in the formulation of possible theories on the juridical phenomenon in its entirety (be it that of the judge, of the legislator, or of the citizen), thus considering the different roles and the different prospectives of the analysis. From this point of view, a perspective of

---

<sup>7</sup> As is well known, the phenomenon of trafficking is a hidden phenomenon since it is difficult to judicially identify; in fact, it is hardly found in criminal proceedings. The number of judgments examined must not seem small. The Catania office (Sicily, Italy), in fact, in 2016, was the first in Italy in terms of the number of proceedings against known subjects, subjects arrested, victims identified and those rescued, even reaching 50% of all the judicial burden on human trafficking at national level. The United Nations in 2018 recognised the processes of identification and contrast to the phenomenon of child trafficking that was implemented on this part of the Italian territory as a “best practice”.

socio-juridical analysis may be fertile, demonstrating that the scientific character of the sociology of law, today, is the implementing of methodological tools that allow to understand and describe the proper function of modern jurisprudence in a scientifically based way, as well as the empirically observable reality of the behaviour of jurisprudence operators or subjects interacting with the juridical system (De Felice *et al.* 2013).

The protection of minors who are victims of trafficking in the criminal field is fragmented in the international provisions that circumscribe the listening methods in the particular form that allows “protected hearing” (in chronological order, the regulatory steps on an international basis of the procedural protection of the minor: Beijing Rules, 29 November 1985; Convention on the Rights of the Child, 20 November 1989; Optional Protocol, 6 September 2000). These are exceptions provided to ensure that the emergence of the crime, the contribution to the formation of evidence and the participation of the minor in a proceeding concerning him/her, take place in compliance with the minor’s condition of vulnerability. Listening to the minor is, in fact, a procedural situation but it also protects his/her best interests, in line with the UN Convention on the Rights of the Child of 1989 which contains the institution of listening as the right of the minor to “be heard in every judicial or administrative procedure that concerns him, either directly or through an appropriate representative or body, in a manner compatible with the procedural rules of national law”. The guarantees posed by criminal law endeavour to cover the risks associated with the minor’s involvement in the hearing as far as possible through significant variations in relation to phases, profiles, tools and context.

The need to create a mechanism that allows the acquisition of the statements of the minor in stages not provided for in ordinary proceedings is linked to the protection of the victim with respect to the so-called risk of second victimization (referring to further suffering resulting from contact with the justice system) and the opportunity to obtain information from his experience in a timely and therefore uncontaminated manner<sup>8</sup>.

## **6. Methods of data collection and analysis**

The proceedings examined concern Nigerian minors recruited in the country of origin through proposals and prospects for lawful employment on the European continent from compatriots residing in Italy. The story of the victims is reconstructed starting from their journey: the deception, followed by the rituals, the debt and the threats. In particular, judicial decisions are analyzed from four aspects: the formalization of the charges (I); the genesis of the investigations (II); the defence thesis (III); compensation (IV).

### *6.1. The formalization of the charges and the genesis of the investigations*

As regards the charges (I), the connection between the crimes relating to trafficking (in articles 601 and 602 Italian penal code) and the crime of association (article 16) is

---

<sup>8</sup>Secondary victimization is not to be considered automatic to the victim’s involvement in the reconstruction of his/ her history. Rather, it can be assumed that secondary victimization is not at all linked to participation in the trial phase itself, with its parts, but to other variables: a perception of detachment from the operators, the outcome of the process, an unprofessional interrogation, the relationship between the victim and the people who are supposed to represent his interests not based on trust.

evident, furthermore accompanied by the challenge of the aggravating circumstance of the transnationality of the criminal activities that the “organized group” engage in. Transnationality, as mentioned in several parts, is an implicit characteristic of the crime in question. It can be identified as a predicate of conduct and therefore is referable to a group operating only or mainly in a State,<sup>9</sup> but it can also be a characteristic of the group, of its structure, and therefore specularly a condition of conduct that seems to be consumed in one state and yet implemented by an organization involving multiple states.

In the reconstruction of the events relating to the three cases, the minor’s journey is divided into several stages, in different states, with different subjects at each step and for this reason the configuration of transnationality is inevitable as an aggravating factor for the activity carried out by the various subjects of the organization. The associative character is then reaffirmed, in these cases, the qualification in the agreement, even if not expressed, between subjects aware of connected actions in compliance with a common purpose. Starting from these elements, the need to strengthen constant coordination between agencies and between states in the fight against organized crime remains crucial for reflection,<sup>10</sup> and has partly been achieved with Europol,<sup>11</sup> though still insufficiently in relations with the countries of origin, where they often reside. Leaders and promoters of the organization’s network aiming at trafficking and exploiting human beings are deployed, a need that is also faced with a now documented dysfunction that often involves law enforcement and government officials in transit territories outside the European Union.<sup>12</sup>

Much of the information contained in the text of the decision emerges in the reconstruction of the genesis of the investigations (II), which refers to the dynamics of the event, the profile of the victim and the roles connected to the first identification, a decisive moment for the fate of the victims, but also fundamental for the planning of law enforcement actions.

Specifically, in the first case, the initial report was received from the Traffic Police after a check carried out in the areas adjacent to the city of Catania (in eastern Sicily). Further checks revealed that the young woman was a minor and she was transferred to a structure for unaccompanied minors. The activities of the Judicial Police (PG) began with a declaration of the minor demonstrating his/her condition as a victim of trafficking.

---

<sup>9</sup> III Criminal section of the Criminal Supreme Court of 5.2.15 n. 32322.

<sup>10</sup> In relation to organized crime it is important to consider that there is a range of actors in this space – some of whom are involved in ways that may fit the definition of organized crime, and others who are linked to the child as family or acquaintances. The motivation in some cases may not be financial but may be sexual gratification, which is again a different approach from understanding the problem solely as organized crime. To explore this further, see Paoli 2002. To further investigate a few critical issues related to explanation in criminal network research, see Campana 2016.

<sup>11</sup> In this regard, we note a recent operation in April 2019 as part of an action to combat human trafficking for the purpose of labour exploitation in which Europol supported and coordinated 23 EU states, Iceland, Norway and Switzerland. The operation took place in a week and ended with the identification of 323 potential victims and the arrest of 46 suspected traffickers. The reported news may be accessed on: Europol 2019.

<sup>12</sup> On this topic, a discussion in Anti-Slavery International *et al.* 2011.

The second is the case of a minor who was identified as an offended party in the context of a proceeding with two suspects for the crimes of trafficking and aiding and abetting illegal immigration. The steps that lead to the identification of the minor as a victim highlight a series of interventions and roles connected to each other: first the specialized Police section (in Italian, *squadra mobile*), in a subsequent phase the staff of the International Organization for Migration (IOM) and finally the PG with an interpreter, a cultural mediator and a psychologist to assist during the hearings.

The initiation of the judicial process in the third case is a first assessment carried out by the IOM on the occasion of a disembarkation. This is also the story of the recruitment and exploitation (prostitution) of two Nigerian minors as proved by the evidence of the technical activity carried out by the PG and the prosecution of the victims.

In the fourth case, the investigation activities follow the statements made by the injured party about 6 months after his disembarkation at the port of Pozzallo.<sup>13</sup> The victim was recruited in Nigeria by a compatriot with the promise of “a school, an education and a good job, a good life”. As part of the same procedure, the testimonies of two other women were also acquired, offended parties, a nineteen-year-old recruited with similar methods and a woman fleeing from an Edo State criminal association.

In the fifth case, the circumstances that gave rise to the criminal action refer to the facts narrated to the investigators by a minor who disembarked in Italy. The telephone utilities provided by the same during the investigation made it possible to reconstruct the criminal contribution starting from the roles of the three main individuals who brought about the event: the Juju man, the connection man and the contact at destination.<sup>14</sup>

In the sixth case, a 16-year-old minor was put into contact with the financier of her trip from Nigeria to Italy. Once arrived at her destination, after two attempts to escape from the reception centers for minors, she was intercepted and placed in protection by the Catania mobile squad during an internal transfer that should finally have led her to the

---

<sup>13</sup> The port of Pozzallo is the largest in the province of Ragusa (city in the south-east of Sicily) and one of the most important in Sicily. It is located about 90 km from Malta island and is in a strategic position for connections with North Africa.

<sup>14</sup> Girls are asked for a very high amount of money that makes them slaves even before leaving, because they must be able to anticipate the costs of the journey (they are often forced into prostitution before arriving at their destination). Among the main instruments of subjugation, members of criminal organizations make use of beliefs and superstitions (Bruno 2017). The most used is the so-called “JuJu ritual” that strongly subjugates girls from a psychological point of view until the debt they have contracted is extinguished. The control exercised over them is based on refined blackmail mechanisms starting from the rite practised in front of witnesses. This starts just before the trip. The performance of the ritual involves a sequence of articulated actions that take place starting from the packaging of a small object - precisely the ju-ju, which is followed by the removal from the girl of locks of hair, nails and, at times, even menstrual blood. The ju-ju was previously used as a life insurance or good luck charm while now it represents the commitment undertaken by the young woman with her *maman*, thus becoming the formalization of a bond with her new “daughter”. The girl is stripped, washed and wrapped in a white sheet which serves to represent a new beginning. At the conclusion of the rite, the “contract” is celebrated, summarizing the commitments that are binding until the debt is extinguished: “work, don’t talk about the agreement, obey and pay”. Breaking the contract means breaking the oath and incurring consequences that go beyond intimidation. The importance attached to the oath is proof of the normative pressure it exerts on the victims, like a “legal institution that contains elements that we are used to associating with the religious sphere” (Agamben 2008, 25).



madame.<sup>15</sup> Investigations continued with checks on the telephone number of the latter and were supported by the information provided by the minor during the pre-trial hearing.

### 6.2. *The defence thesis and the compensation*

The theses of the defence, the third aspect considered, raise issues of importance with respect to the perpetration of the crime in the “destination” territory: ascertaining the age of the victim, territorial jurisdiction (Article 8 of the Italian Penal Code) and the assessment of the crime as tempted or consummated, even if in any case it tends to be permanent (Bartoli 2001). In the specific cases found, the ascertainment of the minor age is inferred from radiological findings and is confirmed by the wiretapping and statements made by the victims themselves. The defence line aiming at supporting the possibility of a margin of error in the radiographic examination is not accepted in the trial, nor is the alleged ignorance of the guilty regarding the age of the victims, held as incompatible with art. 602 quater of the Italian criminal code.

Finally, a fourth aspect was considered, relating to compensation. In general, this is an important fact that demonstrates the feasibility of the agreements that Italy has signed at international level (Article 6 (6) Additional UN Protocol), and the adaptation to European legislation (Article 17 of Directive EU36/2011). Attention to this data may also be useful in view of a broader comparison with other states, based, for example, on the national average of compensation granted or requested. But compensation is above all that element of the decision that somehow measures the centrality that the injured party assumes in the proceedings, also through the action of the associations constituting the civil party.

The estimate of compensation for victims of trafficking is, by nature, multifaceted because it embodies the restorative, preventive and remunerative purposes of the justice system. This is obviously a material and immaterial restitution, even symbolic, if we consider that the sum must satisfy the victim’s need for justice and that this in turn represents the possibility of getting out of the victimization mechanism (Barrenechea 2016). Compensation can, however, follow a more or less proportional criterion with respect to the offence suffered and in this sense consideration of the weight of some variables is inevitable: the production of evidence, the possibility of asserting damages suffered in the past or abroad, the amount requested by the person representing the victim’s interests. Here comes the preventive purpose: it is more likely that a positive experience with the justice system will lead the victim to feel “healed” and therefore less exposed to any new subjection.<sup>16</sup>

---

<sup>15</sup> During the migratory journey, girls are generally accompanied by Nigerian men who are part of, or work with, criminal organizations. Their task ends when the girls arriving in Italy are entrusted to a “madame”, a woman who will control and manage their business as prostitutes and who is often a former prostitute herself.

<sup>16</sup> “Contrary to what is generally expected, victims’ wishes are not restricted to harsher punishment of the offender, but extend to the other goals of criminal law, among them restorative goals” (Malsch and Carrière 1999, 243).

### 6.3. Schematic structure

In *scheme no. 1*, the information relating to the charges and the corresponding requests of the defence of the six Italian jurisprudential cases cited are summarized; *scheme no. 2* focuses on the results relating to the judgement and the type of compensation relating to the six jurisprudential cases cited.

#### SCHEME 1

Indictments	Defence requests
<b>Art. : 416 c.p.; 110 c.p.; 601 c.p.; 602 c.p.</b>	Indictment Defence requests 416 of the criminal code; 110 c.p. ; 601 of the criminal code; 602 c.p. Incompetence by territory; downgrading from child prostitution to prostitution (for only one of the accused); downgrading of the crime of trafficking from consummated to attempted; redevelopment of the indictment of trafficking in persons as per paragraph 3 of Article 12 of TU 286/98.

Scheme 1. Summary of charges and defence requests.

#### SCHEME 2

<b>Case 1</b>
10 years, 10 days of imprisonment; 20,000 euros for each of the civil parties.
<b>Case 2</b>
10 years of imprisonment; 20,000 euros as compensation for damages in favour of the civil party; 10,000 euros in compensation in favour of the civil party, the anti-trafficking association.
<b>Case 3</b>
6 years, 6 months of imprisonment; 15,000 euros for each of the plaintiffs.
<b>Case 4</b>
16 years and 6 months of imprisonment.
<b>Case 5</b>
10 years of imprisonment.
<b>Case 6</b>
13 years and 4 months of imprisonment; 25,000 euros as compensation.

Scheme 2. Penalty and compensation.

The analysis of jurisprudence on the basis of an HT model responds to the need to investigate two problematic aspects. The first is closely linked to the phenomenon, or rather to the emergence of its constituent elements, to the emergence of these elements within a given structure (Meier *et al.* 2001). The second aspect is instead linked to the need to frame the response to the phenomenon, the adequacy of existing legal sources, the translatability of these to the operator and therefore the understanding of HT in the specific context of the cases of the Court of Catania.

The diagram below summarizes the attempt to interpret the Human Trafficking model as a process, starting from the judgments examined.<sup>17</sup> This schematic reading allows the reconstruction of the sequences that from the first phase of recruitment lead to the proclamation of the trafficking condition, focusing, for each phase, on the realization of what type of event it is (in the relevant jurisprudence) and of the conditions or actors which play a crucial role in that realization. Finally, the text part of the judgement allows us to read the event and conditions / actors as characteristics of the action scenario.

Analytically, without going into the merits of the more or less detailed attributions provided by the legal doctrine in the criminal field, by event we mean the result of the action (Article 40 of the Italian Criminal Code) and in particular, for the contents dealt with, the reference is to the definition of the Protocol of Palermo UN 2000, using the terms expressed in art. 3. The conditions / actors provide a description of the steps and/or subjects that make up the event in general terms, and finally the text (of the judgement) translates and reproduces these characteristics within the scenario of action of the cases examined (Scheme 3).

---

<sup>17</sup> Due to the small number of judgments examined, this is clearly not yet a generalizable scheme. It constitutes an attempt to read the sentences which, once the number of the sample has been expanded, can synthetically return information on the phenomenon (to contribute to its understanding) and on its evolution (a sort of monitoring).

---

## SCHEME 3

<b>Event</b>	<b>Conditions/Actors</b>	<b>Text of criminal judgement</b>
<b>Recruitment</b> ↓	Agencies. People with a good reputation. Family members.	“A friend, ***, aware of the young woman’s economic problems, proposed that she join an older sister who worked in Europe and was looking for girls who were able to work as a hairdresser”.
<b>Documentation and transport of victims</b> ↓	People who provide the necessary documentation to face the trip; who are responsible for planning and making the transfer possible.	“A compatriot named *** had taken her to the bus station in Benin City, providing her with his account to contact him; from Benin City *** had reached *** (where she had found *** waiting for her) [...]”.
<b>Transit places</b> ↓	Temporary Structures.	“In Tripoli, where she was housed in a shed together with other migrants awaiting boarding”.
<b>Control System</b> ↓	Guards who prevent the victims from trying to escape.	“By making them cross the continent of origin under the control of criminals who subjected her to deprivation of all kinds, controlled her under the threat of arms and, finally, they made her reach Italy”.
<b>Destination</b> ↓	Permanent transfer to a member state of the European Union.	“One night she was put on a rubber dinghy that set sail for Italy”.
<b>Exploitation</b> ↓	People who ultimately put the victims into exploitation.	“Nigerian woman who had driven her to her home in *** where a few days later she was put on the road to prostitute herself with other compatriots”.
<b>Debt</b>	Final operation that allows to keep the victim in the exploitation circuit.	“That he would thus have returned the money advanced by the woman little by little (he had later discovered the sum to be 30 thousand euros)”.

Scheme 3. HT model as a process.

The choice of this scheme finds a necessary premise in reading the judgement through an approach that uses “narrative thinking” to capture a process. The process contained in a text furnishes a great amount of legal and factual information. The criminal case is built from “narratives” in all its phases. The judicial police build one for the investigation, the Public Prosecutor elaborates the contents of this to formulate the accusation, the witnesses and the accused give their version and the defences value certain aspects in court before a judge to whom judgment is eventually entrusted.

---

In the case in question, it is a question of first breaking down the information content of a judgement so as not to neglect any element as part of the process, and to separate the result from its immediate cause/condition, and then questioning what needs to be ascertained for one element to be associated with others. The interaction between the sources of information will ultimately build an integrated reading of the narrative and its procedural formulation, that as structures are originally parallel.

Decisions form events when they do not happen by chance and in isolation, and rather enter into a mutual relationship in a framework that establishes their effects.

IAs already observed, for the small number of cases examined the study can currently only represent an attempt. The choice of the judgement, not only in its decision-making outcomes, as in the traditional jurisprudential selection, but also as a textual basis, is justified (at least in the case of HT), for it furnishes the possibility of exploring through narrative connections the increasing use of certain behaviours, the possible phases that do not emerge from the victim's complaint, the alleged or ascertained movements involving the different territories, the duration of the exploitation and that set of elements therefore useful for the final decision, understood as the codification of what becomes accessible of the crime. That is, the event is subjected to its reading within a Court called upon to "decide" what HT represents within its pre-existing structure of meaning which, so to speak, resonates with familiarity (legal culture).

This scheme is then used to allow the study to move in the fusion between the two structures, that of the phenomenon and that of the functioning of justice (decision), in the hypothesis that this is also a way to grasp the evolution of the same: evolution of jurisprudential criminal law every time it is called upon to define a case; the evolution of the crime in the extent of the debt, in the changes in the rituals, places, sequences, victims, perpetrators, transfers.

Maintaining the focus on communication between the two worlds, the relationship between phenomenon and law gives grounds for sociological analysis: a study that does not observe it solely from a criminal point of view, but also intercepts that information from the text of the decision (usually found from other sources: interviews, reports); relationships that allow a reading of the HT that does not only have to do with the guilt of a subject or the occurrence of a circumstance, but with other factors that call into question, *melius re perpensa*, the responsibilities and objectives of repression, prevention and protection together. In this perspective, starting from the criminal sphere, described and prescribed, as an instrument of protection and contrast, we can present a study that differs from the perspective of legal science, if we consider at least the common vocation it has with political and social sciences, that is the search for the reasons of justice and the possibility of investigating the responses to contingent events.

A broader reading of HT actually focuses on the possible intervention points able to balance the threat that materializes in the occurrence of the event.

It is therefore not intended in this case, (despite the proliferation of suggestive studies in this sense), to support the point of view of research that encourages the implementation of a predictive investigative system of the crime to focus on possible interventions towards the agent (Kehl *et al.* 2017); rather, no the intention is to stimulate the functionality of an ex post mapping that takes from the decision-making process of crime

commission, and from the decision-making process aimed at circumscribing it, the recurrences and the modalities that involve similar places and objectives in order to frame appropriate prevention strategies regarding the factors of exposure to crime.<sup>18</sup>

In summary, the HT model describes a context within which the law exists, and subsists through the qualification of actions related to an event/situation (which we call crime), as actions that have purposes and effects (I). The model is also the interface of the interaction between law and knowledge of the phenomenon which results in the reconstruction/reworking of the meanings that emerge from the narrative contained in the judgement, and the relationship between these (II) (Di Donato 2008). Finally, it renders explicit the information content of the judgement (for the purpose of the judgement, the outcome), that is, it organizes the constituent elements of the crime, trafficking/no trafficking (III).

#### 6.4. Complexity of the phenomenon in its jurisprudential emergence

*Scheme 4* summarizes the references contained in the three judgements issued by the Court of Catania, which allow us to open up to a primary reflection on the complexity of the phenomenon in its jurisprudential emergence. The judgement becomes as much an internally oriented communication tool, (that is, towards the “trial community” which, progressively, learns to “read”, “select” and “exchange” information), as well as externally oriented, to which it returns models of interpretation of its object towards the “civil community” in which it (imposes) itself as a norm and decision (Giura 2015, 10). Conceptualized in this way, the judgement symbolically reconstructs the attempt at a “common grammar of a language in which one responds to someone because and while one responds to something (...) here is the boundary to point out between law and trial. Criminal law must promptly indicate what to answer for and precisely identify the consequences of responsibility, while it is up to the process to establish the framework of rules for asking and responding” (Resta 2000).

SCHEME 4

Case I	III Criminal section of Supreme Court n.50561 of 08.10.2015 <i>“The crime of trafficking protects the freedom of the person while facilitating illegal immigration public order”.</i>
Case II	Supreme Court Judgement n. 40045 del 24.09.2010 <i>“Deception as an alternative to violence or threat”.</i>
	VI section of Supreme Court Judgement n. 16115 of 24.04.2012 <i>“It is sufficient that even a fragment of the conduct occurred in the territory of the State”.</i>
	Supreme Court Judgement n. 21630 of 06.05.2010 <i>“Situation of necessity was not of necessity”.</i>
	Supreme Court Judgement n. 23368 of 08.05.2008 <i>“It is not necessary that the crime of reducing slavery is also committed”.</i>

<sup>18</sup> “Prevention is no less important than repression in any integrated approach to organised crime, to the extent that it aims at reducing the circumstances in which organised crime can operate. The Union should have the instruments to confront organised crime at each step on the continuum from prevention and repression and prosecution” (EU-Action Plan to Combat Organised Crime, 1997).

Case III	I Criminal section of Supreme Court Judgement n. 3133 of 12.03.1998 <i>“The evidence regarding the associative crime can also be inferred from the executive methods of the intended offences, from their repetition, from the contacts between the perpetrators, from the uniformity of the conduct, especially if continued for an appreciable time”.</i>
	II section of Supreme Court n. 19917 of 15.01.2013 <i>“For the purposes of the configurability of the crime of criminal association, it is not necessary for the associative bond to take on the character of absolute stability”.</i>
	I section of Supreme Court, n. 24062 of 21.06.02 <i>“A complex and articulated organization is not necessary, endowed with considerable economic resources and conspicuous operational tools, as the existence of structures, even if only rudimentary, aimed at pursuing common illicit purposes is sufficient”.</i>
Case IV	Supreme Court n. 16339 of 2013 <i>The element of indeterminacy of the criminal program “does not disappear for the sole fact that the partnership is aimed exclusively at the carrying out of crimes of the same type or nature, as it relates to the number, methods, timing, objectives of programmed and certainly not to their legal qualification”.</i>
Case V	Supreme Court n. 9844 of 2015 <i>The extenuating circumstance is to be considered to exist when “the contribution given by the joint participant has materialized in the assumption of a role of causal efficacy so slight with respect to the event, as to be negligible in the general economy of the criminal process”.</i>
Case VI	Supreme Court n. 22588 of 2005 <i>Prospective alternative actions provided for by the law can be traced back to a unitary action under the legal profile.</i>

Scheme 4. The jurisprudential framework of reference.

The way in which the plot of the vast regulatory fabric that revolves around the trafficking of minors is reconnected confirms the criteria within which lie some aspects of the argument, as an extension of the interpretative moment linked to the reconstruction of the nefarious event, to the distinctions made to qualify the offence in question. The judgment discloses the jurisprudential approach by defining the limits to the flexibility underlying the interpretation and the relative deviation from the theses in contrast with the regulatory framework.

The jurisprudential perspective is also a reading of a social phenomenon (see Esser 1983) and therefore its observation (Seidl and Becker 2006, 47). The selections that lead to the outcome of a process qualify a factual datum and do so through the attribution of meanings that the operator draws from inside and outside, from the norm and the environment. In this sense, the reconstruction of an event is also a construction of the coherence between the reaction (conditioned by the rules) and the external phenomenon: autonomy of a process that conforms to its function in relation to a specific context (Luhmann 1990, 130). From this perspective, the text of the decision contains a construction of reality and determines regulatory expectations that in this case are modelled on the variety of issues that revolve around the profile of minors and the cross-border activity that involves them illegally.

## 7. Conclusions

Although the corpus of criminal judgements is limited in both time and space, the results of the analysis are significant for two main reasons: 1) in human trafficking (minors), working only on repression does not work. Effective and non-contingent inclusion routes need to be created, which require strategic investments of the European Union

for new migration policies. In the knowledge that the criminal organizations that handle *smuggling* know the geographic vulnerabilities and the local regulations, and are able to exploit them to their advantage (as we have seen, in this sense the experience of the COVID-19 pandemic has proved it to us), it is fundamental to reaffirm and spread the positive practices that have already been created (Di Nicola 2016, 2) The basic condition of any evaluation on trafficking has been highlighted as the existence of the element of vulnerability which shows the role of victim or potential victim. But vulnerability in becoming substance is not the assessment of the person at risk that ends with an interview at the moment of disembarkation, with a trial or with a temporary permit. An evaluation that explains the victimization *ex post* would be too limited, regardless of the fact that the condition of that person then continues to remain at risk. Dwelling on indicators such as gender, origin, age, level of education, in order not to speculate on these in the longer term, for the benefit of society and not for the illegal advantage of criminal organizations, means observing a situation statically without taking into account what happens to a victim or a former victim who once arrived in our State with detailed instructions finds no reference other than his exploiter. This is how the role of the *madame* takes shape: victims who exploit other victims.

In other words, the expectations of the victims of trafficking require adequate responses and prepared interlocutors, but also a system that goes beyond criminal repression, that is capable of creating the possibility of subsequent life - and not only survival - the insertion of the girls into the protection circuit. If in most cases the law enforcement system is exhausted in a temporary form of welfare rather than in the design and implementation of a circuit of autonomy, the efforts of many institutions and many actors who are spent in the territories to fight the phenomenon will be in vain. This is what is clear and all those who share a "section" of the path with the victims (regardless of the single outcome) are in agreement.

The idea of a social (and political) construction of anti-trafficking legislation is therefore welcomed, but raised to the rank of recognition towards the actors who have pursued, elaborated and institutionalized it through the processes of implementing the rules. The processes of normative production are always, and necessarily, the result of tension between political and social forces: "the ambition to build a more civilized world and respectful of the dignity of all human beings passes through the action of those who have taken seriously their political responsibility and the task of legislator" (Ambrosini 2018, 15). For these reasons differentiation (of responsibilities), training and sharing can be the keystone.

In trafficking, in the market mechanism to which it lends itself, the offer is organized to create the availability of a service. This organization is obviously aimed at satisfying the request of the final consumer. It would be a mistake in this sense to observe trafficking as a phenomenon that begins with the recruiter and ends with the exploiter, it would be a mistake because as with all products, here too the chain tends to satisfy the consumer. The consumer is not the one who is looking for a good or a service in general and who by chance is satisfied, e.g. by Nigerian girls. Now, if it is true that it is difficult for a client in the sex market to be aware or not of buying the services of a trafficked person (from the consumer's point of view it does not matter whether they are trafficked, the same for



agricultural or domestic work), it is also true that the demand refers to a “product” (or service) with specific characteristics which are often those of the victims.

All the topics referred to so far - vulnerability, prevention, autonomy, integration, the human trafficking market - refer to the objective and method of this study. The literature that has explored the phenomenon of trafficking has done so starting from the reconstructions provided by the victims, in the awareness that distant territories come together in organized crime. But here we also wanted to contemplate another order of magnitude, which is not only that of the crime, but the reality of a crime that requires commitment and updated, coordinated and continuous responses.

## References

- Abbamonte, O., 2001. Le ragioni del decidere. per un possibile studio della giurisprudenza e della mentalità del giudice. *Sociologia del diritto*, no. 2, 5-44.
- Action plan to combat organized crime (Adopted by the Council on 28 April 1997) (97/C 251/01). *Official Journal* [online], C 251, 15/08/1997 P. 0001 – 0016. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:51997XG0815&from=EN> [Access 24 May 2021].
- Adhikari, S.D., and Turton, J., 2020. Understanding “trafficking vulnerabilities” among children: the responses linking to child protection issues in Nepal. *Children’s Geographies* [online], 18(4), 393–405. Available from: <https://doi.org/10.1080/14733285.2019.1676398> [Access 24 May 2021].
- Agamben, G., 2008. *Il sacramento del linguaggio: Archeologia del giuramento*. Bari: Laterza.
- Ambrosini, M., 2018. Prefazione. Lottare contro le nuove schiavitù richiede anzitutto di comprenderle. In: M.A. Quiroz Vitale, *Diritti umani e cultura giuridica: Il principio di autodeterminazione e l’invenzione delle nuove schiavitù in Europa*. Milan: Mimesis, 13–15.
- Anti-Slavery International, Transparency International and United Nations Office on Drugs and Crime, 2011. *The Role of Corruption in Trafficking in Persons* [online]. Issue paper. Vienna: UNODC. Available from: [https://www.unodc.org/documents/human-trafficking/2011/Issue\\_Paper\\_-\\_The\\_Role\\_of\\_Corruption\\_in\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/2011/Issue_Paper_-_The_Role_of_Corruption_in_Trafficking_in_Persons.pdf) [Access 24 May 2021].
- Barrenechea, A., (with C. Falconer, ed.), 2016. *Access to Compensation for Victims of Human Trafficking* [online]. Working paper. July. London: FLEX. Available from: <https://www.antislaverycommissioner.co.uk/media/1066/dwp-compensation-f.pdf> [Access 24 May 2021].
- Bruno, E., 2017. Le vittime di tratta ed il programma di emersione di cui all’art. 18 comma 3 bis del D.Lgs. 25 luglio 1998 n. 286. *Minorigiustizia* [online], 3, 152–162. Available from: <https://doi.org/10.3280/MG2017-003014> [Access 24 May 2021].
- Campana, P., 2016. Explaining criminal networks: Strategies and potential pitfalls. *Methodological Innovations* [online], 2. Available from: <https://doi.org/10.1177/2059799115622748> [Access 24 May 2021].

- Campana, P., 2018. Out of Africa: The organization of migrant smuggling across the Mediterranean. *European Journal of Criminology* [online], 15(4), 481–502. Available from: <https://doi.org/10.1177/1477370817749179> [Access 24 May 2021].
- Carchedi, F., 2004. *Prostituzione migrante e donne trafficate*. Milan: Franco Angeli.
- Communication from the Commission [of the European Communities] to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation (COM (96) 567 final) [online]. Brussels, 20 November 1996. Available from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0567:FIN:EN:PDF> [Access 24 May 2021].
- Coppola, V., Howard, P., and Inverno, A., 2020. *Piccoli schiavi invisibili. L'impatto del COVID-19 sulla tratta e lo sfruttamento: dalle strade all'online* [online]. Save the Children. Available from: <https://www.savethechildren.it/cosa-facciamo/pubblicazioni/piccoli-schiavi-invisibili-2020> [Access 24 May 2021].
- De Felice, D., et al., 2013. Information Extraction and Social Network Analysis of Criminal Judgements. A sociological and Computational Approach. *Informativa e Diritto*, 1, 243–261.
- De Felice, D., Lombardo, E., and Salerno, G., 2019. La tratta di esseri umani minorenni. Quadro normativo e percorsi di cittadinanza. *Sociologia del diritto* [online], vol. 1, pp. 53–84. Available from: <https://doi.org/10.3280/SD2019-001003> [Access 24 May 2021].
- Di Donato, F., 2008. *La costruzione giudiziaria del fatto: Il ruolo della narrazione nel "processo"*. Milan: Franco Angeli.
- Di Nicola, A., 2016. Via dalla guerra con me: parola di trafficante. *Rassegna Italiana di criminologia*, no. 3, 201–208.
- Di Ronco, A., 2020. Law in action: Local-level prostitution policies and practices and their effects on sex workers. *European Journal of Criminology* [online], First Published 23 July, 1–19. Available from: <https://doi.org/10.1177/1477370820941406> [Access 24 May 2021].
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011. *Official Journal of the European Union* [online], L 101/1, of 15 April. Available from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> [Access 24 May 2021].
- Esser, J., 1983. *Precomprensione e scelta del metodo nel processo di individuazione del diritto*. Naples: Esi.
- Europol, 2019. Action week against human trafficking: 323 potential victims identified, 46 suspected traffickers arrested. Press release. *Europol newsroom* [online], 27 May. Available from: <https://www.europol.europa.eu/newsroom/news/action-week-against-human-trafficking-323-potential-victims-identified-46-suspected-traffickers-arrested> [Access 24 May 2021].

- Europol, 2020. *Catching the virus. Cybercrime, disinformation and the COVID-19 pandemic* [online]. Report. 3 April. Available from: <https://www.europol.europa.eu/publications-documents/catching-virus-cybercrime-disinformation-and-covid-19-pandemic> [Access 10 November 2020].
- Giura, G., 2015. *I delitti di criminalità organizzata in Sicilia: Un'analisi socio-giuridica della giurisprudenza*. Milan: Mimesis.
- Haddon, L., and Vincent, J., eds., 2014. *European children and their carers' understanding of use, risks and safety issues relating to convergent mobile media* [online]. Report D4.1. Milan: Unicatt. Available from: [https://netchildrengomobile.eu/ncgm/wp-content/uploads/2013/07/NCGM\\_QualitativeReport\\_D4.pdf](https://netchildrengomobile.eu/ncgm/wp-content/uploads/2013/07/NCGM_QualitativeReport_D4.pdf) [Access 24 May 2021].
- Internal Displacement Monitoring Centre (IDMC), 2018. *Global Report on Internal Displacement 2018* [online]. Available from: <https://www.internal-displacement.org/global-report/grid2018/> [Access 24 May 2021].
- International Labour Organization (ILO), 2017. *Global estimates of modern slavery: Forced labour and forced marriage* [online]. Report. Geneva: International Labour Organization. Available from: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf) [Access 24 May 2021].
- Johansson, Y., 2020. Opening statement by Commissioner Johansson on “Schengen, migration and asylum policy and the EU security strategy in the context of COVID-19” at the European Parliament Committee on Civil Liberties, Justice and Home Affairs [online]. Transcription of speech. 7 May. European Commission Directorate-General for Communication. Available from: [https://ec.europa.eu/commission/commissioners/2019-2024/johansson/announcements/opening-statement-commissioner-johansson-schengen-migration-and-asylum-policy-and-eu-security\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/johansson/announcements/opening-statement-commissioner-johansson-schengen-migration-and-asylum-policy-and-eu-security_en) [Access 24 May 2021].
- Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children (97/154/JHA). *Official Journal* [online], L 063 , 04/03/1997 P. 0002 – 0006. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997F0154&from=EN> [Access 24 May 2021].
- Kehl, D., Guo, P., and Kessler, S., 2017. *Algorithms in the Criminal Justice System: Assessing the Use of Risk Assessments in Sentencing*. Responsive Communities Initiative, Berkman Klein Center for Internet & Society, Harvard Law School.
- Lisborg, A., 2014. The Good, the Bad and the Ugly: In the Name of Victim Protection. In: S. Yea, ed., *Human Trafficking in Asia: Forcing Issues*. London: Routledge, 19–34.
- Luhmann, N., 1990. *Sistemi sociali: Fondamenti di una teoria generale*. Trans.: A. Febbrajo, R. Schmidt. Bologna: Il Mulino.
- Malsch, M., and Carrière, R., 1999. Victims wishes for compensation: the immaterial aspect. *Journal of Criminal Justice*, 27(3), 239–247.

- Meier, R.F., Kennedy, L.W., Sacco V.F., ed., 2001. *The Process and Structure of Crime: Criminal Events and Crime Analysis*, Somerset, United Kingdom: Taylor & Francis Inc.
- O'Brien, E., 2013. Ideal Victims in Human Trafficking Awareness Campaigns. In: K. Carrington et al., eds., *Crime, Justice and Social Democracy: International Perspective*. Basingstoke: Palgrave Macmillan, 315–326.
- Paoli, L., 2002. The paradoxes of organized crime. *Crime, Law & Social Change*, no. 37, 51–97.
- Pennisi, C., and Giura, G., 2009. Un'analisi empirica della giurisprudenza sulla criminalità organizzata e di tipo mafioso. *Antigone*, no. 2–3, 125–162.
- Prina, F., 2008. *La tratta di persone in Italia: Il sistema degli interventi a favore delle vittime* (vol. 3). Milan: Franco Angeli.
- Quiroz Vitale, M.A., 2018. *Diritti umani e cultura giuridica: Il principio di autodeterminazione e l'invenzione delle nuove schiavitù in Europa*. Milan: Mimesis.
- Qvortrup, J., 1995. From Useful to Useful: The Historical Continuity of Children's Constructive Participation. *Sociological Studies of Children*, 7(1), 49–76.
- Qvortrup, J., 2008. Macroanalysis of Childhood. In: P. Christensen and A. James, eds., *Research with children: Perspectives and Practices*. New York: Routledge.
- Resta, E., 2000. Tra responsabilità e pena. *Democrazia e diritto*, 2, 184–201.
- Ronfani, P., 1995. *I diritti del minore: Cultura giuridica e rappresentazioni sociali*. Milan: Guerini Scientifica.
- Ronfani, P., 2013. Prefazione. In: G. Maggioni et al., eds., *Bambini e genitori: Norme, pratiche e rappresentazioni della responsabilità*. Rome: Donzelli.
- Rousseau, J.J. (with P. Massimi, trans. and ed.), 1969. *Emilio o dell'educazione*. Rome: Armando. (Originally published in 1762).
- Save the Children Italia Onlus, 2017. *Piccoli schiavi invisibili: I minori stranieri vittime di tratta e sfruttamento in Italia* [online]. Available from: <https://www.savethechildren.it/sites/default/files/files/uploads/pubblicazioni/piccoli-schiavi-invisibili-2017.pdf> [Access 24 May 2021].
- Seidl, D., and Becker, K.H., 2006. Organizations as Distinction Generating and Processing Systems: Niklas Luhmann's Contribution to Organization Studies. *Organization*, 13(1), 9–35.
- Shelley, L., 2010. *Human Trafficking: A Global Perspective*. Cambridge University Press.
- Todres, J., 2011. Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking. *North Carolina Law Review* [online], 89(2), 447. Available from: <http://ssrn.com/abstract=1742953> [Access 24 May 2021].
- Torrioni, P.M., 2013. Diventare autonomi, dimostrarsi responsabili. In: G. Maggioni et al., eds., *Bambini e genitori: Norme, pratiche e rappresentazioni della responsabilità*. Rome: Donzelli.

- UN General Assembly, 2016. *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences* (A/HRC/33/46) [online]. UN Human Rights Council, 33<sup>rd</sup> session, 3 August. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/142/67/PDF/G1614267.pdf?OpenElement> [Access 24 May 2021].
- UN General Assembly, 2017a. *Joint report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and the Special Rapporteur on trafficking in persons, especially women and children* (A/72/164) [online]. 72<sup>nd</sup> session, 18 July: Promotion and protection of the rights of children. Available from: <https://undocs.org/en/A/72/164> [Access 24 May 2021].
- UN General Assembly, 2017b. *Report of the Special Rapporteur on the right to education: realizing the right to education through non-formal education* (A/HRC/35/24) [online]. UN Human Rights Council, 35<sup>th</sup> session, 6–23 June. Available from: <https://undocs.org/A/HRC/35/24> [Access 24 May 2021].
- United Nations Office on Drugs and Crime (UNODC), 2016. *Global Report on Trafficking in Persons* (Sales No. E.16.IV.6) [online]. Vienna: UNODC. Available from: [https://www.unodc.org/documents/data-and-analysis/glotip/2016\\_Global\\_Report\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf) [Access 24 May 2021].
- United Nations Office on Drugs and Crime (UNODC), 2020. *Global Report on Trafficking in Persons 2020* (Sales No. E.20.IV.3) [online]. Vienna: UNODC. Available from: [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP\\_2020\\_15jan\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf) [Access 24 May 2021].
- Venturoli, M., 2015. *La vittima nel sistema penale dall'oblio al protagonismo*. Naples: Jovene.
- Vijayarasa, R., 2015. *Sex, Slavery and the Trafficked Woman: Myths and Misconceptions About Trafficking and its Victims*. London: Routledge.
- Wells, K., 2009. *Childhood in a Global Perspective*. Cambridge/Malden: Polity Press.
- Winterdyk, J., 2018. Combating (Child) Human Trafficking: Building Capacity. *Oñati Socio-Legal Series* [online], 8(1), pp. 106–129. Available from: <https://doi.org/10.35295/osls.iisl/0000-0000-0000-0921> [Access 24 May 2021].
- Wyness, M., 2012. *Childhood and Society*. 2<sup>nd</sup> ed. Basingstoke: Palgrave Macmillan.