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GLOBAL ANSWER

Guide on conceptual and methodological issues in social work research in the field of human mobility



Guide on conceptual and methodological issues in social work research in the field of human mobility.

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**SECTION 1. POLICY AND INSTITUTIONAL
FRAMEWORK OF HUMAN MOBILITY IN THE UE**

me is transnational in nature and is characterized by organisation and a lack of individual sanction due to the limited capacity of the most closely linked states to effectively combat this type of private but generally organised crime.

- Human trafficking

The crime of trafficking in persons, within the framework of Spanish legislation, is contemplated and penalised in Article 177 bis of the Penal Code. Those who, using violence or intimidation, or through the use of a remuneration system, use other people with the purpose of bringing them to our country and exploiting them in the commission of crimes, either for the purposes of sexual exploitation (including pornography), removal of bodily organs, or forced marriage.

There must be a situation of need or vulnerability, which occurs when the person in question has no real or acceptable option but to submit to the abuse. In addition, it is important to highlight that the victim of human trafficking will be exempt from punishment for the criminal offenses they have committed during their situation of exploitation, as long as their participation in said crimes has been a direct consequence of violence, intimidation, deceit or abuse to which the victim has been subjected.

1.3. Migration and Asylum Policy in Italy

Giulio Gerbino, Giovanni Frazzica, Lalage Mormile and Riccardo Ercole Omodei

1.3.1. The notion of the foreigner and the procedure for obtaining citizenship in Italy

The institution of nationality expresses the stable link between the individual and the

system. This entails a difference in treatment in terms of the rights and freedoms recognised by the state, compared to the corresponding active subjective legal positions that foreigners can claim. This is made clear by the Italian Constitution itself, which recognises certain rights only to citizens. For example, the Constitution only recognises the right of citizens to move and reside freely within the national territory (Article 16 Const.), the right to assemble peacefully and without arms (Article 17 Const.), the right to associate freely (Article 18 Const.). A foreigner is a person who does not hold Italian citizenship, which may be acquired:

1. By birth, when one is the child, even adoptive, of a father or mother in possession of Italian nationality, regardless of the place of birth (*ius sanguinis*); when one is born in Italy of unknown or stateless parents or, if of foreign parents, when one does not obtain the nationality of the parents on the basis of the laws of the states to which they belong (*ius soli*);
2. With uninterrupted residence from birth until reaching the age of majority, if within one year the applicant declares that they wish to acquire Italian nationality;
3. At the request of the interested party when they are the spouse of an Italian citizen if the conditions of Article 5 of Law 91 of 5 February 1992 are met, when the foreigner has a parent or second-degree direct ascendant who is an Italian citizen by birth; in the case of the adoption by an Italian national of an adult foreigner who has resided, after the adoption, for at least five years in Italian territory; when the foreigner has been employed by the state for at least five years; when they are a national of an EU member state and have resided in Italy for at least four years; if the stateless person has resided for at least five years in the territory of the Repu-

blic; or if the foreigner has resided for at least ten years in the territory of the Republic.

Citizenship, as it is acquired, may be lost. This may occur by renunciation or, in the presence of certain conditions (see Articles 10 bis and 12 of Law 91/1992), automatically.



1.3.2. Rights of EU citizens

International and European norms have led to the creation of a legal status endowed with rights and freedoms of absolute importance: Citizenship of the Union. It is governed by Articles 20-25 TFEU and is in addition to the citizenship of the individual member states and also entails: the right to reside and move freely within the territory of the member states, the right to reside without any limitation or formality for periods of less than three months, with the limitations set out in Article 7 Legislative Decree 30 for periods of more than three months, the right to vote and to stand as a candidate in municipal elections in the state of residence, under the same conditions as Italian citizens, the right to protection by the diplomatic and consular authorities of any member state, the right to petition the European Parliament and to apply to the European mediator.

1.3.3. Rights of non-EU citizens

In this case, Article 10 paragraph 2 of the Constitution establishes a reservation of the law, according to which 'the legal status of foreigners is regulated by law in accordance with international standards and treaties'. This has made it possible to extend the rights and guarantees recognised for citizens to foreigners as well. The inviolable human rights enshrined in the Constitution and international sources (e.g., the European Convention on Human Rights and the Nice Charter) are now recognised for the individual, thanks also to Article 2 of the Constitution, regardless of their status as a citizen. The protection of a foreigner's fundamental rights is also guaranteed by ordinary legislation. The Consolidated Text of the provisions governing immigration and rules on the status of foreigners (25 July 1998, 286, T.U.I.M.), in Article 2, paragraph 1, states that "[a]n alien, however present at the border or in the territory of the state, is recognised the fundamental human rights provided by the rules of domestic law, by the international conventions in force and by the generally recognised principles of international law". This provision transposes what is already provided for in the constitutional text, but it nevertheless plays a positive role as an opening principle of immigration laws, not tying the enjoyment of fundamental rights to the foreigner's condition of legality. As far as the civil rights of foreigners are concerned, only foreigners 'regularly residing in the territory of the state enjoy the rights attributed to Italian citizens' (Article 2 paragraph 2 T.U. Imm.).

Finally, it should be mentioned that the Constitution enshrines the right to asylum. Article 10 paragraph 3 of the Constitution, in fact, provides that "a foreigner who is prevented in their own country from effectively exercising the democratic freedoms guaranteed by the Italian Constitution has the right to asylum in the territory of the Republic". This provision, which is entire-

ly consistent with international law (cf. Geneva International Convention on Refugees) and European law (see Directive 2011/95/EU), represents a significant exception to the state's right to regulate migratory flows. If, as a rule, the state has the possibility of precluding a foreigner who is a citizen of a non-EU country, the right to enter, stay and move within the territory of the Republic, with the related possibility of expelling the irregular foreigner, in the case of a subject who can legitimately invoke refugee status, this power of the Italian legal system is lost.



1.3.4. Residence of third-country nationals: Types of residency permit and their duration

A residence permit is required in order for foreigners who have legally entered the territory of the state to reside there. A foreigner who applies for a residence permit is subject to a photodactyloscopic examination and, if he is of age, is required to pay a fee ranging between €40 and €100.

There are numerous types of residence permits in relation to the reasons indicated on the entry visa (e.g., self-employment, subordinate employment, family reasons, research, study, etc.) or to apply

for asylum, to acquire citizenship or stateless status, for reasons of justice (in cases where the presence of the foreigner in the national territory is indispensable in relation to ongoing criminal proceedings), for the integration of a minor, etc. In general, the duration of a residence permit may not in any case exceed 3 months, for visits, business or tourism, or 1 year, for the attendance of a study or training course, with the possibility of annual renewal (for multi-year courses). The issue of a residence permit for employment reasons occurs following the stipulation of a residency contract for employment (Article 5-bis T.U. Imm.); in this case, the duration of the residence permit is that stipulated in the residency contract and in any case may not exceed certain duration limits that depend on the type of employment contract.

a) Entry for employment reasons and the residence contract

The entry into Italy of foreigners for subordinate work, including seasonal work, or self-employment according to Article 3, paragraph 4 of the Consolidated Act on Immigration, takes place on the basis of the so-called "Flows Decree", a national regulation issued every year that sets the maximum limit. The procedure requires the employer to submit a nominative request or a generic request for foreign workers registered on special lists. The requests are verified by the Single Desk for Immigration. In the event of a positive outcome, the One-stop Shop (OSS) issues the *nulla osta* (no impediment) and the consular offices in the country where the foreigner is located can issue an entry visa. Within eight days of arriving in Italy, the foreigner must sign, at the Single Desk for Immigration, the contract of stay, with which, among other things, the employer undertakes to guarantee the foreigner housing that meets the minimum standards of public housing and the expenses of the return journey to the country of origin. Article 26 of the T.U.

Imm. provides that foreigners may engage in non-occasional self-employment consisting of “an industrial, professional, handicraft or commercial activity, or set up capital companies or partnerships, or take on corporate offices”), provided that they can prove that they “have adequate resources for the exercise of the activity that they intend to undertake in Italy; that they meet the requirements laid down by Italian law for the exercise of the individual activity, including, where necessary, the requirements for registration in the official listings and they undertake to be in possession of a certificate issued by the competent authority no more than three months before, declaring that there are no obstacles to the issue of the authorisation or licence required for the exercise of the activity that the foreigner intends to undertake”, as well as the availability of “suitable accommodation and an annual income, from lawful sources, of an amount exceeding the minimum level provided for by law for exemption from participation in health care expenditure”. The numerical limits of the Flows Decree are not applied in the case of particular categories of workers, including: managers or highly specialised personnel of companies with headquarters or branches in Italy; exchange or mother-tongue university lecturers; university professors destined to carry out an academic assignment in Italy; translators and interpreters; artistic and technical staff for opera, theatre, concert or ballet performances; professional nurses employed in public and private health facilities, etc (Article 27 T.U.I.). Highly qualified foreign workers may also be exempt from the Flows Decree, in application of European Directive 2009/50/EC. This is an accelerated admission procedure, which grants these workers social and economic rights equal to those of nationals of the host member state in a number of areas and provides for the issuance of an ad hoc residence permit called the ‘EU Blue Card’. In this regard, the recently adopted EU Directive 2021/1883, which repeals its pre-

decessor and is to be transposed by the EU member states by 18 November 2023, has now been adopted. The new directive aims to create an even more attractive regime for highly qualified workers from third-countries in order to facilitate mobility within the Union (Biondi Dal Monte, Rossi 2022: 88).



b) Special protection and special case permits

Article 5, paragraph 6, T.U. Imm. prior to decreto-legge 113/2018 provided for the possibility of issuing a permit for humanitarian reasons in the presence of “serious reasons, in particular of a humanitarian nature or resulting from constitutional or international obligations of the Italian state”. Although it did not reintroduce the issuance of a residence permit for humanitarian reasons, a subsequent measure on the matter (decreto-legge 130/2020) provided that “the refusal or revocation of the residence permit may also be adopted on the basis of international conventions or agreements, made enforceable in Italy, when the foreigner does not meet the

conditions of residence applicable in one of the contracting states, without prejudice to compliance with the constitutional or international obligations of the Italian state”.

This provision is linked to Article 19 of the Immigration Consolidation Act (Article 19, paragraphs 1 and 1.1), which, on the subject of prohibitions on expulsion and refoulement, provides that in no case may expulsion or refoulement be ordered to a state where the foreign national may be subjected to persecution or where there are reasonable grounds for believing that they risk being subjected to torture or inhuman or degrading treatment, or where constitutional and international obligations (Article 5, paragraph 6 of the Immigration Consolidation Act) are applicable. In addition, the rejection or expulsion of a person to a state is not permitted if there are reasonable grounds to believe that removal from the national territory would result in a violation of the right to respect for their private and family life, without prejudice to reasons of national security, public order and safety and health protection. There are also residence permits for ‘special cases’, concerning reasons of social protection, cases of domestic violence, reasons related to specific medical treatment, disasters, etc.

c) The EU long-term resident permit

This type of residence permit, introduced by Directive 2003/109/EC, aims to enhance the integration of third-country nationals settled on a long-term basis in member states as a ‘key element in promoting economic and social cohesion’. The requirements are:

- possession, for at least five years, of a residence permit;
- income not less than the annual amount of the social allowance: if the request is related to family members, sufficient income according to the

parameters established for family reunification (Article 29, paragraph 3b, T.U. Imm.);

- suitable accommodation in accordance with the minimum standards laid down for public residential housing, i.e., accommodation that meets the hygienic and sanitary requirements ascertained by the local health authority;
- passing an Italian language knowledge test.

A foreigner who holds this type of permit, in comparison with other categories of legally residing foreigners, has the right to move freely within the national territory, to carry out any subordinate or autonomous work activity within the territory of the state, except for those that the law expressly reserves to the citizen or prohibits the foreigner from carrying out, subordinate work activities (a residence contract is not required), to benefit from social assistance, social security, of those relating to health, education and social benefits, of those relating to access to goods and services available to the public, including access to the procedure for obtaining public housing “unless otherwise provided for and provided that the actual residence of the foreigner in the national territory is demonstrated”, to participate in local public life, according to the forms and within the limits provided for by the regulations in force (Biondi dal Monte, Rossi 2022: 96).

A foreigner who holds a residence permit issued by another European Union member state may enter and remain in the national territory for up to three months. For longer periods, they may request to reside there in order to carry out a subordinate or autonomous work activity, to attend a study or vocational training course or for any other purpose, demonstrating that they are in possession of non-occasional means of subsistence. In these cases, the residence permit is issued according to the procedures provided for by national

regulations. Finally, a specific rule stipulates that even the holder of an EU Blue Card issued by another member state may obtain an EU long-term residence permit, taking advantage of their residency within the European Union, as long as they have spent at least two years in Italy (Article 9-ter T.U. Imm.).

d) Administrative regularity for residence, work, health care

Registration as a civil registrant in the municipality of residence is an indispensable and preliminary condition for defining legal status. Both citizens and foreigners residing legally in the national territory have the right to freely establish their residence and the obligation to request registration with the town hall of residence (Law 1228 of 24 December 1954), which, in turn, is obliged to register the request by the person concerned and to proceed on the basis of its own ascertainment of the factual situation. It does not consist in "a 'benefit' granted by the public authority, nor should it constitute the result of an exercise of administrative discretion" (Biondi Dal Monte, Rossi 2022: 192). In this procedure, as provided by the T. U. Imm. Article 6, paragraph 7, there is full equality of treatment between Italian citizens and legally resident foreigners. In fact, there is a contradiction between the latter rule and the regulation implementing the aforementioned Law 1228/1954, adopted by Presidential Decree 223 of 30 May 1989: Article 7, paragraph 3, which provides for the obligation for foreigners registered with the registry office (but obviously not for Italian citizens) to renew their declaration of habitual residence in the commune within 60 days of the renewal of their residence permit; failure to comply with this obligation entails cancellation from the registry office one year after the expiry of the residence permit, albeit after notification by the office and an invitation to do so (within 30 days) (Article 11, paragraph 1c). In terms of the hierarchy of sources of law,

we observe that a regulation is a source of lower rank than a law. On a practical level, it is necessary to consider how a foreigner, who has obtained a civil registration, often considers it definitive, at least until he intends to move to another municipality, and may forget to confirm the declaration, losing all the legal benefits - deriving from national and even regional regulations - resulting from the documented formal continuity of his residence.



e) Family reunification

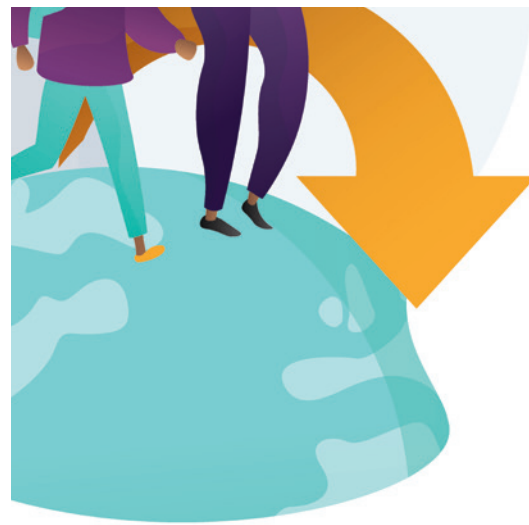
The Italian legal system protects family unity as a fundamental right of individuals. For foreigners, the instrument for implementing this right is the institution of family reunification, governed by Articles 28 and 29 of the Consolidation Act on Immigration (decreto-legge 286/1998). Article 28 of the Consolidation Act recognises the right to maintain or regain family unity for foreigners, if they hold a long-term residence permit or a residence permit of no less than one year issued for subordinate or autonomous work, asylum, study, religious or family reasons. The rule recognises the right to reunification with family members who fall into one of the three so-called proximity categories. These are the spouse, children and parents. The law requires the existence of certain requirements proving the household's ability to

live in dignity. The applicant must prove the availability of suitable accommodation that meets hygienic and sanitary requirements; the ownership of a minimum annual income from lawful sources not less than the annual amount of the social allowance increased by half for each family member to be reunited, taking into account the total annual income of the family members living with the applicant; the ownership of health insurance or other suitable title that guarantees coverage of risks in the national territory for the ascendant over 65 years of age, or their registration with the National Health Service, subject to payment of the required contribution. The requirements of income, housing eligibility and health insurance for the ascendant aged 65 and over do not apply in the case of a foreigner who has been granted refugee status. Article 29, last paragraph, excludes asylum seekers awaiting a final decision, beneficiaries of temporary protection, beneficiaries of extraordinary reception measures for exceptional events and holders of residence permits for natural disasters from the active legitimacy to apply for reunification.

Until 2018, holders of residence permits for humanitarian reasons were also excluded, an institution repealed by decreto-legge 4.10.2018, 113, containing urgent provisions also on international protection and immigration, converted by legge 1.12.2018 132 and replaced by special protection. The residence permit for humanitarian reasons was issued for two years and was renewable upon verification of the permanence of the conditions of issue. It could be requested and renewed even in the absence of a passport and the requirements for the other types of permits, such as the availability of adequate means of subsistence and accommodation.

The new legislation has led to a peculiar situation for former holders of humanitarian permits, since, since they are no longer, in fact, excluded by the law and sin-

ce their previously obtained permit lasted two years, they have, according to the majority interpretation, access to family reunification. The issuing procedure basically consists of three stages. The first is the responsibility of the Single Desk for Immigration carried out at the territorial government office. The second is the responsibility of the consulate and the third, concerns the actual entry of the family member into Italy and the definition of the internal administrative procedure for reunification.



f) Administrative irregularities

Removal from national territory: refoulement and expulsion.

The removal of a foreigner from the national territory may consist of:

- rejection (Article 10 of the Consolidated Act on Immigration), near the border or deferred. This measure is the responsibility of the Police Commissioner. Since deferred refoulement restricts personal freedom, Decreto-legge 113/2018 establishes that the validation procedures provided for in the field of expulsion are applied: communication to the Justice of the Peace within 48 hours for validation within the following 48 hours; communication to the person concerned in a known language

ge or, where this is not possible, in French, English or Spanish; possibility of appeal to the judicial authority against this measure;

- administrative expulsion (under Article 13 of the Consolidated Act on Immigration), or as a security measure (under Article 15 of the Consolidated Act on Immigration), or as an alternative or substitute sanction to detention (under Article 16 of the Consolidated Act on Immigration). In cases where the expulsion procedure cannot be carried out immediately, the foreigner may be detained, for the time strictly necessary (a maximum of 30 days, which may be extended if necessary), at a 'repatriation detention centre', by order of the Police Commissioner. This measure restricts personal freedom and therefore validation must be requested within 48 hours from the Justice of the Peace, who must decide within a further 48 hours; the foreigner is guaranteed the right to defence, including through free legal aid, and the presence of an interpreter. Penalties are provided for those who have entered or are staying irregularly, for those who do not comply with an order to leave the national territory or who re-enter it despite being subject to a re-entry ban.

Removal is prohibited:

- for those who seek and/or obtain international protection;
- to a state where the foreigner may be subject to persecution on various grounds (race, sex, sexual orientation, gender identity, language, nationality, religion, political opinion, personal or social conditions), or may risk being returned to another state where they are not protected from persecution;
- to a state if there are reasonable grounds for believing that the alien is

in danger of being subjected to torture or inhuman or degrading treatment;

- if there are reasonable grounds for believing that expulsion would result in a violation of the alien's right to respect for private and family life, without prejudice, however, to reasons of national security, public order and safety, and health protection;
- of foreign nationals under the age of 18, without prejudice to the right to follow the expelled parent or guardian;
- foreigners holding an EU long-term residence permit;
- foreigners cohabiting with relatives within the second degree or with their spouse who are Italian nationals;
- women who are pregnant or in the six months following the birth of their child, and also their cohabiting spouse;
- foreigners who are in a serious psychophysical condition or suffering from serious pathologies that have been proven by means of appropriate documentation;
- under no circumstances may unaccompanied foreign minors be turned back at the border.

Offences related to the condition of irregularity: the crime of irregular entry and stay in the territory.

Law 94/2009 introduced the offence of irregular entry and stay in the territory (Article 10-bis of the T.U. Imm.). For this offence, the sanction imposed by the Justice of the Peace is a fine of between €5,000 and €10,000. Similarly, the following are considered offences:

- Failure to comply with an order to leave the national territory.
- Violation of the re-entry ban following expulsion.
- Failure to produce documents and their alteration.

Aiding and abetting illegal immigration (i.e., entering and remaining in the territory of foreigners without a valid permit) is regulated in Article 12 of the Consolidated Act on Immigration. For this offence, the penalty is imprisonment from 1 to 5 years together with a fine of €15,000 for each person whose entry has been facilitated. In particular, aiding and abetting illegal residence in the territory (Article 12(5)) is punishable by imprisonment for up to four years and a fine of up to approximately 15,000 euro. In addition, the provision of a property to an irregular foreigner (Article 12(5-bis)) is punishable by imprisonment from 6 months to 3 years.



An employer who employs foreign workers without a residence permit or with an expired permit is also committing a criminal offence, according to Article 22, paragraph 12, T.U. Imm. Specific regulations provide for criminal sanctions for cases of illegal brokering and exploitation of labour.

1.3.5. Vulnerabilities

a) Unaccompanied foreign minors

The condition of unaccompanied foreign minors has recently been the subject of a specific regulatory intervention by the Italian legislator. With Law 47 of 2017, laying down provisions on measures for the protection of unaccompanied foreign minors, Italy intended to offer specific instruments

of protection to all those minors who, regardless of any assessment of the legitimacy of their entry into the territory, find themselves in it in a condition of particular vulnerability, as they are deprived of a parent or in any case of a parental figure.

Article 1 of Law 47 opens with an important, albeit superfluous, affirmation of equal treatment with minors of Italian or European Union citizenship, granted to foreign minors as holders of the same rights in matters of child protection.

It was thus intended to provide a discipline that intersects with the more general provisions on immigration, deviating from them whenever it is necessary to provide specific protection for situations of extreme vulnerability.

Pursuant to Article 2 of Law 47/2017, an unaccompanied foreign minor is a minor not having Italian or European Union citizenship who is for any reason in the territory of the Italian state or who is otherwise subject to Italian jurisdiction and is without the assistance and representation of his parents or other adults legally responsible for him under the laws in force in the Italian legal system.

The special protection that is expressed, first and foremost, in the absolute prohibition of refoulement at the border of unaccompanied foreign minors, requires, firstly, the ascertainment of the minor's age and, secondly, the absence of the legal representative of reference. The law provides for a detailed regulation of the procedures for ascertaining the actual age, identifying the constant duty to provide information, made effective by recourse to cultural mediation and, in any case, the prohibition of invasive verifications, as the cardinal principles that allow the exclusion of any possibility of prejudice. Minority is in any case presumed in the event that even after the prescribed investigations doubts remain. The actual absence of the legal repre-

representatives (parents, foster parents, guardians) is ascertained at the outcome of family investigations, carried out with the involvement of the most appropriate professionals, such as social workers, cultural mediators, law enforcement agencies, the staff of reception facilities and the judicial authorities. Family investigations respond to the child's overriding interest in not being separated from their parents.



If the family of origin is traced and there is no risk to the child's safety, the child must be relocated to the parental home. This may involve a voluntary assisted return to the country of origin or to a third country. If the minor remains on Italian territory, family fostering will be preferred over community placement. The provision of a voluntary guardian is particularly relevant. The law has established at each Court a special list of private individuals willing to assume the office of guardian. The guardian assumes the task of ensuring that the child's growth in the host society takes place in full respect of their rights. There is thus a tendency to favour forms of representation based on a type of relationship characterised by the personalisation of the relationship, replacing the traditional, necessarily depersonalised, offices held by institutional subjects such as the mayor. The guardian may represent up to three minors, especially if the guardianship concerns siblings. It is considered that, in the case of family custody, the representation of the minor is the responsibility of the

custodian and it is therefore not necessary to appoint a guardian. The case is different if the child is placed in a community.

Minor migrants are guaranteed the exercise of so-called social protection rights. The host state has the obligation to regularise their stay. It must guarantee the protection of the minor's health and their access to the education system.

The matter of residence permits for unaccompanied minors has recently been reorganised by Presidential Decree 191/2022 implementing Law 47/2017. Minors who cannot be deported have the right to regularise their stay by means of the following residence permits: permit for minors; permit for family reasons in the case of fostering or guardianship and cohabitation with an Italian citizen or legally residing foreign citizen; permit for international protection.

The permit for minors is not a provisional authorisation, as it is valid until the minor reaches the age of majority. The minor who holds it may work on Italian territory, subject to the limits imposed by the minor's age and education and training obligations. It is issued to the minor as soon as they are "tracked" on Italian territory. It is also granted to a minor who, although under guardianship, does not live with their guardian and to a minor under the age of 14 entrusted to a legally resident foreigner. The permit for family reasons must be issued to the under-fourteen minor entrusted to, pursuant to Law 184/1983, or subject to the guardianship of an Italian citizen residing with the minor, or to the over-fourteen minor entrusted to or subject to the guardianship of a legally residing foreigner or an Italian citizen residing with them. It is therefore not valid for a minor under the age of 14 if the guardian or custodian residing with them is a foreigner. The permit for family reasons makes it possible to regularise the situation of the minor who could not obtain the *nulla osta* for family reunification due to the absence

of the prerequisites required by the Consolidated Law on Immigration (income requirements and housing suitability).

The asylum application permit is preliminary to the recognition of the residence permit corresponding to international protection status, now governed by decreto-legge 142/1025 that transposed Directive 2013/33/EU on standards for the reception of applicants for international protection and Directive 2013/32/EU on common procedures for granting and withdrawing international protection status and subsequent amendments and additions. Pursuant to Article 4(1), the applicant for international protection is issued a residence permit for asylum request valid in the Italian territory for six months and renewable until the application is decided. The regularisation of the permanence of the unaccompanied minors is a prerequisite for the guarantee of the other social rights, namely health and education. Article 14 of Law 47/2017 inserts in paragraph 1 of Article 34 of the TUI, the obligation of immediate registration of unaccompanied minors with the National Health Service, which therefore takes place following reports of their being found on national territory. The obligation to register falls to the person in charge of the first reception facility, or if appointed, to the voluntary guardian.



As of the moment of the minor's placement in the reception facilities, the educational institutions of every level and grade and the training institutions accredited by the regions and autonomous provinces must activate measures aimed at favouring the fulfilment of the scholastic and training obligation for unaccompanied foreign minors, also through the preparation of specific projects that provide, where possible, for the use or coordination of cultural mediators, as well as conventions aimed at promoting specific apprenticeship programmes. The law also provides for the issuance of the final qualifications of study courses, even in the event that the minor has reached the age of majority while awaiting the completion of his or her studies.

b) Human Trafficking

The Italian legislation on trafficking in human beings is enshrined in the criminal code, specifically in Article 601. This provision, which should be read in conjunction with the rules on slavery (Articles 600 and 602 of the Criminal Code) and the recently coined case of trafficking in organs removed from a living person (Article 601 bis of the Criminal Code), has been subject to numerous amendments that have made the Italian system fully compliant with the complex international framework of protection. The regulation, having abandoned the original meagre wording - punishing anyone who commits trafficking in persons in conditions similar to slavery -, now has a more than detailed description of the typical fact, structured around the three different indices, of international matrix, of the conduct carried out, the means used and the unlawful purpose of exploitation. However, these regulatory changes have not affected the legal objectivity of the offence in question, which has retained the same *sedes materiae*. The crime of trafficking, in fact, is placed within Title XII of Book II of the Criminal Code among the crimes against the person, and specifically within Section I of Crimes

against the Individual Person, of Chapter III of Crimes against Individual Liberty. The offence in question therefore has a purely individualistic purpose of protection: to protect the human person against illegitimate interference by third parties aimed at distorting their very essence by means of dehumanising conduct (such as slavery or exploitation), conduct that reduces the subject to a mere means, thereby damaging their dignity as a human. The provision in Article 601 of the criminal code actually contains several criminal offences. Here we shall confine ourselves to recalling the main cases of trafficking in human beings envisaged by the article in question. The first of these hypotheses is identified by the initial sentence of the provision, which penalises anyone who recruits, introduces into the territory of the state, transfers, transports, gives authority or harbours one or more persons in the conditions described in Article 600 of the Criminal Code. This implies that the conduct will be criminally relevant whenever it is directed against a person in conditions of slavery or servitude. For the correct identification of the latter two concepts, however, reference must necessarily be made to the provision preceding Article 600 of the Criminal Code, which defines slavery as a situation corresponding to the exercise of the right of ownership, and servitude as a state of continuous subjection of the victim from which ensues the compulsion to perform certain unlawful activities.

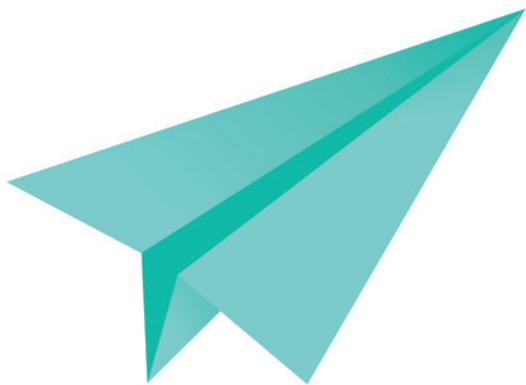


The second sentence of paragraph 1 of Article 601 of the Criminal Code identifies a further trafficking offence, which is in its conformation perfectly superimposed on supranational protection requirements (see the Additional Protocol on Trafficking to the UN Convention of Palermo on Organised Crime and Directive 2011/36/EU). This second abstract case is structured, in fact, according to the three indices of conduct, means and purpose of exploitation already identified by the Additional Protocol to the Palermo Resolution. This implies that, in addition to the conduct referred to in the first sentence, the offence of trafficking will exist if directed against persons in a state of freedom, if the same conduct referred to above is carried out by means of coercive instruments: violence and threats, or inductive instruments: deception, abuse of authority or taking advantage of a situation of vulnerability, physical or mental inferiority or need, or through the giving or promising of money or other benefits to the person in authority over the victim. In the presence of these specific ways of carrying out the conduct, the offence of trafficking will also apply where it is directed against free persons, provided that the action is supported by the specific intent to compel or induce the victim to work, to engage in sexual or begging activities or in any case to engage in unlawful activities involving the exploitation of the victim or to submit to the removal of organs. These particular modes of conduct give way again, in the next paragraph, to the pre-eminent need for protection if the passive subject of the offence is a minor. In the case in question, by virtue of the particular vulnerability of the victim, the legislator does not require the use of particular coercive means, extending punishability, in accordance with the provisions of the second paragraph of Article 601 of the Criminal Code, to all the conduct identified by the first sentence of the article even if lacking the specific methods of coercion.

The protection provided by the domestic law against the crime of trafficking is therefore particularly broad and in line with international law since, on the one hand, it punishes, with three different offences, the entire trafficking cycle and, on the other hand, it outlines the offence in question according to a definition which, although detailed, is particularly broad, in an attempt to take into account the multiple forms of manifestation of the crime.

c) Asylum and international protection

As already mentioned, (see C. Rights and Freedoms of the Non-EU Citizen), the Italian legal system recognises for non-EU foreigners and stateless persons the right to asylum (Article 10, paragraph 3 of the Italian Constitution). There is no law directly aimed at regulating the conditions, procedures and methods of exercising this right. However, over time “the implementation of the constitutional principle has been achieved through a series of interventions from different levels of the legal system, which have led both the Court of Cassation and the Constitutional Court to consider that the constitutional right of asylum is ‘today fully implemented and regulated’”. - not without overlaps, confusion between institutions and disciplines and even misunderstandings - by means of three different segments that are not part of an organic regulation of the right to asylum (Biondi Dal Monte, Rossi, 2022: 107; 111).



A first segment consists of the protection of refugee status, defined by the Italian ratification (Law 722/1954) of the UN Convention relating to the Status of Refugees (Geneva, 28 July 1951), followed by other relevant provisions. Refugees are defined as those who are considered as such in application of previous agreements as well as those who, due to events prior to 1 January 1951 and in justified fear of being persecuted for their race, religion, nationality, membership of a particular social group or political opinion, find themselves outside the state of which they are a national and are unable or, due to this fear, do not wish to seek the protection of that state. These norms do not allow for the full implementation of the right to asylum, since the definition of refugee is less broad than that of asylum seeker (Article 10, paragraph 3 of the Italian Constitution: “a foreigner who is prevented in his own country from effectively exercising the democratic freedoms guaranteed by the Italian Constitution”).

A second category is subsidiary protection, according to decreto-legge 251 of 19 November 2007 and decreto-legge 18 of 21 February 2014, which implement two EU directives of 2004 and 2011. A potential recipient of such protection is a foreigner or stateless person who does not qualify as a refugee, but in respect of whom there are reasonable grounds for believing that, if returned to their country of origin, they would face ‘a real risk of suffering serious harm’: for example, the death sentence, torture or other form of inhuman or degrading treatment or punishment, or a serious and individual threat to life or limb resulting from indiscriminate violence in situations of internal or international armed conflict. These provisions also only partly overlap with situations falling under the right to asylum.

Finally, a third element is humanitarian protection, provided for “humanitarian, compassionate or other reasons” (Direc-

tive 2008/115/EC, Article 6(4)). However, the Italian law had already introduced this type of protection before: with Law 388/1993 and then with the T.U. Imm. (Article 5, paragraph 6), which assigned the authority to issue the relative permit to the Police Commissioner (see above).

The latter was amended several times, in 2018, in 2020, in 2023.

- Decreto-legge 113/2018 eliminated the provision of the permit for humanitarian reasons and introduced other permits: in particular, that for special protection, which does not entirely overlap with the other and instead has a narrower scope, limited only to cases of danger of persecution or torture.
- Decreto-legge 130/2020 maintained, at least in name, the “special protection residence permit”, introduced by decreto-legge 113/2018, although the scope of regulation has been changed: this permit has been made convertible into a work permit on a par with others, but above all, the cases in which it must be recognised have increased: that is, “if there are well-founded reasons to believe that the person risks being subjected to torture” - as it was before - but also in the event that they risk “inhuman or degrading treatment” or even “if there are constitutional or international obligations of the Italian state”.
- A residence permit for special protection must also be granted “if there are reasonable grounds to believe that removal from the national territory would result in a violation of the right to respect for an individual’s private and family life”; on the other hand, it must not be granted when removal from the national territory “is necessary for reasons of national security, public order and safety as well as health protection in accordance with the Convention relating to the Status of Refugees [...] and the Charter of

Fundamental Rights of the European Union”.

- With decreto-legge 20/2023, without prejudice to the fact that “in no case may expulsion or refoulement be ordered to a state where the foreigner may be persecuted for reasons of race, sex, sexual orientation, gender identity, language, nationality, religion, political opinion, personal or social conditions, or may risk being returned to another state where they are not protected from persecution”.
- In the Geneva Resolution, it is stipulated that the “special protection residence permit” may also be issued to persons who would risk being subjected to inhuman and degrading treatment in their country of origin or to systematic and serious human rights violations in the event of repatriation. The special protection permit may also be issued if obligations under international conventions or agreements apply. The new rules remove the reference to the nature and effectiveness of the family ties of the person concerned, his effective social integration in Italy, the duration of his stay and the existence of family, cultural or social ties with the country of origin.

The Decreto-legge converted into Law 173/2020 transformed the previous Protection System for holders of international protection and unaccompanied foreign minors, established in 2018, in turn the predecessor of the SPRAR (Protection Service for Asylum Seekers and Refugees, established in 2002) into SAL (Reception and Integration System). The latter is intended for the so-called “second” reception of applicants for international protection - after the first reception upon arrival in Italy - as well as holders of protection, unaccompanied foreign minors, and foreigners in administrative continuation entrusted to the social services, upon reaching the age of majority. In addition, holders of residence

permits for special protection, for special humanitarian cases in a transitional regime, holders of social protection, victims of domestic violence, victims of labour exploitation disaster victims, migrants who are recognised as having special civic value, and holders of residence permits for medical treatment may also be received.



d) Sicilian regional law on the reception and integration of immigrants

A last mention should be made of Sicily and its recent Regional Law 20/2021, which identifies numerous and varied areas of intervention by the region in immigrant reception and integration policies: educational services for children, health care, school education, vocational training, job placement and self-employment, housing policies, support for social integration and labour inclusion, the role of local authorities and third sector associations and bodies; it also provides for measures to protect regular employment and against discrimination. The activities will be guided by a “three-year plan for reception and inclusion” (Article 6), which “also identifies any regional and extra-regional resources that may be allocated to finance interventions” and, in cascade, by an “annual programme”. Also within the limits of regional competences, supplementary interventions are identified to support the

right to asylum, with particular attention to unaccompanied foreign minors. In order to “monitor and develop analyses of the phenomenon on the regional territory” the Regional Observatory on the migratory phenomenon is established (Article 8). The law also establishes, for cognitive purposes, the regional list of cultural mediators (Article 13).

1.4. Migration and Asylum Policy in Sweden

Claudia di Matteo, Torun Elsrud, Kristina Gustafsson, Jesper Johansson, Philip Lalander, Norma Montesino and Emma Söderman

Sweden was for a long time recognised internationally as a country that welcomes migrants and people seeking asylum (Jansson, 2018; Shierup, and Ålund, 2011). The reason is that during the 1970s Sweden passed reforms to embrace a liberal citizenship that incorporated civil, social, and political rights also to non-citizens with permanent residence (Shierup and Ålund, 2011, see also Elsrud, Lundberg, and Söderman 2023). The relatively universal character of these policies has been reviewed showing a strong relation between social rights and the individuals’ position in the labour market. Refugee migration was, after the Second World War, limited to European refugees. The reception of non-European refugees started during the 1970s and continued until the mid-2010s. According to Statistics Sweden (SCB), in 2022 around two million (19.6%) inhabitants in Sweden were born in another country, with people from Syria, Iraq, Finland, Poland, and Iran being the largest groups.

During recent decades, this liberal model has radically changed (Dahlsted and Neergard, 2019), and integration policies have converged with neoliberal ideologies and

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