

Trafficking in Persons and Smuggling of Migrants into Italy



Ministero della Giustizia
Ministero per le Pari Opportunità



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 TRANSCRIME

IN COLLABORATION WITH:
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SMUGGLING OF MIGRANTS INTO ITALY

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A Scientific Committee followed the research through its various stages and determined the directions in which it moved. The Scientific Committee defined the methodological tools to be used for the analysis; it selected the public prosecutor's offices at which the interviews were to be carried out; it supervised the conduct of the interviews and the compilation of the final report, assisting with its final completion. The members of the Scientific Committee were: dott. Carlo Corti, cons. Augusta Iannini, dott. Mario Remus, professor Ernesto U. Savona, cons. Giusto Sciacchitano, cons. Pierluigi Vigna.

The State Anti-Mafia Division (*Direzione Nazionale Antimafia*- hereinafter *DNA*) maintained relationships with the Italian judicial offices for the acquisition of data on legal proceedings with regard to the "trafficking in persons" and the "smuggling of migrants" from the 164 public prosecutor's offices at the country's courts of law. In particular, the DNA drafted a form to be sent to the public prosecutor's offices in order to determine the existence and characteristics of legal proceedings. The DNA entered the data received from the public prosecutor's offices in *the Legal Proceedings on "Trafficking in Persons" and "Smuggling of Migrants" Database*. Established at the DNA was the Technical Secretariat of the project staffed by Mrs Alessia Di Gennaro, Mrs Michela Trabalzini and Dott.ssa Alessandra Zanotti. The DNA enlisted the statistical and IT consultancy services of Ing. Maurizio Manetti to set up the database.

Transcrime, the Joint Research Centre on Transnational Crime, *Università degli Studi di Trento/Università Cattolica del Sacro Cuore* - on the basis of the Convention with the Ministry of Justice for conduct of the research - collected and catalogued the extant bibliography on the subjects addressed by the study and drew up an interview outline to be used with the public prosecutors working in the offices most active in combating human trafficking and smuggling. It carried out

¹ On 22 December 2000 the Head of the Department for Equal Opportunities approved the project after the Interministerial Commission had previously accepted it on 20 December 2000 pursuant to article 25 of D.P.R. no. 394, 31 August 1999.

² On 31 May 31 2001 the Department for Equal Opportunities and the Ministry of Justice signed the protocol of understanding on realisation of the project by the Ministry of Justice.

the interviews with the public prosecutors in the fifteen most active offices, and it produced the drafts of the interviews to be submitted for the attention of the Scientific Committee. It also validated the DNA database, and on the basis of all the information collected, wrote this summary final report.

Compilation of the summary final report was supervised by Professor Ernesto U. Savona, currently Professor at the *Università Cattolica del Sacro Cuore* in Milan and Acting Director of Transcrime, and it was coordinated by Andrea Di Nicola with the collaboration of Federica Curtol, Silvia Decarli, Alessandro Valluzzi, researchers at Transcrime, and the assistance of Roberta Belli and Laura Polo.

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2.

EXECUTIVE SUMMARY

This report – written by Transcrime – presents the results of the research project on *Trafficking in Persons and Smuggling of Migrants* financed by the Ministry for Equal Opportunities, coordinated by the Ministry of Justice, and conducted jointly by the State Anti-Mafia Division (DNA) and Transcrime.

The research project and this report setting out its results ensued from the United Nations Convention on Transnational Organised Crime opened to signatures in Palermo on December 2000 and the two annexed Protocols on the Trafficking in Persons and on the Smuggling of Migrants. The Convention requires that the Member States monitor their own domestic policies and, more generally, their own measures to combat organised crime, evaluating their efficacy and efficiency. Moreover, the Convention and the Protocols invite the use of research and information as tools with which to prevent and combat the trafficking of persons and the smuggling of migrants.

The overall objective of the research project was to identify possible legislative, technical-administrative and operational ways to improve:

1. judicial responses to the trafficking of persons and the smuggling of migrants;
2. international cooperation among law enforcement agencies and judiciaries in combating the criminal organisations involved in human trafficking and smuggling;
3. prevention of the phenomenon through the knowledge acquired about criminal organisations and their *modi operandi*;
4. actions for the social protection of victims.

The smuggling of migrants is a continuously evolving criminal activity. In the European Union as elsewhere it has by now acquired stable organizational complexity and relies on protection by public officers and collusion among criminal organisations operating in diverse parts of the world. It has increasingly developed economies of scale by integrating with other forms of illegal trafficking. The growth in the supply of illegal migration routes by organised crime has reinforced the linkage between trafficking and the exploitation of migrants through their introduction into criminal activities in the destination countries. These changes in international migration have affected Italy in particular, as the country of first entry and consequently of transit for regular and irregular migratory flows into the European Union.

The trafficking of persons and the smuggling of migrants in Italy and the European Union may burgeon into an even more serious problem. As long as information on the phenomenon is meagre, unreliable and largely non-comparable, the development of effective, coherent and integrated responses – whether these take the form of prosecution, prevention or protection (assistance to victims) – will be a complex undertaking. The need for systems with which to monitor human trafficking and smuggling is especially urgent at European Union level. These systems should be able to furnish detailed information on criminal activities and on

the functioning of the strategies used to combat them, and when applied in several countries, they should provide reliable and comparable information. This would yield thorough understanding of the phenomenon and would enable determination of the most effective domestic and international policies with which to address the problem. The need for reliable data does not only concern quantitative information, however, although this is often meagre at both national and international level, but concerns qualitative data as well.

Against this background, and with particular regard to the Italian situation, the research project entitled *Trafficking in Persons for the Purpose of Exploitation and the Smuggling of Migrants* set out to monitor the activities of public prosecutor's offices in regard to human trafficking and smuggling in order to answer a series of questions concerning these phenomena and the actors involved, judicial activity in this sector, and the relationships between the judicial system and non-governmental organisations in assisting victims.

To this end, the research moved through the following phases:

- Phase I. Definition of the criminal offences that constitute "trafficking in persons" and "smuggling of migrants" under Italian law;
- Phase II. Collection of documentation on the subjects examined by the research;
- Phase III. Preparation of the survey instrument used to identify the most active prosecutor's offices and to collect quantitative information on the "trafficking of persons for the purpose of exploitation" and the "smuggling of migrants";
- Phase IV. Mapping of ongoing legal proceedings at the 164 Italian prosecutor's offices by administering the survey instrument and creating a database on legal proceedings brought against human traffickers and smugglers;
- Phase V. Identification of the Italian prosecutor's offices most active in combating the trafficking of persons and the smuggling of migrants;
- Phase VI. Drafting the interview outline to be used with the most active prosecutor's offices and administration of the interviews;
- Phase VII. Writing and correcting the interview transcriptions;
- Phase VIII. Analysis of all the data and information acquired and their summary in this final report.

The phases specifically concerned with legal proceedings in regard to human trafficking and smuggling were IV, V and VI.

During phase IV, the DNA drew up a survey instrument which was then sent to the prosecutor's offices in order to determine the existence and characteristics of ongoing legal proceedings concerning "trafficking in persons" and "the smuggling of migrants" (Annex A to this final report). By the expression "ongoing legal proceedings" is meant legal proceedings concerning human trafficking/smuggling during the investigation or committal for trial phases, or proceedings where sentence had already been passed, in the period from June 1996 to June 2001. The survey asked for quantitative information regarding the charges brought, the perpetrators, and the victims. Each prosecutor's office, for each ongoing legal proceeding, completed the survey instrument and then returned it to the DNA, where the *Legal Proceedings on the Trafficking in Persons and the Smuggling of Migrants Database* was set up. When Transcrime received the database, it validated it and then processed and analysed the information contained therein.

During phase V, the project's Scientific Committee drew on the map of ongoing legal proceedings at Italian prosecutor's offices to select the fifteen of the latter most active in the fight against trafficking in persons and the smuggling of migrants. The prosecutor's offices selected were: Arezzo, Ascoli Piceno, Brescia, Brindisi, Crotone, Genoa, Gorizia, Lecce, Milan, Palermo, Perugia, Rome, Tolmezzo, Turin and Trieste.

During phase VI, the public prosecutors with most expertise on the matters investigated at each of the most active prosecutor's offices were identified on the basis of information furnished by the person in charge of that office. These prosecutors were interviewed using a semi-structured questionnaire which consisted of two parts (Annex B to this final report): the first part covered the phenomenon and its prevention, whilst the second covered judicial activity. The interviews centred on the legal proceedings – whether in the preliminary investigation phase or at trial, or whether a sentence had already been issued – that the prosecutor's offices had undertaken in the period from 1996 and 2002. The interviews were carried out between 8 July and 9 November 2002.

The monitoring of activities by prosecutor's offices with regard to the trafficking of persons and the smuggling of migrants yielded the following intermediate results.

1. Mapping legal proceedings, specifying the types of charges brought, their number, and determining the characteristics and distribution of the perpetrators and victims (chapter 11 of this final report). The information on legal proceedings furnished by the 114 prosecutors offices which stated that they had brought proceedings in cases of trafficking and/or smuggling between June 1996 and June 2001 is now summarised (35 public prosecutor's offices stated that they had not dealt with any relevant cases during the period in question, and 16 did not reply):

- The total number of legal proceedings for criminal offences related to trafficking and smuggling at the level of the preliminary investigation, committal to trial, or sentencing between June 1996 and June 2001 was 9004. The annual average number was around 1800 legal proceedings;
- The areas with the largest number of legal proceedings for trafficking and smuggling were: 1) land and sea border areas; 2) large urban centres or northern towns close to large urban centres; 3) small towns in central Italy with economies based mainly on tourism and on medium and small industry;
- Out of a total of 9004 legal proceedings, 6074 (67%) concerned the smuggling of migrants and 2930 the trafficking of persons;
- Examination of the data from the public prosecutor's offices with the largest number of legal proceedings related to trafficking enabled distinction among: 1) exploitation in large metropolises (or adjoining areas) and the rich industrial towns of northern Italy. This category comprised, moving from south to north, the public prosecutor's offices of Palermo, Rome, Velletri, Chiavari, Savona, Cuneo, Alessandria, Turin, Milan, Brescia, Vicenza and Padua; 2) exploitation in small towns in central Italy, often on the coast, whose economies are based mainly on tourism and small and medium industry. This category comprised, from south to north, the public prosecutor's offices of Pescara, Ascoli Piceno, Fermo, Macerata, Perugia, Arezzo, Pesaro and Ravenna; 3) exploitation in towns situated in border areas (Lecce, Foggia, Trieste and Gorizia);
- In the period considered, 43% of legal proceedings regarding the trafficking of persons were still in the preliminary investigation phase, whilst 57% were in the trial phase;

- The number of persons investigated, charged or sentenced for criminal offences related to the trafficking of persons amounted to 7582, of whom 1216 were females (around 16%);
- Excluding Italian nationals, who accounted for 32.18% of the total, the majority of persons traffickers were Albanian (1201 persons, 29.83% of the total), Chinese (437 persons, 6.69% of the total), Romanian (260 persons, 4.52% of the total) and Nigerian (338 persons, 4.46% of the total);
- The total number of victims in legal proceedings for trafficking was 2741. The majority of victims were female: 2217 out of the total of 2.741, equal to 80.88%;
- The five nationalities most represented among the victims of trafficking offences were: Albanian (654, 23.86% of the total), Nigerian (230, 8.39%), Ukrainian (153, 5.58% of the total), Moldavian (144, 5.25% of the total);
- The largest number of legal proceedings for migrant smuggling were brought during the period considered by: 1) the public prosecutor's offices of border cities situated on land or sea borders, points of access to Italy along trafficking routes: from south to north, the towns of Marsala, Lecce, Brindisi, Trieste, Gorizia and Tolmezzo; 2) the public prosecutor's offices at Italy's two largest airports, Rome and Milan;
- In the period considered, 33% of legal proceedings on migrant smuggling were still in the preliminary investigation phase, while 67% were in the trial phase;
- The total number of persons investigated/charged and sentenced for criminal offences related to the smuggling of migrants in the period considered was 7540, of which 801 were female, equal to 10.62%;
- Excluding Italian nationals (27.96% of the total), the most frequent nationalities of traffickers were Albanian (1428, 18.94% of the total), Romanian (629, 8.34% of the total), Chinese (583, 7.73% of the total), Yugoslavian (454, 6.02% of the total);
- The total number of victims in legal proceedings for migrant smuggling was 4262. Of these, 3662, i.e. 85.92%, were men, while 600 were women, equal to 14.08%;
- The five nationalities most represented among the victims of migrant smuggling offences were: Moroccan (528, 12.39% of the total), Tunisian (423, 9.95% of the total), Albanian (258, 8.39% of the total), Rumanian (256, 6.01% of the total) and Turkish (158, 3.71% of the total).

2. Estimating the real number of victims of trafficking and smuggling during the period between June 1996–June 2001 in Italy (chapter 11 of this final report).

The estimation method used enabled quantification of:

- The real victims of trafficking in Italy in the period between June 1996 and June 2001 as being a minimum of 27,410 and a maximum of 54,820;
- The real victims of the smuggling of migrants in Italy in the period between June 1996 and June 2001 as being a minimum of 85,240 and a maximum of 170,480.

3. Understanding from a qualitative point of view and determining differences and similarities among the various national areas, the criminal activities under scrutiny and the subjective characteristics of perpetrators and victims (chapter 12 of this final report).

Some of the findings on the characteristics and trends of criminal activities were the following.

As regards the trafficking in persons for the purpose of exploitation in the underground labour market:

- Regularisation of presence in Italy on the basis of false eligibility;
- The attractiveness to consumers of goods costing less than the market price facilitates the exploitation of migrants in the underground labour market.

As regards the trafficking in persons for the purpose of sexual exploitation:

- Different degrees of “consent” given by women to prostitution in Italy according to their ethnicities (Albanians are usually treated as sex slaves; women from the East European countries and the Nigerian voluntarily agree to work as prostitutes – though deceived by false information on the working and living conditions that they may expect);
- Smuggling and exploitation planned in every single phase by organised and specialised groups (total control over the process);
- Well-defined and fixed routes;
- Existence of three types of prostitution: prostitution in night clubs; apartment prostitution and street prostitution. Each of these three types of prostitution displays different features in regard to the extent of the control exerted over the victims by the criminal organizations and, consequently, the extent to which the victims are deprived of their freedom;
- Commuting prostitution. Street prostitutes are exploited in locations different from those where they live in order to minimise the risk of their exploiters being identified;
- Importance of the exploitation of apartment prostitution. This phenomenon is flourishing in central Italy and it is growing in the North and South. It is the consequence of the need to find alternatives to exploitation in the street and entertainment venues. Although even this type of exploitation of prostitution is perpetrated with violence, coercion and threats, it more easily eludes the control of the law enforcement agencies. It is difficult to prove contact between the girls and their exploiters, or the assistance given to the latter by certain actors in legal society, such as estate agents and taxi drivers;
- Involvement of certain “legal” actors in prostitution, such as rental agencies, taxi drivers and hotel owners;
- National and international mobility of prostitutes working in night clubs and apartments and their exchange among criminal groups in order to facilitate that mobility;
- Use of expedients by organised crime in order to disguise the exploitation (e.g. stay permits issued for “work secondments” (*distacco lavorativo*), deduction from wages of the hours spent with clients by dancers/ hostesses);
- Use of forged nationality documents for victims;
- Frequent cases of bribery of foreign public officials, whilst cases of bribery of Italian officers are rare (see the case at the Italian Embassy in Nigeria).

As regards the smuggling of migrants:

- Existence of weak points along the Italian borders, which due to their extensiveness cannot be properly patrolled;
- Presence of alternative access routes (by air, sea or land);
- Bribery of foreign public officials in regard to either the issue of visas and other documents to leave the home country and to cross borders. Italian public and frontier police officers were involved as well, though only to a limited extent.
- Use of false, forged or stolen passports often for nationalities that do not require visas to enter Italy;
- ‘Illicit expatriation’. Italy seems to be increasing a country of transit to other destinations;

- 'Displacement', particularly during the entry stage, i.e. the phenomenon whereby criminal activity tends to move to less closely policed areas in order to avoid interception by the Italian authorities (e.g., from the provinces of Trieste/Gorizia to Udine, or from the coasts of Calabria to those of Puglia);
- The strong demand for labour as a key factor encouraging migrant inflows, also irregular, into Italy;
- Serial and sequential phenomenon (same connections among (ethnic) criminal groups, same routes, same methods);
- The increase in criminality produced by curative statutes.

4. *Describing the work of the prosecutor's offices, highlighting their problems and evaluating their relationships with the social organizations furnishing assistance to victims* (chapter 13 of this final report). This phase of the research gave rise to a series of *de iure condendo* suggestions.

More generally, the monitoring process – with the help of the prosecutors interviewed – made it possible to propose feasible actions of criminal policy, prevention and assistance to victims distinguished according to the four goals pursued by the research:

- a) to improve the judicial response to trafficking and smuggling;
- b) to improve international law enforcement and judicial cooperation;
- c) to improve prevention of the phenomenon;
- d) to improve the social protection of victims.

In order to **improve the judicial response**, the prosecutors drew on their expertise to recommend the following actions:

In relation to investigations:

Territorial jurisdiction:

- Centralise investigations, making the trafficking of persons for the purpose of exploitation and the smuggling of migrants – at least in relation to the associative offences – criminal offences within the competence of the DDA;
- Improve the definition of the criminal offences of trafficking and smuggling;

Identification and databases:

- Creation of a national database, well structured and comprising all information on names, places, routes;
- Creation in every prosecutor's office of a database complying with common modules and protocols;
- Introduce in the judicial venue by express legal provision of an identity (which may be only conventional) for the foreign national which must be related to fingerprints and photographs, and to anthropometric evidence;

Investigative tools:

- Reform of the legislation on the smuggling of migrants so that it more closely reflects the consolidated text of the Law on Drugs;
- Recruitment of law enforcement agents from different ethnic groups in order to permit the tailing of suspects, undercover activities and the gathering of information without alerting the suspects;
- Improvement of policing methods by increasing the number of personnel;

Incidente probatorio (the taking of evidence in the pre-trial stage of a criminal proceeding whenever it cannot be produced or gathered at a later stage) (suggestion by the Lecce prosecutor's office):

- Article 362 of the criminal procedure code should be followed by an article *362-bis (Information and identification by the foreign national in emergencies)* "In cases of emergency that may arise following the rejection or the expulsion of a foreign national who has illegally entered the country, should it be necessary to acquire information from that person or induce him/her to identify other persons or things, when there is reason to believe that it may be not possible to locate the foreign national for his/her examination during the trial or the *incidente probatorio*, the information referred to in article 362 of the criminal procedure code shall be acquired by the public prosecutor during the cross-examination in the presence of the defence of the parties. Likewise, the public prosecutor shall identify the persons or objects referred to in article 361 of the criminal procedure code. Article 360, section 1 and 2, and article 141-*bis* of the criminal procedure code are applicable to the extent possible";
- Section 1 of article 400 of the criminal procedure code should be supplemented with the following section: "2. In cases of emergency that may arise following the rejection or the expulsion of a foreign national who has illegally entered the country, the Court, on request by the Public Prosecutor, shall fix the day of the hearing to take evidence from the foreign national or to identify persons or objects within 48 hours from the lodging of the request and its proven notification. The decision of the Court shall be communicated without delay to the Public Prosecutor and to the defence, in which case articles 396, 397 and 398 section 1, 2 and 3 shall not be applied";

Miscellaneous recommendations:

- Improve the computerized logging of criminal legal proceedings from the preliminary investigation stage onwards;
- Conduct financial investigations and studies on remittances abroad;
- Establish a network of translators by creating a register or list of translators of proven reliability (possibly on a country-wide basis and managed by the Ministry of Justice or by the Home Office);
- Coordinate investigations by means of meetings among prosecutors belonging to different offices and the exchange of information;
- Create teams of specialised prosecutors and law enforcement agents;
- Introduce guidelines for the use and conduct of the *incidente probatorio* with simplified terms and forms when the examination concerns irregular foreign nationals who are also victims;
- Setup of a special law enforcement department dedicated to the investigation of cases of migrant smuggling;
- Grant more decision-making autonomy to the PG (law enforcement) in relation to investigations;
- Facilitate interceptions of calls to/from foreign telephone numbers (telephone interceptions abroad);
- Tighten the relationship among the law enforcement agencies involved;
- Extend pre-trial custody time limits in relation to legal proceedings against criminal groups involved in human trafficking and smuggling;

During the trial:

Best practices adopted to handle cases where witnesses cannot be located:

- From investigation stage onwards, pay the utmost attention to acquiring all evidence confirming the statements made by the persons informed;
- Structure a composite case for the prosecution on the basis of documentary evidence, interceptions, and testimonies by diverse persons;
- Use the *incidente probatorio* whenever the testimony appears to have a significant bearing on the case;
- Apply article 18 T.U. of the Immigration Law whenever this may be necessary to guarantee the presence of an important witness and, should the witness not be located, to prove to the Court that it was not possible to foresee his/her disappearance;
- Cite interceptions and other evidence in order to induce defendants to opt for 'alternative' procedures;

Notifications:

- Improve notification systems by introducing a provision which makes it compulsory for a passport to state the owner's current place of residence;
- Computerise trial proceedings;
- Devise methods to facilitate examination: for instance, improve the notification system by affirming the principle that the defendant has the right to know that a criminal proceeding has been brought against him/her (by means of notification), but at the same time placing the onus on him/her to follow its progress (without subsequent notifications being necessary);

Further suggestions:

- Simplify the time-limits and procedures for evidence gathering in order to accelerate trials;
- Devise a legal instrument that requires witnesses to remain at the Court's disposal without it being necessary to resort to the protection programmes provided by article 18 of the T.U. of the Immigration Law;
- Reform article 512-*bis* of the criminal procedure code in order to guarantee utilisation of the charging instruments produced during the preliminary investigations by introducing less strict requirements than those currently set forth by the law;
- Move jurisdiction from the Assize Courts to the Tribunal Courts for the criminal offences covered by articles 600, 601 and 601 of the criminal code;
- Improve coordination of the law on foreign nationals with that on sexual exploitation.

A number of proposals were made to **enhance international judicial and law enforcement cooperation**, viz.:

Generally:

- Simplify rogatory procedures without detriment to the fundamental principles of the trial (right of defence);

Europe-level cooperation:

- Strengthen the role of EUROPOL/EUROJUST;
- Increase transnational collaboration also through the recently introduced European arrest warrant;

- Establish the European judicial space to obtain the direct cooperation of foreign authorities;

Cooperation among the law enforcement agencies and investigating bodies of different countries:

- Mobilise the diplomatic authorities in order to promote direct contacts between foreign and Italian prosecutors and law enforcement agencies;
- Adopt and foster a culture of joint investigation by law enforcement officers ('criminal police') at the service of prosecutor's offices (combined investigative squads);
- Promote closer collaboration between the criminal police and INTERPOL;
- Increase awareness by the law enforcement agencies of the other countries that more effective international cooperation is necessary;
- Create a specialised international police body in each prosecutor's office;

Information exchange:

- Facilitate the exchange of information and data by means of an international database as well as one or more national databases (DDA);

Liaison judges/prosecutors:

- Through the competent international and diplomatic authorities, appoint one or more liaison officers (so-called liaison judges/prosecutors) in the countries involved in the criminal phenomenon to provide effective and immediate 'judicial assistance';

Cooperation with the European and Non-European authorities;

- Harmonise substantial and procedural laws in the countries concerned;
- Ratify the Palermo Convention and promote the execution or reinforcement of bilateral cooperation agreements;
- Draw up protocols of understanding with the countries concerned with the phenomenon either from the investigative or judicial point of view;
- Disseminate knowledge about international conventions.

Some of the possible strategies aimed at the **prevention of human trafficking and smuggling** suggested by the prosecutors were:

- Intensify the policing of the territory and borders by deploying more personnel and means;
- Improve the planning of legal immigration flows and increase the maximum number of legal immigrants allowed into the country;
- Improve social and economic conditions in the home countries of victims;
- Stipulate agreements with the countries of origin in order to regulate the inflow of migrants, which should depend on actual demand in the regular labour market;
- Provide potential migrants with adequate and detailed information in regard to legitimate channels of migration;
- Computerise the relevant documentation and improve the reliability of personal data in the countries of origin, with the possible provision to the developing countries of financial grants and technical assistance to improve their administrative systems;
- Review the procedures for reporting losses of documents;
- Careful selection of the frontier police force and of immigration office staff, also providing specific training, applying strict criteria for personnel selection, and deploying the best agents in key positions;
- Implementing strategies to combat bribery in the countries of migrant transit, origin and destination;

- Pay closer attention to the regularisation of illegal immigrants in that their situation may be criminogenetic;
- Improve the integration of immigrants into society in order to protect their rights and reduce their social exclusion, thereby rendering criminal groups less able to abuse fellow-countrymen or reducing the likelihood that immigrants will be involved in criminal activities;
- Closer controls on agencies involved in the international transfer of money;
- (with particular reference to the Turkish situation) International pressure on the Turkish political authorities to obtain closer internal and coastal control, and especially, more correct management of the 'Kurdish issue';
- Acquire deeper knowledge of the organisational methods used for smuggling in that this would yield a more focused and effective response.

Other, specific measures were proposed in regard to the trafficking of persons for the purpose of exploitation, in particular:

- Interventions to regulate prostitution;
- In this respect, it was suggested that prostitution should be legalised by facilitating the reintroduction of the so-called *case chiuse* or legal brothels so that closer control can be exerted on the phenomenon; or alternatively control over prostitution through stricter administrative measures applied to street prostitution and intended to divert it to more easily policed venues;
- Providing support social activities for victims intended to identify critical situations and prevent further exploitation. Suggested in particular was the strengthening, in terms of either finance or means, the protection measures already provided by article 18 of the T.U. Immigration Law;
- Stricter controls by the Italian labour market authorities;
- Closer control over the renting of apartments.

Suggested to **make the social protection of victims more effective** were the following actions:

- Increase the efficiency of the victim support structure;
- Protect the relatives of victims still in the country of origin, especially when the most violent criminal groups are involved;
- Undertake joint action between public bodies and private associations and promote collaboration with the more accredited facilities hosting immigrants;
- Amend article 18 T.U. Immigration Law so that it is also applicable to cases of mere migrant smuggling. and not solely to cases of trafficking in persons for the purpose of exploitation;
- Increase financial subsidies to NGOs and charities in order to augment their premises and facilities;
- Increase the functions and equipment of the centralised structure to implement the provisions of article 18 T.U. Immigration Law;
- Give prosecutor's offices more effective powers to intervene and exert control and institute a procedure similar to that provided for the protection of state's witnesses, also to ensure the personal safety of victims;
- Increase the receptive capacity of communities/NGOs and the seriousness of their programmes.

Update to the report: new legislation on the trafficking of persons and the smuggling of migrants

The law extant at the time of designing the project, collecting the data, and writing the first draft of this final report has been recently modified to conform with international and European standards. Law no. 228 of 11 August 2003 “Misure contro la tratta di persone” (published in *Gazzetta Ufficiale* no. 195 23 August 2003), has profoundly innovated the previous criminal legislation, from both the substantial and procedural points of view, and reorganised the jurisdictions of the responsible offices. Given the importance of those innovations, the report has been updated to include the most important new provisions introduced by the recent legislation. However, it should be stressed that the data and information collected by the survey instrument and the interviews with the prosecutors refer to a period of time when the new law was not yet in force. The results obtained from the monitoring process, with the help of the prosecutors interviewed, must be thus considered in the light of the legislation existing at that time, although some of the suggestions *de iure condendo* proposed by the prosecutors have already been implemented by the new law.

3.

INTRODUCTION

This report – written by Transcrime – presents the results of the research project on *Trafficking in Persons for the Purpose of Exploitation and Smuggling of Migrants* sponsored by the Ministry for Equal Opportunities, coordinated by the Ministry of Justice, and carried out jointly by the National Anti-Mafia Division (*Direzione Nazionale Antimafia*) and Transcrime.

The research project, whose results are set out in the present report, was undertaken in implementation of the United Nations Convention on Transnational Organised Crime opened to signatures in Palermo on 2000 and its two Protocols on the Trafficking in Persons for the Purpose of Exploitation and the Smuggling of Migrants. The Convention requires that the Member States monitor their own domestic policies and, more generally, institute their own measures to combat the organised crime, evaluating their efficacy and efficiency. Moreover, the Convention and the Protocols invite the use the research and the information as tools with which to prevent and combat the trafficking of persons and the smuggling of migrants.

The smuggling of migrants is a continuously evolving criminal activity. The criminal organizations involved exploit gaps in the relative legislation and regulatory asymmetries among countries to maximize their profits and minimize their risks. In the European Union as elsewhere, it displays an organizational complexity which rests on stable bases, and it enjoys the protection of public officials and collusion among criminal organizations operating in diverse countries. It has developed economies of scale by integrating with other forms of illicit trafficking. The growth in the supply of illicit migration routes by organised crime has reinforced the linkage between trafficking and the exploitation of migrants through their introduction into criminal activities in the destination countries. Changes in international migration have affected Italy in particular, as the country of first entry into the European Union with the subsequent flows of migrants, regular and irregular, through its member-countries.

Human trafficking in Italy and the European Union, however, may burgeon into an even more serious problem. As long as information on the phenomenon is meagre, unreliable and largely non-comparable, the development of effective, coherent and integrated responses – whether these take the form of prosecution, prevention or protection (assistance to victims) – will be a complex undertaking.

The need for systems with which to monitor human trafficking and smuggling is especially urgent at European Union level. These systems should be able to furnish detailed information on criminal activities and of the functioning of the strategies used to combat them, and when applied in several countries, they should provide reliable and comparable information.

That would lead to deep understanding of the subject and would enable determination of the most effective domestic and international responses to the problem.

The need for reliable data concerns not only quantitative information on the phenomenon, which is in any case meagre⁴ at both national and international level, but qualitative aspects as well.

The usefulness of gathering qualitative information on the trafficking in each member-state and with standardised criteria was confirmed by the results of the *Workshop on Application of the Concept of Prevention to Trafficking in Human Beings* held in Brussels on 17 and 18 May 2001, which highlighted the need in the European Union and in each Member State for:

- “concrete measures [...] to counter trafficking [...]. [I]t is necessary to continue the study, research and monitoring of trafficking. Traffickers rapidly change their methods. An effort should be made to establish a monitoring system which can provide immediate analysis. This system should include the creation of databases which facilitate rapid reaction by policy makers” (p. 2);
- “a methodology for prevention” (p. 4);
- “reliable data on all aspects of trafficking so that efficient action to prevent trafficking can be taken” (p. 5);
- “more systematic research” (p. 6);
- “a methodological framework” to aid understanding of the phenomenon (p. 6).⁵

In the light of the above and with particular regard to the Italian situation, the research project on *Trafficking in Persons for the Purpose of the Exploitation and Smuggling of Migrants* set out to monitor the activities of prosecutor’s offices in regard to person trafficking and migrant smuggling in order to answer questions concerning these phenomena, the actors involved, judicial activity on the subject, and the relationship between the judicial system and NGOs in offering assistance to victims.

The questions on the phenomena and the actors involved were intended to improve understanding of the following problems. What are the characteristics of the criminal activities? What are the distinctive features of the traffickers (socio-cultural and judicial profiles), particularly in relation to criminal groups organised on national basis? What are the characteristics of the persons/migrants involved in illicit/irregular migration? What are the illegal forms of entry into the country? Moreover, how many perpetrators and victims are involved in the judicial proceedings on human trafficking and smuggling? What nationalities are most involved? Which prosecutors deal most frequently with perpetrators and victims belonging to the most commonly represented nationalities? And finally, is it

⁴ See: B. De Ruyver, W. Van Eeckhoutte, J. Meese, K. Van Impe, and S. Vanhese, *Multidisciplinary Research on the Phenomenon of Trafficking in Human Beings from an International and a National Perspective: a Pilot Study with Poland and Hungary*, Research Group Drug Policy, Criminal Policy and International Crime, Ghent University, Ghent, 1998; IOM, *Migrant Trafficking in Europe: A Review of the Evidence with Case Studies from Hungary, Poland and Ukraine*, International Organisation for Migration, Geneva, 2000; IOM, *Victims of Trafficking in the Balkans. A Study of Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region*, IOM, Geneva, 2001, pp. 1–8; IOM, *Analysis of Data and Statistical Resources Available in the EU Members States on Trafficking in Humans, Particularly in Women and Children for Purposes of Sexual Exploitation. A Project of the International Organization for Migration (IOM) for the European Commission’s STOP Programme, Final Report*, IOM, Geneva, 1998.

⁵ European Commission Directorate-General Justice and Home Affairs, *Minutes of the Workshop on Application of the Concept of Prevention to Trafficking in Human Beings*, Brussels, May 17th and 18th, 2001.

possible to quantify the real number of the victims of the trafficking and smuggling?

The questions concerned with the judicial activity were intended to bring out the strengths and weaknesses of the criminal law and of the work of the prosecutor's offices, while also considering international cooperation. What were the best practices of judicial activity adopted by the prosecutor's offices? What problems were faced by the prosecutors in applying the relevant provisions? What were the most effective tools available to the prosecutors, and what did the latter need, from a *de iure condendo* perspective, to improve the efficiency of their response? What is the level of judicial cooperation between the competent Italian authorities and those operating in the countries of origin of migrants? How could this cooperation be made more effective?

Finally, the questions on the relationship between the prosecutor's offices and the NGOs in providing assistance to victims concerned the possibility of improving assistance to victims and protecting their rights. How have the relationships between the prosecutor offices and the NGOs developed in relation to application of article 18 of the *d.lgs.* 25 July 1998? How can victims' rights and their personal safety be guaranteed?

In answer to these questions, besides offering quantitative and qualitative information on human trafficking and smuggling in Italy, the research highlighted methods to improve: a) the judicial response to the trafficking and smuggling; b) international cooperation both among law enforcement agencies and among judicial authorities; c) the prevention of the phenomenon itself; d) actions for the social protection of victims.

This report follows the various stages of the research and is organised as follows:

- Acknowledgements (chapter 1);
- Executive summary (chapter 2);
- Introduction (chapter 3);
- Goal, objectives and phases of the research (chapter 4);
- Operational definitions (chapter 5);
- The United Nations Convention against transnational organised crime and the Protocols against trafficking in persons and against the smuggling of migrants (chapter 6);
- The European Union regulations (chapter 7);
- Trafficking and smuggling in Europe (chapter 8);
- Trafficking and smuggling in Italy (chapter 9);
- Italian legislation and judicial competences in the fight against trafficking and smuggling (chapter 10);
- A map of the phenomenon in Italy: proceedings brought by prosecutor's offices between June 1996 and June 2001 (chapter 11);
- The results of the interviews conducted with the most active prosecutor's offices: the phenomenon and its prevention (chapter 12);
- The results of the interviews conducted with the most active prosecutor's offices: best practices in judicial activities (chapter 13);
- Conclusions (chapter 14).

The annexes to this report contain the instrument used to survey legal proceedings on the trafficking in persons for the purpose of exploitation in prejudice to foreign

persons and on the smuggling of migrants (Annex A), and the outline of the interview conducted with the prosecutor's offices most active in combating the trafficking in persons for the purpose of exploitation and the smuggling of migrants (Annex B).

ADDENDUM

Update to the report: new legislation on the trafficking of persons and the smuggling of migrants

The law extant at the time of devising the project, gathering the data, and writing the first draft of this final report has been recently modified to conform with the international and European standards described in chapters 6 and 7 of this report. Law no. 228 of 11 August 2003 "Misure contro la tratta di persone" (published in *Gazzetta Ufficiale* no. 195 23 August 2003) has profoundly innovated the previous criminal legislation, from both the substantial and procedural points of view, and reorganised the jurisdictions of the responsible offices.

Given the importance of those innovations, the report has been updated to include the most important new provisions introduced by the recent legislation. The innovations are dealt with specifically in chapter 10 (section 1) of this report and whenever it has been necessary to refer to them.

However, it should be stressed that the data and information collected by the survey instrument and the interviews with the prosecutors, refer to a period of time when the law of 11 August 2003, no. 228 was not yet in force. The results must therefore be interpreted in the light of the legislation existing at that time, which is described in detail in section 2 of chapter 10, although it will be noted that the some of the suggestions *de iure condendo* made by the prosecutors interviewed, as described in chapter 13, have already been implemented by the new law.

4.

GOAL, OBJECTIVES AND PHASES OF THE RESEARCH

The overall goal of the research project was to identify possible legislative, technical-administrative and operational ways to improve:

1. the judicial response to the trafficking of persons for the purpose of exploitation and the smuggling of migrants;
2. international cooperation, among both law enforcement agencies and judicial authorities, to combat the criminal organisations involved in the trafficking and smuggling;
3. the prevention of the phenomenon itself by applying the knowledge acquired on criminal organisations and their *modi operandi*;
4. actions for the social protection of victims.

This goal was to be achieved through accomplishment of three further objectives:

- A. Improve knowledge on the trafficking of persons for the purpose of exploitation and the smuggling of migrants, paying particular attention to:
 - The characteristics of the criminal activities investigated;
 - The characteristics of the perpetrators of the offences (socio-cultural and judicial profiles), particularly in cases involving criminal groups organised on a nation-wide basis;
 - The characteristics of the persons/migrants induced into illicit/irregular migration;
 - Illegal forms of entry into the country.
- B. Monitor domestic judicial activity and the procedural mechanisms of the analysed acts in order to determine best practices, and verify the level of judicial cooperation between the Italian competent authorities and those operating in the countries of origin or provenance of migrants (from the point of view of both the fight against the trafficking organisations and the protection of victims);
- C. Monitor the role played by NGOs, considering both their actions in providing social protection for the victims of trafficking in persons for the purpose of exploitation and incentives for the victims of trafficking to cooperate with investigations (incentives that the statute on immigration sets out in the provisions contained in article 18 of the consolidated text on Immigration, *d.lgs. no. 286/98*).

In order to achieve these goals, the research moved through the following phases.

Phase 1. Definition of the criminal offences that constitute “trafficking in persons” and “smuggling of migrants” under Italian law. The Scientific Committee of the

project defined the criminal offences to which the Italian judicial authorities may refer in order to punish “trafficking in persons for the purpose of exploitation” and “smuggling of migrants”. Given that under Italian law the perpetrators of these criminal activities may be charged with a variety of criminal offences, it was important from the outset to define the offences that may be related to human trafficking and smuggling, so that the list of criminal offences thus obtained could be used in each phase of the study.

Phase 2. Collection of documentation on the subjects examined by the research. Transcrime collected all the documentation on the subjects of the research, which was physically present at Transcrime and/or the central library of the University of Trento. In order to facilitate analysis and the drafting of this final report, Transcrime drew up an annotated bibliography which classified the documentation into four sectors, each of which connected with one of the research goals as defined in the executive summary. The bibliography provided short abstracts for the most pertinent documents. A copy of the indexes of the most significant volumes and parts of the documentation, which replicated the four sections of the annotated bibliography, was sent in folders to dott. Mario Remus of the Legislative Office of the Ministry of Justice and to the Technical Secretariat of the project at the DNA.

Phase III. Preparation of the survey instrument used to identify the most active prosecutor’s offices and to collect quantitative information on the “trafficking in persons for the purpose of exploitation” and “smuggling of migrants”. The DNA prepared a survey instrument which was sent to the Prosecutor’s Offices at the Tribunal Courts. The purpose of this instrument was to determine the existence and quantitative characteristics of ongoing legal proceedings with regard the “trafficking in persons for the purpose of exploitation” and the “smuggling of migrants”. By the expression ‘ongoing legal proceedings’ is meant legal proceedings which dealt with trafficking/smuggling during the investigation and committal for trial phases, or those proceedings which had already led to sentencing in the period from June 1996 to June 2001. The survey instrument was designed to gather quantitative information on the criminal offences for which charges were brought, the perpetrators (number, nationality, gender, age) and the victims (number, nationality, gender, age). For more details see Annex A.

Phase IV. Mapping of ongoing legal proceedings at the 164 Italian prosecutor offices by administering the survey instrument and creating a database on legal proceedings regarding “the trafficking in persons for the purpose of exploitation” and the “smuggling of migrants”. The DNA sent the hard-copy and electronic format of the survey to all the 164 prosecutor’s offices in the country. Each prosecutor’s office completed the survey instrument for each ongoing proceeding and then returned it to the DNA. The *Legal Proceedings on the “Trafficking in Persons for the Purpose of Exploitation” and the “Smuggling of Migrants” Database* was then created at the DNA. A feature of this database that should be stressed is the presence of information on the victims of trafficking and smuggling.

Phase V. Identification of the Italian prosecutor’s offices most active in combating the trafficking in persons and the smuggling of migrants. The project’s Scientific Committee drew on the results of the mapping carried out in the previous phase to select the following fifteen prosecutor’s offices as those most active in the fight against the trafficking of persons and the smuggling of migrants: Arezzo, Ascoli

Piceno, Brescia, Brindisi, Crotone, Genoa, Gorizia, Lecce, Milan, Palermo, Perugia, Rome, Tolmezzo, Turin and Trieste.

Phase VI. Drafting of the interview outline to be used with the most active prosecutor's offices and administration of the interviews. Transcrime prepared a semi-structured questionnaire (see Annex B) to be used during the meetings between the Transcrime interviewer/s and one or more prosecutors belonging to the offices selected from those most active in combating the trafficking of persons for the purpose of exploitation and the smuggling of migrants. The scheme consisted of two parts: the first was concerned with the phenomena and their prevention, the second with judicial activity, paying particular attention to international cooperation and the relationships with the NGOs in regard to article 18 of the consolidated text of the Law on Immigration. The interview outline was used during the meetings between the Transcrime interviewers and the prosecutors belonging to the offices most active in combating the trafficking of persons for the purpose of exploitation and the smuggling of migrants. The prosecutors with the most expertise were selected to be interviewed on the basis of information furnished by the person in charge of that office. They played an important role as key informants able to give useful insights into the activities of the prosecutor offices over the last five years. The "case-study" approach was used, so that the analysis was qualitative: calculation was not made of the mere percentage of prosecutor's offices engaged in a given activity; rather, consideration was made of how the philosophy behind the action and concrete experience yielded significant results in the fight against the forms of crime examined. The interviews were carried out during the period between 8 July 2002 and 29 November 2002.

Phase VII. Writing and correction of the drafts of the interviews. Transcrime prepared fifteen drafts based on the interviews conducted. The drafting was carried out with the help of the tape recordings, and when necessary, by telephoning the prosecutors for further clarification. When preparing the texts, Transcrime took into account the comments received from the Scientific Committee as the work proceeded. The drafts of the interviews were sent for comments, revision and definitive approval to the persons in charge of the fifteen most active prosecutor's offices and to the prosecutors interviewed. The accompanying letter stated that, once approved, the text would be used as basis for the summary final report of the research. It was also made clear that if no reply was received, the texts would be taken as approved. Transcrime took due consideration of all clarifications and requests when writing the summary final report.

Phase VIII. Analysis of all the data and information acquired and their summary in this final report. Transcrime analysed all the documentation and the quantitative and qualitative information collected during the previous phases of the research. In particular, it validated the Database on proceedings against the "trafficking in persons for the purpose of exploitation" and the "smuggling of migrants" and processed the information contained therein. Transcrime also prepared this final report on the research, using for the purpose an index approved by the Scientific Committee. The report sets out the results of the research and makes a series of recommendations with regard to improving the judicial response, preventing the phenomenon, increasing international cooperation among law enforcement agencies and judicial authorities, and promoting actions for the social protection of victims.

5.

OPERATIONAL DEFINITIONS

5.1 THE DIFFERENCE BETWEEN TRAFFICKING AND SMUGGLING

The process by which the international community has come to give legal definition of *trafficking of human beings* (for the purpose of exploitation) and of *smuggling of migrants* or *alien smuggling* has been slow.

The need for definitions which distinguish between these two phenomena has arisen for reasons connected with the practices of law enforcement authorities, criminological and victimological concerns, and public policy considerations:⁶

- At the level of domestic jurisdiction over investigations, the two illicit activities have been often been allocated to different authorities;⁷
- The criminal groups involved in one or the other activity differ, are independent from each other, and use different methods;
- The victims of trafficking for the purpose of exploitation are different from those of smuggling in both their characteristics and the relationships that bind them to the criminals;
- Trafficking and smuggling have assumed different political significances over time. Whilst illicit immigration has always been a national and international priority in that it is a problem concerning security and public policy, trafficking for the purpose of exploitation has only latterly come to the attention of governments and other international bodies.

During the 1990s this distinction consolidated in practice until it was formalised in certain legal instruments and then given definitive formulation by the two

⁶ On these aspects see: F. Pastore, "L'azione internazionale per la lotta al traffico di persone: tendenze e problemi" [International Action to Combat the Trafficking of Persons: Tendencies and Problems], in F. Pastore (ed.), *L'Italia nel sistema internazionale del traffico di persone. Risultanze investigative, ipotesi interpretative, strategie di risposta* [Italy in the International System of the Trafficking in Persons. Investigative Results, Interpretative Hypotheses, Strategies for Reaction], Centro Studi di Politica Internazionale (Cespi), Commissione per le politiche di integrazione, Dipartimento per gli Affari Sociali, in "Working Paper", no. 5, Rome, 2000; T. De Zulueta, *Relazione sul traffico di esseri umani* [Report on the Trafficking of Human Beings], Commissione Parlamentare d'inchiesta sul fenomeno della mafia e delle altre associazioni criminali similari, XIII legislatura, Doc. XXIII n. 49, approved by the Commission on December 5th, 2000, p. 7, available at the internet website http://www.camera.it/_dati/leg13/lavori/doc/xxiii/049/d010.htm; Comitato parlamentare di controllo sull'attuazione ed il funzionamento della Convenzione di applicazione dell'Accordo di Schengen e di vigilanza sull'attività dell'unità nazionale Europol, *Documento conclusivo dell'indagine conoscitiva sulla tratta degli esseri umani* [Final Document of the Inquiry into Trafficking in Human Beings], Rome, February 7th, 2001.

⁷ For instance, in Italy the *Direzione Centrale della Polizia Criminale* at the *Dipartimento di Pubblica Sicurezza* of the Ministry of Interior has competence for cases of trafficking, whilst the *Servizio Stranieri* within the same department has competence for smuggling.

Supplementing Protocols of the United Nations Convention against Transnational Organised Crime,⁸ 2000.⁹

The first Protocol, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, deals with trafficking for the purpose of exploitation, whilst the second, *Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime*, deals with the smuggling of migrants.

These Protocols have been designed to fill a gap in international regulation and promote, amongst other things, harmonisation of the criminal laws of the signatory states against trafficking for the purpose of exploitation and the smuggling of migrants.

The following sections examine the definitions of trafficking of human being for the purpose of exploitation and the smuggling of migrants contained in the Protocols. It should be pointed out that these definitions have been fundamental for this research project, because at the time when it was drafted Italian law did not include

⁸ The Convention and the supplementing Protocols were adopted by the ad hoc drafting Committee on 28 October 2000, subsequently approved by the General Assembly of the United Nations in New York, and opened to signatures at the International Conference held in Palermo between 12 and 16 December 2000. The Convention came into force on 29 September 2003 on the ninetieth day from the fortieth ratification (article 38 of the Convention). The Trafficking Protocol came into force on 25 December 2003. As of March 2004, this Protocol has been signed by 117 countries and ratified by 47. The Smuggling Protocol came into force on 28 January 2004. As of March 2004, it has been signed by 112 states and ratified by 42. For updates on signatures and ratifications of the legal instruments mentioned above, see the UN Office on Drugs and Crime, *Signatories to the UN Convention against Transnational Crime and its Protocols*, available at http://www.unodc.org/unodc/crime_cicp_signatures.html.

⁹ The need to counteract the two phenomena internationally had already been evinced by the adoption of a number of conventions, which however proved unable to combat the phenomenon effectively. There follows a brief historical excursus on the subject. The phenomenon first came to the attention of the international community in the form of the so-called 'white slave trade', which led to the adoption of the May 1910 Paris Convention on the Trafficking and Exploitation of the Prostitution of Women and Children, which was concerned with not only trafficking but also slavery and prostitution. In 1926 the League of Nations approved the Slavery Convention, which provided a first definition of slavery as the exercise of a property right on a person treated as an object. Subsequently, the concept of slavery has been enlarged and integrated by the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, which defined slavery, servitude and slave trafficking. The importance of this Supplementary Convention, which was signed by the Member States of the United Nations in 1956, is that it extended the concept of slavery to encompass similar practices, so that included within the scope of the Convention were all possible forms of slavery, both ancient and modern. In 1948 the Universal Declaration of Human Rights affirmed the universality of rights to freedom, equality and dignity, while abolishing all forms of slavery or servitude as violations of these universal rights. The 1948 declaration was followed the New York Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed in 1949. From this Convention ensued the so-called "abolitionist theory" that inspired numerous laws on prostitution, including the Italian law (the so-called Merlin Statute). The goal of the Convention was to plan the action of states in pursuit of a common strategy to combat trafficking. The expression "traffic in persons" was used for the first time, though in connection with prostitution, of which it was considered to be the prior circumstance. The Convention, notwithstanding its innovative formulation in defence of the rights of the person, because it criminalised the trafficking and exploitation of women but not prostitution as a life choice, was not ratified by some countries (such as Sweden and the Netherlands), because of their different opinions on how to address the phenomenon of prostitution. Overall, the Convention has not significantly affected the fight against the trafficking of humans; see M.P. Svevo (ed.) *La tratta delle donne tra violazione dei diritti umani e schiavitù nei documenti internazionali ed europei* [The Trafficking in Women between Violations of Human Rights and Slavery in International and European Documents], Associazione Lule, Milan, 2000.

any provision that clearly defined and distinguished trafficking from smuggling. It was for this reason that it was decided to adopt the United Nations terms as operational definitions. Therefore, whenever the reader of this report encounters the expressions “trafficking of persons/human beings for the purpose of exploitation” (or simply “trafficking”), s/he should refer to their legal definitions as set out in the two Protocols.

Italian legislation finally adopted the above-mentioned distinction with the law of 11 August 2003, no. 228, which introduced the criminal offence of “trafficking in persons” (article 601 of the criminal code), substituting the obsolete offence of ‘trafficking and slave trading’).¹⁰ This change to the criminal law took account of the indications provided by the Convention, apart from some minor differences explained in the appropriate sections.¹¹

5.2 THE UNITED NATIONS DEFINITION OF “TRAFFICKING IN PERSONS”

The definition of “trafficking in persons” (in this report referred to as “trafficking in persons/human beings for the purpose of exploitation” or simply as “trafficking”) is provided by article 3 of the Protocol on Trafficking supplementing the 2000 United Nations Convention against Transnational Organised Crime.

“Trafficking in persons” is defined in paragraph (a) as the activity of “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

This definition is the legal basis for the undertaking set forth in article 5 of the Protocol of the signatory States to criminalise the offences mentioned above.

The description of the methods and means that may be used for coercion is intentionally left broad in order encompass a wide range of offences involving the trafficking of persons for the purpose of exploitation.

Paragraph (b) of article 3 states the irrelevance of consent by the victim of trafficking where any of the means set forth in paragraph (a) have been used. This provision is particularly important in all situations where it may initially appear that the victim has consented and then later withdrawn the consent; or in all cases where consent is given by persons other than the victim.¹²

¹⁰ Article 2 of the law of August 11th, 2003, no. 228 “Misure contro la tratta di persone” published in *Gazzetta Ufficiale*, no. 195 of 23 August 2003. For the sake of completeness, it should be pointed out that although Italy is a signatory to the Convention and the two Supplementing Protocols, it has not ratified the Convention.

¹¹ See *infra* chapter 10, *Section I*.

¹² These are cases where the victims of the trafficking are under-aged persons or ones subject to a ‘controller/controlled’ interpersonal relationship. It may happen that the person with control over the victim

A point long debated during the drafting of the Protocol is the reference to “the abuse of power or of a position of vulnerability”. This expression means persuasive behaviour adopted by the traffickers towards the victim and which exploits the latter’s situation of inferiority. This inferiority need not necessarily depend on mental handicap; it may be due to social-cultural underdevelopment or other personal or familial factors. During the *travaux préparatoires* the position of vulnerability was interpreted as “the situation where the person involved has no real or acceptable alternative except being subjected to abuse”.¹³

Trafficking in children¹⁴ is treated separately by paragraph (c). In this case the offence, which consists in “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation”, is considered to be committed even if none of the means set out in paragraph (a) are involved.

A further essential element of trafficking is the aim pursued by the traffickers and whereby exploitation of the trafficked persons is its purpose. The second part of article 3 paragraph (a) defines exploitation as including “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

The expression “the exploitation of the prostitution of others or other forms of sexual exploitation” was intentionally left undefined for two main reasons: firstly, in order to stress the close link between this type of exploitation and the previous activity of recruitment and transport; secondly, as a compromise in order to avoid a refusal to endorse it by some countries. It was preferred to leave specification of the diverse forms of sexual exploitation to the legislations of individual countries with their particular social and cultural policies on prostitution.¹⁵

The other forms of exploitation are defined by other instruments of international law.¹⁶

consents to the removal of the latter by the traffickers. In these situations the possible lack of refusal by the migrant is ascribed to his/her physiological immaturity, which prevents his/her realistic realization of what s/he is going to face, so that the victim is easy prey for the traffickers. Therefore, the purpose of the provision is to cover all possible instances of “transfer” or “authorisation of separation” by the person entrusted with legal or effective power of control over the victim, as in the cases of parents or guardians, or the power of control or temporary surveillance, or also in cases of “marital authority”, a tradition still existing in the cultures of some countries (see E. Rosi, *La tratta di esseri umani e il traffico di migranti. Strumenti internazionali* [The Trafficking of Human Beings and the Smuggling of Migrants. International Instruments], in *Cass. Pen.*, Giuffrè, Milan, 2001, pp. 1989 ff.).

¹³ E. Rosi, *op. cit.*, p. 1990.

¹⁴ I.e. people younger than eighteen foreseen by letter (d) of the same article.

¹⁵ For more details on this subject, see International Human Rights Law Group, *The Annotated Guide to the Complete UN Trafficking Protocol*, May 2002, available at www.hrlawgroup/resources/content/Protocol_annotated.pdf.

¹⁶ See: for the definition of “forced labour”, the 1930 International Labour Organisation Convention; for the definitions of “slavery and servitude”, the 1950 European Convention on Human Rights, the 1926 and 1956 Geneva Conventions, the 1990 International Convention on the Protection of Migrant Workers and Members of their Families.

5.3 THE UNITED NATIONS DEFINITION OF “SMUGGLING OF MIGRANTS”

Pursuant to article 3 of the Protocol on the smuggling of migrants, supplementing the 2000 United Nations Convention against Transnational Organised Crime, the *smuggling of migrants* (hereinafter referred to as “smuggling of migrants” or simply as “smuggling”) consists in the “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

According to paragraph (b) of the same provision “illegal entry” means “crossing borders without complying with the necessary requirements for legal entry into the receiving State”.

As with trafficking, so with smuggling the States Parties undertake to criminalise the conduct described.¹⁷

The smuggling of migrants is the procurement of illegal entry into a country for a person who is neither a national nor a permanent resident of that country.¹⁸

This conduct is intended to obtain a material or financial benefit: the intention to gain money is essential. The provision does not cover other economic activities concerned with migrants. Criminalisation concerns solely the smuggling and transportation on which illegal immigration is based.

One of the purposes of the Protocol is to protect the rights of migrants subject to illicit smuggling (article 2). Nevertheless, the definition of the smuggling of migrants does not refer to them as victims, nor there are provisions regarding the possible consent given by the latter. The choice not to consider as a victim the person who voluntarily resorts to criminal groups that earn money from illegal immigration is justified by the different role played by that person, who is no longer a passive subject in relation to the smugglers, but rather an active one, in the sense that the migrant has deliberately undertaken migration by investing his/her own capital. The smuggling is often based on contractual relationships between the migrant and the smugglers. The former buys a service (transport across the borders

¹⁷ The conduct to be criminalised is stated by article 6 of the Protocol. In respect to the smuggling of migrants, it comprises not only the activities of transport and smuggling but also the so-called “instrumental” criminal offences like the production of fraudulent travel or identity documents, or other offences such as enabling a person to remain in the country unlawfully.

¹⁸ On this point see G. Carlin, “Traffico e trasporto di migranti: il Protocollo internazionale firmato a Palermo” [Smuggling and Transport of Migrants: the International Protocol Signed in Palermo], in *Affari Sociali Internazionali*, no. 4, 2001.

of the country) from the latter for a material or economic benefit, which usually consists of a sum of money.¹⁹

¹⁹ See T. De Zulueta, *op. cit.*, p. 8.

6.

THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME AND THE PROTOCOLS AGAINST TRAFFICKING IN PERSONS AND AGAINST THE SMUGGLING OF MIGRANTS

6.1 THE REASONS FOR AN INTERNATIONAL APPROACH

“If crime crosses all borders, so must law enforcement” (Kofi Annan, Secretary – General of the United Nations, 12 December 2000, during the opening to signatures of the United Nations Convention against Transnational Organised Crime). These words summarise the assumption that gave rise to the United Convention against Transnational Organised Crime and the Protocols annexed thereto.

In 1994, when the General Assembly of the United Nations approved the Naples Political Declaration and decided to prioritise the drafting of an international convention against organised crime, the international community became aware that phenomenon no longer concerned only the domestic policy of countries, but was of such magnitude as to endanger their security itself. Hence, it was a matter that concerned international policy, which consequently had to be addressed in global and concerted manner.

A further factor in favour of development of a new international instrument to combat migrant smuggling and trafficking was the inadequacy of the reaction of the international community hitherto. The international legal instruments of that time²⁰ had been conceived to deal with kinds of trafficking very different from those present on a global scale during the 1990s.

Therefore, the United Nations Convention against Transnational Organised Crime and its Protocols against Trafficking in Persons and Smuggling of Migrants sprang from the need to provide an adequate international response to the general question of organised crime, and specifically to that of trafficking in persons/smuggling of migrants. They were opened to signatures during the Conference held in Palermo (12–15 December 2000). Having being ratified by at least forty states (which is the sufficient number of ratifications for their entry into

²⁰ The main international instruments against the trafficking of persons are: International Agreement for the Suppression of the White Slave Traffic, signed in Paris on 18 May 1904; International Convention for the Suppression of the White Slave Traffic, signed in Paris on 4 May 1910; International Convention for the Suppression of the Traffic in Women and Children, signed in Geneva on 30 September 1921; International Convention for the Suppression of the Traffic of Women of Full Age, signed in Geneva on 11 October 1933, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature in New York on 21 March 1950. On this see F. Pastore, “L'azione internazionale per la lotta al traffico di persone: tendenze e problemi” [International Action for Combating the Trafficking in Persons: Tendencies and Problems], in F. Pastore (ed.), *op. cit.*

force),²¹ they currently represent the most significant reaction by states at international level.²²

The strategy to combat the trafficking of persons and smuggling of migrants proposed by these international instruments is based on an “integrated” approach whereby the objectives of prevention and suppression are pursued jointly with protection of the persons subject to trafficking. In this regard, the Preamble to the Protocol against the Trafficking in Persons states that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking [...]”. Similar considerations are put forward in the Preamble to the Protocol against the Smuggling of Migrants.

This approach is based on the premise that “the prevention and protection of victims can only be effective if carried on together with equally effective action against the criminal organisations which manage the trafficking”,²³ and that effective suppression of these offences must seek to “identify, prosecute and punish those responsible, trying to recoup, as far as possible, the profits from offences by the organised crime”.²⁴

In order to achieve all these objectives, the Convention and the Protocols set out detailed provisions with a view to:

- a) the harmonization of domestic legislations, and
- b) international judicial cooperation.

The following sections provide an overview of the main provisions with regard to these two guiding principles, taking into account first the Convention and then the two annexed Protocols against, respectively, trafficking in persons and smuggling migrants. Before detailed analysis is made of the provisions contained in the annexed Protocols, the relationship between these instruments and the Convention will be considered. This relationship is of particularly practical important view in relation to the action against the criminal phenomena examined by this report, especially during the pre-trial investigation phase.

²¹ Cfr. *supra* note 8.

²² F. Spiezia, F. Frezza, N.M. Pace, *Il traffico e lo sfruttamento di esseri umani. Primo commento alla legge di modifica alla normativa in materia di immigrazione ed asilo* [The Trafficking and the Exploitation of Human Beings. A First Comment on the Legislative Reform to the Immigration and Asylum Law], Giuffrè, Milan, 2002, p. 191.

²³ Cfr. G. Sciacchitano, “Cooperazione giudiziaria nel contrasto al crimine organizzato. Contributo della direzione Nazionale Antimafia” [Judicial Cooperation for Combating Organised Crime. A Contribution by the National Anti-Mafia Division], paper presented to the *European Conference for the Prevention and the Combat of the Trafficking in Human Beings: a Global Challenge for the 21st Century* [Conferenza europea per la prevenzione e la lotta al traffico di esseri umani: una sfida globale per il 21° secolo], Brussels, 18–20 September 2002, p. 20, available at the website of the International Organization for Migration, www.iom.it.

²⁴ Cfr. E. Rosi, *op. cit.*, p. 1987.

6.2 THE UNITED NATIONS CONVENTION

6.2.1 The harmonisation of substantial and procedural legislations

The effort to harmonise domestic legislations from point of view the *substantial* criminal law is especially evident in articles 2, 5, 6, and 8 of the Convention. These provisions attempt to establish common ground for the criminalization of conduct that can be related to organised crime, such as membership of an organised criminal group (article 2 and 5), the laundering of proceeds of crime (article 6), and corruption (article 8).

One of the main difficulties encountered was envisaging a specific criminal offence constituted by membership of an organised criminal group. In this regard, to be noted is that until the 1994 Naples Ministerial Conference, countries like the USA and the United Kingdom believed that it was not possible to define an autonomous offence of 'criminal association'. The contrast between the concept of association and the common law notion of conspiracy was the central issue of the debate. As a possible way out of the *impasse*, a number of countries asked that a list be provided, even if not exhaustive, of the criminal offences linked to organised crime, which would also include terrorism.

As a result, the laundering of criminal proceeds and corruption were defined as specific crimes, although it was considered more appropriate to differentiate organised crime from terrorism. In regard to the laundering of the proceeds of crime, although references to the recommendations of the FATF (Financial Action Task Force)²⁵ were removed from the text, it incorporated the principle of the European Convention on money laundering, research and confiscation of the proceeds of crime (Strasbourg, 8 November 1990) to the effect that any illegal activity can be considered the predicate offence.

However, the closer harmonisation of the two legal traditions is evidenced by article 2 of the Convention, which provides a definition of organised crime which includes both the concept of conspiracy and that of association: "Organised criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit".

In regard to the harmonisation of criminal *procedural* law and, more generally, of measures to combat organised crime, of particular importance are the provisions of articles 7, 9, 10, 12, 20, 24–26.

Some of these provisions set out measures specifically aimed at dealing with offences committed by organised crime, such as money laundering (article 7) and corruption (article 9). These measures do not necessarily pertain to criminal law; however, in accordance with the integrated approach adopted by the Convention,

²⁵ Financial Action Task Force (FATF), *The 40 Recommendations*, available at the website <http://www1.oecd.org/faft>. The 40 FATF Recommendations were revised on 20 June 2003 in order to combat the financing of terrorism more effectively.

they range from the institution of supervisory financial systems to actions that may be necessary to guarantee the independence of public officials. The Convention has thus adopted the best legislative solutions formulated to date.

Other measures fall directly within the scope of criminal law and provide for the liability of legal persons, confiscation, the use of special investigative techniques, and the protection of witnesses and victims.

Pursuant to article 10, the civil liability of legal persons may be administrative, civil or criminal, according to the principles on which the legal order of each state party to the Convention is based. The wording is consistent with the approach followed by the European Union as well, and satisfies the exigencies of legal systems based on the principle of personal criminal liability.

As regards confiscation, article 12 encourages each State Party to adopt all the measures as may be necessary in order to allow the confiscation of the proceeds of the crimes set out in the Convention, or other goods the value of which is equivalent to those proceeds (“confiscation for equivalent”), and of any other equipment or instrumentalities used to commit those offences. Also included is an important provision which enables the State Parties, within and under the principles of their domestic law, to consider the possibility that offenders be required to demonstrate the licit origin of the alleged proceeds of offences or of those other goods that may be subject to confiscation.

Finally, as regards the special investigative techniques envisaged by article 20 of the Convention, these consist mainly in controlled delivery, electronic surveillance and undercover operations. As will be evidenced by the commentary on the answers provided by the prosecutor’s offices most active in combating person trafficking and smuggling (see chapter 13), those investigative techniques, together with the provisions on witness and victim protection (articles 24–26), are the fundamental instruments with which to bring criminal proceedings against traffickers.

6.2.2 International judicial cooperation

Judicial cooperation is considered of fundamental importance for the suppression of criminal offences of typically transnational nature, such as those related to the trafficking of persons and the smuggling of migrants.²⁶

These trafficking activities are organised in different stages: from the recruitment of the persons in the country of origin, to their subsequent journey and the crossing of borders, to their final allocation among various sectors (irregular employment, prostitution, crime). These various features can only be uncovered by investigations which retrace the route followed by each individual victim during his/her journey.²⁷ It thus becomes possible to determine not only the stopping

²⁶ P. Vigna, “Metodi investigativi, cooperazione internazionale” [Investigative Methods, International Cooperation], paper presented to the Rome Conference on the Trafficking in Persons (*Traffico di esseri umani. Alla ricerca di nuove strategie di intervento*), which took place on October 24th–25th, 2000.

²⁷ F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, pp. 165–166.

places during the journey, but also the criminal group that organised it. International cooperation is essential if this type of investigation is to be successful.

The United Nations Convention sets out a number of procedures that can be activated by the investigating authority and the judiciary also in cases of person trafficking and migrant smuggling (see *infra* § 6.3).

Particularly significant are the provisions of article 16–18 regulating the extradition procedures and mutual legal assistance among State Parties. In both cases the provisions are so detailed and comprehensive that they have been referred to as “mini-treaties” on extradition and judicial cooperation within the framework of a Convention.²⁸

The legal assistance may be requested when a State Party “has reasonable grounds to suspect that the offence [...] is transnational in nature [...] and that the offence involves an organised criminal group”. By this is meant that the procedures for cooperation may be activated from the very beginning of the investigation, when the existence of the organised crime, as defined by the Convention, has not yet been demonstrated but there is nevertheless reason to suspect criminal activity. This approach derives from the conviction that person trafficking and migrant smuggling are crimes that divide into various phases and therefore require investigation that proceeds backwards, so to speak.

The forms of legal assistance envisaged by the Convention are listed in a long series of provisions, many of them patterned on those contained in other legal instruments drafted by the European Council and the European Union. Relevant examples of these types of “importation” are: the creation of a central authority responsible for ensuring speedy response to requests for legal assistance, directly transmitting them to the competent authority; the principle of the *locus delicti regit actum*; the possible use of videoconferences for witnesses located in different countries.

As regards extradition procedures, which are notoriously long-drawn-out, the Convention encourages the State Parties to simplify the legal requirements for extradition and, if a specific treaty is not in force, to recognise the Convention as the legal basis for extradition of a person under investigation in relation to the offences referred thereto (article 16).

Besides the provisions on extradition and mutual legal assistance, the Convention regulates almost all other forms of international judicial, police and technical cooperation against transnational organised crime:

- international cooperation for purposes of confiscation (article 13);
- transfer of sentenced persons so that foreign criminal sentences may be implemented (article 17);
- joint investigations (article 19);
- transfer of criminal proceedings (article 21);

²⁸ M. Plachta, “International Cooperation in the draft United Nations Convention against Transnational Crime”, in *Resource Material Series*, no. 57, paper presented to the 114th International Training Course on International Cooperation to Combat Transnational Organised Crime, United Nations Asia and Far East Institute, February 17th–18th, 2000.

- collection and exchange of information (articles 26 e 28);
- law enforcement cooperation (article 27);
- technical assistance (article 30).

The complexity and comprehensive character of the provisions on legal assistance has induced some scholars to define the Palermo Convention as “the most complete instrument of international cooperation in criminal law”.²⁹

6.3 THE RELATIONSHIP BETWEEN THE CONVENTION AND THE ANNEXED PROTOCOLS

Pursuant to article 1 of the Protocol on the smuggling of migrants, the two Protocols supplement the Convention and must be interpreted together with it. The offences formulated by each Protocol must be regarded as offences provided for by the Convention itself and the provisions of the Convention must be applied, *mutatis mutandis*, to the Protocols as well.

This opening provision, together with the need for the State to be party to the mother-Convention in order to access the supplementing Protocols (cf. article 37, section 2, of the Palermo Convention) supports the concept of substantial unity among these legal instruments, and it is essential for suppression of the criminal phenomena dealt with in the Protocols.

From a practical point of view, the provisions allow an extended consideration of most of the provisions contained in the mother-Convention, i.e. the application of investigative techniques and international cooperation described above in relation to the Convention (e.g.: wire tapping, undercover agents, provisions against the laundering of proceeds of crime and corruption, protection of victims and witnesses).

In cases of trafficking and smuggling committed by transnational organised criminal groups, the Protocols and the Convention thus constitute a substantial and procedural legal *corpus* which has been defined “a coordinated series of provisions that, more or less bindingly, provide for the commitment of the States for the introduction and enhancement of more effective and specific tools of legal and investigative cooperation, in order to squeeze the criminal groups in a such legal straitjacket that eliminates any room or possibility of impunity that would give the opportunity to the offenders to hide or to invest the proceeds of the their illegal activities, regardless where they have been committed”.³⁰ This provides domestic legislators, prosecutors, and law enforcement in general with an important advantage, for it allows them to tackle the complexity of criminal organisations in a broader context which concerns not one single criminal area (e.g. trafficking in persons), but several (money laundering, corruption, etc.) and provides them with a broader range of measures for the purpose.

²⁹ M. Plachta, *op. cit.*, p. 87.

³⁰ E. Di Francesco, “La Convenzione delle Nazioni Unite contro il crimine organizzato transnazionale e i protocolli aggiuntivi” [The United Nations Convention against Transnational Organised Crime and the Annexed Protocols], in *Gli Stranieri*, no. 3, 2000, p. 429.

It is necessary to draw some distinctions, however. *Trafficking* and *smuggling* may be prosecuted only if they are transnational in nature and involve an organised criminal group (article 4 of both Protocols). In order to make these two expressions meaningful, reference must be made to the mother-Convention, which defines both “criminal organised group” (article 2) and “transnational” (article 3, section 2).³¹

The presence of an organised criminal group and the transnational character of the offence are necessary conditions only for application of the Convention’s specific provisions on international cooperation among State Parties. According to the Convention (article 34, section 2), the criminalisation of the offences described therein shall be established in the domestic law of each State Party, regardless of the legal definition given to the offence of transnational organised crime, in order to relieve prosecutors of the onus of proving fulfilment of those conditions during criminal proceedings.³²

6.4 THE ANNEXED PROTOCOLS ON THE TRAFFICKING IN PERSONS AND THE SMUGGLING OF MIGRANTS

The approach to offences involving the trafficking of persons and the smuggling of migrants suggested by the two Protocols annexed to the Palermo Convention comprises the same elements as present in the mother-Convention:

- the need for international action against the trafficking in persons and the smuggling of migrants;
- the simultaneous provision of measures aimed both to prevent and to suppress those phenomena.

Both protocols consist of four sections. The first (“General Provisions”) provides for regulation of the matters dealt with above: the relationship with the mother-Convention and the scope of application (see *supra* § 6.3), the definition and criminalisation of human trafficking and smuggling (see *supra* §§ 5.2 and 5.3). The sections that follow comment on the remaining sections.

6.4.1 The Protocol on the trafficking in persons

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against*

³¹ For the definition of criminal organised group, see the comment on article 2 of the Palermo Convention *supra* § 6.2.1. According to article 3, section 2, of the Convention, an offence is transnational in nature if “it is committed in more than one state: it is committed in more than one State but a substantial part of its preparation, planning, direction or control takes place in another State; it is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; it is committed in one State but it has substantial effects in another State”.

³² E. Rosi, *op. cit.*, p. 1988.

Transnational Organized Crime was opened to signatures during the Palermo Convention on 12–15 December 2000 and entered into force on 25 December 2003.

The purposes of the Protocol are:

- “to prevent and combat trafficking in persons, paying particular attention to women and children;
- to protect and assist the victims of such trafficking, with full respect for their human rights; and
- to promote cooperation among States Parties in order to meet those objectives”.

An entire section of the Protocol deals with the measures to prevent/combat trafficking and to achieve cooperation (articles 9–13). Those provisions are supplementary to those already present in the Convention. The measures to combat those criminal phenomena concern border controls (with particular regard to commercial carriers), cooperation among border control agencies and the exchange of information on methods, means and documents used by organised criminal groups. The Protocol’s strongly preventative purpose is evident in its section dealing with measures to strengthen training for the law enforcement, immigration and other relevant officials, and to ensure the security of identity and travel documents in order to prevent their falsification or alteration.

The concern to protect victims is evident in the second part of the Protocol, which sets out measures for the protection of the victims which range from the protection of their privacy and identity – making legal proceedings related to such trafficking confidential – to protection of their physical safety whilst they are on the territory of a State Party. In order to ensure more effective protection of victims, also provided are measures offering compensation for the damage suffered. The assistance offered to victims is not related to a legal proceeding, but to the victim’s broader social context. It is therefore possible to appreciate the value of the work carried out by the NGOs jointly with the State. Finally, specific attention is paid to repatriation of victims of trafficking, which must not prejudice the physical safety of the victim, and to stay in the receiving State through verification of entitlement to permanent residence.

6.4.2 *The Protocol on the smuggling of migrants*

The *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against the Transnational Organized Crime* was opened to all States for signatures during the Palermo Convention of 12–15 December 2000, and it entered into force on 28 January 2004.³³

The purpose of the Protocol on smuggling is to protect victims (the migrants) as well as well as to deal with repression and cooperation against smuggling. The numerous provisions on protection and assistance adopt the recommendations of

³³ Cfr. *supra* nota 8.

the UN High Commissioner for Human Rights³⁴ and implement the principle of non-liability for criminal prosecution regarding migrants subject to the criminal conduct described in the Protocol. In this regard, the domestic legislator may adopt such legislative measures as it may consider necessary to establish criminal offences. However, the Protocol specifies that the international legal instrument imposes no obligation on States Parties to criminalise migrants just because they have been subject to smuggling.

As in the Protocol against the trafficking in persons, cooperation among States is considered in detail. Article 10 of the Protocol against the smuggling of migrants requires States whose territories are involved in smuggling, and especially those with common borders, to exchange information on routes, identities of the persons involved, means and methods used by the organised criminal groups, travel documents, effective practices and measures used to combat smuggling, and any other scientific and technological information useful for the prevention and combat of such criminal conduct. In this last respect the exchange of information is promoted through the training of officials and technical cooperation (article 14), which the States Parties with relevant expertise should provide to States of origin and transit.

As regards prevention, particular attention is paid to border controls (article 11) and travel documents (articles 12–13). An entire section of the Protocol is devoted to the smuggling of migrants by sea, given the complexity of action to combat it. This section provides a detailed description of the behaviour to adopt by a State in accordance with the international law of the sea and without prejudice to the safety of the persons on board when it has reasonable grounds to suspect that a vessel is engaged in smuggling of migrants.

Significant are, finally, the provisions on the return of migrants to the State of origin (article 18), which pays particular attention to the physical safety of the migrants and respect for their dignity and seeks to take account also of the needs of the States involved in the repatriation. The question of the readmission of foreign nationals was long debated during the drafting of the Protocol, with an

³⁴ United Nations General Assembly, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime, Eighth Session, *Note by the Office of the United Nations High Commissioner for Human Rights, United Nations Children's Fund and International Organization for Migration on the Draft Protocols concerning Migrant Smuggling and Trafficking in Persons*, Vienna, 21 February, 3 March, 2000, A/AC.254/27.

endeavour to reach a solution that removed the effect of the criminal offence, also in view of the question of the possible privation of nationality by some States of origin (Cuba, Mexico). Hence, for the first time it was possible to include in a multilateral legal instrument the undertaking to readmit migrants, specifying the necessary forms of cooperation among the States involved.

7.

THE EUROPEAN UNION REGULATIONS

The prevention and the suppression of trafficking in persons and smuggling of migrants are two priorities of the European Union in so far as they concern the protection of human rights, immigration policies, the security of citizens, and enlargement of the Union to the candidate state members.³⁵

On 28 February 2002, the Council of the European Union adopted a *Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*.³⁶ The Plan set a number of priorities for the prevention of illegal immigration and trafficking and emphasises the intention of the Union to tackle the problem with a view to establishing an area of freedom, security and justice. The overall plan deals with various aspects of the problem: visa policy; information exchange on illegal immigration; pre-frontier measures and those relating to the crossing of the borders; readmission and return policy; the strengthening of action by Europol; the provision of adequate penalties for the criminal offences of *trafficking in persons* and *smuggling of migrants* in accordance with the definitions proposed by the Protocols supplementing the Palermo Convention of 2000³⁷ and harmonising the criminal laws of the Member States. The Action Plan is the most recent in a number of initiatives in this field, which include:

- the Conclusions of the European Council Meeting in Laeken, held on 14 and 15 December 2001, which reaffirm the commitment of the European Council to the policy guidelines and objectives defined at Tampere (on 15 and 16 October 1999) regarding the creation of an area of freedom, security and justice. Among its various recommendations, the European Council of Laeken emphasises the need to harmonise regulations on the trafficking in human beings (conclusion no. 45);
- the Conclusions of the European Council Meeting in Tampere held on 15 and 16 October 1999 (the so-called ‘Tampere Milestones’), which affirmed the importance of creating an area of freedom, security and justice within the Union through full application of the possibilities offered by the Treaty of Amsterdam. One of the priorities specified in addressing the problems connected with illegal migration is the development of measures for the management of migration flows (Conclusion n. 22). The conclusions of the Presidency of the Council also affirm the commitment “to tackle illegal immigration at its source, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants”. This requires the Member States to adopt legislation which impose severe penalties on those who commit these crimes. The Member

³⁵ See E. Camilletti, "La problematica della tratta degli esseri umani: politiche e strategie dell'Unione europea" [The Question of Trafficking in Human Beings: the Policies and Strategies of the European Union], in *Diritto & Diritti*, November 2002, available at www.diritto.it/articoli/europa/camilletti.html.

³⁶ Council of the European Communities, *Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*, Doc. no. 6621/1/02 JAI 30 FRONT 19 MIGR 10 VISA 29N REV 1, Brussels, 28 February 2002.

³⁷ The choice of conforming to the distinction and definitions of the United Nations was reaffirmed in the *Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*, recommendation no. 22.

- States should also “direct their efforts to detecting and dismantling the criminal networks involved”, while at the same time ensuring appropriate protection of the rights of the victims, taking the problems of women and children into due consideration (Conclusion no. 23). Moreover, the Presidency conclusions suggest a series of measures to “derive the maximum benefit from co-operation between Member States' authorities when investigating cross-border crime in any Member State”, and in particular in the fight against trafficking in human beings, as well as strengthening judicial cooperation (Conclusions nos. 43–48);
- the Action Plan of the Council and of the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, adopted by the Council of Justice and Internal Affairs on 3 December 1998 (Doc. no. 13844/98), which affirms the high priority of action against illegal immigration. In particular, point 46 of the Action Plan provides that, among the measures to be adopted within two years of entry into force of the Treaty, priority should be given to the suppression of trafficking in human beings and of exploitation of children.

Before continuing, it should be stressed that there have in the past been numerous attempts by the European institutions to define the concepts of trafficking in human beings and smuggling of migrants in a manner acceptable to all the Member States. The question has been set aside, however, since the Union's accession to the United Nations Convention against Transnational Organised Crime and its two supplementing Protocols against trafficking in persons and smuggling of migrants. Today, the European Union adopts the distinction contained in these two Protocols between *trafficking in persons* and *smuggling of migrants*.

The endeavour now is to define the Union's actions and strategies with regard to, on the one hand, the suppression and prevention of trafficking and smuggling, and, on the other, the protection of victims.

7.1 THE EUROPEAN UNION'S POLICIES ON CRIME CONTROL

The first concrete action dates to February 1997³⁸ with the adoption by the Council of the European Union of the *Joint Action to combat trafficking in human beings and sexual exploitation of children*,³⁹ the main objectives of which were:

- to agree on legal definitions of trafficking in human beings and sexual exploitation of children, so that they might be included among the criminal offences punished by domestic laws;
- to improve judicial cooperation in combating these offences.

³⁸ Intervention by the European institution started before the 1997 Joint Action, in fact. In 1996 the European Commission set up the STOP Programme with Joint Action 96/700/JHA. This was a programme intended to create a system of training, information, study and exchange programmes for persons responsible for combating the trade in human beings and the sexual exploitation of children on the basis of a “coordinated and multidisciplinary” approach. The intent was more to prevent than to suppress the criminal phenomena.

³⁹ Joint Action 97/154/JHA.

Each State was invited to review its national laws so that trafficking in human beings and the sexual exploitation of children and adults were punishable as crimes and with criminal penalties that would be “effective, proportionate and dissuasive”. In order to achieve those objectives, the Joint Action defined each of the phenomena mentioned above; definitions which were to provide the legal framework to which the Member States should refer.⁴⁰

This Joint Action was ineffective, however, because it was too general and because it did not set minimum thresholds for punishment.⁴¹ Nevertheless, it was of assistance in stressing some of the aspects essential for effective suppression at European level, such as the need for common legal definitions.

This first Action has been followed by others. The following sections analyse the European Union’s actions, instruments and proposals to achieve an effective strategy for the suppression of trafficking and smuggling. Examined in particular will be:

1. the instruments designed to harmonise domestic laws by furnishing common definitions of crimes, penalties and, more generally, measures to combat them (§ 7.1.1);
2. instruments designed to improve judicial cooperation on criminal matters (§ 7.1.2);
3. the temporary residence permit for the victims of trafficking who decide to cooperate with the judicial authorities (§ 7.1.3).

7.1.1 The harmonisation of domestic laws: the framework decisions

The Council of the European Union has recently issued two framework decisions intended to improve the fight against trafficking and smuggling.

The first, *Council framework decision on combating trafficking in human beings*, was adopted on 19 July 2002 following a Commission Proposal.⁴²

The second, *Council framework decision of the Council on strengthening the penal framework to prevent the facilitation of unauthorised entry, transit and residence* was adopted on 28 November 2002 following a French initiative.⁴³ This framework

⁴⁰ According to these guidelines, trafficking in human beings is constituted by “any conduct that may facilitate the entry, transit and residence or exit in the territory of a Member State, for the purpose of gaining money or exploitation or sexual abuses”. Sexual exploitation is distinguished according to the person exploited. Should a child be involved, the definition is rather broad and encompasses various economic activities such as prostitution and other forms of paedophile–pornography. The exploitation of adults is limited to prostitution.

⁴¹ In this regard, see Commission of the European Communities, *Proposal for a Council Framework Decision on Combating Trafficking in Human Beings*, COM (2000) 854 final, December 21st, 2000, p. 4.

⁴² Commission of the European Communities, *op. cit.*

⁴³ French initiative on the adoption of a framework decision of the Council aimed at strengthening the penal framework so as to prevent the facilitation of unauthorised entry and residence (10676/2000 – C5 – 0426/2000 – 2000/0821 (CNS)).

decision is linked to the Council Directive, issued on the same day, in regard to “defining the facilitation of unauthorised entry, transit and residence”.⁴⁴

The decision to use the legal instrument denominated ‘Framework Decision’ and introduced by the Treaty of Amsterdam was taken because of its particular functionality to achieving the objectives of crime prevention. It is believed that a framework decision may facilitate the creation of a common legal approach among the Member States. According to the Commission, the use of the framework decision in this field enables greater development of “certain aspects of criminal law and judicial co-operation [...] than has been possible through instruments available before the entry into force of the Amsterdam Treaty [...]. A Framework Decision should, for instance, address more precisely issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition”.⁴⁵

By the end of 2004 the Member States of the European Union, and thus Italy as well, are required to have taken all the measures necessary to comply with these two pieces of legislation.

THE COUNCIL FRAMEWORK DECISION ON COMBATING TRAFFICKING IN HUMAN BEINGS ⁴⁶

The Council framework decision on combating trafficking in human beings pursues the specific objectives of:

1. introducing, at the European level, common provisions in order to define and regulate certain issues such as criminalisation, penalties, aggravating circumstances, jurisdiction and extradition;
2. harmonising the laws and regulations of the Member States in the area of police and judicial cooperation.

Article 1 contains the definition of trafficking and states that the purpose of exploitation is an essential component. The criminal offence consists in “the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person”, where:

- use is made of coercion, force or threat, including abduction; or
- use is made of deceit or fraud, or
- there is an abuse of authority, or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse, or
- payments or benefits are given or received to achieve the consent of a person having control over another person.

Once the conduct and the means to perform it have been clarified, the purposes of the crime are specified. The trafficking must be undertaken:

⁴⁴ Council Directive 2002/90/EC adopted following a French initiative (10675/2000 - C5 - 0427/2000 - 2000/0821 (CNS).

⁴⁵ Commission of the European Communities, *op. cit.*, p. 7.

⁴⁶ To be noted is that this Framework Decision is the result of adoption of the principles contained in the United Nations Protocol against trafficking in persons.

- for the purpose of exploiting the person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
- for the purpose of exploiting the prostitution of others or other forms of sexual exploitation, including pornography.

Article 1 paragraph 2 specifies the irrelevance of consent however it may have been given by the victim. Paragraph 3 contains specific provisions should the conduct involve a child. In this event a punishable trafficking offence still exists even if none of the means set forth in article 1 has been used.

With regard to the penalties that Member States must institute for trafficking offences, article 3 states that they must be "effective, proportionate and dissuasive criminal penalties", which may entail extradition. Also established is a minimum punishment – imprisonment for not less than eight years – where one of the following aggravating circumstances is present:

- the offence has deliberately or by gross negligence endangered the life of the victim;
- the offence has been committed against a victim who was particularly vulnerable,⁴⁷ and the offence has been committed for the purpose of the prostitution of others or other forms of sexual exploitation, including pornography;
- the offence has been committed with the use of severe violence or has caused particularly grave harm to the victim;
- the offence has been committed within the framework of a criminal organisation.

Turning to procedural aspects, the preliminary considerations of the decision stress that it is necessary to introduce penalties for trafficking of sufficient severity for trafficking to be included within the scope of instruments adopted for the purpose of combating organised crime. The reference is to the *Joint Action, adopted by the Council on the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime*,⁴⁸ and the *Joint Action adopted by the Council on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union*.⁴⁹

THE COUNCIL FRAMEWORK DECISION ON STRENGTHENING THE PENAL FRAMEWORK TO PREVENT THE FACILITATION OF UNAUTHORISED ENTRY, TRANSIT AND RESIDENCE

This framework decision supplements the provisions of the Directive "defining the facilitation of unauthorised entry, transit and residence" mentioned above.⁵⁰ The

⁴⁷ Pursuant to this provision a victim shall be considered to be particularly vulnerable when s/he "was under the age of sexual majority according to national law".

⁴⁸ Joint Action 98/699/JHA of 3 December 1998.

⁴⁹ Joint Action 98/733/JHA of 21 December 1998.

⁵⁰ Council Directive 2002/90/CE adopted following a French initiative (10675/2000 – C5 – 0427/2000 – 2000/0821 (CNS).

two resolutions concern the definition and repression of facilitating illegal immigration.

The Directive defines criminal offences regarding the facilitation of illegal immigration so that the framework decision can be more effectively applied. Article 1 specifies the offences and invites each Member State to adopt appropriate sanctions on:

- any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
- any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

An exempting circumstance is facilitation of the illegal entry of a migrant in order to provide him or her with humanitarian assistance. This provision, in relation to punishment of the crime, stresses the essential character of the purpose of financial gain. Besides protection of action by natural or legal persons operating in the field of humanitarian assistance, the provision is intended to temper the repressive regime in consideration of the “often dramatic circumstances of illegal immigration” and of the personal situation of migrants, which requires “a sympathetic and shaded approach”.⁵¹

On the basis of the definition of the criminal offence and of the exempting circumstances, the framework decision sets minimum standards for sanctions, the liability of legal persons, and jurisdiction.

As regards the penalties, article 1 states that each Member State shall amend its domestic law to punish the crimes covered by the Directive with “effective, proportionate and dissuasive criminal penalties which may entail extradition”.

Some specific measures, which may accompany the sanctions already given, are expressly mentioned in the provision, and in particular:

- confiscation of the means of transport used to commit the offence;
- a prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the offence was committed;
- deportation.

Finally, two aggravating circumstances are introduced which entail imprisonment for no less than eight years when:

- the offence was committed as an activity of a criminal organisation;
- the offence was committed while endangering the lives of the persons subject to the offence.

⁵¹ See the European Parliament Report on the French initiative on the adoption of a Council Framework Decision aimed at strengthening the penal framework for the prevention of action facilitating illegal entry and residence (10676/2000 – C5 – 0426/2000 – 2000/0821 (CNS), pp. 19 ff.

7.1.2 Judicial cooperation in criminal matters

International cooperation is an essential requisite for any type of strategy to combat the phenomena considered. The reason is the structurally transnational nature of these illicit activities, due to the mobility of the goods (human beings) moved from one country to another and transferred among a number of criminal groups constantly moving from one territory to another.⁵²

Until a few years ago it was argued that there were insufficient incentives for the creation of an 'international judicial area', in contrast to what was happening with police cooperation. Commentators emphasised the "the widening gap between the internationalisation of police investigation and the predominantly domestic character of judicial activities which constitutes an obstacle against the efficacy of repressive action".⁵³ Since then, significant progress has been made. With regard to judicial cooperation on criminal matters, to be noted are various procedures now available to combat trafficking and smuggling, some of which, as shown by the results of the interviews with prosecutors (chapter 13), have already been utilised by the Italian authorities.

First to be mentioned is the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*⁵⁴, which supplements the provisions of the *European Convention on Mutual Assistance in Criminal Matters* of 20 April 1959 and seeks to promote mutual assistance among judicial and police authorities, facilitating the implementation of certain procedural measures. Among the activities proposed are the following:

- spontaneous exchange (i.e. without prior request) of information among the domestic competent authorities;
- controlled deliveries, in the framework of criminal investigations into extraditable offences;
- investigations into crime by officers acting under covert or false identity, with due authorisation by the Member State on whose territory the investigation takes place;
- interceptions of telecommunications.

The agencies currently engaged in such cooperation and coordination are:

- a) Europol;

⁵² See P. Vigna, "Cooperazione giudiziaria nel contrasto al crimine organizzato. Contributo della Direzione Nazionale Antimafia" [Judicial Cooperation in Combating Organised Crime. A Contribution by the State Anti-mafia Division], in "Contributo dell'Italia. La posizione del Governo italiano in materia di lotta al traffico di esseri umani" [Italian Contribution. The Position of the Italian Government on Combating the Trafficking in Human Beings], paper presented to the *European Conference for the Prevention and the Combat of the Trafficking in Human Beings: a Global Challenge for the 21st Century* [Conferenza europea per la prevenzione e la lotta al traffico di esseri umani: una sfida globale per il 21° secolo], Brussels, September 18th-20th, 2002, p. 20, available at the website of the International Organization for Migration, www.iom.int.

⁵³ L. Violante, "La strategia internazionale nella lotta alla mafia" [The International Strategy for Combating the Mafia], in B. Nascimbene, M. Pastore (eds.), *Da Schengen a Maastricht. Apertura delle frontiere, cooperazione giudiziaria e di polizia*, Giuffrè, Milan, 1995, pp. 90-91.

⁵⁴ Adopted by Council Act on 29 May 2000 (2000/C 197/01), pursuant to article 34 of the Treaty of the European Union.

- b) European Judicial Network;
- c) Eurojust.

To these should be added the recently introduced cooperation instruments that seek to remedy the inadequacies of traditional means such as letters rogatory and extradition, with a view to overcoming “the impediment that the territory imposes on the exercise by states of their sovereignty”.⁵⁵ These new instruments are:

- d) joint investigation teams;
- e) the European arrest warrant.

There now follow descriptions of cooperation and coordination structures and of the recently-introduced instruments for judicial cooperation.

A) EUROPOL

Europol is the European Police Office. With its headquarters in The Hague (Netherlands) and established by the Council Act of 26 July 1995,⁵⁶ this agency has proved useful in combating the criminal networks involved in illegal immigration and the trafficking of persons for the purpose of exploitation. Its objective is to improve the efficiency of the Police Offices of the Member States, promoting cooperation in the fight against organised crime. Its primary tasks are to:

- facilitate information exchange among the Member States;
- gather, analyse and circulate information and reports;
- facilitate investigations in Member States;
- gather information and manage the relevant databases.

B) EUROPEAN JUDICIAL NETWORK

The European Judicial Network was set up on June 1998 with adoption of the Joint Action of the European Union Council.⁵⁷

It is a network of judicial contact points among the Member States created in order to improve cooperation on criminal matters, accelerate such cooperation and simplify operations, paying particular attention to the fight against transnational organised crime.

Although the Action does not expressly refer to trafficking in human beings and/or the smuggling of migrants, these phenomena fall within its scope.⁵⁸ The validity of

⁵⁵ Statement by the national antimafia prosecutor P. Vigna, “Cooperazione giudiziaria nel contrasto al crimine organizzato. Contributo della Direzione Nazionale Antimafia”, *cit.*, p. 21.

⁵⁶ Act drawing up the so-called “Europol Convention”. Italy ratified this with law no. 23 of 23 March 1998, which entered into force on 1 October 1998.

⁵⁷ Joint Action of 29 June 1998, adopted by the Council pursuant to article K. 3 of the European Union Treaty, on the establishment of an European Judicial Network (98/428/JHA).

this approach is confirmed by the Strategic Plan for the prevention and control of organised crime⁵⁹ set out in Recommendation no. 10 contained in paragraph 2.5, which promotes “close cooperation” among the Network, Europol and the Member States in order to achieve effective “coordination of investigations”, at the level of police and judicial activities, regarding organisations active in the field of illegal immigration.

According to article 2 paragraph 1, the contact points in the Member States, taking into account their constitutional rules, legal traditions and internal structure, are:

- the central authorities responsible for international judicial cooperation;
- judicial authorities;
- other competent authorities with specific responsibilities within the context of international cooperation;
- authorities competent both generally and for certain forms of serious organised crime⁶⁰.

Also to emphasised is the existence of two further legal instruments that may enhance the efficiency of the European Judicial Network.⁶¹ These are two Joint Actions stating the practical mechanisms with which to improve implementation of existing or future instruments for cooperation.

The first is the *Joint Action on good practice in mutual legal assistance in criminal matters*. Adopted by the Council of the European Union on 29 June 1998,⁶² this envisages the creation of a system of “best practices”, the purpose being to guarantee uniform standards in international judicial cooperation on criminal matters. Article 1 of the Action accordingly provides that each Member State should deposit with the General Secretariat of the Council of the Union a “statement of good practice in executing requests, including transmission of results, from other Member States and sending requests to other Member States for legal assistance in criminal matters”.

Article 3 expressly refers to the European Judicial Network and affirms that all statements deposited must be available to the Network. The Network, for its part, is empowered to evaluate the statements in the light of its competencies and experience and may make any proposals it considers appropriate with a view to improving legal assistance in criminal matters, “including finding common methods for evaluation of performance”.

The second instrument, adopted by the Council on 22 April 1996,⁶³ is the *Joint Action concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union*. Establishment of the role of the “liaison magistrate” falls within the European

⁵⁸ See E. Calvanese, G. De Amicis, “La Rete Giudiziaria Europea: natura, problemi, prospettive” [The European Judicial Network: Nature, Problems and Perspectives], in *Cass. Pen.*, 2001, pp. 698 ff.

⁵⁹ Council of the European Communities, *The Prevention and Control of Organised Crime: a European Union Strategy for the Beginning of the New Millennium*, 2000/C 124/01, Brussels, 27 March 2002.

⁶⁰ As regards Italy, the competent judicial authorities are, generally, the General Prosecutor’s Offices at the Courts of Appeal, whilst in cases of organised crime the contact point is the DNA.

⁶¹ See E. Calvanese, G. De Amicis, *cit.*

⁶² Joint Action (98/427/JHA).

⁶³ Joint Action (96/277/JHA).

context of strengthening judicial cooperation and has provided the basis for the subsequent establishment of a more ramified network. The exchange of magistrates, or simply sending them to other States of the Union, is intended “to increase the speed and effectiveness of judicial cooperation” and “to promote the pooling of information on the legal and judicial systems of the Member States and to improve their operation”.⁶⁴

The tasks of the liaison magistrates comprise the establishment of direct contacts with the services and competent authorities of the other Member States. “This 'personalisation' of the functions of the liaison magistrate through the setting up, *in loco*, of direct and intense bilateral contacts with the competent authorities and services (both administrative and law enforcement) will accelerate the evolution of traditional mechanisms of judicial cooperation, introducing forms of synergy with parallel activities of the Network, in order to create a European judicial space also based on the appropriate combination of the practical experiences acquired – with especial regard to requests for cooperation on serious crimes – by the contact points and the liaison magistrates linked to the Network”.⁶⁵

c) EUROJUST

On February 28th, 2002, the Council of the European Union adopted the *Decision for the setting up of Eurojust with a view to reinforcing the fight against serious crime*.⁶⁶

Trafficking in human beings and illegal immigration at the level of the Union are organised crime activities that fall within the competence of Eurojust.⁶⁷ The tasks of this agency are:

- to facilitate the best possible coordination among the authorities in charge of prosecutions;
- to assist with investigations into cases of organised crime, especially on the basis of analysis by Europol;
- to cooperate with the European Judicial Network in order to simplify the implementation of letters rogatory.

Eurojust consists of a national member appointed by each Member State in his/her capacity as a prosecutor, a judge, or a police officer of equivalent competencies (article 2 of the Decision).

The objectives of the Eurojust unit are listed in article 3 as being:

- a) “to stimulate and improve the coordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States”;

⁶⁴ Pursuant to article 1 paragraph 3.

⁶⁵ E. Calvanese, G. De Amicis, *cit.*, pp. 705–706.

⁶⁶ Decision (2002/187/JHA).

⁶⁷ The setting up of this European judiciary unit complies with the guidelines contained in the Presidency Conclusions at the meeting of Tampere (point 46).

- b) “to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests”;
- c) “to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective”.

The competences of Eurojust are broad in scope. In regard to trafficking and smuggling offences, they fall within the provisions set forth by article 4, paragraph 1 letter a), which refers to “the types of crime and the offences in respect of which Europol is at all times competent to act pursuant to article 2 of the Europol Convention”.

The tasks entrusted to Eurojust are stated by article 5 ff. and they are carried out either by acting collegially or by acting through its national members. The unit’s main functions consist in powers to request Member States to:

- consider undertaking an investigation or prosecution of specific acts;
- coordinate the competent authorities of the Member States concerned;
- set up a joint investigation team;
- provide Europol with any information necessary for it to carry out its tasks.

The activities of Eurojust should be undertaken in synergy with those of Europol and the European Judicial Network through constant cooperation and collaboration.⁶⁸

D) JOINT INVESTIGATION TEAMS

Joint Investigation Teams – consisting of the competent authorities of two or more Member States – are provided by article 13 of the 29 May 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,⁶⁹ although they were already mentioned in the Presidency Conclusions of the meeting in Tampere as figuring among the measures to be taken for effective repression of trafficking in human beings.

The joint investigation teams conduct criminal investigations in one or more of the Member States concerned. The provision specifies the requirements for setting up a team:

- a) “when the inquiries conducted by a Member State into criminal offences require difficult and demanding investigations linked with other Member States”;

⁶⁸ As specifically regards relationships with the European Judicial Network, The Decision stresses that cooperation shall be maintained in “a balanced functional relationship, which is based on one hand on the mutual autonomy and on the other hand on the structural complementarity of the two bodies”, so as to prevent conflicts between the activities of the two judicial authorities. Accordingly, Eurojust is a body devoted to the coordination of investigative and judicial activities by the judicial authorities of the Member States. This task is different and independent from cooperation, which is broadly understood as assistance to national authorities in the carrying out of the above activities, this being instead the task of the Network. For more details see E. Calvanese, G. De Amicis, *cit.*, pp. 1964 ff.

⁶⁹ Council of the European Communities, *Council Act of 29 May 2000 establishing, in accordance with article 34 of the Treaty on European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, in Official Journal C 197, 12.07.2000.

- b) “when a number of Member States are conducting investigations into criminal offences that for the circumstances of the case necessitate coordinated and concerted action”.

Both these requirements fulfil the need for cooperation in combating crimes that are typically transnational in nature, and they are useful in cases of trafficking and the smuggling.

E) THE “EUROPEAN ARREST WARRANT”

The *Council Framework Decision on the European arrest warrant and the surrender procedures between Member States*⁷⁰ furnishes an important instrument with which to combat transnational organised crime. The Commission’s proposal for the framework decision states that the introduction of the European arrest warrant, “in terms of law enforcement, draws its consequences from the opening of borders within the European law-enforcement area by making it easier for justice to be administered across borders between Member States”.⁷¹

The European arrest warrant allows for the forced transfer of a person from one Member State to another. The new procedure for the transfer has been introduced in order to replace the traditional extradition system,⁷² as recommended during the European meeting at Tampere.⁷³

The European arrest warrant represents “the first concrete measure in the field of criminal law implementing the principle of mutual recognition” to which the European Council referred as “the cornerstone of judicial cooperation”.⁷⁴

The general objective is to replace the traditional relationships of cooperation already existing among the Member States with “a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice”.⁷⁵ Accordingly, article 1 of the Framework Decision defines the warrant as “a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order”.

Article 2 limits the scope of application of the warrant to the criminal offences punishable by a custodial sentence or a detention order for a maximum period of at least 12 months. The provision also includes a non-exhaustive list of the crimes that may give rise to surrenders, among them trafficking in human beings, the sexual exploitation of children, and abetment of unauthorised entry and residence.

⁷⁰ Council Framework Decision (2002/584/JHA), adopted on 13 June 2002.

⁷¹ See Commission of the European Communities, *Proposal for a Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between the Member States*, COM (2001) 522 final, Brussels, 19 September 2001, p. 4.

⁷² Regulated by the 1957 European Convention on Extradition.

⁷³ See Conclusion n 35.

⁷⁴ Council of the European Communities, *Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between the Member States*, (2002/584/JHA), Brussels, 13 June 2002, point no. 6.

⁷⁵ Council of the European Communities, *Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between the Member States*, (2002/584/JHA), Brussels, 13 June 2002, point no. 5.

7.1.3 The temporary residence permit for the victims of trafficking who cooperate with the authorities

On 12 November 2002 the European Parliament approved a *Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities*.

The proposal was presented by the European Commission⁷⁶ in the context of the measures adopted within the Union for combating illegal immigration, following the example of some Member States (Belgium, Holland, Spain and Italy) that had already included a similar provision in their domestic legislations.

The temporary residence permit is issued to victims of the trafficking in human beings or actions to facilitate illegal immigration. The permit is issued in exchange for cooperation with the police and judicial authorities. It is thus to be considered a measure to suppress the criminal phenomena rather than a measure for the protection of the victim.

To be stressed is that the victims of trafficking and of illegal immigration are considered to be equivalent.⁷⁷ The Explanatory Memorandum to the Proposal of the Commission specifies that “facilitating illegal immigration and trafficking in human beings are two separate offences in law, but experience suggests that in practice they often overlap”.⁷⁸

Although migrants usually undertake all the phases of the smuggling and transport deliberately, believing that the relationship with the smugglers will cease once they have reached their destinations, it cannot be excluded that they will not become victims. This is for example the case when migrants are exploited during the journey, or when, once at destination, they are introduced into the illegal labour market or forced into prostitution and kept in servitude until they have repaid their debt.

Thus, according to the Commission, on this basis it is possible to qualify a person as a ‘victim’ whenever it is demonstrated that that person has suffered damage – meaning a threat to his/her life or to his/her personal safety – caused by being subject to trafficking or to actions facilitating illegal immigration.

These considerations seemingly address the situation of the trafficked persons with a view to their protection. However, this may be misleading, for the Commission’s Explanatory Memorandum clearly defines the objective of the proposal directive as being “to strengthen the instruments for combating illegal immigration by

⁷⁶ Commission of the European Communities, *Proposal for a Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities*, COM (2002) 71, Brussels, 11 February 2002.

⁷⁷ To date, those who voluntarily entrust themselves to criminal organisations for the purpose of migrating have not been considered to be victims, or at least not from the judicial standpoint: not even in the Protocols supplementing the Palermo Convention on the trafficking and the smuggling, which today represent the most advanced legal instruments in this field.

⁷⁸ Commission of the European Communities, *Proposal for a Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities*, *cit.*, p. 2.

introducing a residence permit for the victims [...], subject to conditions designed to encourage them to cooperate with the competent authorities against those suspected of committing the crimes in question”.⁷⁹ In order to eliminate any doubts on this point, the following parts of the Explanatory Memorandum reaffirm that the proposal introduces a residence permit and “[it] is not concerned with protection of either witnesses or victims. This is neither its aim nor its legal basis”.⁸⁰ The extended qualification of ‘victim’ is functional to the law enforcement objectives of this piece of legislation. The nature of the residence permit as a ‘reward’ is subordinate to a more effective strategy of law enforcement.

The rationale for this measure is the mutual advantage – for the victim and for the judicial authorities – deriving from issue of the permit, without which the victims cannot report to the authorities because of their illegal presence in the country and because of the certainty that they will be immediately returned to their country of origin. On the other hand, without the help given by the victims, the judicial authorities cannot obtain information disclosed by direct witnesses usually crucial for the success of investigations. The aim of the instrument is to encourage victims to cooperate with the authorities by enabling them to emerge from illegality and escape from criminal networks. The fact that the victim is an invaluable source of information justifies, according to the institutions, the granting of less harsh treatment than that provided for by the legislation on foreigners, which restrictively regulates migratory flows.

The procedure for issue of the residence permit requires fulfilment of three conditions:

- the damage suffered by the victim must be a direct consequence of actions facilitating illegal immigration or trafficking in persons for the purpose of exploitation;
- a commitment, followed by behaviour consistent with it, to sever all relations with the alleged wrongdoers;
- the presence of the victim in the territory of the state is useful for the purposes of the investigation or the bringing of a legal proceeding against the criminal subjects reported.

When the competent authority comes into contact with possible victims, it may inform them⁸¹ of the existence of a short-term residence permit, of 6 months’ duration, which may be granted in exchange for their cooperation. At the same time the victims are invited to sever all links with their exploiters. A thirty-day “reflection

⁷⁹ Commission of the European Communities, *Proposal for a Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities*, cit., p. 5.

⁸⁰ Commission of the European Communities, *Proposal for a Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities*, cit., p. 7. The Explanatory Memorandum specifies also that “victim protection and witness protection are matters of ordinary national or European law”. Cited on this point is the Framework Decision of 15 March 2001 (2001/220/JHA) on the Status of Victims in Criminal Proceedings, which sets out the rules concerning the right to receive information, protection, assistance as well as the right to compensation.

⁸¹ Note that this is an optional power granted to the authorities. Hence there is no duty to inform, nor right of victims to be informed. The decision as to issue of the residence permit is based solely on assessment of its functionality to law enforcement.

period” is granted to the victims starting from the day when they have been informed. Within this maximum limit, the proposal must be accepted or rejected. During this period, the proposal of directive provides that the Member State shall allow the victims to receive assistance in the form of accommodation, medical and psychological care, and material assistance if necessary. In the same period the competent authority evaluates the usefulness of the victim’s presence for the purpose of its investigations.

On conclusion of this process, the victim may be granted a temporary residence permit. Besides the possibility of legally staying in the territory of the State throughout the period granted, this process entails the victim’s participation in programmes aimed at her social integration with a view to the issue of a definitive permit residence or her return to the country of origin.

Contrasting attitudes emerged during the parliamentary debate prior to approval of the proposal.. The spokeswoman designated by the Parliamentary Commission for the freedoms and rights of citizens, Patsy Sørensen, confirmed the Commission’s position, maintaining that the main objective of the Directive was to strengthen measures to combat illegal immigration and trafficking in human beings. The spokeswoman argued that the use of these instruments also served to defend victims who intended to sever all links with the perpetrators of trafficking for the purpose of exploitation or the mere smuggling of migrants.

A different line was taken by representatives of the minority, who stressed the problematic aspects of the Commission’s position, declaring that if concrete help was to be given to victims, the Parliament could not hide “behind the interests related to application of the European legislation and cynically keep on tenterhooks victims with short-term residence permits. The state must not apply pressure to victims, threatening them with expulsion, in order to obtain their cooperation with the police and the investigative authorities. Instead, complete protection of the victims should be guaranteed, with first of all a permanent residence permit, and in particular access to asylum procedures and complete, equal and unconditioned access to medical and social services. All the rest may perhaps be useful to the European prosecutors, but surely it is not enough for the victims of trafficking in human beings”.⁸² This position is contrary to the Community’s preference for law enforcement aspects rather than an approach based on the real protection of victims.

7.2 THE POLICIES OF THE EUROPEAN UNION FOR THE PREVENTION OF THE OFFENCES AND ASSISTANCE TO VICTIMS

Trafficking in persons for the purpose of exploitation and the smuggling of migrants are serious forms of transnational organised crime. They are illicit

⁸² Opinion given by Ilka Schröder on the *Proposal for a Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities*, COM (2002) 71 – C5 – 0085/2002 – 2002/0043 (CNS), Brussels, 19 November 2002, p. 29.

activities that threaten the space of freedom, security and justice that the European Union has guaranteed to its citizens with the Treaty of Amsterdam. The repression of these crimes is just one of the responses of the Union. The European institutions – as well as the international community and many states – are aware of the need for an approach based on three pillars and encompassing, besides repression, measures for the prevention of trafficking and smuggling and for the protection and assistance of victims.⁸³

This section illustrates intervention by the Union in this sector by analysing: 1) the policy developed within the Union for the prevention of organised crime; 2) the preventive measures contained in the Global Plan for the fight against illegal immigration and the trafficking of human beings within the European Union; and 3) the Union's strategy regarding prevention of the trafficking in women and support for victims.

7.2.1 The prevention of organised crime

Since 1997, the European Union has developed a policy for the prevention of organised crime. In 1997 the Action Plan adopted by the Amsterdam European Council called for evaluation of the preventive instruments used to support law enforcement.⁸⁴ Article 29 of the Treaty of Amsterdam introduced the prevention of crime as one of the policies of the Union contributing to the creation of a "space of freedom, security and justice".

On 21 December 1998, the Council adopted a *Resolution on the prevention of organised crime*.⁸⁵ The objective was to establish measures for the prevention of the crime at international level. Those most significant for the purposes of this analysis were:

- implementation of prevention programmes and the undertaking of educational action;
- adoption of instruments, such as codes of conduct, by professions that may be subject to corruption;
- conduct of awareness-raising campaigns on the causes, risks and consequences of crime;
- the creation, at regional and local level, of structures for the study of problems related to crime;
- exchange among the Member States of all new information obtained from scientific investigation or from experiences and practical evaluations; moreover, the Council foresees that such exchange may be institutionalised by the designation of national contact points;
- definition, in collaboration with the Commission and Europol, of common methods of prevention.

⁸³ Commission of the European Communities, *Common Policy on Illegal Immigration, Communication of the Commission to the Council and to the European Parliament*, COM (2001) 672, Brussels, 15 November 2001, p. 10. See A.A. Aronowitz, "Smuggling and Trafficking in Human Beings: the Phenomenon, the Markets that Drive it and the Organizations that Promote it", in *European Journal of Criminal Policy and Research*, vol. 9, no. 2, pp. 185-190.

⁸⁴ Action Plan adopted by the Amsterdam European Council on June 1997.

⁸⁵ Official Journal C 408, 29 December 1998.

The resolution articulates the actions to be taken in three sections: 'strategy', 'knowledge and experiences' and 'implementation'. In the 'strategy' section the Member States are invited to develop national programmes to combat organised crime, drawing attention to prevention and exchange of information on the subject. In the section on 'knowledge and experiences' the Member States are required to set up research programmes on the subject or to use community programmes. The section on 'implementation' recommends that Member States prioritise the rapid implementation of effective prevention measures.

On 27 March 2000, as a final follow-up to the Amsterdam Action Plan, the Council adopted the Strategy of the European Union for the beginning of the new millennium on the prevention and control of organised crime.⁸⁶ This document envisaged various forms of prevention, in particular affirming the need to:

- develop and/or improve systems for the gathering and analysis of data on organised crime (rec. 1);
- create systems able to prevent penetration of organised crime into the public and legitimate private sectors (recs. 2, 3, 4 and 5);
- establish partnerships with the private sector and create system of legislative crime proofing (rec. 6). This involves the creation of mechanisms that anticipate the preventive reaction to the moment when provisions are drafted. This is necessary because provisions may sometimes unintentionally create criminal opportunities, making the commission of an offence more lucrative or less risky. Necessary as a consequence is, during the legislative process, to insert instruments which test law bills against the crime, in order to ensure that they do not unintentionally provide incentives for its commission;
- improve cooperation with applicant countries and third states (recs. 32, 33 and 36).

On November 2000, the Commission presented a Communication on the prevention of crime in the European Union to the Council and the European Parliament⁸⁷ which set out a global strategy to be pursued against both common and organised crime. Prevention was defined as "all activities which contribute to halting or reducing crime as a social phenomenon, both quantitatively and qualitatively, either through permanent and structured cooperation measures or through *ad hoc* initiatives". Actions aiming at preventing crime should:

- reduce the opportunities for crime;
- reduce the social and economic factors which foster the growth of crime;
- provide information and protection for victims and prevent victimisation.

The strategy of the Union should be articulated in three points:

- improve understanding of crime through the sharing of national experiences and practices;

⁸⁶ Council of the European Communities, *The Prevention and Control of Organised Crime: a European Union Strategy for the Beginning of the New Millennium*, cit.

⁸⁷ Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament – The Prevention of Crime in the European Union – Reflection on Common Guidelines and Proposals for Community Financial Support*, COM (2000) 786 final, Brussels, 29 November 2000.

- develop cooperation and networking by those involved in prevention at all levels;
- promote a multi-disciplinary approach.

A key element in the strategy proposed by the Commission is the establishment of a European Forum on the prevention of organised crime which pays particular attention to prevention of the trafficking of women for the purpose of both labour and sexual exploitation. The general task of the Forum is to promote forms of collaboration among the diverse actors concerned with prevention (law enforcement agencies, social workers, judicial authorities, immigration agencies, NGOs, international organisations).

Recently, on 13 March 2001, the European Commission and Europol published a joint report entitled *Towards a European Strategy to Prevent Organised Crime* which defines "organised crime prevention" as "any means other than the enforcement of criminal law that reduces the opportunities for, damage caused by, profit from and fear of what has been defined as organised crime".⁸⁸

7.2.2 The comprehensive Plan for combating illegal immigration and the trafficking in human beings

Some preventive measures against trafficking and smuggling are set out in the already mentioned *Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*.⁸⁹ In order to define a common and integrated approach, the Plan identifies the actions and instruments to be developed and implemented for the prevention and combating of illegal immigration in seven sectors. Those that are not criminal in nature are:

1. Visa policy

The Plan envisages a uniform format for visa and related security rules (nos. 26–27) and increased cooperation among the Member States' diplomatic and consular representations in the countries generating migratory flows. The final goal is to establish joint visa offices or infrastructures in those countries (nos. 28–33).

2. Information exchange and analysis

It is necessary to provide the Member States with "statistical data reliable enough to analyse at regular intervals both legal and migratory flows and illegal immigration" (no. 43). It will also be essential to "[develop] a European system for exchanging implications in the countries of destination" (no. 46).

3. Pre-frontier measures

The utmost support should be given to liaison immigration and airline officers in countries of transit and origin (nos. 50–52). Moreover, it is necessary to support targeted measures in countries of origin and transit (no. 53). This entails giving

⁸⁸ Commission of the European Communities, *Towards a European Strategy to Prevent Organised Crime. Joint Report from Commission Services and Europol*, SEC (2001) 433, Brussels, 13 March 2001, p. 7.

⁸⁹ Council of the European Communities, *Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*, Brussels, 27 February 2002.

appropriate technical and financial support to actions in those countries, with targeted projects in the following sectors:

- support to asylum-seeker infrastructures;
- establishment of reception centres for illegal immigrants in transit countries;
- awareness-raising campaigns;
- improvement of document security;
- fight against corruption;
- deployment of liaison officers;
- expert meetings, training and seminars;
- supporting returns of irregular migrants;
- improvement of border control management and equipment (no. 54).

Awareness-raising campaigns should be carried out within the framework of pre-frontier measures. "The concept of information campaigns as such should be interpreted in a broad sense. Initiatives aimed at raising awareness among the public at large of the problems and risks related to illegal migration could be considered, as well as concentrated initiatives targeted at specific groups such as the unemployed, women or student" (no. 56). "Given that the preparation of information campaigns, both by the European Union and by Member States, requires a tailor-made solution for each country of origin or even region, and furthermore, since the cultural dimension is a fundamental element of such campaigns, their elaboration has to be conducted carefully in a way which ensures that the campaign has the desired effect on the target region and audience" (no. 57).

4. Measures relating to borders management

According to the Plan, "high-standard external border controls" must be set up (no. 58), together with "appropriate legislative and/or operational initiatives at European level aimed at improving sea border controls" (no. 63). Moreover, an endeavour should be made to harmonise the training of border guards (no. 65). Finally, "measures should be adopted to develop and intensify practical cooperation and coordination of border checks and surveillance and to analyse the need for and the viability of a common external border unit" (no. 68).

5. Readmission and return policy

The objective is to establish a joint approach/cooperation among the Member States of the European Union for the implementation of return measures (nos. 71–74). Identification must be made of "the third countries with which new readmission agreements need to be negotiated and concluded [...], and common measures adopted aimed at ensuring that such countries fulfil their measures obligation to readmit their own nationals in accordance with the rules already established under international law. These agreements should also include an obligation to readmit third-country nationals and stateless persons coming from or having resided in the country concerned" (n.77). Also recommended is the establishment in all the Member States of common standards for return procedures (no. 81).

7.2.3 The prevention of trafficking and support for victims

In regard to the trafficking of women, the European Union has adopted a variety of preventive actions, both specific and general, and it has also addressed the problem of providing support for victims. This section deals with: a) the results of the European Forum on the prevention of organised crime in regard to the prevention of trafficking in women; b) the campaigns for prevention, and to support NGOs; c) the measures adopted to tackle the problem of sexual discrimination and to promote equality between men and women in the Union and in the countries of origin; d) the measures adopted to tackle the unemployment and poverty that sustain the trafficking of human beings in the applicant States; e) the measures adopted to support and protect victims.⁹⁰

A) THE RESULTS OF THE EUROPEAN FORUM ON THE PREVENTION OF ORGANISED CRIME AND THE PREVENTION OF TRAFFICKING IN WOMEN

The European Forum, whose creation was proposed by the Commission in its *Communication from the Commission to the Council, the European Parliament – The prevention of Crime in the European Union*, has already been mentioned. Some of the Forum's activities centre on the prevention of trafficking in women for the purpose of labour and sexual exploitation.

On 17 and 18 May 2001, the Forum held a *Workshop on Application of the Concept of Prevention to Trafficking in Human Beings*,⁹¹ the conclusions of which reaffirmed the need to:

1. improve understanding of the phenomenon, particularly as regards its recent trends. Developing efficient measures to prevent trafficking requires improved data and research on the character and scale of trafficking. Evaluation should be made of the economic impact of this illicit activity, considering also the profits made by the traffickers and the role of the trafficking in the underground economy;
2. develop a multi-disciplinary approach;
3. develop assistance policies in favour of victims. Re-establishing the human dignity of a victim is a long process that includes different aspects and concerns authorities in a number of countries. It is necessary to ensure that victims have the security, psychological support and training necessary to lead a different life. A significant role in this respect is played by the exchange of experiences with social workers and other professionals in both the countries of origin and transit.

⁹⁰ The following information is official and is available at the website of the European Commission. In this regard, see Commission of the European Communities, *Trafficking in Women. The Misery Behind the Fantasy: from Poverty to Sex Slavery. A Comprehensive European Strategy*, available at http://www.europa.eu.int/comm/justice_home/news/8mars_en.htm.

⁹¹ Commission of the European Communities, Directorate-General Justice and Home Affairs, European Forum on Prevention of Organised Crime, Workshop on Application of the Concept of Prevention to Trafficking in Human Beings, *Minutes and Summary Conclusions of the Chairperson*, Brussels, 17–18 May 2001.

On 30 October 2001, the Forum held a further *Workshop on Application of the Concept of Prevention to Trafficking in Human Beings*⁹². The conclusions of this workshop affirmed the importance of:

1. promoting the participation of NGOs in strategies for the prevention of the phenomenon and the social reintegration of victims. The NGOs are privileged observers and possess information, both local and international, essential for developing preventive strategies and for socially rehabilitating victims;
2. promoting cooperation among NGOs, law enforcement agencies, national immigration and visa offices, and other social services in order to develop early warning systems. These systems should help detect conditions that may signal situations prone to trafficking. Early warning systems should also be developed in the legislative field, in order to identify provisions that may create opportunities for the commission of trafficking offences;
3. providing regular training for the various professions concerned;
4. drawing up methodologies/protocols at Union level for the gathering of qualitative and quantitative information on trafficking and developing databases that contain useful data comparable among Member States.

B) PREVENTION CAMPAIGNS AND SUPPORT FOR NGOS

The European Union supports the creation and development of NGOs engaged in the fight against trafficking in human beings. The objective is to sustain agencies able to complement the role of the public authorities. An example is the funding in 1996 of the NGO "La Strada" to encourage the prevention of trafficking in women in Central and Eastern Europe.

The Union also supports information campaigns intended bring the problem to the attention of the public and the authorities, as well as initiatives to furnish legal and medical support for victims and to warn women of the perils of trafficking.

The Union directly finances programmes for the protection of victims in countries of origin and transit.

C) MEASURES ADDRESSING DISCRIMINATION AND GENDER EQUALITY IN THE EUROPEAN UNION AND IN THE COUNTRIES OF ORIGIN

The Commission has included the promotion of gender equality in civil life in its framework strategy for the period 2001–2005. The goal is to guarantee the full enjoyment of human rights and fundamental freedoms, with particular attention paid by the Commission to women subject to discrimination or violence and/or sexual exploitation.

⁹² Commission of the European Communities, Directorate-General Justice and Home Affairs, European Forum on Prevention of Organised Crime, II Workshop on Application of the Concept of Prevention to Trafficking in Human Beings, *Minutes and Summary Conclusions of the Chairperson*, Brussels, 30 October 2001.

In this regard, the Commission supports various initiatives, such as:

- training in equality legislation for the legal professions, labour inspectorates, social partners and NGOs in the EU and in the candidate countries;
- research and data collection on the gender dimension of health and safety at the work place.

One of the cornerstones of the European strategy is the development of structures to promote the implementation of gender equality policies in the candidate countries.

D) MEASURES ADDRESSING THE UNEMPLOYMENT AND POVERTY WHICH FUEL TRAFFICKING IN THE CANDIDATE COUNTRIES

The Commission is preparing the candidate countries for the progressive implementation of the European Employment Strategy and the various social provisions currently applicable at EU level. The intention is to enhance the prevention of trafficking in human beings by reducing socio-economic differences with respect to the fifteen current Member States of the Union.

The process divides into two phases:

1. review of employment policies in the candidate countries and the characteristics of their labour markets. The candidate countries must devise measures which enable their employment policies to address structural problems in their labour markets. Particular attention is paid to female labour-force participation;
2. the drawing up, in co-operation with the Commission, of national strategies for employment and human resources development, including policy responses to many of the challenges identified in the first phase.

The European Social Fund, which financially supports the European strategies for employment and social inclusion, will be available to the candidate countries on the day of their accession. In the meantime a Special Preparatory Programme is being run by the European Training Foundation (ETF) to prepare the candidate countries in the use of the Fund.

E) MEASURES TO SUPPORT AND PROTECT VICTIMS

NGOs and health and social services play an important role in assisting victims gradually to resume a normal life. The assistance must consist not only of safe reception and rehabilitation centres protecting victims against their exploiters, but also confidential medical, social and psychological care and legal assistance. Further support is also often required for social reintegration, job training and the repatriation of victims.

These objectives have been and will be supported by the European programmes, which over time have:

- provided assistance to victims through NGOs;
- supported a number of innovative transnational projects for the rehabilitation and social reintegration of victims;
- developed NGO networks and their mutual cooperation as well as with the public authorities.

On March 2000, the Lisbon European Council invited the Member States to use the Structural Funds to combat poverty and social exclusion and to develop actions targeted on specific groups. Italy, for example, within the scope of the PON Security Programme, is using the European Social Fund to combat trafficking and to provide support for victims.

8.

TRAFFICKING AND SMUGGLING IN EUROPE

Migration is an old and complex problem from both the social and criminological points of view. At European level, attempts have been made to define the phenomenon of human migration by identifying particular cases, principal among which are the following:

- legitimate/legal migration and asylum seeking;
- illegal migration, irregular or without identity or travel documents;
- illegal organised immigration;
- trafficking in persons.

Illegal immigration and trafficking in persons are the most important categories within the context of socio-criminological analysis, and both are increasing in Europe. According to Europol data,⁹³ illegal immigration has grown in some Member States of the European Union especially, notably Spain and Italy. However, the preferred destination countries are still Austria, Belgium, the Netherlands, Sweden and Great Britain. By contrast, precise determination of the most recent trends in person trafficking in persons is not possible. This is because the victims are regularly moved from one Member State to another, so that it is difficult to identify the preferred destination countries. However, Germany, the Netherlands, Belgium and France seem to be more vulnerable than others.

These considerations highlight that trafficking in persons and the smuggling of migrants are growing at worrying rates not only within individual countries but also at the level of the European Union.

A recent improvement notwithstanding, statistics on illegal immigration and trafficking are still insufficient, both in the European Union and elsewhere. Little is known about the number of those who migrate illegally with the help of traffickers, or about the number of persons at the service of the criminal groups engaged in the smuggling. The situation is even more serious when one seeks to obtain information on the number and characteristics of the victims of smuggling and trafficking, for example women and children, asylum seekers, and so forth. The most detailed information on the characteristics of victims is that provided by the International Migration Organisation (IMO), which carries out periodic surveys on the phenomenon.⁹⁴ Moreover, as highlighted by the relevant literature,⁹⁵ there are no estimations of the extent and nature of smuggling.⁹⁶ Complaints about the lack of statistic data and calls for research to remedy these shortcomings are constantly

⁹³ Europol, *2000 EU Organised Crime Situation Report*, 2001, available at <http://www.europol.eu.int/index.asp?page=EUOrganisedCrimeSitRep2000>.

⁹⁴ IOM, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, IMO Migration Research Series, No. 11, Geneva, September 2002; IOM, *Victims of Trafficking in the Balkans. A Study of Trafficking in Women and Children for Sexual exploitation to, through and from the Balkan Region*, cit.; IOM, *Migrant Trafficking in Europe: A Review of the Evidence with Case Studies from Hungary, Poland and Ukraine*, cit.

⁹⁵ B. De Ruyver, W. Van Eeckhoutte, J. Meese, K. Van Impe, and S. Vanheste, *op. cit.*

⁹⁶ IOM, *Victims of Trafficking in the Balkans. A Study of Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region*, cit., pp. 1–8.

present in the documentation on trafficking and smuggling. The data made available by countries concerned with these problems are often managed by different agencies and organisations, gathered with different methods and at different times, and using different terminologies. As a consequence data are not even comparable within the same country, let alone with those of other countries. Not surprisingly, therefore, there is strong international demand for the establishment of a centralised database to enable information exchange.⁹⁷

A study conducted in 1998 by the IOM on the *Analysis of Data and Statistical Resources Available in the EU Member States on Trafficking in Humans*⁹⁸ confirmed those worries. The main source of information is the police, followed by immigration authorities (including the frontier police), a finding which shows that trafficking is considered to be a criminal problem, so that data are collected in accordance with this view. Moreover, the results of the study highlight the paucity of the available data on trafficking: only 11 of the 25 countries consulted declared that they possessed statistics on the number of sentences for trafficking offences.

When addressing the problem from an operational point of view, it is crucial to distinguish between trafficking in persons and the smuggling of migrants. Although this is possible in the literature and in the law, in practice the two categories often overlap.⁹⁹ Though different in nature, trafficking and smuggling are similar in their practical methods for recruitment, transport, and entry into the foreign country. The feature that distinguishes them is the fate of the victims: that is, the exploitation to which the persons involved in the trafficking are subject. Aside from this feature, there are no others that can be related exclusively to one or other of the two phenomena.

This similarity is most evident when the causes that give rise to the trafficking and smuggling have been established. Europol¹⁰⁰ distinguishes two main categories of factors: those that induce recourse to trafficking and smuggling services (*push factors*) and those that make the destination countries attractive (*pull factors*). The push factors¹⁰¹ include:

- dissolution and disintegration of multicultural countries, accompanied by ethnic and religious conflicts;
- increase in natural catastrophes, the progressive destruction of the major ecosystems and the related global warming consequent on the industrial economic system;

⁹⁷ IOM, *Migrant Trafficking in Europe: A Review of the Evidence with Case Studies from Hungary, Poland and Ukraine*, cit.

⁹⁸ IOM, *Analysis of Data and Statistical Resources Available in the EU Members States on Trafficking in Humans, Particularly in Women and Children for Purposes of Sexual Exploitation. A Project of the International Organization for Migration (IOM) for the European Commission's STOP Programme*, cit.

⁹⁹ IOM Bishkek, *Research on Trafficking in Migrants (Kyrgyz Republic, 1999)*, IOM, Bishkek, 2000; and UNICEF, UNHCHR and OSCE-ODIHR, *Trafficking in Human Beings in South-Eastern Europe*, UNICEF, Belgrade, 2002.

¹⁰⁰ Europol, *Organised Illegal Immigration Into the European Union*, Europol, 2002, available at http://www.europol.eu.int/index.asp?page=publ_illegalimmigration.

¹⁰¹ For in-depth analysis of emigration push factors, including their identification by means of multiple regression analysis, see M. Bales, "What Predicts Global Trafficking?", report presented to the UNICRI International Conference on *New Frontiers of Crime: Trafficking in Human Beings and New Forms of Slavery*, Verona, 22–23 October 1999.

- discrimination;
- political instability and wars, continuing armed conflicts (including civil wars);
- economic situation;
- uncontrollable demographic growth;
- differences between demographic and economic growth;
- impoverishment, as a result of the failure of social welfare systems.

The pull factors, by contrast, make the EU Member States desirable for migrants, who seek to reach them and then live in them. They include:

- shortage of labour;
- comprehensive social security;
- positive economic situation;
- democratic government systems, political and social stability;
- historical links;
- common language;
- communities already existing *in loco*;
- expectations.

Among the causes of smuggling, the International Migration Organisation adds the globalisation of transport, markets and labour, and above all, in respect to the trafficking in women for the purpose of sexual exploitation and the socio-economic inequality suffered by the women in their countries of origin.¹⁰² All these factors concern supply. However, some observers highlight the role played by demand.¹⁰³

In the past decade the supply of and demand for trafficking and smuggling in Europe¹⁰⁴ seem to have increased. Simple market forces can be understood in this context as being the origin of the problem. In the destination countries the demand for cheap labour and sex is always present, whilst in the countries of origin ever present is the desire for a better life. Demand and supply are thus guaranteed; and organised crime's sole concern is to match them.

Organised crime is a crucial factor in the organisation and management of trafficking and smuggling in Europe. Most of the Member States have reported that these activities are carried out by a combination of foreign and local criminal organised groups which work closely together. The foreign organisations attend to recruitment in the countries of origin, whilst the local ones exploit their links with the local criminal environment to maintain access to the sex industry and to the irregular or 'black' labour market. However, not to be excluded are connections

¹⁰² IMO, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, cit., p. 23.

¹⁰³ Demand at the level of clients, especially in case of prostitution, has been little studied at European level. Study of this kind would make it possible to establish whether and how demand affects supply. For thorough examination of this matter see J. O'Connell Davidson, J.E. Sanchez Taylor, *The Informal Tourist Economy in the Caribbean: Gender, Race and Age*, Final Report to the Economic and Social Research Council, 2001; L. Keeler, M. Jyrkinen (eds.), *Who's Buying: The Clients of Prostitution*, Council of Equality, Ministry of Social Affairs and Health, Helsinki, 1999.

¹⁰⁴ IMO, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, cit., p. 26.

with the legal business world,¹⁰⁵ although the latter is not always aware of the illicit nature of the activities proposed by criminal groups.

According to Stulhofer and Raboteg-Saric,¹⁰⁶ the agents of the process of trafficking for the purpose of exploitation are:

1. *Organisers* belonging to the criminal network;
2. *Emissaries*, who work in particular places and are responsible for individual phases. They usually entrust specific tasks to persons that do not belong to the criminal network;
3. *Managers* working in the sex market;
4. *Logistical support* provided by persons with positions/offices in the public administration, law enforcement and similar agencies, who may provide information and legal documentation useful for circumvention of legal obstacles;
5. A further form of *logistical support* furnished by taxi drivers, hotel managers, landlords, and so forth.

However, Europol¹⁰⁷ has recently stressed that in the particular case of trafficking for the purpose of sexual exploitation, criminal coalitions between foreigners and locals are being replaced by more integrated networks. This new organisational structure is based on a broader criminal network which manages the entire smuggling process, superseding the strict divisions of roles for each individual phase (recruitment, transport, entry, sale and exploitation) typical of the traditional management method. In this new scenario, the vertical hierarchy gains greater importance, and so does the horizontal division of labour. Specialised groups or individuals are responsible for the various aspects of the activity in the country of origin (recruitment, documents, etc.) and destination (allocation in the market, control, collection of profits, etc.). Trust and flexibility are therefore crucial, and they also enable a proactive approach by criminal groups, which are easily able to overcome obstacles but also grasp opportunities offered by the market.

But what form do the phases of trafficking and smuggling actually take?

To be stressed first is that, generally, each individual phase takes place in a particular place. Specifically:

- recruitment takes place in the victims' countries of origin;
- transport involves various countries and locations, depending on the origin and destination, as well as the route chosen;
- exploitation usually takes place in the country of destination, although it may sometimes occur during the transport phases.¹⁰⁸

¹⁰⁵ Business organisations are involved as follows: employment and matrimonial agencies in the recruitment phase; travel agencies in the transport phase; and a wide range of other legal operators, such as firms, building societies, manufacturing and crafts firms, night-clubs, taxi drivers, landlords, in the exploitation phase.

¹⁰⁶ A. Stulhofer, Z. Raboteg-Saric, *Sex Trafficking in Croatia: An Assessment Study*, IOM, Geneva, 2002.

¹⁰⁷ Europol, *Crime Assessment – Trafficking of Human Beings into the European Union*, Europol, 2002, available at http://www.europol.eu.int/index.asp?page=publ_crimeassessmentTHB.

¹⁰⁸ For thorough examination of this subject see IOM, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, cit., pp. 34–36.

As regards recruitment, a distinction must first be drawn between trafficking and smuggling. Those who decide to emigrate using the services of criminal groups take the decision voluntarily. In return for payment (usually in advance), the migrants are transported to the chosen destination, where they are left free to continue their journeys as they wish. The case of victims intended for exploitation is obviously different. The 2001 Europol Report¹⁰⁹ on trafficking in persons identifies three types of victim in relation to the recruitment method used:

- *Exploited victims.* These are women who have already worked as prostitutes in their home countries. They are usually approached in night clubs, being offered an opportunity to do similar work abroad. The greatest inducement offered is the mirage of much higher earnings in the wealthy Western countries. Only when they arrive in the West do the girls become aware of the slave-like conditions in which their exploiters will force them to work. These victims are usually poorly educated and come from dysfunctional families. This category comprises the largest number of trafficking victims;
- *Deceived victims.* These are women who have been recruited to work in the West, mainly in the service or entertainment industries. No mention is made to them of the sexual services that they will actually perform. The criminal organizations contact their potential victims in the guise of (legitimate) employment agencies. The contact comes about through advertisements in local newspapers or on the Internet, to which the victims reply. The victims in this category are better educated and more ambitious;
- *Kidnapped victims.* This is the smallest group. These are persons who already work in the sex industry but do not want to leave their countries. Regarded as chattels by their exploiters, they are subjected to the worst treatment, repeatedly sold among criminal groups or individuals, and treated as sex slaves.¹¹⁰

Traffickers in persons and smugglers of migrants tend to adhere to certain major routes, although there is a certain flexibility in the selection of these due to contingent circumstances and the need to exploit all possible advantages. The development of the sex market in particular areas, as well as the need to obtain visas, the length and permeability of borders, existing links among smuggling networks, and the efficiency of local law enforcement¹¹¹ induce smugglers to use some routes rather than others.

The most recent routes to the European Union are the following:¹¹²

¹⁰⁹ Europol, *Crime Assessment – Trafficking of Human Beings into the European Union, cit.*

¹¹⁰ A recent report by Save the Children emphasises the danger to Albanian girls living in the countryside, who are often kidnapped on their way to school (see D. Renton, *Child Trafficking in Albania*, Save the Children in Albania, Tirana, March 2001).

¹¹¹ An example is provided by a recent Croatian study which pointed out that, because of the strengthening of controls by law enforcement agents, the traditional entry route through Hungary has been replaced by the route to Bosnia–Herzegovina. This change has been associated with the geographical enlargement of the sex market in Croatia, which has moved from the capital to tourist areas and military bases. See A. Stulhofer, Z. Raboteg–Saric, *op. cit.*

¹¹² Europol, *Crime Assessment – Trafficking in Human Beings into the European Union, cit.*

Baltic route

From the internal Russian regions and the Balkan countries to (their) coasts, then by ship to the Scandinavian countries. There is also an overland passage, although it is limited, which entails direct entry into Finland and northern Sweden.

Eastern Europe route

From Eastern Europe passing through Poland, Hungary, Czech Republic, arriving first in Germany and then in Scandinavia. This route is the last stage of the journey by migrants arriving by air from Eastern Asia, Africa and South America.

Central Europe route

From the countries of Central Europe, entering Austria and northern Italy. This route entails the use of roads or bus lines connecting the capitals of Eastern Europe with the main towns and cities of the European Union, especially in its Eastern part.

Balkan route

From the Balkan countries, including Moldavia and Bulgaria, entering the European Union via Italy and Greece. In the former case small ships are used to transport migrants across the Adriatic Sea, while in the latter unpatrolled borders are used.

African route

From the West African countries through Morocco and/or Algeria. Arrival in the European Union is achieved by passing across the Straits of Gibraltar into Spain and Portugal. This route is also used as the final stage of the journey for victims from the East, certain areas of Africa and Latin America. Particular attention should be paid to Nigeria, one of the main origin countries of trafficking in persons for the purpose of exploitation. The Nigerian girls follow air routes from the big cities in their country (Lagos, Benin City) to the main European airports (Paris, Berlin, Amsterdam, Milan, Rome).

Besides these entry routes into the European Union there are internal ones used for transfers to places of destination. This phase is less risky, because the free movement of persons – provided by the internal free market and affirmed by the Schengen Agreement – allows any person on the territory of the Union to freely move within the Union itself. In general, it is clear from the reports presented by the EU Member States to Europol that countries from which the internal routes start are mainly Greece, Italy and Spain, whose maritime borders are difficult to patrol and more easily crossed. However, these countries are primarily staging posts towards other destinations in Northern Europe, primarily Belgium, France, and the Netherlands, from which the journey continues by land to the Scandinavian countries, or by train or ship to Great Britain across the English Channel.

Victims who enter the European Union by land across the Austrian and German borders then follow the same internal routes.

There is then the complex network of transfers that take place after arrival by air in the Union. Capital cities are the preferred direct destinations, because controls are more lax in large airports, and it is also easier to find corruptible officials. Transfers are then made from these cities to the final destinations by means of public transport or car.

A distinctive aspect has been reported by Spain, where the majority of South American women arrive after passing through the Netherlands.

Only when the victim arrives at the destination is it possible to determine whether trafficking or smuggling is involved. In the case of smuggling, the migrants are left free to continue their journeys on their own. If, on the other hand, the victims are not freed but kept because they have a debt to repay and are exploited, this is a case of trafficking. The fate of the victim is, however, already decided at the moment of recruitment.

Finally, in regard to exploitation, its most widespread form in Europe is prostitution. Almost all the victims are relatively young women, who once lured into the sex industry, are introduced into one of the two existing types of prostitution:

- outdoors on the streets; or
- indoors in brothels, apartments, hotels, motels, night clubs, beauty or massage parlours.

The male victims of the trafficking tend to be used as irregular labour in commercial firms operating mainly in construction, agriculture and manufacturing. Collusion with large firms is also possible.¹¹³

Besides these widely known and typical forms of exploitation, also to be emphasised is the exploitation of migrants in (unpaid or underpaid) domestic work and in the domestic work deriving from marriage. In the former case, the situation is similar to the acquisition of a slave put to work for long hours in the home. This phenomenon is typical of well-off foreign families living in the Member States of the European Union, especially Great Britain. In the latter, marriage is merely a device to conceal evasion of national immigration laws: on celebration of the marriage the foreigner obtains citizenship and is subsequently exploited in one of the ways described above.

Separate mention should be made of the trafficking in children for exploitation in the sex market and the irregular labour market. The problem mainly concerns kidnapped children or those sold by their poor families, or taken away from orphanages in Eastern European countries. After being trafficked into the Western countries and appropriately trained, they are used to beg in the streets or put to work as pickpockets.

A final aspect to be considered concerns the profits accruing from trafficking and smuggling. Although precise quantification of these profits is not possible, it seems that the activities are quite remunerative.¹¹⁴ This assumption can be made on the basis that organised crime always pursues profits, in the absence of which it would undertake other activities.

Notwithstanding the lack of precise financial data provided by Member States, it is likely that criminal organisations are constantly in search of methods and mechanisms to launder the large proceeds deriving from the trafficking in persons and the smuggling of migrants. These incomes principally take the form of cash,

¹¹³ For example it has been argued that the international fashion houses make significant profits from the use of underpaid labour.

¹¹⁴ For an estimate of turnover by traffickers and smugglers in Spain, Italy and Finland see Transcrime, *MON-EU-TRAF. A Pilot Study on Three European Union Immigration Points for Monitoring the International Trafficking of Human Beings for the Purpose of Sexual Exploitation across the European Union, Final Report*, Trento, April 2002.

which is an immediately acceptable means of exchange and is less easy to trace. Some hypotheses regarding the methods and mechanisms of proceeds laundering have been formulated by Europol.¹¹⁵ Proceeds may be:

- reinvested in order to finance the criminal organisation itself and its business;
- used to finance other illicit activities in which the criminal organisation is involved;
- cleaned through the channels traditionally used to launder the proceeds of crime.

The mere use of hypotheses, even though formulated by such an authoritative source as European law enforcement, underlines that there is still a lot of work to be done in the field of financial investigations.

In the light of the information available, it is clear that the trafficking in persons and the smuggling of migrants are still crucial problems. Insufficient importance has been given to the phenomenon to date, at either the level of the European Union or that of the Member States. The push and pull factors have been underestimated, and at present there is no evidence to suggest that they will be any less important in the future. Moreover, legislative, administrative, managerial, investigative and suppressive responses by the competent authorities have not been adequate to requirements. Significant in this regard is the lack, even internally to Member States, of a definitive strategy to combat these crimes.

On the basis of the quantitative and qualitative information gathered, the guidelines formulated by Europol for a joint European action against the smuggling and the trafficking suggest the following:

- formulate national policies which combat the phenomenon and at the same time comply with the strategy drawn up by the European Union;
- exploit the vulnerabilities identified in the *modi operandi* of criminal organisations;
- develop a systematic approach to the gathering of updated information on smuggling and trafficking.

¹¹⁵ Europol, *Crime Assessment – Trafficking of Human Beings into the European Union*, cit., p. 17.

9.

TRAFFICKING AND SMUGGLING IN ITALY

The trafficking of persons for the purpose of exploitation and the smuggling of migrants have considerably evolved in Italy since the 1990s.

Italy is particularly affected by these phenomena because it is one of the most important countries of both destination and transit: "its geographical position and the instability characterising all the countries close to the Balkan area, make it both a suitable final destination and a transit point for illegal flows directed towards other European countries. Italy, indeed, represents, together with Germany and Austria, the Eastern border of the European Union [...] and the maritime border both with the Balkan countries and the southern shore of the Mediterranean Sea".¹¹⁶

This chapter summarises and discusses the main characteristics of trafficking and smuggling in Italy, using the results of recent research as its basis.

Foreign ethnic organisations (primarily Albanian, Nigerian, Chinese, Russian and Romanian) have almost exclusive monopoly on smuggling and trafficking, although they may collude with Italian groups associated with the Mafia.¹¹⁷

These ethnic criminal groups display different levels of organisation: they may constitute real and proper criminal networks able to supply services ranging from transport to illegal entry and residence, or they may carry out only simple and isolated activities (for example, the *passeurs* who facilitate only the crossing of borders).

Illegal migration flows into Italy originate mainly from Asia (e.g. Philippines, China), the Indian subcontinent (Bangladesh, Sri Lanka), Africa (Nigeria, Ghana), Eastern Europe (Albania, Romania, former Yugoslavia, Moldavia, etc.) and the former states of the USSR. Points of entry into Italian territory are areas that, owing to their

¹¹⁶ P. Viero, "Prevenzione del traffico di esseri umani. Contributo del Ministero degli Affari Esteri", [Prevention of the Trafficking in Human Beings. A Contribution of the Ministry of the Foreign Affairs], in "Contributo dell'Italia. La posizione del Governo italiano in materia di lotta al traffico di esseri umani", [Italian Contribution. The Position of the Italian Government on the Fight against the Trafficking in Persons], report presented to the *European Conference for the Prevention and the Combat of the Trafficking in Human Beings: a Global Challenge for the 21st Century* [Conferenza europea per la prevenzione e la lotta al traffico di esseri umani: una sfida globale per il 21° secolo], Brussels, 18–20 September 2002, p. 4, available at www.iom.int.

¹¹⁷ The term "new mafias" has been coined in respect to the ethnic organisations active in person trafficking. For a thorough analysis see: Consiglio Superiore della Magistratura, *Criminalità organizzata degli stranieri e organizzazione giudiziaria* [Foreign Organised Crime and Judicial Organisation], Rome, 2000; G. Lumia, "La criminalità transnazionale: le nuove mafie" [Transnational Crime: the New Mafias], in Commissione parlamentare d'inchiesta sul fenomeno della mafia e delle altre associazioni criminali similari, *Relazione conclusiva*, IV part, approved by the Parliamentary Commission on 6 March 2001, available at http://www.axiaonline.it/sicurezza/Relazione_Antimafia/parte_quarta.htm; M.G. Giammarinaro, "Il traffico degli esseri umani e le nuove mafie" [Trafficking in Human Beings and the New Mafias], report presented to the International Conference *Il traffico di esseri umani e il ruolo della criminalità organizzata* [Trafficking in Human Beings and the Role of Organised Crime], Istituto Italiano per gli Studi Filosofici, Naples, 27–29 May 1999, Edition "La città del sole", Naples, 2000; S. Becucci, M. Massari (eds.), *Mafie nostre, mafie loro. Criminalità organizzata italiana e straniera nel Centro - Nord* [Our Mafias, Their Mafias], Edizione di Comunità, Turin, 2001.

geographical position, are vulnerable to illegal entry both by land and sea: the Italian–Slovenian border, the Adriatic coasts, and in particular the coasts of Puglia and Sicily. There are also reported cases of entry by air via both large and small airports (e.g. Fiumicino airport in Rome).¹¹⁸

The smugglers bring the migrants into the country both legally – or apparently so (e.g. using false or forged identity and travel documents) – and illegally (e.g. the so-called “journeys of hope”).

To be observed on Italian territory is trafficking of persons which falls within the category of both smuggling – that is, the mere facilitating of illegal immigration – and outright trafficking, which is aimed at exploiting the trafficked persons after their reduction to servitude. One of the most manifest instances of that the latter phenomenon is the trafficking in women for sex markets where they are treated as slaves by the exploiters and forced to work as prostitutes. The victims are also often subject to violence, both physical and psychological, and to other forms of pressure and coercion.¹¹⁹

¹¹⁸ See a recent research study by Transcrime on the trafficking of persons for the purpose of sexual exploitation in three countries of the European Union (Italy, Spain and Finland). This study has updated the data and identified current trends in the phenomenon. See Transcrime, *op. cit.*

¹¹⁹ In addition to the studies previously mentioned, the following recent Italian studies have examined the various aspects of the phenomena in question. On illegal immigration see Caritas Roma, *Immigrazione. Dossier statistico 2001* [Immigration. Statistical Dossier 2001], Anterem Edition, Rome, October 2001; DIA, “Il ruolo delle organizzazioni criminali nella gestione dei flussi di immigrazione clandestina” [The Role of Organised Crime in the Management of Illegal Immigration Flows], in *Relazione semestrale – giugno 1995*, Ministero dell’Interno, Rome, 1995; E.U. Savona, A. Di Nicola, “Migrazioni e criminalità. Trent’anni dopo” [Migrations and Crime. Thirty Years Later], in *Rassegna Italiana di Criminologia*, IX, no. 1, 1998; ISMU, *Sesto Rapporto sulle Migrazioni 2000* [Sixth Report on Migration 2000], Franco Angeli, Milan, 2001; G. Marotta, “L’immigrazione clandestina in Italia” [Illegal Immigration in Italy], in A. Coluccia (ed.), *Immigrazione. Riflessioni e ricerca*, Giuffrè, Milan, 1999; G. Sciortino, “Un’analisi dell’industria dell’ingresso clandestino in Italia” [An Analysis of Illegal Entry into Italy], in F. Pastore (ed.), *op. cit.* On trafficking for the purpose of exploitation see: P. Romani, “Condizioni della persona trafficata e mercati di inserimento” [Conditions of the Trafficked Person and Introduction Markets], in F. Pastore (ed.), *op. cit.*; G. Zincone (ed.), *Secondo Rapporto sull’integrazione degli immigrati in Italia* [Second Report on the Social Integration of Migrants in Italy], Commissione per le politiche di integrazione degli immigrati, Dipartimento per gli Affari Sociali, Presidenza del Consiglio dei Ministri, Il Mulino, Bologna, 2001. On trafficking in women and forced prostitution: M. Ambrosini, S. Zandrini, *La tratta infame. La prostituzione delle donne straniere* [The Wicked Trade. The Prostitution of Foreign Women], I Quaderni 10–Oltre, Caritas Ambrosiana, 1996; O. Benzi, *Una nuova schiavitù. La prostituzione coatta* [A New Slavery. Forced Prostitution], Ed. Paoline, Milan, 1999; Caritas Ambrosiana, *Comprate e vendute. Una ricerca su tratta e sfruttamento di donne straniere nel mercato della prostituzione* [Bought and Sold. A Research Study on the Trafficking and Exploitation of Foreign Women in the Prostitution Market], Franco Angeli, Milan, 2002; F. Carchedi, A. Picciolini, G. Mottura, G. Campani (eds.), *I colori della notte. Migrazioni, sfruttamento sessuale, esperienze di intervento sociale* [The Colours of the Night. Migration, Sexual Exploitation and Experiences of Social Intervention], Franco Angeli, Milan, 2000; IOM – Migration Information Programme (MIP), *Trafficking in Women to Italy for Sexual Exploitation*, IOM, Budapest, 1996; E. Moroli, R. Sibona, *Schiave d’Occidente. Sulle rotte dei mercanti di donne* [Slaves of the West. On the Routes of the Women Markets], Mursia, Milan, 1999; F. Olivero (ed.), *La situazione delle donne estere immigrate in Italia. Sfruttamento e traffico degli esseri umani a livello europeo ed internazionale, e canali internazionali di traffico verso l’Italia (in particolare Nigeriane ed Albanesi)* [The Situation of Foreign Women Immigrants in Italy. Exploitation and Trafficking in Human Beings at the European and International Level, and International Channels for Trafficking to Italy (in particular Nigerian and Albanian)], Turin, January 2000, available at www.torino.chiesacattolica.it/migranti/tratta.doc; PARSEC–University of Florence, *Il traffico delle donne immigrate per sfruttamento sessuale: aspetti e problemi* [The Trafficking in Immigrant Women for the Purpose of Sexual Exploitation: Aspects And Problems], 1996, available at <http://www.isinet.it/PdD/num9/vienna1.htm>.

It is worthwhile at this point to consider a number of analyses of assistance in quantifying the phenomena of trafficking and smuggling in Italy.

The experts of the Budapest Group estimate that 50% of the illegal migrants in the eastern, western and southern European countries have used the services of smugglers.¹²⁰ As regards Italy, in 1998 the Ministry of the Internal Affairs reported the presence of between 236,000 and 268,000 illegal migrants, with an incidence in the total number of foreigners present on Italian territory equal to 23–27%.¹²¹ If the data provided by the Budapest Group are taken into account, in Italy (according to the Ministry data) there were between 118,000 and 147,500 trafficked migrants present in the country in 1998.

To date, there have been few attempts in Italy to estimate the number of women victims of trafficking and no research on smuggling in the more general sense. Studies conducted by Parsec–Università di Firenze have sought to define the total number of trafficked women working as prostitutes, estimating them in 1996 as numbering between 1453–1858 (minimum) and 1942–2216 (maximum) and in 1998 at between 1103 (minimum) and 1446 (maximum).¹²²

More recently, Transcrime has proposed a quantification of both the number of women trafficked for the purpose of sexual exploitation and the turnover of traffickers and exploiters. In particular, Transcrime has produced:¹²³

- an estimate of the annual number of trafficking victims;
- an estimate of the annual turnover from the sale of the women trafficked among criminal organisations (these are profits of criminals who transfer foreign nationals from one country to another in order to supply prostitutes to exploiters in the destination countries) (*FV*);
- an estimate of the annual turnover deriving from the sexual exploitation of the women trafficked (*FS*).

The study estimated the actual number in Italy of the victims of trafficking for the purpose of sexual exploitation in the period from 6 March 1998 to 31 December 2000 at between a minimum of 7,260 and a maximum of 14,520. The average annual number of victims therefore varied (for the period from 1999 and 2000) from a minimum of 2,640 to a maximum of 5280. The estimate of *FV* for the period 1999–2000, for each year, varied from € 2,640,000–5,280,000 to € 36,960,000–

¹²⁰ B. Gosh, *Huddled Masses and Uncertain Shores. Insights into Irregular Migration*, Martinus Nijhoff, The Hague, 1998, p. 9.

¹²¹ Ministero dell'Interno, *Relazione sulla presenza straniera in Italia e sulle situazioni di irregolarità*, Rome, 1998, pp. 63–66.

¹²² F. Carchedi, A. Picciolini, G. Mottura, G. Campani (eds.), *op. cit.*

¹²³ Transcrime, *op. cit.*, pp. 54–55.

73,920,000, and the estimation of the annual FS, between 1999 and 2000, from € 380,160,000–760,320,000 to € 475,200,000–950,400,000.

10.

ITALIAN LEGISLATION AND JUDICIAL COMPETENCES IN THE FIGHT AGAINST TRAFFICKING AND SMUGGLING

The results presented in this final summary report, both quantitative in chapter 11 and qualitative in chapter 12, as well as the *de iure condendo* perspectives articulated in chapter 13, refer to the legal framework in force when this project was drafted and the relevant data gathered by the survey instruments and the interviews conducted with the prosecutors.¹²⁴ However, this legal framework has been profoundly innovated to conform with the international and European standards described in chapters 6 and 7 of this report by law no. 228 “Misure contro la tratta di persone” (Measures against Trafficking in Persons) enacted on 11 August 2003 and published in *Gazzetta Ufficiale* no. 195 of 23 August 2003, which has significantly altered the criminal law in force from both the substantive and procedural points of view, as well as reorganising the competences of the responsible offices.

Given the importance of these innovations, examination of the main changes introduced in the system for the fight against trafficking and smuggling is crucial. At the same time, without detailed examination of the law in force when the data were gathered, it would be difficult to understand the results set out in this report.

This chapter divides into two sections:

The first section (“The new law against trafficking in persons and its relationships with the United Nations Convention”) analyses the main changes made to the law while the report was being completed, comparing them against the standards adopted by the international community. Of course, this will be only preliminary analysis of the new anti-trafficking legislation, given that it came into force on 7 September 2003 and no other scientific study to support the commentary is yet forthcoming.

The second section (“The criminal law provisions referred to by the survey instruments and the interviews”) instead provides a panorama of the legal provisions in force when the data were collected and conducts more detailed examination of the criminal offences relating to the criminal phenomena in question. The majority of these provisions are still in force even after the new anti-trafficking legislation of August 2003. In order to prevent possible confusion, the legislative modifications will be spelled out in the footnotes.

The treatment has been organised in this way so that the reader can:

¹²⁴ More specifically, chapter 11 deals with the crimes connected to trafficking in persons and/or smuggling during the investigation or committal to trial phases, or for which a sentence had already been issued during the period from June 1996 to June 2001, while chapters 12 and 13 set out the results from the interviews conducted with the prosecutors working in the offices most active in the fight against trafficking and/or smuggling during the period between 8 July 2002 and 29 November 2002.

- easily interpret the results of the surveys and of the interviews conducted with the prosecutors in the light of the law in force at the time; and
- compare the results of the project with the legislative innovations introduced in the meantime.

Section I

The new law against trafficking in persons and its relationships with the United Nations Convention against Transnational Organised Crime

10.1 FROM PARLIAMENTARY BILL NO. 1255/2001 TO LAW NO. 228/2003: ORIGINS AND NEW DIRECTIONS IN THE FIGHT AGAINST TRAFFICKING IN PERSONS

Evident when reading the *travaux préparatoires* for the final version of the new anti-trafficking law (law no. 228, 11 August 2003) is the political and technical effort made across two legislatures to remedy shortcomings in the legislation on trafficking in persons. The text of the law, which was necessary to comply with the international undertakings consequent on Italy's signature to the Palermo Convention, was subject to fully four readings and a process of modification that lasted for more than two years before the text's final approval.¹²⁵

Brief consideration should be made of the *travaux préparatoires* for the recent anti-trafficking law in order to understand its rationale and the importance of a text that, although it consists of only 16 articles, nevertheless has strongly innovative content.

The draft bill tabled by a group of MPs on July 2001¹²⁶ proposed once again, albeit with minor modifications, a text already presented during the previous legislature on "trafficking in human beings", this being the expression used at the time for trafficking in persons for the purpose of exploitation.¹²⁷ The proposal was later converted into a Government bill with the same contents,¹²⁸ which was presented to the Chamber in November 2001.¹²⁹

The parliamentary and governmental documents were based on the same considerations as regards trafficking in persons: the phenomenon had grown to

¹²⁵ The text, presented to the *Camera dei Deputati* (Chamber of Deputies) by On. Finocchiaro on 9 July 2001 (doc. n. 1255), was assigned to the II Commission (Justice) and approved on 21 November 2001. It was then examined by the Senate (doc. n. 885) and approved with modifications and re-presented to the *Camera dei Deputati* on 26 February 2003 (doc. 1255-B). The *Camera* approved the modification with Consolidated Text, doc. n. 1584 (bill tabled by the government) and sent it once again for examination by the Senate (doc. n. 885-B), which approved it with further modification on 4 July 2003. After assignment to the II Commission (Justice) and its approval on 30 July 2003, the text became law on 11 August 2003 and entered into force on 7 September 2003.

¹²⁶ Parliamentary proposal for a law no. 1255, presented on 9 July 2001.

¹²⁷ See Camera Document no. 5350-A (XIII Legislature).

¹²⁸ See bill no. 1584, presented by the Government on 18 September 2001.

¹²⁹ See the consolidated text No. 1255-A approved by the II permanent Commission (Justice) on 15 November 2001.

serious proportions and there is no appropriate criminal legislation able to fill the legal gaps left by the obsolete provisions of the Code.¹³⁰ Both proposals considered this situation unacceptable in the light of the obligations undertaken by Italy both internationally by signing the United Nations Convention and its Protocols and within the context of its membership of the European Union.

These concerns gave rise to a series of provisions intended to modify those in the Code on slavery and to create the outright criminal offence of “trafficking in persons”, thereby updating the substantive law to cover criminal phenomena that were growing increasingly widespread. During revision of the text, these substantive provisions were refined and flanked by other procedural measures intended to furnish the concrete means with which to combat trafficking.¹³¹

Besides the suppressive aspects, one notes, from the first versions of the text of the law onwards, the other components in the fight against trafficking in human beings: prevention, and measures to protect the victims. The provisions concerned with these last aspects were still present *in nuce* in the text presented to the Chamber in 2001,¹³² but already evident was the intent to adopt an integrated approach to trafficking, following the direction set by the United Nations Convention and its annexed Protocols (cf. *supra* § 6.1).

In subsequent elaborations of the text, until its promulgation with the new anti-trafficking law, the guidelines laid down by the Convention were transposed from the point of view of penalties and investigations, and also from the point of view of prevention and assistance to victims.

10.2 THE NEW PENALTIES

One aspect of the reform that has most significantly affected the former scenario is the array of penalties provided for crimes related to trafficking in persons. The provisions of the Code that, with difficulty and with contrasting case-law interpretations, had been used for this purpose were profoundly innovated in order to improve the legal response to the contemporary dynamics of crime.

¹³⁰ The Supreme Court pointed out the problem regarding application with a case-law citation that identified the only rare occurrence of the crime of reduction to servitude, and mainly where the victims were under-age. For thorough examination of the various decisions, see *infra* Section II.

¹³¹ See the text modified by the Senate on 28 February 2003 and the Report of the Commission (printed doc. No. 1255-C), which introduced the following measures: sanctions against legal persons involved in trafficking, modification to the criminal procedure code in relation to competences, and the use of special investigative techniques (interceptions, under-cover activities, state's witnesses).

¹³² Articles 4-6 in the text presented to the *Camera* on November 2001 (see printed doc. No. 1255-A), provide for the use of goods confiscated from traffickers to assist, re-socialise and protect victims, as well as for the purposes of prevention. In the subsequent version of the text (see printed doc. No. 1255-B, n. 1255-C, No. 1255-D), these measures for prevention and assistance were given concrete form with the establishment of a fund for anti-trafficking measures and a special programme to assist victims consisting of cooperation initiatives, awareness-raising campaigns, and technical assistance to the countries concerned with trafficking.

In particular, the criminal offences of reduction to servitude (article 600 criminal code), trafficking and slave trading (article 601 criminal code) and conveyance and acquisition of slaves (article 602 criminal code) have been reformulated. Also defined is a criminal offence aimed at punishing the criminal groups involved in trafficking and in the crimes related thereto.

By means of the provisions set out in the first three articles of the new law, Italian legislation has responded to the need for harmonisation affirmed by the Convention against the Transnational Organised Crime and the annexed Protocol against trafficking. In particular, the lacuna regarding the offence of trafficking has been filled, so that this is now regulated in accordance with the guidelines stated by articles 3 and 5 of the Protocol.

The compliance of Italian substantive law with the text of the Palermo Convention is not limited to the repression of trafficking in persons and the problem of exploitation; it also concerns the criminal conduct related to those offences. Specific attention is paid to their possible associative aspects, with stricter treatment than that usually provided for criminal conspiracy being envisaged.¹³³ Article 5 of law 228/2003 likewise applies administrative sanctions (pecuniary and interdicting) to legal persons, companies and associations for the crimes covered by the new articles 600, 601 and 602 of the criminal code. In this respect, too, the guidelines laid down by the United Nations Convention have been followed, in that article 10 provides that the State may decide which form of liability (civil, criminal or administrative) to adopt in relation to these legal entities, provided that the sanctions are effective, proportionate and dissuasive.

10.2.1 Reformulation of the offence of “reducing to or keeping in slavery or servitude” (article 600 criminal code)

Application of the former article 600 criminal code (entitled “Reduction to Servitude”) gave rise to various difficulties for legal scholars and the courts in regard to both its application and its interpretation, and which were primarily due to the wording of the provision. This was a “concise regulation”¹³⁴ entailing problems in complying with the principle of determination of the criminal offence.¹³⁵ The new article 600 criminal code (entitled “Reducing to or Keeping in Slavery or Servitude”) gives clearer definition to the offence and provides a more detailed description of its characteristics:

¹³³ See the new paragraph 6 of article 416 criminal code, which states that “if the purpose of the association is to commit the crimes referred to in articles 601 and 602, the applicable term of imprisonment shall be from five to fifteen years as provided for by paragraph 1 [association of three or more people for the purpose of committing more than one crime], and from four to nine months for the cases referred to in paragraph 2 [that is to say, mere participation in the association]”. This is an aggravating circumstance of the basic crime consisting in criminal conspiracy and may thus be balanced with other possible circumstances of the crime. On this see G. Amato, “Dubbio aggravante per le associazioni a delinquere” [Aggravating Doubt for Criminal Conspiracies], in *Guida al diritto*, no. 35, 2003, p. 48.

¹³⁴ G. Fiandaca, E. Musco, *Diritto penale. Parte generale* [Criminal Law. General Part], Edition Zanichelli, Bologna, 2001, p. 72.

¹³⁵ See *infra* § 10.6.2.

‘Whoever exercises on another person powers equivalent to property rights or who reduces to or keeps another person in a position of persistent subjugation, forcing him/her to work or furnish sexual services or to beg, or any whatever type of activity that implies his/her exploitation, shall be punished with imprisonment for a period of between eight to twenty years.

Reduction to or maintenance in subjugation occurs when the conduct is carried out with violence, threat, deceit, abuse of authority, or by profiting from a situation of physical or psychological inferiority or a situation of necessity, with the promise or payment of money or other advantages to whomever has power over the person.

The penalty shall be increased by one third to a half if the conduct referred to in the first paragraph concerns a minor or is intended to exploit prostitution or to remove body organs from the person offended against”.

The conduct covered by the provision consequently comprises both reducing to and keeping in subjugation. Thus eliminated are any doubts arising from the previous wording of the provision, which seemed to punish only the reduction to servitude of free persons.¹³⁶ Moreover, some forms of exploitation are specified (sexual exploitation and begging), but the list is intentionally left open. This legislative technique is appropriate from the repressive point of view, for it is difficult to foresee in advance what form the exploitation may take in the future. However, it is possible to envisage interpretative problems due to the ‘completion’ of the provision by the courts, given that the wording of the provision leaves room for extensive, more or less covert, interpretation by analogy.

From the sanctionative point of view, the new article 600 criminal code provides harsher treatment for the offence of reducing to or keeping in slavery or servitude, increasing the duration of imprisonment from 5 to 15 years to 8 to 20 years. Moreover, three different specific aggravating circumstances are considered: if the offence is committed:

- against an under-age person (aged under 18 years);
- for the purpose of exploiting prostitution;¹³⁷
- for the removal of body organs.

Besides these circumstances, others (“with special effect”) are envisaged: if the offence is committed against a person under the age of 14 (article 600–*sexies* criminal code), or in the presence of specific relations of kinship, dependence, custody of a minor, or foster care, as well as abuse of power by a public official (article 600–*sexies*, paragraph 2, criminal code). In these cases, the judge may not take cognisance of possible mitigating circumstances (with the exception of those provided by article 98 criminal code for under-aged persons). This provision resembles those applied to offences committed by Mafia-type organised crime groups (article 7, legislative decree no. 152, 13 May 1991, converted into law no. 203, 12 July 1991).

¹³⁶ See Criminal Court of Cassation, section V, 1st July 2002, no. 32363 (Dimitrijevic).

¹³⁷ Should the aggravating circumstance of the exploitation of prostitution be applicable, it has been argued, article 3 of law no. 75 of 1958 should be applied. See G. Amato, “Un nuovo sistema sanzionatorio e investigativo per una lotta efficace contro la schiavitù” [A New System of Sanctions and Investigations for Effectively Combating Slavery], in *Guida al diritto*, no. 35, 2003, p. 44.

10.2.2 Reformulation of the offences “trafficking in persons” (article 601 criminal code) and “acquisition and disposition of slaves” (article 602 criminal code)

The re-worded article 601 punishes at least the following three types of conduct:

- the trafficking (by which is meant any form of transfer from the national territory or within it) of persons in the situation described by article 600;
- inducement by deceit to enter, stay within, or exit from the national territory, or to move within it, with the purpose of reducing or keeping a person in slavery or servitude;
- forcing a person by means of violence, threats or abuse of authority, or by taking advantage of a situation of psychological inferiority or a situation of necessity, or by promising money or other benefits to the person with power over the victim, to enter, stay within, or exit from the national territory or to move within it, for the purpose of reducing or keeping him/her in slavery or servitude.¹³⁸

The difference between the first of these forms of conduct and the other two is the situation of the victim. The first case occurs when the victim is already in the condition of subjugation referred to in article 600 criminal code; the second and the third cases occur when the person is free and is induced or forced to subject him/herself to the trafficking.¹³⁹ The difference from the conduct described in the new article 602 criminal code resides in the latter’s lack of reference to transfer of the victim within or out of national territory.

The differentiation among the offences envisaged by articles 600, 601 and 602 allows charges for a variety of crimes to be brought against the same person. This may happen, for example, when the trafficker of the subjugated person is the person who initially placed him/her in the state of subjugation defined by article 600. Moreover, if the trafficking has been committed by bringing an illegal migrant into national territory, this constitutes a case of concurrence with the offence provided for by article 12 of legislative decree no. 286, 25 July 1998, as amended by law no. 189, 30 July 2002 (so-called ‘Bossi-Fini Law’).

10.3 THE CHANGES TO THE CODE OF CRIMINAL PROCEDURE AND THE NEW INVESTIGATIVE MEASURES

Besides the sanctionative aspects described above, the innovations introduced by law 228/2001 also concern procedural and investigative instruments intended to facilitate the investigation and prosecution of trafficking in persons. Numerous changes have been made to proceedings and to trial procedure and, as in the case of substantive regulation, they comply with the guidelines laid down by the United Nations Convention. This concerns, for example, the introduction of special

¹³⁸ Note that the terminology used to describe trafficking in persons is to the same as that used by the United Nations Protocols on trafficking, in article 3, letter a.

¹³⁹ See G. Amato, “La condizione della vittima qualifica il reato” [The Condition of the Victim Qualifies the Crime], in *Guida al diritto*, no. 35, 2003, p. 45.

investigative techniques, such as under-cover investigation and 'controlled deliveries', but also extension of the waivers already provided for the purpose of combating organised crime and drug trafficking: for example, increased powers to intercept communications, the use of *agents provocateurs*, and extension of the rules on confiscation.

Moreover, a series of changes have been made to criminal procedure law in order to deal with the typical problems arising in the fight against the phenomena in question, such as the poor coordination of investigations and their strict time limits.

10.3.1 The changes to the criminal procedure code: jurisdiction, powers and time limits for pre-trial investigations

Article 6 letter a) and b) of the new anti-trafficking law modifies both the competences of the judicial bodies and the powers of the investigative agencies in relation to the criminal offences regarding the trafficking in persons (the new articles 600, 601, 602 and 416, paragraph 6 of the criminal code).

According to the new law, the court of first instance (*tribunale*) in its collegial form, this being the court competent for crimes punished with imprisonment for more than ten years (article 33-*bis*, paragraph 2, criminal procedure code), shall judge in *subiecta materia*. Pursuant to article 16, paragraph 1, of the new law the competence of the court as described above applies to offences committed since the entry into force of law 228/2003.

However, the most important innovations from the investigative point of view concern the powers of prosecutors. During pre-trial investigations and in legal proceedings of first instance, competence is attributed to the prosecutor's office at the court located in the district concerned. The prosecutor thus becomes a 'district prosecutor'.¹⁴⁰

The centralisation of investigations to Anti-Mafia District Divisions ("Direzioni Distrettuali Anti-Mafia") meets a need for coordination that was repeatedly emphasised by the prosecutors interviewed for this study. The innovation will also facilitate investigative coordination at the international level through action by the National Anti-Mafia Division ("Direzione Nazionale Anti-mafia"), which, as in cases of drug trafficking and organised crime, will be the agency entrusted with all information on the criminal phenomena in question. In this manner, the provisions of the Convention against Transnational Organised Crime intended to improve international police and judicial cooperation will be implemented (article 26-28 of the Convention).

Article 6, letter c of the new law also modifies the time-limits for pre-trial investigations, extending their maximum duration to two years. In this case, too,

¹⁴⁰ R. Bricchetti, "Così la competenza passa al Tribunale" [Thus Competence is Passed to the Tribunale], in *Guida al diritto*, no. 35, 2003, p. 51.

the Italian legislators have sought to meet the requests long expressed by the prosecutor's offices most active in the fight against trafficking in persons.¹⁴¹

10.3.2 The new investigative instruments: interceptions, under-cover activity, delayed arrest and seizure, penal benefits for state's witnesses, confiscation and prevention measures

Law 228/2003 enlarges the range of instruments available to the agencies investigating the trafficking in persons and related crimes, implementing most of the suggestions made by the prosecutors interviewed for this study.

'Controlled delivery' and under-cover activity are by now indispensable assets for investigations into organised crime. These techniques are specifically mentioned in article 20 of the Palermo Convention, and they also figure among other instruments against offences frequently committed by organised criminal groups, such as drug trafficking (article 97 and 98 of the consolidated text of the Law on Drugs).

These instruments, in fact, enable investigators to go beyond the final links in the organisational chain (for example, the *passeurs* in the case of trafficking in persons) and determine the structure that directs the criminal activity.

Given the usually associative nature of the crimes related to the trafficking in persons, law 228/2003 allows the prosecutor to delay the execution of precautionary measures, arrest, seizure, or police detention when this is necessary to acquire important evidence and to identify or arrest the perpetrators of the crimes envisaged by articles 600, 601 and 602 criminal code, as well as those related to prostitution *ex* article 3 of law no. 75, 20 February 1958.

The same rationale inspires the extension of the provisions of article 4, paragraph 1, 2, 4, 5, 6 and 7 of legislative decree no. 374, 18 October 2001 on under-cover activities, converted with amendment by law no. 438 15 December 2001, which provides urgent measures for combating international terrorism.

Finally, prosecutors have greater powers to use interceptions in the case of crimes covered by articles 600, 601 and 602 criminal code, as well as crimes relating to prostitution as envisaged by article 3 of law no. 75, 20 February 1958 (see article 9 of law 288/2003). In particular, the exemption already provided for offences relating to organised crime (article 13, legislative decree no. 152, 13 May 1991, converted into law no. 203, 12 July 1991) is extended to these cases as well, facilitating the use of this instrument.¹⁴²

¹⁴¹ Modifications to the assignment of investigations and the extension of their maximum time-limit have been made by addition of articles 51 to paragraph 3-*bis* and 407, paragraph 2, letter a) to the criminal procedure code. These modifications have had important consequences also regarding investigation secrecy and notification of enrolment of suspects on the relevant register, interceptions, time-limits for the beginning of prosecution, maximum duration of preventive detention, and separation of proceedings. For a thorough examination see R. Bricchetti, *op. cit.*, p. 52.

¹⁴² Article 13 of legislative decree no. 152, 13 May 1991, as converted into law no. 203 12 July 1991, provides that, in derogation to article 267 criminal procedure code, authorisation for interceptions shall be given when it is "necessary for the carrying out of investigations", not when it is "absolutely essential" as

These modifications made by the recent law on interceptions, delayed seizure or arrest and under-cover activities, satisfy needs expressed principally by prosecutor's offices operating in border areas, for which these instruments may be very helpful for the investigation and prosecution of trafficking in general (see chapter 13).

Even the best investigative operation, however, may be thwarted by the impossibility of proving the culpability of defendants during trial. This is especially a problem in cases of trafficking in persons, where it is often difficult to take depositions because of the victims' illegal presence in the country. In this regard, the role of state's witnesses (*collaboratori di giustizia*) may offer concrete assistance in the prosecution of trafficking offences. Article 11 of law 228/2003 provides for a series of penal benefits and specific protection measures intended to facilitate cooperation by persons sentenced for trafficking.¹⁴³

Further internationally recognised instruments for the fight against organised crime are those that enable the competent authorities to attack the economic interests of criminal groups. The United Nations Convention, for example, stresses the value of confiscation and seizure in articles 12 and 13, which envisage a wide array of measures to confiscate the proceeds of crime and other goods (see chapter 6).

Likewise, law 228/2003 greatly extends the scope of application of confiscation and pecuniary preventive measures (articles 7 and 16, paragraph 3). In particular, the confiscation of the *tantundem* (i.e. of goods belonging to the defendant of equivalent value) becomes "compulsory" if confiscation of the proceeds or the price of the crime is impossible. This provision is also reflected in the extension of the possibility for judges to use the provision contained in article 321, paragraph 2, criminal procedure code, concerning the preventive seizure of goods subject to confiscation.¹⁴⁴

10.4 ASSISTANCE AND PREVENTION MEASURES

Articles 12, 13, and 14 of law 228/2003 provide respectively for:

- the creation of a fund for anti-trafficking measures and to be used in financing programmes for the assistance and re-socialisation of victims, as well as for other social protection objectives as provided by article 18 of legislative decree no. 286, 25 July 1998;
- the creation of a special programme to assist victims of the offences envisaged by articles 600 and 601 of the criminal code, which provisionally provides such victims with appropriate accommodation, food and medical care;

was previously stated. In this respect, only "sufficient grounds for suspicion" are required (instead of the previous "serious" ones) and the permitted duration of interceptions has been extended.

¹⁴³ For criticism of the provision see A. Marcheselli, "Benefici penitenziari solo per chi collabora" [Penal Benefits Only for Those Who Collaborate] in *Guida al diritto*, no. 35, 2003, p. 62.

¹⁴⁴ For thorough examination of the provision see G. Amato, "Obbligatoria la confisca di profitti o beni personali" [Compulsory Confiscation of Profits and Personal Goods], *Guida al diritto*, no. 35, 2003, p. 49.

- measures to prevent the crimes of reducing to or keeping in slavery or servitude, or offences connected with trafficking in persons, by establishing cooperation among the countries involved and organising international meetings, awareness-raising campaigns, and training courses for personnel.

These provisions represent the other component in the integrated approach to the fight against trafficking in human beings. They are aimed not only at suppression of the phenomenon but also its prevention, and the protection of the victims. Law 228/2003, therefore, at least theoretically, implements the guidelines set out in the United Nations Convention against transnational organised crime (see chapter 6). Nevertheless, to be stressed is the presence in the text of the law of an imbalance between substantive and procedural provisions, formulated in detail and replete with references to national and foreign experiences of combating person trafficking, and the provision on prevention and the protection of victims, whose general principles must be further completed by legislative and administrative acts.

Section II

The criminal law provisions referred to by the survey instruments and the interviews

This section considers the criminal law provisions in force when the data for this project were gathered. Most of these provisions are still valid even after enactment of the new anti-trafficking law of 11 August 2003. In order to prevent misunderstandings, any legal change will be appropriately indicated in the footnotes.

The section examines the Italian criminal law from the twofold point of view of substantive legislation and judicial competences on trafficking and migrant smuggling offences. As regards the former offence, an overview of the main legal instruments (§ 10.5) will be provided before the relative individual offences are examined (§ 10.6). The purpose is to aid understanding of Italy's complex legislation on person trafficking and migrant smuggling. The relevant criminal offences are not, in fact, comprised in one single piece of legislation but are treated in different ones.¹⁴⁵ Referred to in particular will be the provisions set out in the law on immigration (legislative decree 286/1998 as modified by the so-called 'Bossi-Fini Law'), on prostitution (law 75/1958), on sexual assault (law 66/1996), on paedophilia (law 269/1998), and other provisions of the criminal code.

The section then deals with the individual criminal offences (§ 10.6) that, despite their different systematic locations, are linked with the criminal phenomena considered and have been directly monitored for this report. In this respect, it must

¹⁴⁵ For some time there has been political-legislative discussion on how to remedy the unwieldiness of the legislation on immigration-related crime by issuing of a systematic set of rules. This new piece of legislation would fill the existing gaps and put an effective strategy in place, complying with the guidelines set at international and European Union level. A first result has been the promulgation of law no. 228, 11 August 2003, "Misure contro la tratta di persone" examined in the previous section. In this case too, however, references to different sectors of legislation (criminal code, criminal procedure code, Anti-Mafia laws, etc.) makes it rather difficult to construe. However, the endeavour to include the regulation of trafficking in a single text is evident.

be emphasised again that the main legislative innovations introduced in the meantime, and specifically the Bossi-Fini Law (law no. 189, 30 July 2002, “Modifica alla normativa in materia di immigrazione ed asilo”), and the new law 228/2003 against trafficking, will be highlighted in the footnotes.

The last part of the section (§ 10.7) describes judicial competences on the offences considered, taking into consideration the investigative and judicial authorities as they existed at the time when the data were gathered. Examination will be made of both the traditional criteria used for the attribution of competences in relation to case, territory and connection and the functional criteria applied at prosecutor’s offices. The focus will be on these procedural provisions because, as stressed by the prosecutors interviewed, they affect the efficiency of the fight against the smuggling and trafficking of persons in the same way as do the substantive provisions.

10.5 THE CRIMINAL PROVISIONS

10.5.1 The consolidated text on immigration, article 18 in particular

The legislation on migration is contained in the *Testo Unico* (consolidated text) of the Law on Immigration¹⁴⁶ recently modified by the Bossi-Fini Law and which entered into force in August 2002.

The *Testo Unico* is the reference legislative source for the offence of migrant smuggling because it sets out (article 12 “Disposizioni contro le immigrazioni clandestine” [Provisions against illegal immigration]) the penalties for offences such as facilitating illegal entry into and out of the country (“acts intended to procure illegal entry into another State of which the person is not a citizen or for which s/he does not have a legal residence permit”).¹⁴⁷

Besides setting out provisions aimed at suppression, the *Testo Unico* also deals with the administrative aspects of immigration (residence permit, expulsions, employment of immigrants, family reunification, treatment of minors, etc.), which are not treated here because they are not directly connected with the fight against human smuggling and trafficking.

In the light of the interviews conducted with the prosecutors (see § 13.4), it is advisable to carry out more detailed examination of article 18, which belongs among the “humanitarian provisions” contained in the *Testo Unico* on Immigration. This provision is a new component of the strategy to combat human trafficking in that it combines instruments for suppression, described in detail in § 10.2.1, with a measure concerning the victims and their adequate protection and assistance.

¹⁴⁶ Legislative decree, 25 July 1998, no. 286 “Testo Unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”, published in the *Gazzetta Ufficiale*, no. 191, 18 August 1998.

¹⁴⁷ For detailed description of the offences see § 10.6.1.

This provision introduces the “short-term stay permit for the purpose of social protection”. A foreign national who has been the victim of trafficking is thus able to obtain a special six-month stay permit, renewable for further years, so that s/he may “escape violence and coercion by the criminal organisation and take part in an assistance and re-socialisation programme”. The stay permit is issued by the police, who must verify compliance with at least two of the requirements listed in the provision. The permit is issued in proven cases of:

- “violence against or serious exploitation of a foreign national” or
- “concrete dangers to his/her person consequent on attempts to escape the coercion [...] or threats”.

The permit may also be issued in the case of significant cooperation with investigations (for example, reporting to the police, information on suspected perpetrators of trafficking or smuggling offences). This requirement is not binding, however, because the permit is not intended to function as a ‘reward’. The only condition for obtaining a short-term stay permit is consent to participate in a support and re-socialisation programme.

The distinctive feature of this regulation, which places it at the international forefront,¹⁴⁸ is its provision of a “double circuit”. As said, cooperation by the victim with the judicial authorities is not a necessary requirement for the granting of a stay permit. There is a second alternative, which consists in mediation by an association working with immigrants. The association attends to the procedure for application to the Police and organises the subsequent assistance and re-socialisation programme. Hence, two different routes are available: the judicial one, which is not ‘rewarding’ in character, whereby the victim reports, directly or through the prosecutor, to the Police, and the social route mediated by an association, which does not exclude the possibility of the victim bringing criminal proceedings against his/her exploiters.

Article 18 covers both the smuggling of migrants and the trafficking of persons for exploitation. In its concrete application, however, it has been used primarily by foreign women illegally present on national territory and intending to escape from the prostitution racket.

This provision has the further merit, from the victim protection point of view, of severing the link between exploitation and illegal immigration, “eliminating the irregularity that constitutes the principal factor in the vulnerability of the foreign

¹⁴⁸ The European Parliament approved on 12 November 2002 the *Proposal for a Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities* (COM (2002) 71 - C5-0085/2002 - 2002/0043 (CNS)) mentioned in chapter 7 (see § 7.1.3). However, though adoption of the Directive will constitute progress in the fight against trafficking in persons for most Member States of the European Union, it will be a partial step backwards for Italy. The social protection of the victim is not an overriding priority of the European regulation, the main concern of which is to repress the offence. Issue of a short-term residence permit, in fact, is conditional on collaboration with the police and the investigative authorities. Another restriction is the “reflection period” (thirty days from the moment when the victim is informed that a residence permit can be obtained in exchange for collaboration), which is the maximum amount of time granted for the decision to be taken whether or not to accept the proposal.

person and enables the criminal to perpetrate the most intolerable forms of exploitation and violence against the persons forced into prostitution".¹⁴⁹

The purpose of the measure is therefore to combine an effective judicial anti-trafficking strategy based on the incentive to report any exploitation to the police with adequate protection of the victim which encourages his/her social reintegration and offers assisted escape from exploitation. The instrument treats the two objectives on the same level, "without considering the protection of trafficked persons as a mere tool of criminal prosecution, but on the contrary considering the protection of the persons involved to be an essential priority, of equal standing with the State's concern to punish the perpetrators of serious criminal offences such as those related to the trafficking of human beings".¹⁵⁰

10.5.2 The law on prostitution

Prostitution in Italy is disciplined by the Merlin Law (law no. 75, 25 February 1958, "Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui").¹⁵¹

This law is also relevant to the fight against trafficking in human beings, because it is directed against the illegal markets for victims, and in particular against the exploitation of prostitution.¹⁵²

The Merlin Law de-criminalised prostitution on the ground that it is an activity which is private in nature, and it accordingly banned brothels as well as the

¹⁴⁹ M. Virgilio, "Prostituzione e traffico di esseri umani tra legge e diritto giurisprudenziale" [Prostitution and Trafficking in Human Beings between Law and Case-Law], in Associazione On the Road (ed.), *Prostituzione e tratta. Manuale di intervento sociale* [Prostitution and Trafficking. Guide for a Social Intervention], Franco Angeli, Milan, 2002, p. 40.

¹⁵⁰ M.G. Giammarinaro, *op. cit.*, p. 60. On this subject see also by the same author "La rappresentazione simbolica della tratta come riduzione in schiavitù" [The Symbolic Representation of Trafficking and Reduction to Servitude], in F. Carchedi, A. Picciolini, G. Mottura, G. Campani (eds.), *op. cit.*; "Il permesso di soggiorno per motivi di protezione sociale previsto dall'art. 18 del T.U. sull'immigrazione" [The Stay Permit for Social Protection Provided by article 18 of the *Testo Unico* on Immigration], in *Diritto, immigrazione e cittadinanza*, no. 4, 1999; "Prime valutazioni sull'attuazione delle norme sul traffico di persone" [First Evaluation of Implementation of the Provisions on Trafficking in Persons], in *Diritto, immigrazione e cittadinanza*, no. 3, 2000. See also: S. D'Amico, "Il soggiorno per motivi di protezione sociale. Un compromesso legislativo tra esigenze investigative ed umanitarie" [The Residence Permit for Social Protection. A Legal Compromise between Investigative and Humanitarian Needs] in *Gli Stranieri*, no. 2, 1998; L. Trucco, "Il permesso di soggiorno per protezione sociale (art. 18 T.U. sull'immigrazione)" [The Residence Permit for Social Protection (article 18, *Testo Unico* on Immigration)], in M. Da Pra Pocchiesa, L. Grosso (eds.), *Prostituite, prostituite, clienti. Che fare? Il fenomeno della prostituzione e della tratta degli esseri umani* [Prostitutes, Prostituted, Clients. What to Do? The Phenomenon of Prostitution and Trafficking in Human Beings], Gruppo Abele Ed., Turin, 2001, pp. 149-153.

¹⁵¹ According to M. Virgilio, in *op. cit.*, the Merlin Statute, though theoretically applicable to trafficking-related crimes, is by now outdated. The legislation on prostitution should be revised in the light of recent developments in the phenomenon. The interconnection between illegal immigration and prostitution in its form as sexual exploitation, which represents "new slavery", requires a rapid response. Numerous proposals for revision of the legislation have been made by political parties and inspired by different approaches to solution of the problem. Given the complexity of the subject, these tendencies will not be treated here.

¹⁵² See Transcrime, *op. cit.*; T. De Zulueta, *op. cit.*; P. Romani, "Condizioni della persona trafficata e mercati di inserimento" [Conditions of the Trafficked Person and Entry Markets], in F. Pastore (ed.), *op. cit.*

registration of prostitutes and compulsory medical treatment. As a consequence, the women were removed from any form of medical and police control.¹⁵³

It is instead the *exploitation* of prostitution which is punished by the law, and three provisions in particular relate to trafficking for sexual exploitation: article 3, paragraph 1, no. 6, which punishes incitement to move to another location or country to undertake some form of prostitution, and facilitation of the departure; article 3, paragraph 1, no. 7, which punishes any kind of national or foreign association which recruits persons for prostitution; article 3 paragraph 1, no. 8, which punishes the abetment and exploitation of prostitution.

10.5.3 The law on sexual assault

Law no. 66 of 15 February 1996 on sexual assault introduced a number of important changes in regard to sexual offences.

The intention of the legislators was to recast the law so that its focus shifted from protection of public morality to protection of the freedom of the person.¹⁵⁴

The use of violence, especially in case of sexual assault, has an instrumental function in trafficking, given that its purpose is to subjugate the victims to the will of the traffickers/exploiters.¹⁵⁵ It is for this reason that the provisions under examination are an important component of the strategy to combat trafficking in persons.

10.5.4 The law on paedophilia

Law no. 269 of 3 August 1998, "Norme contro lo sfruttamento della prostituzione, della pornografia, del turismo sessuale in danno dei minori, quali nuove forme di riduzione in schiavitù", addresses a number of extremely topical issues by setting out provisions against the abuse of minors.

Of particular significance is the reference to "the new form of reduction to servitude", as already contained in the title of the law, which expresses the legislators' intention to combat the unlawful activities connected with each other by the endeavour to deprive persons of their freedom and reduce them to a state similar to slavery.

¹⁵³ On this see M. Virgilio, *op. cit.*, p. 41.

¹⁵⁴ The basic criminal offence of sexual assault is covered by article 609-*bis* of the criminal code, where it is included among other sexual crimes in section II of Title XII, "Crimes against individual freedom", which were previously included among "Crimes against public morality" in Title IX, repealed by law no. 66/1996.

¹⁵⁵ On this see A. Picciolini, "Il quadro normativo italiano sul problema del traffico internazionale finalizzato alla prostituzione e allo sfruttamento sessuale delle donne", [Italian Legislation on International Trafficking for the Purpose of Prostitution and the Sexual Exploitation of Women], in F. Carchedi, A. Picciolini, G. Mottura, G. Campani (eds.), *op. cit.*

The law introduces new criminal offences against minors. Two provisions added to the criminal code should be mentioned in particular: article 601, paragraph 2 and article 600-*bis*, paragraph 1, "Prostitution of minors".¹⁵⁶

10.5.5 The criminal code¹⁵⁷

The criminal code envisages a number of criminal offences related to the trafficking of persons for exploitation and the smuggling of migrants, these being the so-called "instrumental" offences typically committed by individual criminals or criminal groups before, during, or after the entry into the country of illegal migrants/exploited persons.¹⁵⁸

The first reference is to crimes involving various kinds of violence, such as bodily harm (article 610), threatening behaviour (article 612), abduction (article 605 and 630), sexual assault (609-*bis* and subsequent), battery (article 582), murder (article 575).

Criminal proceedings on human trafficking and smuggling often use the provisions on organised crime contained in article 416 "criminal conspiracy", and article 416-*bis*, "Mafia-type conspiracy".

Finally, particular attention should be paid to the provisions of articles 600-604 in the criminal code aimed at repressing slavery.¹⁵⁹ The management model typical of the illicit activities involved in persons trafficking, rests crucially on reduction to slavery, because it is a means to limit and influence the freedom of the person both physically and psychologically.

¹⁵⁶ The innovative impact of law 228/2003 has also affected the legislation on paedophilia: article 601, paragraph 2, of the criminal code has been replaced by the new article 601 of the criminal code which increases the penalties for trafficking persons under the age of 18, and likewise the revised provisions on reduction to and maintenance in slavery or servitude (see new article 600, paragraph 3 of the criminal code). Other dispositions increasing penalties are contained in article 600-*sexies*, paragraph 1 criminal code (Aggravating and mitigating circumstances). The changes to the substantive law are of course also reflected in investigative instruments and the judicial procedure described in the previous section of this chapter.

¹⁵⁷ The provisions of the Code have now been completely revised by law 228/2003. See the previous section, paragraph 10.2, for examination of the substantive provisions.

¹⁵⁸ N.M. Pace, "I flussi migratori illegali: disciplina penalistica della materia e tecnica delle indagini, anche nella loro dimensione sovranazionale" [Illegal Migratory Flows: the Criminal Regulation of the Subject and Investigative Techniques, Also in Their International Dimension] report presented to the International Conference *Il traffico di esseri umani e il ruolo della criminalità organizzata* [Trafficking in Human Beings and the Role of Organised Crime], Istituto Italiano per gli Studi Filosofici, Naples, 27-29 May 1999, "La città del sole" Ed., Naples, 2000, pp. 61 ff.

¹⁵⁹ As mentioned above, these provisions have been completely revised by law 228/2003.

10.6 APPLICABLE CRIMINAL OFFENCES

The previous section described the legal instruments available for the fight against trafficking in persons and the smuggling of migrants. This section analyses the individual criminal offences applicable in detail. As will be shown in the following chapters, these criminal provisions were the legal body of reference for the project's monitoring of the Italian prosecutor's offices. The numerous crimes selected, notwithstanding differences due to their provenance from diverse legal sources, allow punishment of various offences falling within the category of behaviours typical of trafficking and smuggling.

10.6.1 Facilitating illegal immigration (article 12 d.lgs. 286/1998)

As mentioned in the previous paragraph, the criminal law definition of migrant smuggling (article 12, paragraph 1, *Testo Unico* on Immigration) has been recently modified by the Bossi-Fini Law. The current provision states:

“Unless the behaviour is part of a more serious offence, those who violate the provisions contained in this *Testo Unico* by engaging in any activity with the purpose of bringing a foreign national into the national territory, or any activity aimed at procuring the illegal entry in another State of a person not a citizen thereof or who does not possess a legal permanent residence permit, violating the provisions contained in this *Testo Unico*, may be subject to imprisonment for up to three years and a fine amounting to a maximum of Euro 15,000 for each person”.

Besides the procurement of illegal entry, which was also envisaged by the previous version of the provision, a further criminal offence related to so-called ‘illegal expatriation’ has been added, thus extending punishment to offences committed to the detriment of other countries.

The third paragraph of article 12, which in the version previous to the 2002 reform provided for a mere aggravating circumstance, has been revised to envisage a crime punished with more severe sanctions when specific features are present, such as: *mens rea* specifically intended to gain profits even indirectly from the crime; participation in the crime by three or more persons: the use of international transport services or of false or illegally obtained documents. Aggravating circumstances for this crime have been introduced by article 3-*bis* (i.e. having facilitated the entry or the stay in the national territory for five or more persons; having acted in manner to endanger the life and physical well-being of the person illegally smuggled into the country; having treated that person in an inhuman or degrading way), while other aggravating circumstances have been introduced by article 3-*ter* (having acted to induce into prostitution or sexual exploitation the persons smuggled into the country, or in respect to minors, having smuggled them for the purpose of their exploitation in unlawful activities).

The balance of circumstances, too, has been substantially modified from a more repressive perspective, in that paragraph 3-*quater* states that mitigating circumstances other than age (article 98 criminal code) cannot be considered as equivalent to or overriding the aggravating ones described above.

Finally, article 12 paragraph 3–*quinquies* introduces a ‘reward’ for those migrants who cooperate with the police or the judicial authorities in order to prevent the criminal activity from giving rise to further consequences by helping with the gathering of crucial evidence, the identification or arrest of the perpetrators, or the elimination of resources important for the commission of the crimes.

These are the main innovations to the legal framework made by the Bossi–Fini Law, which preserves the main components of the previous version of article 12 while increasing the penalties and introducing further criminal offences besides the abetment of illegal immigration. In what follows the continuities with the previous law are analysed.

The objective elements of the conduct punished do not include the behaviour of the migrant. Simple illegal or irregular entry into the country is not punished as a crime in itself, but is considered to be a merely administrative offence to be punished with expulsion.¹⁶⁰

The intention of the legislators not to punish the mere act of illegal entry, except with administrative sanctions, represents awareness of the existence of a plurality of values protected by the provision in question. While on one hand the aim is to protect borders and the effectiveness of the controls on them, on the other it is to protect the security and dignity of those whose irregular entry has been facilitated or arranged. Although there may have been voluntary or consensual participation by the migrant, possible charges against the latter for participation in the crime of aiding and abetting have been excluded.¹⁶¹

The offence is described by the provision as conduct in any form, so that the crime is committed regardless of the occurrence of any particular event (not even necessary is the actual entry of the foreign national on the territory of the state). It is a mere endangerment crime (presumed or concrete) characterised by a generic *mens rea*.

Paragraph 5 of article 12 envisages a further criminal offence: “facilitation of the foreign national’s stay on the territory of the State”. This is expressly treated as a residual offence and is applicable “when the cases described in the previous paragraph are not present and except when the behaviour constitutes a more serious crime”. The offence consists in facilitating the illegal residence of the foreigner on national territory. It is committed with the mere performance of the conduct described and does not require occurrence of the event described (residence). The subjective element of the *mens rea* is pursuit of “unlawful profit from the foreigner’s position of illegality or from the activities punished by this article”. It has been argued that this specification brings the criminal offence in question more within the scope of trafficking in persons for exploitation than within that of migrant smuggling, given that it has been applied to conduct intended to

¹⁶⁰ E. Lanza, “La repressione penale dell’immigrazione clandestina” [Criminal Repression and Illegal Immigration], in *Diritto & Diritti*, available at <http://www.diritto.it/articoli/penale/lanza.html>. To be noted is that this provision entirely complies with the United Nations Protocol against the smuggling of migrants supplementing the 2000 Palermo Convention.

¹⁶¹ On this see M. Cesare, “Riformata la disciplina dell’immigrazione: le novità della legge Bossi–Fini” [The Reformed Legislation on Immigration: the Innovations of the Bossi–Fini Law], in *Diritto Penale e Processo*, IPSOA, Milan, no. 11, 2002.

facilitate the migrant's stay in Italy for the purpose of recruitment into prostitution or the exploitation of minors in illicit activities.¹⁶²

With the purpose of counteracting illegal immigration more effectively, a number of procedural instruments have been introduced in regard to the crime of abetting illegal entry envisaged by article 12, paragraph 1, legislative decree 286/1998, and for the aggravated circumstances set out in paragraph 3. These instruments are:

- compulsory arrest when the person is caught in the act of committing the crimes described in article 12 paragraph 1 and 3 (article 12, paragraph 4);
- immediate trial, unless special investigation is required (article 12 paragraph 4);
- controls on and inspections of means of transport and transported goods when there are grounds to suspect a connection with the crimes in question (article 12 paragraph 7);
- consignment to the law enforcement agencies of seized properties or motor vehicles with a view to their re-use in further investigations (article 12, paragraph 8).

Furthermore, the Bossi-Fini Law has introduced a further five clauses (from paragraph 9-*bis* to 9-*sexies*) which regulate the procedure for interception by the Navy should a ship suspected of involvement in the smuggling of migrants be identified.

10.6.2 Reduction to servitude (formerly article 600 criminal code)¹⁶³

Reduction to servitude is punished under Italian law by article 600 of the criminal code as an offence against the person. The provision states:¹⁶⁴

“Whoever reduces another person to servitude, or to a similar condition, shall be punished with imprisonment for between five and fifteen years”.

The conduct punished “consists in the proactive behaviour that causes, on the one hand, the establishment of a property right, even partial, of one person over another and, on the other, privation or detriment of the legal capacity and freedom of the passive subject”.¹⁶⁵

It is a crime that can be committed in any form: that is to say, its modes of execution are left unspecified. Its commission begins at the moment when the victim becomes a slave and it ceases when the victim regains her freedom.¹⁶⁶

¹⁶² See N.M. Pace, *op. cit.*, pp. 60 ff.

¹⁶³ For an examination of the revised text of article 600 criminal code, see *supra* § 10.2.1.

¹⁶⁴ The revised text of article 600 criminal code is examined in § 10.2.1.

¹⁶⁵ Italian Parliamentary Committee for Supervision of Implementation of the Convention on Application of the Schengen Agreement and of the Activity of the National Europol Unit, *op. cit.*

¹⁶⁶ Case law considers criminal offences involving reduction to servitude to be “necessarily permanent”. Under article 6 of the criminal code, authority to hear the case may be assigned to the jurisdiction of the Italian courts when commission of the crime began abroad and then continued in Italy; see Criminal Court of Cassation, 13 March 2001, no. 10311, rv. 218463, in *Codice penale e codice di procedura penale annotati con la giurisprudenza*, Esselibri Simone Multimedia, Naples, 2002.

The conduct in question is a criminal offence frequently subject to proceedings in regard to cases of trafficking in persons for exploitation because it constitutes a *modus operandi* typical of traffickers in human persons.

The judicial interpretation of the concept of slavery has undergone profound evolution, especially as regards the definition of a “condition similar to slavery”.¹⁶⁷

The new interpretation of the provision derives from ruling no. 261 by the Court of Cassation issued on 16 January 1997,¹⁶⁸ which in accordance with the approach adopted by the Constitutional Court, defined “the condition similar to slavery”, ex articles 600 and 602 of the criminal code, not only as a circumstance defined by law but also as “any situation where the conduct of the wrongdoer causes the offended person to be treated as a slave, that is to say, his or her exclusive subjugation to another person who may dispose of the former in a similar way to that of a master and a slave in legal orders where slavery is permitted”.¹⁶⁹

Given the that the right to freedom is inalienable, it has argued that any consent given by the passive subject or by whoever has authority over him or her is irrelevant, and in no case can be considered an extenuating circumstance.¹⁷⁰ The *mens rea* is generic so that cases of attempts to commit the crime may arise.

¹⁶⁷ See on this G. Porco, “Schiavitù un fenomeno in evoluzione” [Slavery an Evolving Phenomenon], in *La Giustizia Penale*, Part II, 1998, pp. 732 ff. The original rule in the Rocco Code distinguished the crime of reduction to servitude from the crime of undue influence (article 603 criminal code) on the ground that the former concerned “situations at law” (*situazioni di diritto*) where the law recognised the *status servitutis*, and the latter all other “factual situations” not regulated by any provision and consisting of cases of subjugation where the person is deprived of free self-determination. Because of this restrictive interpretation, article 600 remained a dead letter until the landmark ruling by the Constitutional Court (case no. 96 of 6 August 1981) that declared the crime of undue influence invalid because of insufficient precision in its description. Furthermore, the Constitutional Court, in order to close any lacunae in the law, ruled that application of the provisions on slavery were to be extended to encompass factual situations still not legally disciplined. A different interpretation, in fact, would have been in conflict with the international obligations undertaken by Italy by signing the 1926 Geneva Convention to Suppress Slavery and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, whose section on “Institutions and Practices Similar to Slavery”, provides for any “factual conditions carried out without any legal act or fact that authorises them”.

¹⁶⁸ Criminal Court of Cassation, S.U., 20 November 1996, in *Cass. Pen.*, 1998, p. 36.

¹⁶⁹ Before unanimous interpretation was reached, two jurisprudential approaches clashed: the first suggested adopting the comprehensive list provided by the 1926 and 1956 Geneva Conventions and specifying all the punishable “similar conditions”, whilst the second proposed an extended interpretation which included a range of possible behaviours not determinable *a priori*. The afore-mentioned decision of the Court of Cassation settled the matter by specifying that, with reference to conditions similar to slavery, the institutions and practices mentioned in the Geneva Conventions constituted only a exemplificatory list, not a comprehensive one. This interpretation is also adopted by the following rulings: Criminal Court of Cassation Section III, 7 1998, no. 7929, rv. 211543; Criminal Court of Cassation, Section III, 24 September 1999, no. 2793, rv. 214517, all in *Codice penale e codice di procedura penale annotati con la giurisprudenza*, Esselibri Simone Multimedia, Naples, 2002. To be noted, however, is that before the Cassation ruling, the criminal offence was considered applicable to trafficking for exploitation. See Criminal Court of Cassation, Section V, 24 January 1996, no. 2390, rv. 204369, in *Codice penale e codice di procedura penale annotati con la giurisprudenza*, Esselibri Simone Multimedia, Naples, 2002. In the case in question the decision recognised the existence of the crime of slavery where the behaviour of the defendants/traffickers consisted in the exploitation of Albanese children delivered to them by their parents to be used for begging.

¹⁷⁰ The irrelevance of consent recalls the definition of trafficking in persons provided by the Protocol against trafficking signed in Palermo. On this see section 5.3.

The recent trend in case law is to give a broader interpretation whereby the provision on reduction to servitude is applicable to a variety of cases of exploitation of trafficking victims.¹⁷¹ Thanks to these recent rulings, the criminal offence in question may be an effective instrument for the suppression of trafficking for the purpose of exploitation.

10.6.3 Trafficking and the slave trade (article 601, par. 1, criminal code)¹⁷²

Article 601, paragraph 1 of the criminal code states:

“Whoever engages in trafficking or any form of trading in slaves or persons in a condition similar to slavery shall be punished with imprisonment for between five and twenty years”.

The conduct described is behaviour typical in the context of the illicit activities in question.

By the term ‘trafficking’ is meant “action by those who engage in a large-scale activity of recruitment, also coerced, and of transport and sale, whilst the concept of trade is more restricted”.¹⁷³ The concept of ‘trade’, in fact, is already contained in notion of trafficking, and its purpose is to bring other minor offences within the scope of the description of the criminal offence.¹⁷⁴

The *status servitutis*, which in the offence of reduction to servitude is the presupposition for commission of the crime, restricts the scope of application of the provision because the trafficking may occur regardless of whether the victims have already been reduced to servitude or a similar condition.¹⁷⁵

¹⁷¹ On this see the ruling by the Rome Court of Assize of 23 February 2001, in *Cass. Pen.*, 2001, p. 1115, with commentary by L. Benanti. The Court recognised the existence of the crime of reduction to servitude charged against traffickers for the purposes of sexual exploitation of young Moldavian women as well as further elements: the extension of punishability under article 600 criminal code to cases of “conculcation of wilfulness”, this being the previous and abolished crime of undue influence; the existence of a “condition similar to slavery” even in the absence of “complete power” but only the exercise of “single faculties entailed by a proprietary right different from ownership, such as easement (*diritto di uso*) and usufruct (*usufrutto*)”; the occurrence of the crime of reduction to servitude even in the case of a subjugated person with a “very limited capacity for self-determination” whenever “the limited autonomy results from permission given by the person exercising power over the victim and is in any case exercised within the sphere of control over the former”, see Criminal Court of Cassation, 18 December 2000, no. 13125, rv. 217846, in *Codice penale e codice di procedura penale annotati con la giurisprudenza*, Esselibri Simone Multimedia, Naples, 2002. According to these decisions by the Cassation “the condition of segregation and subjugation to the other person’s power of disposition is not excluded when it is temporarily eased, allowing even moments of conviviality, and apparent kindness, aimed at further breaking the will of the victim and overcoming her resistance”. This decision confirms the opinion that reduction into slavery is one of the devices used by traffickers to exercise their power of psychological subjugation and influence over victims through deceptive behaviour (for example by showing them affection) in order to distort their perception of reality and suppress any idea of rebellion in them.

¹⁷² For the new formulation of article 601 criminal code see *supra* § 10.2.2.

¹⁷³ F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, p. 129.

¹⁷⁴ See F. Lemme, at “Slavery”, “Il delitto di tratta o commercio di schiavi” [The Crime of Trafficking and Trading in Slaves], in *Enciclopedia giuridica Treccani*, Rome, 1992, vol. XXVIII.

¹⁷⁵ See F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, p. 47.

The criminal offence is injurious and may also be 'permanent' in that its commission may be instantaneous (with reference to acquisitions, sales and lucrative transfers) or prolonged (as in the case of the transport of slaves).¹⁷⁶

The *mens rea* is generic. Not envisaged is attempted commission of the crime, because the conduct punished by the provision presupposes its realisation.¹⁷⁷

10.6.4 Conveyance and purchase of slaves (article 602 criminal code)¹⁷⁸

Article 602 of the criminal code states:¹⁷⁹

"Whoever, with the exception of the cases described in the previous article, conveys or assigns a person in servitude or a similar condition or acquires him or her, or purchases the person, or keeps her or him in slavery or a similar condition, shall be punished with imprisonment for between three and twelve years".

The subsidiary offences set out by this article cover all other cases that do not fall under the previous provisions, so that criminal law protection of the *status libertatis* is complete.¹⁸⁰ In particular, the provision punishes the conveyance and purchase of persons already in servitude without it being necessary for any trading activity to have taken place.¹⁸¹

The *mens rea* is generic, so that an attempt to commit the crime is envisaged by the law, considering the descriptions given by the provision of the different possible forms of conduct (disposition, appropriation, etc.).¹⁸²

10.6.5 Trafficking in under-age persons (article 601, par. 2, criminal code)¹⁸³

According to article 601, par. 2, criminal code:¹⁸⁴

"Whoever traffics or trades in persons under 18 years of age in order to induce them into prostitution shall be punished with imprisonment for between six and twenty years".

Article 601, par. 2, criminal code, introduced by law no. 269¹⁸⁵ 3 August 1998, applies to the crime of trafficking or trading under-age persons: that is, the

¹⁷⁶ F. Lemme, *op. cit.*

¹⁷⁷ *Ibid.*

¹⁷⁸ For the modification introduced by the law 228/2003, see *supra* § 10.2.2.

¹⁷⁹ A new text is provided by law 228/2003, see *supra* § 10.2.2.

¹⁸⁰ F. Lemme, *op. cit.*

¹⁸¹ See F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, p. 129.

¹⁸² F. Lemme, *op. cit.*

¹⁸³ Article 601 has been completely modified by law 228/2003, see *supra* § 10.2.1 and § 10.2.2.

¹⁸⁴ *Ibid.*

¹⁸⁵ Law 269/98, "Norme contro lo sfruttamento della prostituzione, della pornografia, del turismo sessuale in danno dei minori, quali nuove forme di schiavitù".

independently of the offence of trafficking in slaves. The offence as described is identical to that considered by paragraph 1, with only two exceptions: the minority age of the passive subject and the objective element of the crime, which consists in a *mens rea* specifically aimed at inducing the minor into prostitution.¹⁸⁶

Eliminating the link with the concept of slavery as a prerequisite for the person to be considered trafficked has facilitated the punishment of trafficking in human beings.¹⁸⁷

The law that introduces this provision, together with the others concerned to suppress the exploitation of minors, derives from the legislators' intent to furnish closer protection characterised by rigorous description of cases constituting "new forms of slavery" and which marks a shift to a modern perspective on the state of subjugation. The law also demonstrates greater awareness of the illicit activities linked with trafficking in human beings, and in this case specifically with the trafficking in minors for the purpose of exploitation.

The crime in question requires a specific *mens rea* to induce the victim into prostitution, but the intent need not necessarily be realised for the crime to have been committed.

10.6.6 Inducement to move to another country or place for the purpose of prostitution (article 3, no. 6, law no. 75, 20 February 1958)

Of the crimes relating to prostitution envisaged by article 3 of the so-called Merlin Law, l. 75/58, this provision punishes:

"whoever induces another person to move to another State, or in any case, to a different place from that of usual residence, in order to practise prostitution or who acts to facilitate his or her departure".

The crime consists in conduct theoretically applicable to the trafficking of women for the purpose of sexual exploitation.

The purpose of the inducement and facilitation must be the transfer of a person to a place, on national territory or abroad, other than that of residence.¹⁸⁸ The inducement consists in persuasion to move to the place where the woman will practise prostitution.¹⁸⁹ The facilitation consists of conduct that may in some way facilitate the departure of the woman; in the context considered, it may consist, for example, in providing information or lending the amount of money necessary for the journey.

¹⁸⁶ The minority age of the subject is a typical element of the crime, and awareness of it by the wrongdoer must be present for the crime to exist. Ignorance, however, even though excludes the possibility of punishing the wrongdoer under article 601, paragraph II, Criminal procedure Code, may be irrelevant for the existence of the more generic crime of trafficking referred to by article 601, paragraph 1, criminal code.

¹⁸⁷ Cf. F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, p. 47.

¹⁸⁸ See L. Pavoncello Sabatini, entry "Prostitution (Criminal Provisions on)", in *Enciclopedia Giuridica Treccani*, vol. XXV, Rome, 1991.

¹⁸⁹ See also G. Pioletti, entry "Prostitution", in *Digesto discipline penali*, vol. X, IV ed., UTET, Turin, 1997, p. 285.

10.6.7 Conspiracy to recruit persons for the purpose of prostitution (article 3 no. 7, law no. 75, 20 February 1958)

Article 3, paragraph 1, no. 7 of the Merlin Law, l. 75/59, punishes:

“whoever carries out any activity in associations and domestic or foreign organisations engaged in the recruitment of persons for the purpose of prostitution or the exploitation of prostitution, or who in any way and by any means facilitates the action and intentions of the mentioned associations or organisations”.

This provision may be theoretically applied to cases of proven association by persons, either Italian or foreign, to recruit women for the purposes of sexual exploitation. The conduct is representative of cases of trafficking in women for the purpose of sexual exploitation carried out by organised criminal groups. The alternative provision on associations or organisations states the irrelevance of the form taken by the criminal association insofar as only required is the existence of a minimum stable organisation and a plurality of persons.¹⁹⁰

10.6.8 Assistance in or exploitation of prostitution (article 3, no. 8, law no. 75, 10 February 1958)

The provision contained in article 3 no. 8 of the Merlin Law states:

“Whoever induces into prostitution another person younger than 18 years of age or facilitates or exploits their prostitution shall be punished with imprisonment for between six and twelve years and with a fine amounting to between thirty to three hundred million lire”.

Although the conduct is not directly related to the trafficking in human beings in that there is no reference to the features of the trade, the exploitation of prostitution is an aim typically pursued by traffickers. Moreover, it is one of its most symptomatic forms for investigation as well, as it is often possible to use such conduct to reconstruct the chain of trafficking for exploitation, of which prostitution is the final link.¹⁹¹

The provision envisages two different cases, which may be concurrent, the difference between them being the conduct and the interest protected.

Abetting, unlike facilitation, which is a minimum form of help supporting the activity of another person, implies the provision of more solid support.¹⁹² It may consist in behaviour intended to facilitate the prostitution of others by, for example, transporting the prostitute to and from the place of prostitution or allowing her to change clothes in one's car.¹⁹³

¹⁹⁰ Ibid.

¹⁹¹ On this see F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, pp. 139 ff.

¹⁹² G. Pioletti, *op. cit.*, p. 287.

¹⁹³ See Criminal Court of Cassation, Section III, 15 April 1982, no. 3834, Galoppi, in *Riv. Pen.*, 1983, p. 117. The examples of assistance are typical *modi operandi* of the exploiters controlling street prostitution by trafficked women.

Exploitation is the earning of unlawful profits from the prostitution of other persons and consists in any receipt of proceeds from prostitution without legal reason, that is to say, without any cause that legitimates payment of the money.¹⁹⁴

10.6.9 Juvenile prostitution (article 600-bis criminal code)

The provision, introduced by law no. 269, 3 August 1998, punishes any conduct that entails the exploitation of juvenile prostitution, even in the forms of inducement and assistance.

With respect to the prostitution-related offences covered by the Merlin Law, the legislators have introduced new measures applying to particular cases of sexual exploitation of persons aged under 18.¹⁹⁵ The intention has been to “safeguard the physical, psychological, spiritual, moral and social development, hence the entire formation of the personality of the under-age person, against sexual exploitation for commercial purposes which amounts to their reduction to (conditions similar to) slavery”.¹⁹⁶ The purpose of the provision is to improve the protection of persons considered vulnerable.¹⁹⁷

Simplification has been made to article 3 of law 75/1958, with the list of offences reduced to inducement, abetment and exploitation on the ground that these activities correspond to all the relevant behaviours concerned.¹⁹⁸

The crime may be habitual, that is, the commission of one single offence is sufficient for punishability, whilst any further commissions may affect the gravity of the crime, which however maintains its individuality.¹⁹⁹

10.6.10 Sexual assault (article 609-bis criminal code)

The offence of 'sexual assault' envisaged by article 609-bis criminal code is the crucial provision of the reform regarding sexual crimes introduced by law no. 66, 15 February 1996.

¹⁹⁴ L. Pavoncello Sabatini, *op. cit.*

¹⁹⁵ To be stressed is the different collocation of the crime in the criminal code, where it is included among crimes against the individual, so that legal protection is shifted from public morality to that of the person.

¹⁹⁶ See “Articolo 2, I comma, Commentario delle Norme contro lo sfruttamento della prostituzione, della pornografia, del turismo sessuale in danno di minori, quali nuove forme di riduzione in schiavitù (L. 3 agosto 1998, no. 269)” [Article 2, Paragraph I, Commentary on the Provisions against the Exploitation of Prostitution, Pornography, Sexual Tourism to the Detriment of the Under-Aged, as New Forms of Reduction into Slavery (law no. 269, August 3ed, 1998)], in A. Cadoppi (ed.), *Commentari delle norme contro la violenza sessuale e della legge contro la pedofilia*, II ed., CEDAM, Padua, 1999, p. 463.

¹⁹⁷ This is also provided by paragraph II, which punishes the “client” when “he performs sexual acts with a minor aged between fourteen and sixteen in exchange for money or other economic benefits”.

¹⁹⁸ The previous provision, which describes the offence as an aggravating circumstance for the crime of exploitation of prostitution referred to by article 3 of the Merlin Law, is to be considered abolished as a consequence.

¹⁹⁹ A. Cadoppi, *op. cit.*, p. 470.

The criminal offence in question is connected with the trafficking of persons in that it concerns the 'initiation' of the trafficked women into prostitution, which is often preceded by episodes of physical coercion, among them sexual assault.²⁰⁰

In this respect the aggravating circumstance provided by article 609-*ter*, no. 4 criminal code is of significance in that it concerns the case of violence committed "on a person subject to limitations on his or her personal freedom". The provision may represent a wide range of limitations on freedom typical of the restrictive conditions to which the prostitute is subject (for example, when her identity documents and passport are taken away, or when she is kept in conditions similar to slavery).

Sexual assault may also be used to break down the will and the psychological defences of victims and to maintain control over them by the use of violence or threats of further abuse.²⁰¹

The bringing of private prosecutions may be a problem, owing to the frequent difficulties of victims in making up their minds to denounce the violence suffered, but the legal obstacle can be overcome through application of another provision, article 609-*septies*, paragraph 4, no. 2, criminal code, that provides for public prosecution (*procedibilità d'ufficio*), "when the offence is connected with another crime for which public prosecution is required", as in the case, for example, of the abetting of illegal immigration pursuant to article 12 of the Law on Immigration.²⁰²

10.6.11 Conspiracy to commit crime (article 416 criminal code)²⁰³

Article 416, paragraph 1, criminal code, states that:

"when three or more persons conspire to commit crime, whoever promotes, creates or organises the conspiracy shall be punished, for that conduct alone, with imprisonment for between three and seven years".

'Conspiracy to commit crime' is the offence that typically falls within the category of the associative crime that necessarily entails participation by more than one person.

The concept of 'conspiracy' implies the formation of a group of persons in order to pursue with wilful intent a common purpose consisting in the commission of an indeterminate number of crimes. The offence is theoretically applicable to a criminal organisation engaged in the trafficking of persons and/or the smuggling of migrants. Indeed, "conspiracy constitutes the usual means to govern the migration 'black market'.²⁰⁴

²⁰⁰ On this see A. Picciolini, *op. cit.*, p. 87.

²⁰¹ On this see the testimonies of women trafficking victims reported in Caritas Ambrosiana, *op. cit.*

²⁰² A. Picciolini, *op. cit.*, p. 87.

²⁰³ For comment on the new paragraph 6 of article 416 criminal code as introduced by the new anti-trafficking law, see *supra* § 10.2.

²⁰⁴ N.M. Pace, *op. cit.*, p. 62.

Conspiracy to commit crime has been the subject of numerous case-law pronouncements which have specified its features and augmented its regulation. In respect to the context in question, it has been specified that “to demonstrate the existence of criminal conspiracy it is not necessary to determine the existence of an outright organisation with an internal hierarchy and distribution of specific criminal roles. Sufficient is the existence of a associative bond that is not limited to one or more particular crimes and is intentionally extended to encompass a more general criminal plan”.²⁰⁵ This specification can be used to demonstrate commission of the crime whenever it is possible to prove the existence of an associative bond but not a particular internal organisational structure to the group, such as a precise allocation of tasks among its members.

Furthermore, three essential characteristics have been identified:

- “an associative bond that tends to be permanent, or is at any rate stable, which is intended to persist beyond the commission of the crimes planned”;
- “the broad compass of the criminal plan, which distinguishes criminal conspiracy from an agreement among persons to commit a crime”;
- “the existence of an organisational structure, even if minimal, suitable and, above all, adequate to achieving the criminal objectives pursued”.²⁰⁶

10.6.12 Mafia-type association (article 416-bis criminal code)²⁰⁷

The purpose of article 416-bis criminal code is to combat criminal organisations that tend to be rooted in a particular community or geographical area, whilst criminal groups engaged in the trafficking of human beings are usually characterised by marked geographical mobility.²⁰⁸ This last feature as well as others considered below highlight the problems that arise when applying this provision in proceedings against person traffickers and smugglers.

The main features of the offence are those of criminal conspiracy as set out by article 416 criminal code: the existence of an association with a organisational structure, even if minimal; a set of rules regulating social relationships; and a specific objective.²⁰⁹

²⁰⁵ Criminal Court of Cassation, Section I, 8 November 1988, no. 10820, rv. 179643, in *Codice penale e codice di procedura penale annotati con la giurisprudenza*, Esselibri Simone Multimedia, Naples, 2002. See also the following previous decisions: Criminal Court of Cassation, Section I, 1 June 1983, Romeo, in *Cass. Pen.*, 1985, 621, m. 344; Criminal Court of Cassation, Section II, 8 July 1983, Furio, in *Cass. Pen.*, 1985, 866, m. 482.

²⁰⁶ Criminal Court of Cassation, Section I, 25 September 1998, no. 10107, rv. 211403. See also: Criminal Court of Cassation, Section VI, 25 November 1995, no. 11413, rv. 203642; both the decisions mentioned are in *Codice penale e codice di procedura penale annotati con la giurisprudenza*, Esselibri Simone Multimedia, Naples, 2002.

²⁰⁷ The article was introduced by law no. 646, 12 September 1982 to cover a new form of associative crime. The provision put an end to the dispute between legal scholars and the courts on the possibility of applying article 416 of the criminal code to cases concerning Mafia-type criminal organisations; see G. Insolera, *Diritto penale e criminalità organizzata* [Criminal Code and Organised Crime], Il Mulino Edition, Bologna, 1996, p. 64.

²⁰⁸ M.G. Giammarinaro, *op. cit.*, pp. 87 ff.

²⁰⁹ On this see G. Marini, “Ordine pubblico (Delitti contro)” [Public Order (Crimes against)], in *Novissimo Digesto, Appendice*, vol. V, 1984, p. 74569.

The further additional feature with respect to article 416 criminal code is the analytical definition of a Mafia-type association provided by paragraph 3.²¹⁰ The application of the provision to the traditional criminal organisations operating in the country allows identification of the three main characteristics of Italian “Mafias”:

- the “intimidatory power of the associative bond”, which causes subjugation and enforces the code of silence (*omertà*);
- the method used, which consists in “use of the above intimidatory power”;
- the typical aims of the criminal plan.²¹¹

By ‘intimidatory power’ is meant the ability to provoke fear in consideration of the group’s readiness to resort to violence.²¹² This ability stems from a customary use of violence and threats which gives the association a reputation such that it is feared and obeyed, regardless of the actual commission of acts of coercion or threat, and which derives from unlawful behaviour previous to creation of the association.²¹³

The conditions of subjugation and *omertà* concern third persons who do not belong to the criminal association and are subject to its power and will because of their fear of revenge and retaliation.²¹⁴

The methods adopted by a Mafia-type association consist in use of the intimidatory force of the associative bond to achieve its typical aims. The offence is a “associative offence of mixed structure”, in that what is required is “the existence not only of an association” but also “an activity external and further instrumental to the mere associative phenomenon aimed at achieving the goals of the criminal association”.²¹⁵

The third structural requirement of a Mafia-type association is an ‘associative plan’ consisting in the typical goals of such an association as exhaustively listed, in alternative manner, by article 416 *bis*, paragraph 3 criminal code.²¹⁶

²¹⁰ Although on one hand the legislator has been praised for the socio-criminological endeavour to provide legal definition of the Mafia phenomenon, a number of criticisms have been made regarding its consequences. The detailed description contained in the provision (*tassatività*) may overly restrict its range of application, so that it cannot be adapted to different forms of the phenomenon; see G. Insolera, *op. cit.* Cases in point are connivance between Mafia members and politicians, and, in the present case, the recent phenomenon of ethnic criminal organised groups.

²¹¹ For thorough examination of this point see G. Spagnolo, *L’associazione di tipo mafioso* [The Mafia Association], CEDAM, Padua, 1993, pp. 21 ff.

²¹² See E. Rubiola, entry “Associazione per delinquere di tipo mafioso” [Mafia Association for Committing Crimes], in *Enciclopedia Giuridica Treccani*, Rome, 1988, vol. III.

²¹³ “Because an association that resolves to use its intimidatory power but which has not yet developed that intimidatory power is [...] a simple association for the commission of crime, those who acted for its creation can be charged as founders only under article 416 criminal code”; G. Spagnolo, *op. cit.*, p. 80.

²¹⁴ G. Spagnolo, *op. cit.*, pp. 36 ff.

²¹⁵ G. Spagnolo, *op. cit.*, p. 65.

²¹⁶ Four typical aims are envisaged by the provision: to “commit crimes”; “directly or indirectly acquire management and control over economic activities, licences, authorisations, public procurements and public services”; “make profits or derive unlawful advantages to oneself or others”; “impede or hinder the exercise of voting rights or [...] obtaining votes for oneself or others during elections”.

The legal description of the features that characterise a Mafia-type association highlights the rigidity of the law, which makes its application difficult even despite its availability to proceedings against person trafficking and smuggling. The difficulties encountered in the criminological observation of organisations engaged in trafficking are also reflected in investigative practice, with its difficulty in gathering evidence on concrete employment of the “the Mafia method”, consisting in the use of the force of intimidation and the subjugation and refusal to testify typically used to commit crimes.²¹⁷

10.6.13 Abduction (article 605 criminal code)

Article 605 of the criminal code punishes “whoever deprives another person of his/her freedom” with imprisonment for between six and eight years.

Abduction is an *instrumental crime* committed by criminal groups engaged in the trafficking of persons. It is one of the methods used to recruit victims in their countries of origin, as well as a means to maintain control over the trafficked person through all the phases from transfer to sale and delivery in the illegal market of his/her exploitation.²¹⁸

Freedom of the person is a legal value protected by the provision, and because it cannot be alienated any consent given by the victim cannot amount to an attenuating circumstance.

The crime can be committed in any form: of importance is the fact that caused the event described by the provision and which consisted in the deprivation of individual freedom.

It is a permanent crime committed with reduction of the individual freedom of another person, this being conduct sufficient to constitute the offence. ‘Consummation’, that is to say, cessation of the offence’s permanent character, occurs when for whatever reason (release, intervention by a third person, escape by the victim), the deprivation of freedom ceases.²¹⁹

10.6.14 Kidnapping for ransom (article 630 criminal code)

Article 630 of the criminal code deals with kidnapping for ransom. It punishes with imprisonment for between twenty-five and thirty years “whoever kidnaps a person for the purpose of obtaining for himself or for others an unlawful profit as the price of the victim’s release”.

²¹⁷ See F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, pp. 140 ff. This explains the intent of the new anti-trafficking legislation of August 2003 which, instead of an autonomous associative offence for trafficking in persons, provides for a circumstance aggravating the basic offence, thus increasing the penalty for criminal conspiracy for the specific purpose of trafficking.

²¹⁸ F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, p. 131.

²¹⁹ N. Mazzacova, “I delitti contro la libertà individuale” [Crimes against Individual Freedom], in *Diritto Penale. Lineamenti di diritto speciale*, Monduzzi Edition, Bologna, 2000, p. 368.

Also kidnapping for ransom is an instrumental crime, in that the criminals detain the smuggled migrants, depriving them of their physical freedom in order to obtain an unlawful profit from the family of the victims as the price for their release or as payment of a debt undertaken for transport.

To be noted that in the case of the two crimes considered above – abduction under article 605 of the criminal code and kidnapping for ransom – the deprivation of freedom takes different forms in limiting the victim's freedom of movement: for example, removal of identity documents. Both these types of limitation on freedom often represent the first stage in a process of coercion leading to the victim's confinement in conditions similar to slavery.²²⁰

10.7 JUDICIAL COMPETENCES ON TRAFFICKING AND SMUGGLING

This section considers the distribution of competences among the different authorities involved in proceedings against traffickers and smugglers. Discussion of these aspects will aid understanding of the problems that reduce the effectiveness of suppressive strategies.²²¹ In this context too, as said, the new anti-trafficking law (228/2003) has had a major impact. For analysis of the main changes in this sector see § 10.3.

The system allocating competences concerning criminal proceedings distribute the criminal cases to be heard both horizontally and vertically, the purpose being to determine the court competent to hear the proceeding.

In relation to the proceedings on trafficking in human beings and the smuggling of migrants, the criteria for determining judicial competences are those that concern:

- competence on the case;
- territorial competence
- competence by connection;
- so-called "functional" competence.

This is the system for determining competences for every criminal proceeding, but as will be explained below, of major importance for the present research are the criteria of 'territorial competence' and "'functional competence'. According to some of the prosecutors interviewed, these criteria may create obstacles or even conflicts detrimental to the efficacy of the strategy to combat the criminal phenomena in question.

²²⁰ F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, p. 131.

²²¹ See *infra* chapter 13.

10.7.1 Competence according to the case

Articles 5 and 6 of the criminal procedure code regulate the criterion according to the case at hand. Following the reform that introduced the single judge of first instance and abolished the office of *pretore*,²²² this criterion only regards the court of assize and the court of first instance (*tribunale*). It establishes competence on the cases to be heard in the proceeding of first instance, assigning them to the *tribunale* or the court of assize depending on the category to which the crime charged belongs (qualitative criterion) and/or the type and minimum and maximum degree of punishment provided for the crime (quantitative criterion).²²³

This criterion only determines the competence of the judge and does not concern identification of the prosecutor. It is nevertheless of interest to this study because it reflects the fragmentation that characterises all the provisions applicable to the criminal phenomena in question. To be recommended is a legal reform that includes in a single provision all the crimes relating to trafficking in persons, bearing in mind that “even though there is no legal vacuum, given that there is no lack of criminal provisions that can be applied, there are numerous reasons to be dissatisfied with the current legislation. [...] a new provision with more modern content would resolve the problems arising from the interpretation and legal description of the crime contained in the provisions (*tipicità*), while at the same time it would equip prosecutors with an instrument to prevent the multiplication of charges and identify the competent judge more easily, given that the entire subject would fall under the competence of the Tribunale in its collegial form”.²²⁴

In regard to the criminal offences mentioned above, judicial competences can be reformulated in relation to proceedings concerned with cases of trafficking in persons.

Under article 5 of the criminal procedure code, the Court of Assize is competent when one of the following crimes has been committed:

- reduction to servitude (article 600 criminal code);
- trafficking and trading in slaves (article 601, par. 1. criminal code);
- trafficking and trading in minors (article 601, par. 2. criminal code);
- conveyance and purchase of slaves (article 602 criminal code).

Under article 6 of the criminal procedure code, the *tribunale* is competent whenever the Court of Assize is not. Within the framework of the proceedings considered by this research, the *tribunale* is competent for the majority of the crimes that may be committed.

However, a further element must be taken into account. The regulations on the distribution of cases within the *tribunale* apply a sub-criterion which distinguishes the competence of the *tribunale* in collegial form from its competence when composed of a single judge (*composizione monocratica*). Although equivalent to the concept of competence, preferable in this case is reference to the criterion of “assignment” in order to highlight the nature of the distribution that takes place

²²² By the *d.lgs.* 19 February 1998, no. 51.

²²³ See on this G. Conso, V. Grevi (ed.), *Compendio di procedura penale*, CEDAM, Padua, 2000, p. 14.

²²⁴ Parliamentary Acts, XIII legislature, Camera dei Deputati, no. 5839.

within the *tribunale* itself. The distribution is based on a quantitative criterion that assigns to the *tribunale* in its collegial form “the criminal offences punished with imprisonment for a maximum period longer than ten years”, (article 33–*bis*, par. 2, criminal procedure code), and on a qualitative criterion that provides for exemptions to this rule.

Under article 33–*bis* of the criminal procedure code, the *tribunale* in its collegial form is competent to try the following crimes (both committed and attempted) relating to the trafficking of persons:

- conspiracy to commit crime (article 416 criminal code);
- Mafia–type association (article 416–*bis* criminal code);
- Inducement to move to another country or place in order to practise prostitution (article 3, no. 6, law no. 75, 20 February 1958);
- association for the purpose of recruiting persons for prostitution (article 3, no. 8, law no. 75, 20 February 1958);
- abetment or exploitation of prostitution (article 3, no. 8, law no. 75, 20 February 1958, no. 5);
- juvenile prostitution (article 600–*bis*, par. 8, criminal code);
- sexual assault (article 609–*bis* criminal code);
- kidnapping for ransom (article 630 criminal code);²²⁵
- aggravated facilitation of illegal entry of persons in the territory of the state (article 12, par. 3, *d.lgs.* 286/1998).²²⁶

The competence of the *tribunale* in its single–judge form arises under article 33–*ter*, par. 2 criminal procedure code whenever the collegial *tribunale* is not competent, and is in particular competent to try cases concerned with the following crimes:

- facilitation of the illegal entry of a person in the territory of the state (article 12, par. 1, *d.lgs.* 286/1998);
- facilitation of the illegal residence of the foreigner on the territory of the state (article 12, n. 5 *d.lgs.* 286/1998);
- abduction (article 605 criminal code).

10.7.2 Territorial competence

Territorial competence allows determination of not only the venue where the competent judge will hear the case but also the prosecutor’s office that will conduct the investigation.

²²⁵ Unless the conduct in whatever manner causes the death of the kidnapped person (article 630, paragraph 2 and subs. criminal code), in which case the competent court is the Court of Assize.

²²⁶ Article 12 paragraph III of the consolidated text of the law sets forth a series of aggravating circumstances with so–called ‘special effect’, to which the law applies a distinct level of sanctions. Under article 33–*bis* paragraph III criminal procedure code, assignment to the *tribunale* in collegial form is determined according to the rules set forth by article 4 of the criminal procedure code, which states the penalty for each committed or attempted crime. The provision of paragraph II states “the character of continuity of the crime, recidivism and the circumstances of the crime are not taken into account, except in the case of aggravating circumstances for which the law provides penalties different from ordinary ones or aggravating circumstances with so–called ‘special effect’”. It has been argued that this regulation is also applicable to the aggravated cases considered above.

This competence is generally defined by the rules contained in article 8 of the criminal procedure code. The main rule concerns the so-called *locus commissi delicti* (article 8, par 1) and assigns competence to the judge of the *tribunale* situated in the district where the crime was committed. The subsequent paragraphs provide further general rules that define the other cases where it is preferable to deviate from the basic rule.²²⁷

In addition, article 9 of the criminal procedure code sets out supplementary rules that intervene in determination of the competent judge when it is not possible to apply article 8.²²⁸

Finally, article 10 of the criminal procedure code deals with the case where the crime has been committed abroad.²²⁹

An exception to the regulation contained in the criminal procedure code, one which is important for the purposes of this research study, is the provision contained in article 328 1-*bis* which specifically regulates proceedings concerning the crimes listed in article 51 par. 3-*bis* criminal procedure code and assigns competence for the pre-trial investigation phase to the prosecutor at the *tribunale* situated in the chief town of the district²³⁰ (while during the trial the ordinary rules apply).²³¹

As regards the assignment of proceedings during the pre-trial investigation to the various prosecutor's offices present in the territorial area, the criminal procedure code does not use the term 'competence', since this is used only in relation to judicial activity.²³²

So-called 'legitimation', that is to say, entitlement to exercise the prosecutorial function in a particular territory, indirectly derives from the competence of the judge hearing the case. Under article 51, par. 3 of the criminal procedure code, the competent prosecutors are those operating in the same territory as the competent judge, this being determined by chapter II, title I (see above).

²²⁷ Paragraph II provides that, in case the death of one or more persons, competence to try the case passes to the judge of the place where the action or omission occurred, in consideration of the fact that the conduct and the event may take place in different places. Paragraph III deals with the permanent offence, assigning competence to decide the case to the judge of the place where commission of the crime began, rather than the place where the permanent character of the crime ceased. Paragraph IV states that in the case of attempted crime the competent judge is the one of the place where the last act in commission of the crime occurred.

²²⁸ The following criteria are mentioned in order of importance: "the place where part of the action or omission occurred" (article 9, paragraph I); "the habitual residence, abode or domicile of the defendant" (article 9 paragraph II); "the place wherein is situated the office of the first prosecutor to register the reported crime in compliance with article 335 criminal procedure code" (article 9, paragraph III).

²²⁹ In particular, when the crime has been committed entirely abroad (article 10, paragraph I and II), competence is determined in consideration of the place of habitual residence, abode, domicile, arrest or delivery of the defendant, or in consideration of the first place where the reported crime was registered according to article 335 criminal procedure code. If the crime is partially committed abroad, the rules contained in articles 8 and 9 of the criminal procedure code apply (article 10, paragraph III).

²³⁰ The rule set out by article 51 paragraph 3-*bis* allows "functional" distribution of the proceedings among prosecutor's offices during pre-trial investigations into the same crimes; see below.

²³¹ See on this G. Conso, V. Grevi, *op. cit.*

²³² G. Conso, V. Grevi, *op. cit.*, p. 63.

10.7.3 Competence by connection

The criminal procedure code states a further criterion for the assignment of competence: the so-called 'criterion of connection', which modifies the allocation provided for by the general rules on competence according to the case at hand and the territory, so that a single adjudicating body hears proceedings that would have otherwise been distributed among several courts.

This criterion has an important bearing on competences in proceedings related to the crimes in question, because it profoundly modifies the operation of the other criteria, in particular that on territorial competence. If one of the listed connections among proceedings exists, transfer ensues not only of the venue of the hearing court but also of the competent prosecutor, so that all investigations are transferred from one prosecutor's office to another.

Article 12 paragraph 1 of the criminal procedure code envisages the existence of a connection between proceedings in one of the following cases:

- *complicity in commission of the crime* by several persons, or *independent actions* by several persons to bring about the event (letter a);
- *formal complicity* in the crime, when a person is charged with several crimes committed by means of one single action or omission, or in the case of a *continuing offence*, where the person pursues a single criminal plan by means of several actions or omissions (letter b);
- *occasional connection*, where some of the crimes charged have been occasioned by the commission of other crimes, or in case of *teleological connection*, when some of the crimes charged have been committed in order to conceal other crimes or to ensure the profit, price, product or impunity (letter c).

If some of the connected proceedings have been heard by the *tribunale* or the court of assize, the competence rule according to the case pursuant to article 15 of the criminal procedure code entails the sole competence of the court of assize over all the proceedings.

Under article 16, par. 1 of the criminal procedure code, territorial competence is altered in the case of connection: the competent court is the one competent for the more serious crime, or if the crimes are equally serious, the one competent for the crime that has been committed first.

10.7.4 'Functional' competence

Though this criterion is not expressly stated by the criminal procedure code, it is used to divide judicial and jurisdictional activity into a number of functions that a judge may carry out during a proceeding.²³³

In particular, the prosecutors at the various national prosecutor's offices are organized on the basis of a 'functional criterion' for the distribution of their workload.

²³³ See G. Conso, V. Grevi, *op. cit.*

Article 51, par 1, letter A of the criminal procedure code, in general, assigns the role of prosecutor during pre-trial investigations and proceedings of first instance to the prosecutors at the *tribunale* in whose district the crime was committed, as determined by the rules on territorial competence.²³⁴

An exception to this entitlement rule is introduced by article 51, par. 3-*bis* of the criminal procedure code,²³⁵ which provides a special set of rules (the so-called “double track”) for certain particularly serious offences related to Mafia organised crime. In the latter case, the functions of prosecutor for pre-trial investigations and proceedings of first instance are assigned to the prosecutor at the *tribunale* of the chief town of the court of appeal’s district in which the court competent to hear the case is situated.

The prosecutor’s office at the *tribunale* of the chief town of the district constitutes an ‘Anti-Mafia District Division’.²³⁶ The prosecutors working in this particular division of the prosecutor office’s, to which are assigned the proceedings for the above-mentioned crimes, are appointed for a period of at least two years.²³⁷

The Anti-Mafia District Divisions are competent, pursuant to article 51, par. 3-*bis*, for proceedings related to the following crimes:

- Mafia-type association, both committed or attempted (article 416-*bis* criminal code);
- kidnapping for ransom (article 630 criminal code) ;
- crimes committed in the circumstances described by article 416-*bis* of the criminal code, the so-called ‘goal-crimes’ instrumental to Mafia-type association;
- crimes committed to facilitate the activity of the associations covered by article 416-*bis* of the criminal code (‘means-crimes’);
- association for the purpose of drug trafficking (article 74, d.p.r. no. 309, 9 October 1990).

This is not a comprehensive list, in the sense that there is no provision that requires the prosecutors at the Anti-Mafia District Division to restrict their activities solely to the above crimes;²³⁸ they may investigate other crimes as well.²³⁹

²³⁴ Article 51, paragraph 3, criminal procedure code.

²³⁵ Introduced by the d.l. no. 367, 20 November 1991, as converted with modifications by law no. 8, 20 January 1992.

²³⁶ The Antimafia District Division and the Antimafia National Division, which has a coordinating function, was created by legislative decree no. 367, 20 November 1991, as converted into law no. 8, of 20 January 1992.

²³⁷ Article 70-*bis* paragraph I judicial ord. The provision has been added by article 5 of *decreto legge* no. 367, 20 November 1991.

²³⁸ Article 70-*bis* judicial ord. regulating the establishment of Antimafia District Divisions only specifies in paragraph III that it is the task of the district prosecutor to designate the prosecutors competent for proceedings pursuant to article 51, paragraph 3-*bis* of the criminal procedure code, stating in paragraph II that the designated prosecutors must fulfil “the duty to ensure the complete and timely mutual exchange of information on investigations” and “to implement the instructions given for coordination and the use of the judicial police”.

²³⁹ This is advantageous to the strategy for combating the trafficking of persons and the smuggling of migrants especially in view of the fact that numerous criminal offences can be taken into account and for the most part are not included in the list provided by article 51, paragraph 3-*bis*, criminal procedure code.

In the light of the above, it is now possible to delineate a distribution of proceedings in which investigation has begun into one of the above-mentioned crimes in relation to cases of trafficking or smuggling.

The ordinary, district or individual prosecutor offices are generally competent for almost all offences, that is to say for:

- crimes related to illegal immigration (article 12, *d.lgs.* 286/98);
- crimes concerning slavery (article 600 and 602 criminal code);
- crimes related to prostitution (article 3, law 75/58; article 600-*bis* criminal code);
- crimes against individual freedom (article 605, 609-*bis* criminal code).

The Anti-Mafia District Divisions are competent for proceedings where the following crimes are charged:

- Mafia-type association (article 416-*bis* criminal code) and possible connected crimes;
- kidnapping for ransom (article 630 criminal code);
- any crime committed by an association also active in the drug trafficking, pursuant to article 74 of the consolidated text of the Law on Drugs.

10.7.5 Anti-mafia national and district divisions

At this point of the study it seems appropriate to conduct brief examination of the structure and functioning of the Anti-Mafia National Division (Direzione Nazionale Anti-mafia or DNA) and the District Divisions (Direzioni Distrettuali Anti-mafia or DDAs), given their important role in the suppression of the illicit activities of organised crime.

Competence for the proceedings in cases concerning trafficking and smuggling does not directly attach to these structures unless there are grounds to suspect the existence of a Mafia organised group, although proposals have been for their competence to be altered in this regard. According to the prosecutors interviewed, modifications to the criminal provisions applicable to trafficking should introduce not only an *ad hoc* offence but also a new “associative crime characterised by the intent to traffic in persons and to exploit them by a criminal organisation”,²⁴⁰ so that the relative proceedings are assigned to the DDAs and DNA. These arguments are supported by Italy’s signature to the two Protocols of the Palermo Convention, which provide for criminal offences of an associative nature. Both the trafficking of human beings and the smuggling of migrants, in fact, require a permanent organisation established in the countries of origin, transit and destination (see article 2 Palermo Convention). It is for this reason that the investigations should be assigned to the DDAs.

The purpose of the legislation creating a differentiated regime for certain Mafia-type criminal offences by modifying the regulations on the office of prosecutor is to strengthen the investigative and judicial activity regarding offences seen as the most serious committed by organised crime.

²⁴⁰ F. Spiezia, F. Frezza, N.M. Pace, *op. cit.*, p. 49.

The decision to set up an *ad hoc* judicial structure for combating the Mafia fulfils two needs: coordination and specialisation.

“the suppression of these organisations requires [...] that all the agencies involved in investigations to identify the perpetrators and prosecute them should structure themselves and act with account taken of multi-territoriality. The criminal network should be opposed by an investigative one. The concept of coordination entails that of specialization [...], which derives from the repeated experience of specific investigations, from the consequent development of knowledge on the criminal organisations and their diverse features, and from the organised conservation of that knowledge; and furthermore, from the devising and the constant updating of specific investigative techniques, the development of appropriate investigative methods, the use of ever more complex and sophisticated technological devices [...] and, last but not least, profound knowledge of all criminal legislation on the subject”.²⁴¹

The Anti-mafia National Division (DNA) occupies a partially different position in the framework of the judicial organisation competent for criminal proceedings on organised crime. At the head of the DNA, which operates within the General Prosecutor's Office at the Court of Cassation, is the National Anti-Mafia Prosecutor, who is appointed by the *Consiglio Superiore della Magistratura* (CSM).²⁴²

The functions of the National Anti-Mafia Prosecutor are stated by article 371-*bis* of the criminal procedure code. They are twofold in nature:

- promoting coordination;²⁴³
- promoting investigations.²⁴⁴

Pursuant to article 371-*bis*, par. 1, the National Anti-Mafia Prosecutor heads the Anti-Mafia Investigative Division (*Direzione Investigativa Antimafia* or DIA), which is an agency set up at the Public Security Department within the Ministry of Internal Affairs and entrusted with the task of coordinating investigations into organised crime, and the central and inter-provincial law enforcement services.

²⁴¹ V. Borraccetti, “Direzione nazionale e direzioni distrettuali antimafia. Un bilancio della esperienza del coordinamento” [Antimafia National Division and District Divisions. An Assessment of the Coordination Experience], in *Questione Giustizia*, no. 3, 2002, p. 636.

²⁴² Article 76-*bis* judicial ord., introduced by legislative decree no. 367, 20 November 1991.

²⁴³ Article 371-*bis* paragraph II defines the “functions of effective coordination of investigative activities among district prosecutors, guaranteeing the functionality of the use of the police in its different departments, and guaranteeing the comprehensiveness and immediateness of investigations”; paragraph III, letter a guarantees the investigative linkages established with the anti-Mafia district prosecutors, thanks also to intervention by the AND prosecutors working with the national prosecutor. Any conflicts in investigative activities and relative powers to intervene are regulated by paragraph III letter f, which empowers the national prosecutor to issue specific instructions to district prosecutors in order to prevent or avoid conflicts; paragraph III, letter g, empowers the national prosecutor to summon district prosecutors when conflicts have not been resolved by directives; finally, paragraph III letter h, enables the national prosecutors to take over prosecutions as an *extrema ratio* to resolve conflicts.

²⁴⁴ The same functions are set out in article 371-*bis* paragraph III letter c of the criminal procedure code, which affirms that the national prosecutor “for the purpose of coordinating investigations and suppressing the crimes must acquire and process reports, information and data regarding organised crime”. This provision gives the prosecutor an active role in seeking information on organised crime.

Just over ten years since creation of these special prosecutor offices, one may pass positive judgement on their effectiveness in suppressing the illicit activities of Mafia organised crime:

“the experience [...] gained over these years allows one to declare that prosecutors are increasingly aware that investigation requires team-work aimed not only at obtaining a positive outcome from the proceeding entrusted to an individual office or prosecutor but also to acquire knowledge which may be useful to all prosecutor’s offices or law enforcement agencies concerned with the same criminal phenomena. [...] Especially the DNA, which is an office that gathers and organises investigative and legal knowledge[...] and integrates it with general information and knowledge [...] regarding the economy, finance, public administration, at the summit of law enforcement, an office supplying the district prosecutor’s offices with knowledge, analysis and services, contributes significantly to defining a general strategy against organised crime ”.²⁴⁵

²⁴⁵ V. Borraccetti, *op. cit.*, p. 641.

11.

A MAP OF THE PHENOMENON IN ITALY: PROCEEDINGS BROUGHT BY PROSECUTOR'S OFFICES BETWEEN JUNE 1996 AND JUNE 2001

The Antimafia National Division drew up a survey instrument which was then sent to the prosecutor's office at each court in order to determine the existence and characteristics of ongoing proceedings concerned with 'trafficking in persons for the purpose of exploitation' and 'smuggling of migrants'. By the expression 'ongoing proceedings' is meant those relative to human trafficking offences either under investigation or brought to trial, or adjudicated with a conviction, during the period between June 1994 and June 2001. The survey instrument gathered quantitative information on the crimes prosecuted, their perpetrators, and the victims. For thorough discussion see Annex A.

For each single proceeding, each prosecutor's office completed a survey form which was then returned to the Anti-Mafia National Division (henceforth AND). This material was used by the AND to create the Proceedings for People Trafficking for Exploitation and Migrant Smuggling Database. On receiving the Database, Transcrime validated it by means of a long and complex process based on subjective criteria and interpretations of the phenomena which made the necessary adjustments. Transcrime then processed all the information. This chapter sets out the results of the analysis.

Of the 164 prosecutor's offices in the country 149 responded to the AND's request for information: 114 of them responded positively, stating that they had brought proceedings for trafficking offences and/or smuggling during the period between June 199 and June 2001,²⁴⁶ while 35 declared that they had not brought any proceeding concerning those offences during the period in question.²⁴⁷ The data set out below therefore refer to the judicial activity of the 114 'active' public prosecutor's offices. Accordingly, the data concern the judicial activities of the 114 prosecutor's offices that responded positively.

²⁴⁶ The 114 public prosecutor's offices which stated that they had brought proceedings for trafficking and/or smuggling offences between June 1996 and June 2001 were (in alphabetical order): Agrigento, Alba, Alessandria, Ancona, Arezzo, Ariano Irpinio, Ascoli Piceno, Avellino, Bari, Bassano Del Grappa, Benevento, Bergamo, Biella, Bologna, Bolzano, Brescia, Brindisi, Busto Arsizio, Cagliari, Caltanissetta, Camerino, Campobasso, Cassino, Catania, Catanzaro, Chiavari, Chieti, Cosenza, Cremona, Crotona, Cuneo, Fermo, Florence, Foggia, Frosinone, Genoa, Gorizia, Grosseto, Imperia, Isernia, La Spezia, Lagonegro, Lanusei, L'Aquila, Larino, Lecce, Livorno, Locri, Lucca, Macerata, Mantua, Marsala, Matera, Melfi, Messina, Milan, Modena, Modica, Mondovì, Monza, Nocera Inferiore, Nola, Novara, Oristano, Orvieto, Padua, Palermo, Palmi, Parma, Patti, Pavia, Perugia, Pesaro, Pescara, Pisa, Pistoia, Prato, Ragusa, Ravenna, Reggio Calabria, Rimini, Rome, Rossano, Rovereto, Rovigo, S. Angelo dei Lombardi, Salerno, Saluzzo, Sassari, Savona, Siccacusa, Siena, Siracusa, Sulmona, Taranto, Tempio Pausania, Tolmezzo, Turin, Torre Annunziata, Tortona, Trani, Trapani, Treviso, Trieste, Urbino, Varese, Vasto, Velletri, Vercellina, Vercelli, Vibo Valentia, Vicenza, Vigevano, Voghera.

²⁴⁷ The 35 public prosecutor's offices which stated that they had brought proceedings for human trafficking offences between June 1996 and June 2001 were (in alphabetical order) the following: Acqui Terme, Aosta, Asti, Avezzano, Barcellona Pozzo di Gotto, Belluno, Caltagirone, Casale Monferrato, Castrovillari, Crema, Enna, Ferrara, Gela, Ivrea, Lamezia Terme, Lanciano, Latina, Lecco, Lodi, Lucera, Massa, Mistretta, Montepulciano, Nicosia, Nuoro, Paola, Piacenza, Pinerolo, Pordenone, Reggio Emilia, Rieti, Sala Consilina, Sondrio, Termini Imerese, Vallo della Lucania.

Preliminary analysis of the proceedings on trafficking and smuggling yielded answers to the following questions. How many were the proceedings in total? In which areas of the country did the prosecutor's offices have the heaviest workloads? Which activity predominated: trafficking or smuggling?

A total of 9,004 proceedings were brought for crimes related to trafficking and smuggling at the pre-trial stage or were adjudicated with convictions between June 1996 and June 2001. The yearly average was therefore around 1,800 proceedings.

As Table 1 and Figure 1 show, most of the proceedings were concentrated in particular areas of the country. In the South the most active prosecutor's offices were those situated in Sicily, notably Marsala (161 proceedings), Palermo (105) and Agrigento (75) and those situated in Puglia, notably Lecce (946), Brindisi (556) and Foggia (51). In the central regions of the country, the most proceedings were brought by the prosecutor's office of Rome (222 proceedings), Ascoli Piceno (105), Arezzo (102), Macerata (97), Velletri (92) and Fermo (54). In the north-east the most active prosecutor's offices were those of Trieste (2,165), Gorizia (858) and Tolmezzo (355). In the central regions of the North, they were those of Milan (905 proceedings), Brescia (517), Bergamo (53) and Monza (77). Moving westwards, still in the north of the country, the most active offices were Turin (112 proceedings), Alessandria (72) and Savona (66).

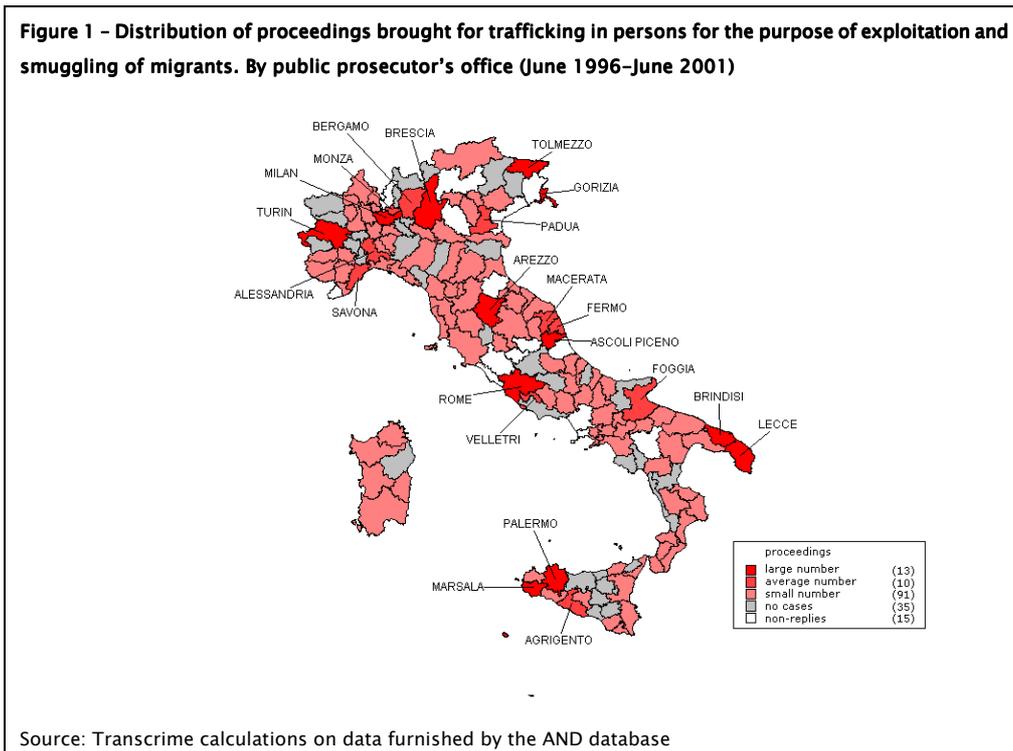
Table 1 – Proceedings brought for human trafficking for the purpose of exploitation and for smuggling of migrants.
By public prosecutor's office. Absolute values (June 1996–June 2001)

AGRIGENTO	75	IMPERIA	1	PRATO	27
ALBA	6	ISERNIA	1	RAGUSA	11
ALESSANDRIA	72	LA SPEZIA	5	RAVENNA	37
ANCONA	34	LAGONEGRO	1	REGGIO CALABRIA	3
AREZZO	102	LANUSEI	2	RIMINI	2
ARIANO IRPINIO	3	L'AQUILA	5	ROME	222
ASCOLI PICENO	105	LARINO	3	ROSSANO	26
AVELLINO	13	LECCE	946	ROVERETO	7
BARI	13	LIVORNO	19	ROVIGO	1
BASSANO DEL GRAPPA	22	LOCRI	25	S. ANGELO DEI LOMBARDI	1
BENEVENTO	6	LUCCA	11	SALERNO	1
BERGAMO	53	MACERATA	97	SALUZZO	3
BIELLA	13	MANTUA	26	SASSARI	3
BOLOGNA	13	MARSALA	161	SAVONA	66
BOLZANO	9	MATERA	22	SCIACCA	8
BRESCIA	517	MELFI	8	SIENA	1
BRINDISI	556	MESSINA	1	SIRACUSA	20
BUSTO ARSIZIO	32	MILAN	905	SULMONA	17
CAGLIARI	7	MODENA	17	TARANTO	3
CALTANISSETTA	1	MODICA	32	TEMPIO PAUSANIA	7
CAMERINO	2	MONDOVI'	8	TOLMEZZO	355
CAMPOBASSO	3	MONZA	77	TORRE ANNUNZIATA	112
CASSINO	11	NOCERA INFERIORE	4	TORTONA	4
CATANIA	5	NOLA	27	TRANI	5
CATANZARO	1	NOVARA	1	TRAPANI	13
CHIAVARI	35	ORISTANO	1	TREVISO	6
CHIETI	8	ORVIETO	18	TRIESTE	8
COSENZA	9	PADUA	71	TURIN	2165
CREMONA	8	PALERMO	105	URBINO	1
CROTONE	34	PALMI	28	VARESE	36
CUNEO	40	PARMA	3	VASTO	8
FERMO	54	PATTI	2	VELLETRI	92
FLORENCE	16	PAVIA	1	VERBANIA	5
FOGGIA	51	PERUGIA	35	VERCELLI	23
FROSINONE	25	PESARO	41	VIBO VALENTIA	3
GENOA	43	PESCARA	44	VICENZA	45
GORIZIA	858	PISA	3	VIGEVANO	1
GROSSETO	2	PISTOIA	37	VOGHERA	5

Source: Transcrime calculations on data furnished by the AND database

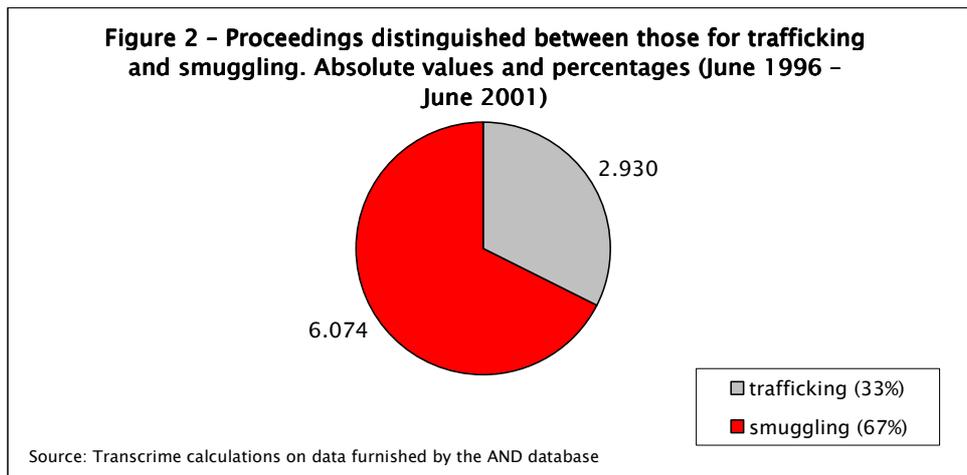
To be stressed are three findings which will be thoroughly discussed in the following parts of this chapter, where the data on trafficking and smuggling are analysed separately, and then in chapter 12, where the details of the interviews conducted at the most active prosecutor's offices will be presented. The areas with the largest number of proceedings on trafficking and smuggling were 1) *terrestrial or maritime border areas*; 2) *large cities or rich cities in the North*; 3) *small towns in the central regions with economies based on tourism and small-to-medium sized industry*.

Figure 1 - Distribution of proceedings brought for trafficking in persons for the purpose of exploitation and smuggling of migrants. By public prosecutor's office (June 1996-June 2001)



Source: Transcrime calculations on data furnished by the AND database

Out of a total of 9,004 proceedings, 6,074 were concerned with the smuggling of migrants and 2,930 with trafficking in persons for exploitation (see Figure 2). Around 67% of the proceedings brought between June 1996 and June 2001 were for the smuggling of migrants, whilst the remaining 33% were for trafficking. Assuming that action to combat the two offences taken by the police and the prosecutors was equally uniform and effective, one may conclude that offences related to the smuggling of migrants were more common. The offences related to the organisation of illegal immigration seem be more frequent that those connected with trafficking for the purpose of sexual exploitation. It is difficult to say whether this ratio between trafficking and smuggling actually holds true: indeed, it is possible to think of at least three cases which suggest the opposite, or at any rate mitigate the finding: 1) it may be that large part of the illicit activities that would turn into exploitation if the victims reached their destinations are intercepted by the prosecutor's offices at the country's borders and are thus classified as smuggling; 2) the organisation of illegal immigration is relatively easier for the law enforcement agencies and prosecutors to intercept; 3) as a consequence, it may be that the law enforcement agencies and prosecutors concentrate their efforts on the suppression of smuggling.



The following sections conduct detailed analysis of the types of crimes charged, their number, and the characteristics and distribution of their perpetrators and victims, considering both trafficking in persons for the purpose of exploitation and the smuggling of migrants. Answers will be proposed to a number of questions concerning first trafficking and second smuggling. How many proceedings were brought and how were they distributed? To what types of offences did the charges relate? How many suspects/defendants and sentenced persons were there, and what were their nationalities? How were proceedings against the defendants belonging to the most frequently represented nationalities distributed across the country? Who were the victims and what were their nationalities? How were proceedings regarding victims with the most frequently represented nationalities distributed across the country?

11.1 TRAFFICKING IN PERSONS FOR THE PURPOSE OF EXPLOITATION

11.1.1 The proceedings

In the period between June 1996 and June 2001 a total of 2930 proceedings were brought for trafficking in persons for the purpose of exploitation. As will be seen from Table 2 and Figure 3, some Italian prosecutor's offices were principally concerned with trafficking. Figure 2 shows the areas in which the largest numbers of proceedings were brought. On inspecting their distribution it is possible to distinguish among: 1) *exploitation in the large metropolises (or their hinterlands) and the rich industrial cities of the North*. Moving from south to north, this category comprises the prosecutor's offices of Palermo, Rome, Velletri, Chiavari, Savona, Cuneo, Alessandria, Turin, Milan, Brescia, Vicenza and Padua; 2) *exploitation in small towns in the country's central regions, especially those located on the coast, whose economies are based on tourism and small-to-medium sized industry*. Belonging to this latter group, again moving from south to north, are the prosecutor's offices of Pescara, Ascoli Piceno, Fermo, Macerata, Perugia, Arezzo, Pesaro and Ravenna. Most of these prosecutor's offices are located in coastal towns

where prostitution is linked with tourism and large population surges at certain times of the year; 3) *exploitation in towns located on borders*. The high concentration of proceedings for human trafficking in the prosecutor's offices of these towns – e.g. Lecce, Foggia, Trieste and Gorizia – seems to be a side-effect of the large flows of traffic that pass through them.

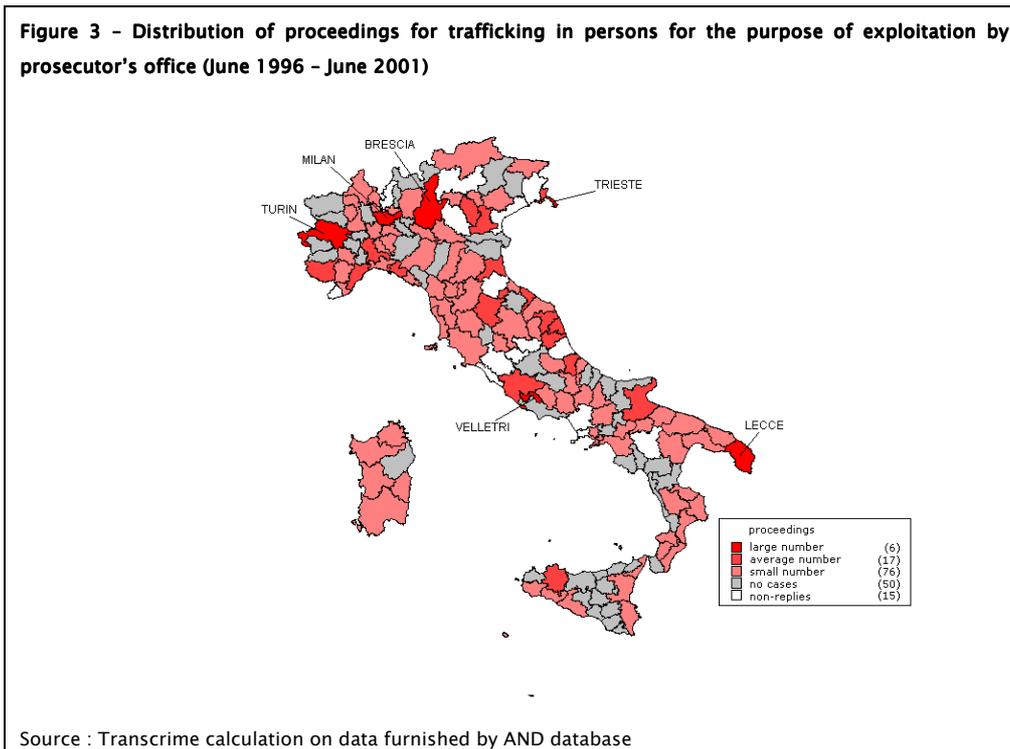
A further specification is in order. Although various forms of exploitation exist, the two most widespread are prostitution and irregular or 'black' work. This may explain why judicial proceedings for trafficking are most frequent in areas comprising cities which are wealthy and/or densely populated and/or which account for a large proportion of the country's industry. One may presume, in fact, that it is in precisely these zones that there is a high level of demand for prostitution and/or irregular labour.

Table 2 – Proceedings brought for human trafficking for the purpose of exploitation. By public prosecutor's office. Absolute values (June 1996–June 2001)

AGRIGENTO	1	IMPERIA	1	PRATO	17
ALBA	4	ISERNIA	1	RAGUSA	0
ALESSANDRIA	70	LA SPEZIA	2	RAVENNA	34
ANCONA	17	LAGONEGRO	0	REGGIO CALABRIA	0
AREZZO	34	LANUSEI	2	RIMINI	2
ARIANO IRPINIO	0	L'AQUILA	5	ROME	79
ASCOLI PICENO	86	LARINO	0	ROSSANO	21
AVELLINO	0	LECCE	342	ROVERETO	5
BARI	6	LIVORNO	19	ROVIGO	0
BASSANO DEL GRAPPA	21	LOCRI	10	S. ANGELO DEI LOMBARDI	1
BENEVENTO	4	LUCCA	5	SALERNO	1
BERGAMO	25	MACERATA	80	SALUZZO	0
BIELLA	9	MANTUA	11	SASSARI	2
BOLOGNA	4	MARSALA	7	SAVONA	41
BOLZANO	1	MATERA	14	SCIACCA	2
BRESCIA	456	MELFI	3	SIENA	1
BRINDISI	16	MESSINA	1	SIRACUSA	13
BUSTO ARSIZIO	9	MILAN	418	SULMONA	1
CAGLIARI	4	MODENA	15	TARANTO	1
CALTANISSETTA	0	MODICA	0	TEMPIO PAUSANIA	5
CAMERINO	2	MONDOVI'	8	TOLMEZZO	14
CAMPOBASSO	2	MONZA	29	TORRE ANNUNZIATA	92
CASSINO	8	NOCERA INFERIORE	1	TORTONA	1
CATANIA	4	NOLA	10	TRANI	3
CATANZARO	1	NOVARA	0	TRAPANI	5
CHIAVARI	34	ORISTANO	1	TREVISO	0
CHIETI	2	ORVIETO	9	TRIESTE	7
COSENZA	8	PADUA	57	TURIN	123
CREMONA	1	PALERMO	77	URBINO	0
CROTONE	2	PALMI	18	VARESE	7
CUNEO	39	PARMA	2	VASTO	0
FERMO	54	PATTI	0	VELLETRI	91
FLORENCE	12	PAVIA	1	VERBANIA	2
FOGGIA	45	PERUGIA	20	VERCELLI	14
FROSINONE	2	PESARO	38	VIBO VALENTIA	3
GENOA	19	PESCARA	32	VICENZA	44
GORIZIA	41	PISA	3	VIGEVANO	1
GROSSETO	1	PISTOIA	16	VOGHERA	4

Source: Transcrime calculations on data furnished by the AND database

Figure 3 – Distribution of proceedings for trafficking in persons for the purpose of exploitation by prosecutor's office (June 1996 – June 2001)



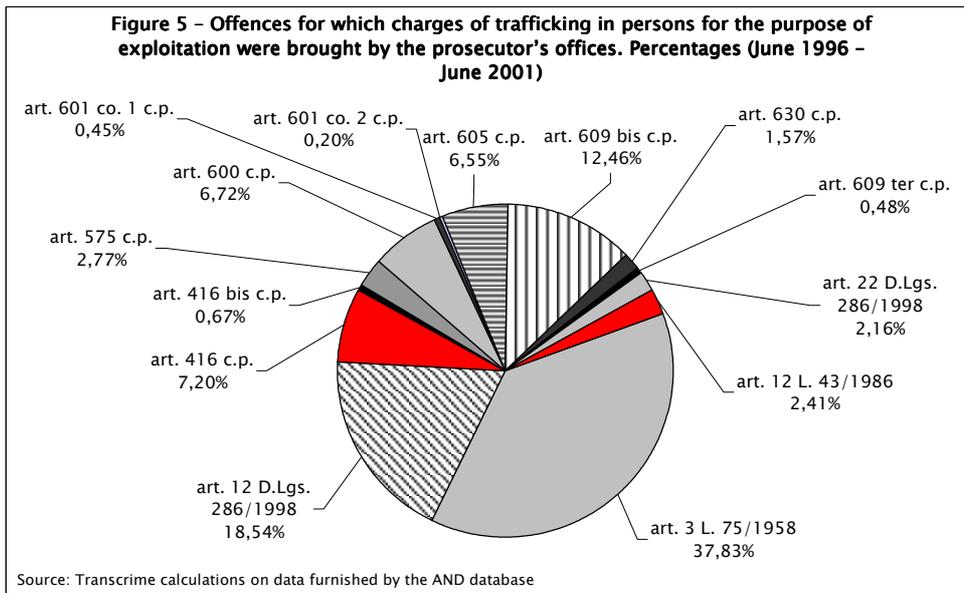
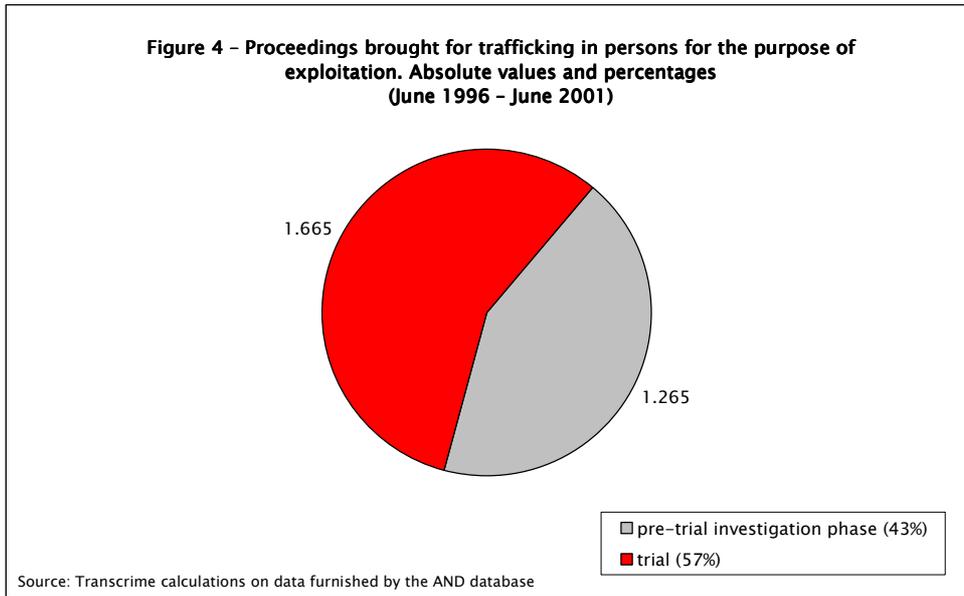
Source : Transcrime calculation on data furnished by AND database

In the period considered, 43% of proceedings on trafficking were still in the pre-trial investigation phase, while 57% were at trial (Figure 4). As Figure 5 shows that charges were brought for a variety of offences, but mostly for:

- crimes related to prostitution, article 3, law no. 75, 20 February 1958 (38% of the crimes charged);
- facilitation of illegal immigration, article 12, *d.lgs.*, 26 July 1998 (19% of the crimes charged);
- sexual assault, article 609–*bis* criminal code (12% of the crimes charged);
- conspiracy to commit crime, article 416 criminal code (7% of the crimes charged);
- reduction to servitude, article 600 criminal code (7% of the crimes charged);
- abduction, article 605 of the criminal code (7% of the crimes charged).

Note also, and as one would expect, charges were also brought for offences relating to the use of the labour of non-EU nationals, and which are punished by article 12 of law 12/1986 and article 22 of law 286/1998. These proceedings dealt with the exploitation of illegal immigrants as irregular labour. Each of these two offences accounted for 3% of the crimes charged.

The pattern of charges brought in cases of trafficking highlights the systematic use of violence and intimidation, even in extreme forms, by the criminals concerned.



11.1.2 The persons investigated/prosecuted/sentenced

How many perpetrators were there and of which gender were they? The data gathered by the Antimafia National Division from monitoring the work of the prosecutor's offices furnish answers to these questions. However, a caveat is necessary. Because of the methodology used, the data, concern the aggregate of persons suspected, prosecuted and sentenced, and it is not possible to disaggregate them into individual categories.

The number of persons investigated, prosecuted or sentenced for crimes related to trafficking in persons for the purpose of exploitation was 7,582, of which 1,216 were females (around 16%). As will be seen from Table 3, trafficking for exploitation

is an activity mainly undertaken by foreigner nationals: only 32.18% of offenders were Italian; the remaining 67.82% during the period considered were foreigner nationals.

Table 3 - Persons investigated/prosecuted/sentenced for trafficking in persons for the purpose of exploitation. Absolute values and percentages (June 1996 - June 2001)

Nationality	Males	Females	Totale	% Males	% Females	%Total
Albania	2101	161	2262	33,00	13,24	29,83
Bosnia	35	5	40	0,55	0,41	0,53
Bulgaria	43	18	61	0,68	1,48	0,80
China	437	70	507	6,86	5,76	6,69
Colombia	27	32	59	0,42	2,63	0,78
Croatia	15	1	16	0,24	0,08	0,21
Czech Republic	15	15	30	0,24	1,23	0,40
France	18	2	20	0,28	0,16	0,26
Germany	14	5	19	0,22	0,41	0,25
Hungary	14	16	30	0,22	1,32	0,40
India	43	14	57	0,68	1,15	0,75
Italy	2140	300	2440	33,62	24,67	32,18
Lithuania	3	5	8	0,05	0,41	0,11
Macedonia	40	5	45	0,63	0,41	0,59
Moldavia	19	37	56	0,30	3,04	0,74
Morocco	145	5	150	2,28	0,41	1,98
Nigeria	145	193	338	2,28	15,87	4,46
Pakistan	22	0	22	0,35	0,00	0,29
Philippines	0	2	2	0,00	0,16	0,03
Poland	9	19	28	0,14	1,56	0,37
Romania	260	83	343	4,08	6,83	4,52
Russia	20	30	50	0,31	2,47	0,66
Santo Domingo	12	16	28	0,19	1,32	0,37
Serbia	6	1	7	0,09	0,08	0,09
Slovakia	2	14	16	0,03	1,15	0,21
Slovenia	57	7	64	0,90	0,58	0,84
Sri Lanka	11	0	11	0,17	0,00	0,15
Tunisia	52	10	62	0,82	0,82	0,82
Turkey	65	0	65	1,02	0,00	0,86
Ukraine	25	35	60	0,39	2,88	0,79
United Kingdom	0	1	1	0,00	0,08	0,01
Yugoslavia	251	39	290	3,94	3,21	3,82
Others	320	75	395	5,03	6,17	5,21
Total	6366	1216	7582	100,00	100,00	100,00

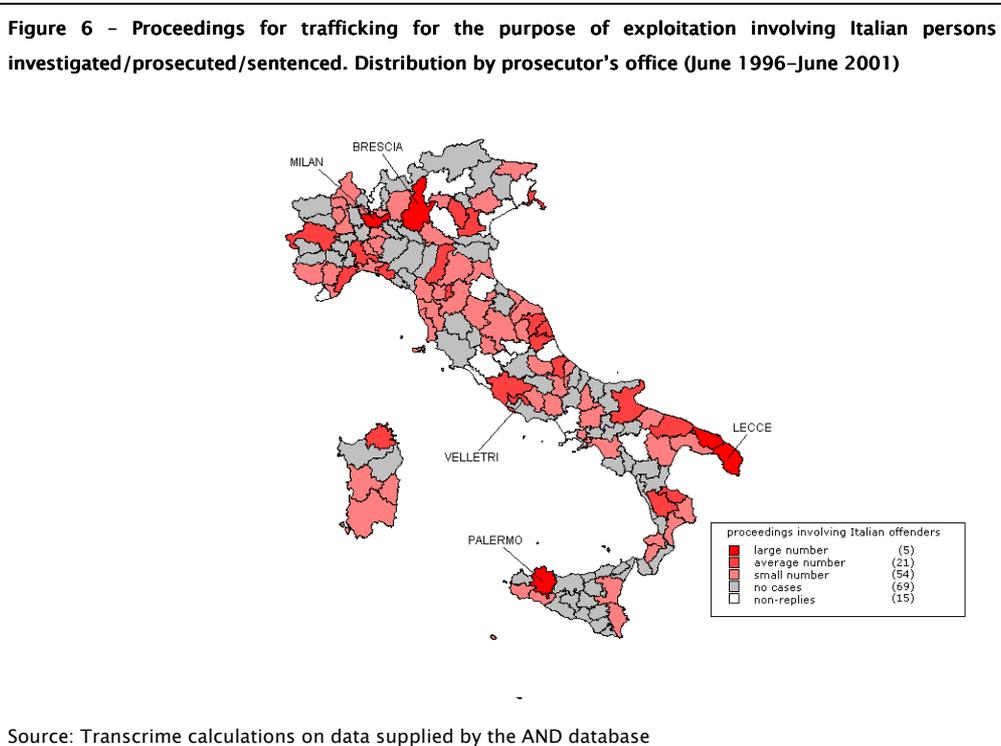
Source: Transcrime calculations on data furnished by the AND database

With the exception of the Italian perpetrators – who, as said, amounted to 32.18% of the total (showing that Italian nationals played a role in the exploitation) – the largest proportion of offenders were Albanians (1,201 persons, 29.83% of the total), Chinese (437 persons, 6.69% of the total), Romanian (260 persons, 4.52% of the total) and Nigerian (338 persons, 4.46% of the total).

As regards Nigerians, to be emphasised is the higher percentage of women compared to men in the total number of perpetrators (193 persons out of 338, or 57.1%). Nigerian women accounted for 15.87% of the total number of suspected/prosecuted/sentenced female traffickers. This figure confirms the primarily female character of the Nigerian exploitation of prostitution. Another interesting finding is the large share of women among Romanian perpetrators (83 out of 338, equal to 24.19% of the total). This last figure would warrant more thorough analysis in order to determine the role played by Romanian women in exploitation.

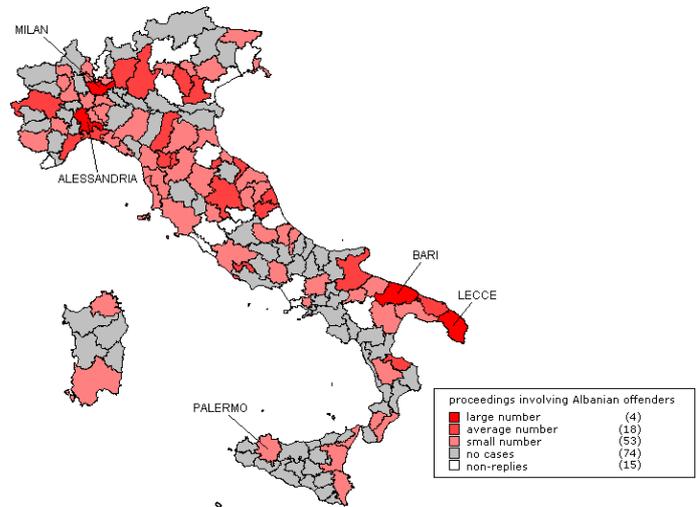
Figures 6–10 show the prosecutor's offices at which proceedings were brought against the most frequently involved nationalities (Italian, Albanian, Chinese, Nigerian and Romanian). These maps illustrate both the type of trafficking (prostitution/irregular work) and the mobility of the criminal groups present in the country.

The prosecutor's offices which brought the largest numbers of proceedings on trafficking against Italian citizens were Palermo, Lecce, Velletri, Milan and Brescia (Figure 6). The involvement of Italians was also reported by other prosecutor's offices, where the number of proceedings was around the average. One may therefore assume that these were cases of exploitation in which Italians were involved as the last link in the chain: either as buyers of women to be exploited in night clubs or as exploiters working in collaboration with traffickers belonging to other ethnic groups, or also as suppliers of back-up services to foreign *Mafias*. This is the case of the proceedings brought by the prosecutor's offices located in Lecce, where the interviews (see chapter 12) confirmed the assistance provided by Italian criminals to traffickers across the Otranto Channel.



The prosecutor's offices with the largest number of proceedings on trafficking against Albanian citizens were Lecce, Bari, Alessandria, Milan and Brescia (Figure 7). However, proceedings were brought against Albanians in many other prosecutor's offices located in central and southern Italy, which confirms the widespread presence of Albanian traffickers in the country. The reason for the large number of proceedings brought against Albanians by the prosecutor's offices of Lecce and Bari is evident. The ubiquity of proceedings in other Italian towns is due to the fact that Albanians have now acquired control over prostitution by Albanian women and those from Eastern Europe (as will be shown in chapter 12).

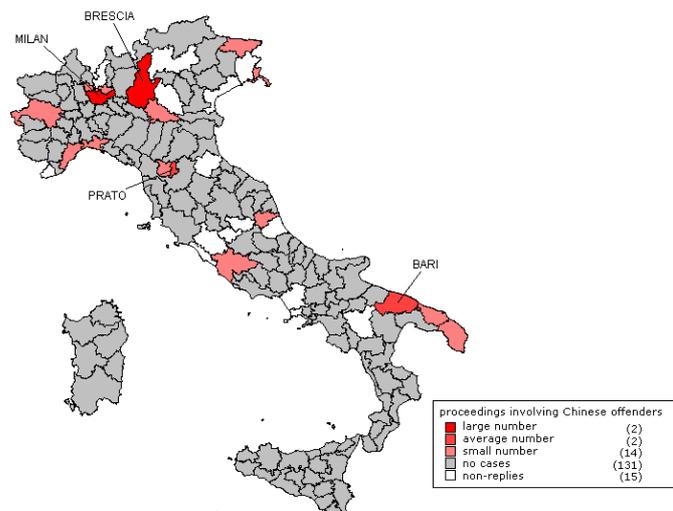
Figure 7 - Proceedings for trafficking for the purpose of exploitation involving Albanian persons investigated/prosecuted or sentenced. Distribution by prosecutor's office (June 1996-June 2001)



Source: Transcrime calculations on data furnished by the AND database

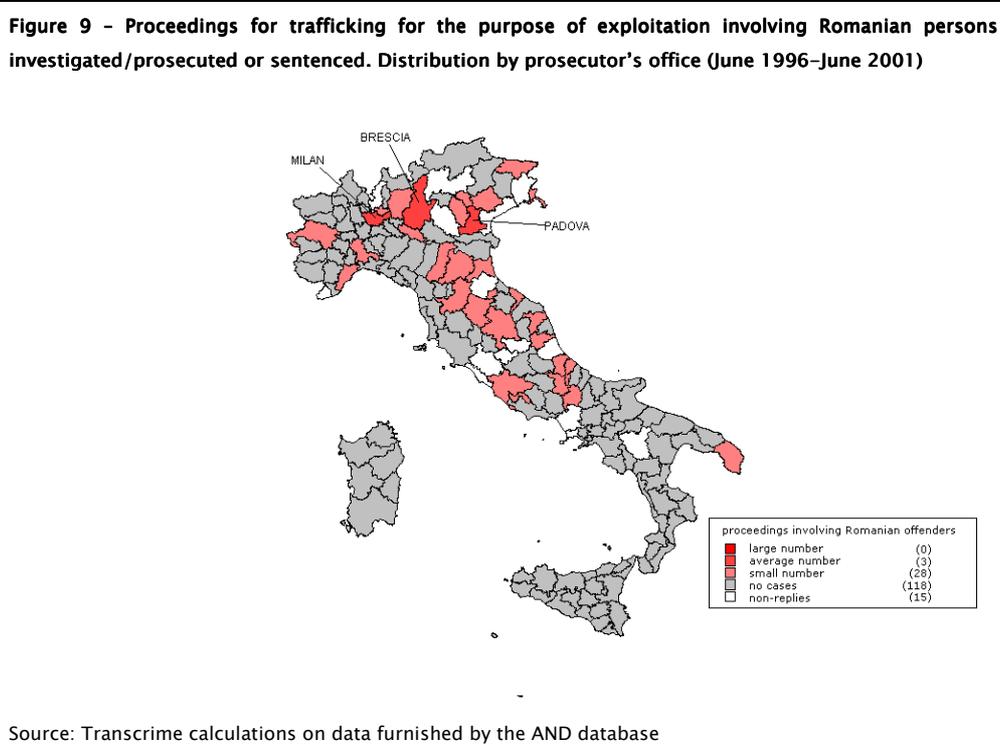
The prosecutor's offices with the largest number of proceedings against Chinese citizens for trafficking (see Figure 8) were Bari, Prato, Milan and Brescia. In these towns, as in the others concerned with crime by persons of this nationality, the Chinese mainly engage in the exploitation of irregular work by persons of the same ethnicity. To be noted is that the presence of Chinese perpetrators is concentrated in a few and specific parts of the country, which further confirms the stability of this particular community.

Figure 8 - Proceedings for trafficking for the purpose of exploitation involving Chinese persons investigated/prosecuted or sentenced. Distribution by prosecutor's office (June 1996-June 2001)



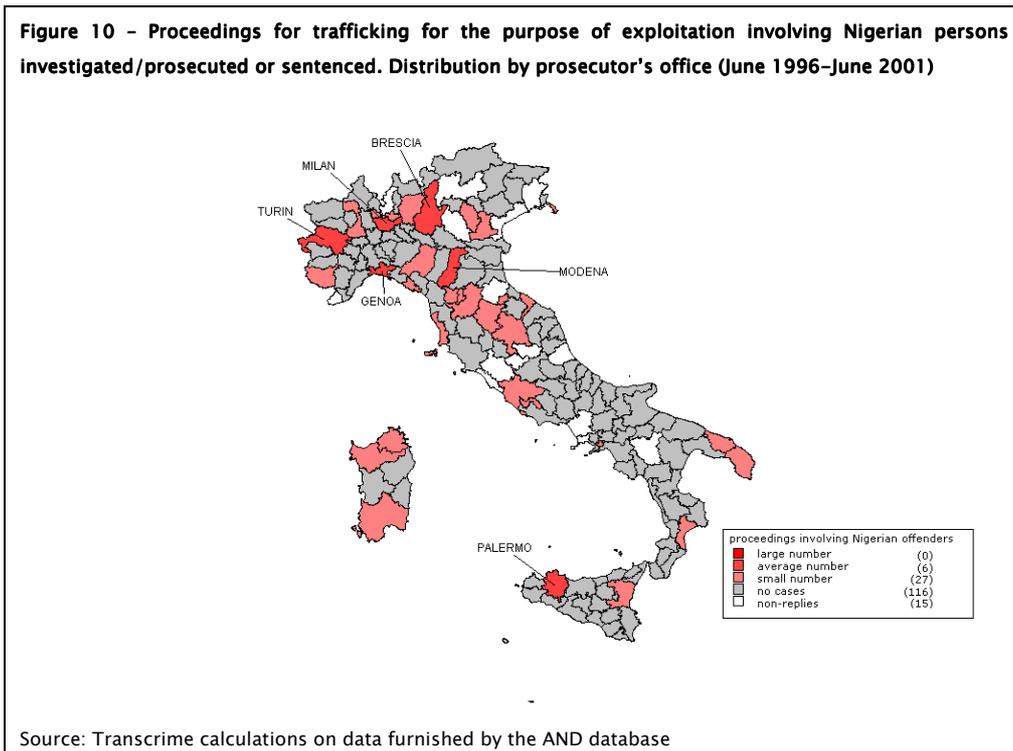
Source: Transcrime calculations on data furnished by the AND database

The prosecutor offices which brought the largest number of proceedings for trafficking (Figure 9) against Romanian citizens were Milan, Brescia and Padua. Person trafficking by Romanian nationals principally takes place in central and northern Italy.



The prosecutor's office with the largest number of proceedings for trafficking (Figure 10) against Nigerian citizens was Turin. Trafficking by Nigerians occurs mainly in central and northern Italy, although some proceedings have been brought by southern offices.

Figure 10 – Proceedings for trafficking for the purpose of exploitation involving Nigerian persons investigated/prosecuted or sentenced. Distribution by prosecutor's office (June 1996–June 2001)



11.1.3 The victims

There were a total of 2,741 victims in proceedings for crimes related to trafficking (see Table 4). Predictably, the majority of the victims were females, representing 2,217 out of the total of 2,741, equal to 80.88%. Although it is obvious that women are the weakest category in the context of trafficking, exploitation of males is also found. The latter are presumably not only exploited for prostitution but also forced to work irregularly in order to repay debts contracted to the smugglers who brought them into the country. This hypothesis is confirmed, for example, by Chinese victims, of whom 48 were male out of a total of 63 (i.e. 76.2% of the total). These were probably Chinese males exploited in restaurants and businesses belonging to other Chinese nationals.

Table 4 – Victims in proceedings brought for trafficking in persons for the purpose of exploitation, by nationality. Absolute values and percentages (June 1996 – June 2001)

Nationality	Males	Females	Totale	% Males	% Females	%Total
Albania	88	566	654	16,79	25,53	23,86
Bosnia	0	6	6	0,00	0,27	0,22
Bulgaria	5	27	32	0,95	1,22	1,17
China	48	15	63	9,16	0,68	2,30
Colombia	12	56	68	2,29	2,53	2,48
Croatia	10	5	15	1,91	0,23	0,55
Czech Republic	2	60	62	0,38	2,71	2,26
France	3	8	11	0,57	0,36	0,40
Germany	5	15	20	0,95	0,68	0,73
Hungary	0	93	93	0,00	4,19	3,39
India	3	0	3	0,57	0,00	0,11
Lithuania	1	5	6	0,19	0,23	0,22
Macedonia	4	13	17	0,76	0,59	0,62
Moldavia	13	131	144	2,48	5,91	5,25
Morocco	17	50	67	3,24	2,26	2,44
Nigeria	19	211	230	3,63	9,52	8,39
Pakistan	0	1	1	0,00	0,05	0,04
Philippines	0	1	1	0,00	0,05	0,04
Poland	2	38	40	0,38	1,71	1,46
Romania	87	216	303	16,60	9,74	11,05
Russia	6	116	122	1,15	5,23	4,45
Santo Domingo	1	23	24	0,19	1,04	0,88
Serbia	0	4	4	0,00	0,18	0,15
Slovakia	0	13	13	0,00	0,59	0,47
Slovenia	0	1	1	0,00	0,05	0,04
Sri Lanka	10	1	11	1,91	0,05	0,40
Tunisia	27	13	40	5,15	0,59	1,46
Turkey	0	1	1	0,00	0,05	0,04
Ukraine	8	145	153	1,53	6,54	5,58
United Kingdom	0	2	2	0,00	0,09	0,07
Yugoslavia	52	72	124	9,92	3,25	4,52
Others	101	309	410	19,27	13,94	14,96
Total	524	2217	2741	100,00	100,00	100,00

Source: Transcrime calculations on data furnished by the AND database

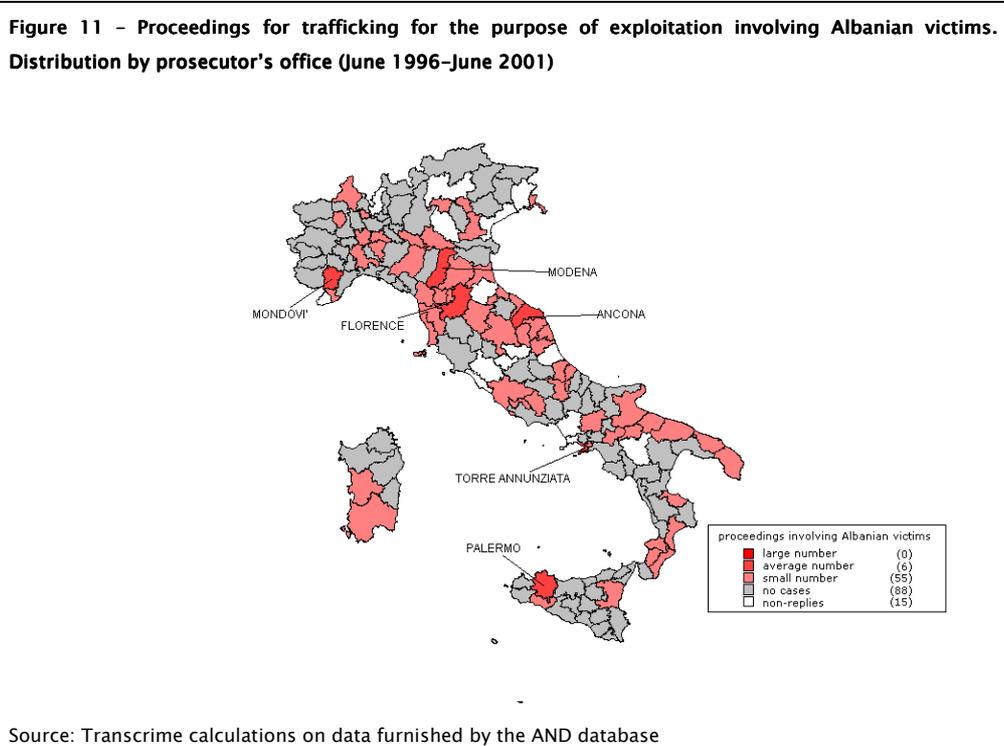
The five nationalities most frequently represented among victims are: Albanian (654 victims, equal to 23.86% of the total), Romanian (303 victims, equal to 11.05%), Nigerian (230 victims, equal to 8.39%), Ukrainian (153 victims, equal to 5.58%), Moldavian (144 victims, equal to 5.25%).

Figures 11–15 show the prosecutor's offices which brought proceedings involving victims belonging to the five most represented nationalities during the five-year period considered by this study. The maps show the places of exploitation in relation to the nationalities exploited. The question is whether victims of certain nationalities are concentrated in certain areas of the country. If they are, then one must ask why and take action in those areas and for those nationalities using preventative as well as supportive measures.

Proceedings which involved Albanian victims (Figure 11) – with the exception of the 'peaks' recorded in the cases of the prosecutor's offices of Palermo, Torre Annunziata, Ancona, Florence, Modena and Mondovi' – were uniformly distributed, albeit with a slightly higher concentration in the central regions of the country. Bearing in mind that there were 654 female Albanian victims, equal to 23.86% of the total, one may conclude that trafficking in Albanian women is a serious problem.

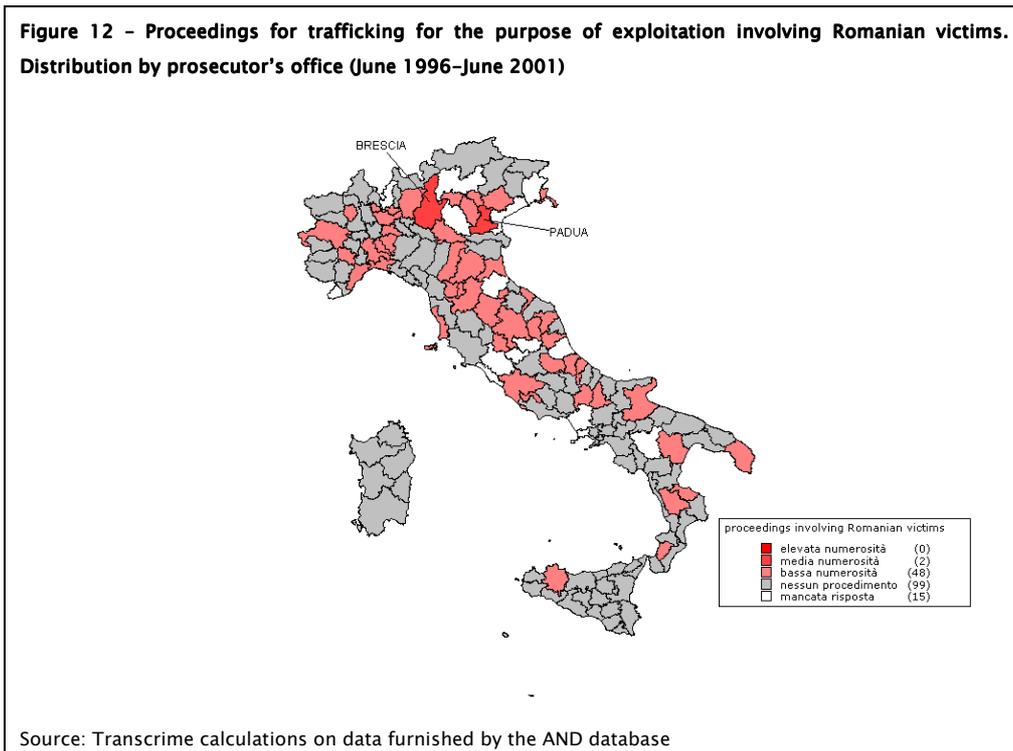
It is interesting to compare Figure 11 against Figure 7 which shows the distribution of proceedings in which Albanians were investigated/prosecuted and sentenced. Especially in the North, there is a wider distribution of proceedings against Albanian

perpetrators compared to proceedings which involved Albanian victims. Indeed, at some prosecutor's offices there were proceedings brought against Albanian perpetrators but none which involved Albanian victims. From this one may deduce that there are numerous Albanian exploiters of non-Albanian victims. Which confirms the Albanians' dominant position in the prostitution market.



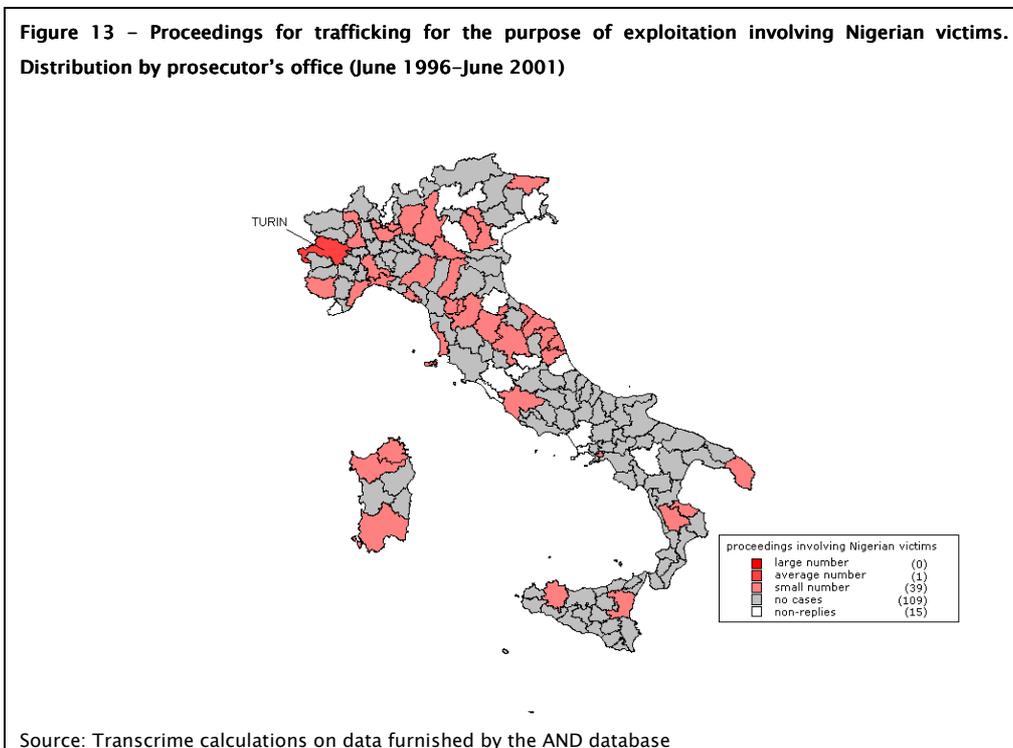
Proceedings involving Romanian victims (Figure 12) were - apart from the peaks recorded at the public prosecutor's offices of Brescia and Padua - concentrated in the Centre and North of Italy. These were cases both of women forced into prostitution by co-nationals and Albanians and persons compelled to work in the underground economy. This finding is borne out by the figure on the number of male Romanian victims: 87 out of a total of 303, which corresponds to 28.71% of Romanian victims, and to 16.60% of all male victims.

Figure 12 – Proceedings for trafficking for the purpose of exploitation involving Romanian victims. Distribution by prosecutor's office (June 1996–June 2001)



As regards the Nigerian victims of human trafficking offences, Figure 13 shows first that the largest number of prosecutions were brought in Turin, and second that proceedings with Nigerian victims were largely concentrated in the Centre and North of Italy.

Figure 13 – Proceedings for trafficking for the purpose of exploitation involving Nigerian victims. Distribution by prosecutor's office (June 1996–June 2001)

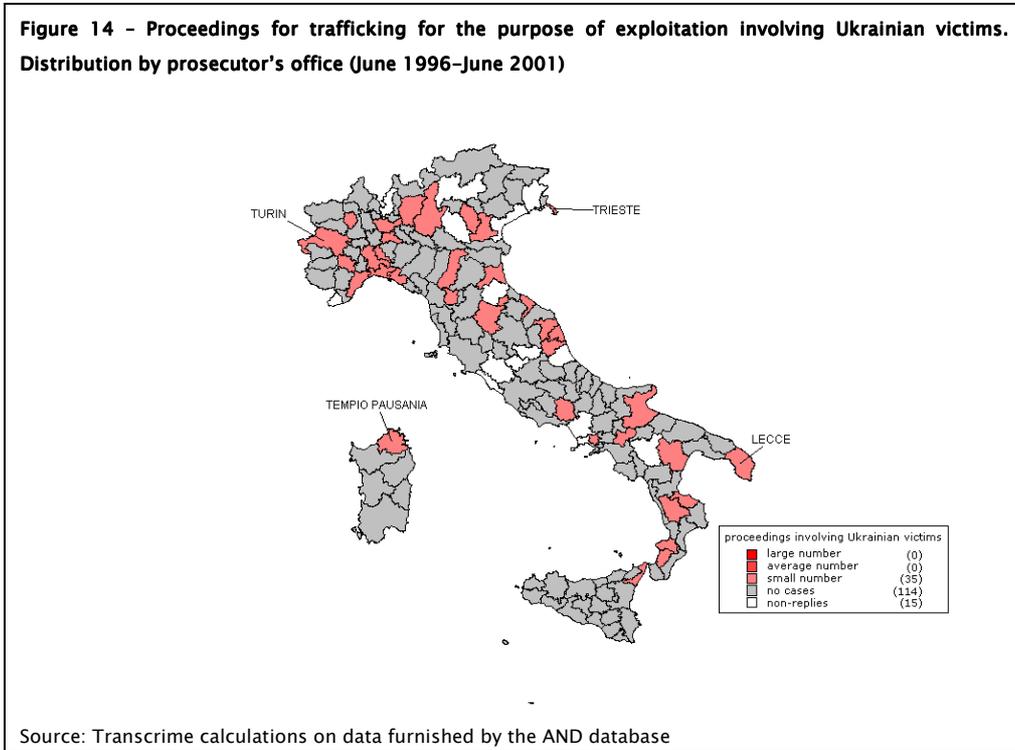


If one compares Figure 13 against Figure 10, which shows the distribution of proceedings brought against Nigerian persons under investigation, prosecuted and

sentenced, the result is a perfect match, which evinces that Nigerian prostitution is an phenomenon that occurs within the same ethnic group.

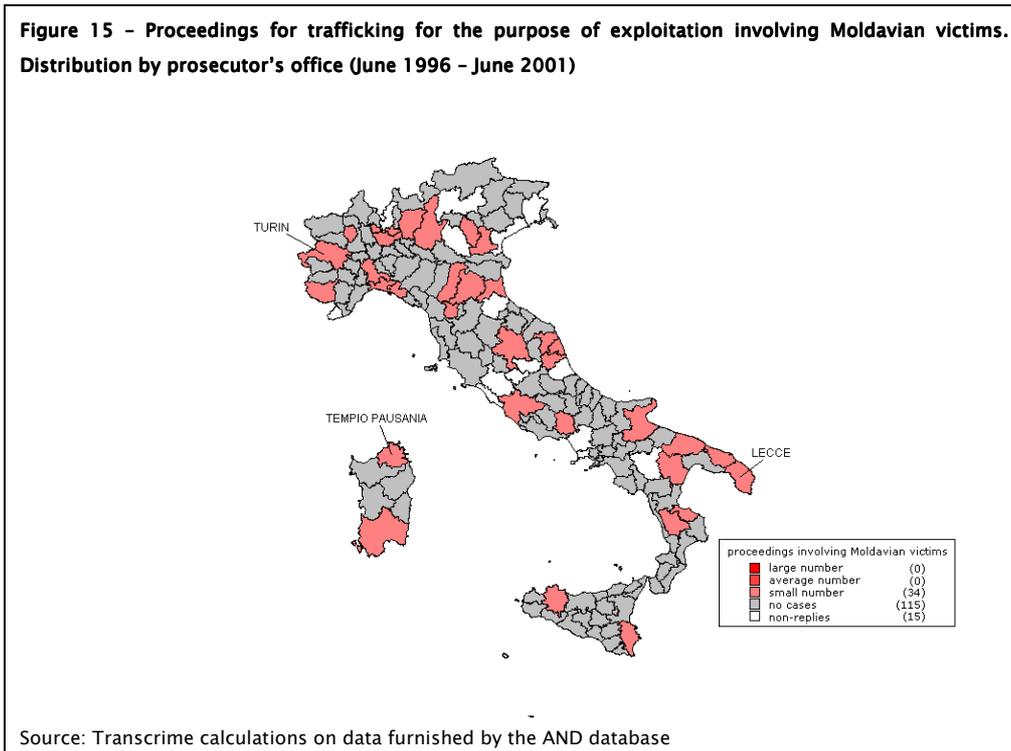
As regards proceedings with victims from Ukraine and Moldavia (Figures 14 and 15), although fewer in number, they are distributed among diverse areas of the country.

Figure 14 - Proceedings for trafficking for the purpose of exploitation involving Ukrainian victims. Distribution by prosecutor's office (June 1996-June 2001)



Source: Transcrime calculations on data furnished by the AND database

Figure 15 - Proceedings for trafficking for the purpose of exploitation involving Moldavian victims. Distribution by prosecutor's office (June 1996 - June 2001)



Source: Transcrime calculations on data furnished by the AND database

Comparison between Figures 14–15 and Figure 7, which shows the distribution of proceedings brought against Albanian persons under investigation, prosecuted and sentenced, shows a certain degree of match. One may therefore conclude that some Ukrainian and Moldavian victims are exploited by Albanians.

11.1.4 An estimation of the victims of trafficking

In the light of the data set out above it is possible to estimate the actual number of victims of trafficking in the period between June 1996 and June 2001. Before such estimation is made, however, a brief preamble is necessary.

In both the European Union and Italy, only very few of the studies conducted to estimate the victims of human trafficking have explained the methodology used to produce their data.²⁴⁸ Yet analysis of judicial activity such as that conducted by this study, or more generally judicial statistics on victims, not only yield information about the victims but also enable quantification of the phenomena investigated. Official information on the number of victims in judicial proceedings provides an important platform for reliable estimates: it is only necessary to calculate, with the help of experts or using the results of victimization surveys, the ratio between victims who contact the judicial authorities and those who do not (*i.e. the hidden*

²⁴⁸ See IOM – Migration Information Programme (MIP), *Trafficking in Women to Austria for Sexual Exploitation*, IOM, June 1996; G.J.N. Bruinsma, G. Meershoek, “Organised Crime and Trafficking in Women from Eastern Europe in the Netherlands”, in P. Williams (ed.), *Illegal Immigration and Commercial Sex: The New Slave Trade*, Frank Cass, London, 1999; L. Kelly, L. Regan, *Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in the UK*, Police Research Series, Paper 125, Home Office, London, 2000; F. Carchedi, A. Picciolini, G. Mottura, G. Campani (eds.), *op. cit.*

number of victims). If a reasonable definition is given to this ratio,²⁴⁹ reliable estimates can be made.

This method has already been adopted by an IOM study on the trafficking of women in Austria,²⁵⁰ a country in which (a) the crime of trafficking in women is expressly foreseen by the criminal code, and (b) official data are collected on victims. This study reported that in the period considered (1990–1994) the victims of trafficking for prostitution recorded by official statistics amounted to 751, but the researchers added that the real number may be many times higher than the statistics show.²⁵¹ That is to say, the officially recorded number of victims is only the tip of the iceberg, but it is certainly a useful basis for calculation of that part of the iceberg which remains submerged.

A starting point for calculating the ratio between the number of victims recorded by this monitoring study on trafficking and the real number of its victims is a recent victimization survey conducted on the victims of sexual offences in the UK.²⁵² For this type of crime only two in every ten victims contact the authorities. The ratio between the number of victims reported in official statistics and those who go unreported is thus 1/5. Taking account of a) the lack of trust in the authorities shown by the victims of trafficking, b) their illegal status in the country and their isolation; c) their total subjugation to the traffickers, e) the covert nature of the trafficking, it is possible to argue that this ratio is much lower.

It accordingly seems likely that the ratio between the victims recorded by the present monitoring study on crimes related to trafficking and the real number of victims oscillates between 1/10 and 1/20.

If the estimation criterion suggested is used, the real number of the victims of trafficking in Italy between June 1996 and June 2001 can be quantified at between a minimum of 27,410 and a maximum of 54,820 (for details on gender and nationality see Table 5).

²⁴⁹ On this see Transcrime, *op. cit.*

²⁵⁰ IOM – Migration Information Programme (MIP), *Trafficking in Women to Austria for Sexual Exploitation*, *cit.*

²⁵¹ IOM – Migration Information Programme (MIP), *Trafficking in Women to Austria for Sexual Exploitation*, *cit.*, p. 32.

²⁵² See A. Myhill, J. Hallen, *Rape and Sexual Assault of Women: the Extent and Nature of the Problem. Findings from the British Crime Survey*, Home Office Research Study no. 237, Home Office, London, March 2002.

Table 5 – Victims in proceedings brought for trafficking in persons and estimates of the actual number of victims. By nationality (June 1996 – June 2001)

Nationality	Victims in proceedings			Estimates of the actual number of victims of trafficking					
	Males	Females	Total	Males		Females		Total	
				Min.	Max.	Min.	Max.	Min.	Max.
Albania	88	566	654	880	1760	5660	11320	6540	13080
Bosnia	0	6	6	0	0	60	120	60	120
Bulgaria	5	27	32	50	100	270	540	320	640
China	48	15	63	480	960	150	300	630	1260
Colombia	12	56	68	120	240	560	1120	680	1360
Croatia	10	5	15	100	200	50	100	150	300
Czech Republic	2	60	62	20	40	600	1200	620	1240
France	3	8	11	30	60	80	160	110	220
Germany	5	15	20	50	100	150	300	200	400
Hungary	0	93	93	0	0	930	1860	930	1860
India	3	0	3	30	60	0	0	30	60
Lithuania	1	5	6	10	20	50	100	60	120
Macedonia	4	13	17	40	80	130	260	170	340
Moldavia	13	131	144	130	260	1310	2620	1440	2880
Morocco	17	50	67	170	340	500	1000	670	1340
Nigeria	19	211	230	190	380	2110	4220	2300	4600
Pakistan	0	1	1	0	0	10	20	10	20
Philippines	0	1	1	0	0	10	20	10	20
Poland	2	38	40	20	40	380	760	400	800
Romania	87	216	303	870	1740	2160	4320	3030	6060
Russia	6	116	122	60	120	1160	2320	1220	2440
Santo Domingo	1	23	24	10	20	230	460	240	480
Serbia	0	4	4	0	0	40	80	40	80
Slovakia	0	13	13	0	0	130	260	130	260
Slovenia	0	1	1	0	0	10	20	10	20
Sri Lanka	10	1	11	100	200	10	20	110	220
Tunisia	27	13	40	270	540	130	260	400	800
Turkey	0	1	1	0	0	10	20	10	20
Ukraine	8	145	153	80	160	1450	2900	1530	3060
United Kingdom	0	2	2	0	0	20	40	20	40
Yugoslavia	52	72	124	520	1040	720	1440	1240	2480
Others	101	309	410	1010	2020	3090	6180	4100	8200
Total	524	2217	2741	5240	10480	22170	44340	27410	54820

Source: Transcrime calculations on data furnished by the AND database

11.2 SMUGGLING OF MIGRANTS

11.2.1 Proceedings

The number of proceedings for crimes related to the smuggling of migrants in the period considered was 6,074. As will be seen from Table 6 and Figure 16, some prosecutor offices were especially concerned with smuggling. Figure 16 reports those at which the largest numbers of proceedings were brought, these being specifically: 1) prosecutor offices located on *land or maritime borders offering access into Italian territory for smuggling routes* – from south to north, Marsala (154 proceedings), Lecce (604), Brindisi (540), Trieste (2,042), Gorizia (817) and Tolmezzo (341); 2) prosecutor offices located in the *cities with Italy's two biggest Italian airports*, namely Rome (143 proceedings) and Milan (487).

The concentration of proceedings in a small group of prosecutor's offices located on some of the traditional smuggling routes suggests two opposing possibilities: 1)

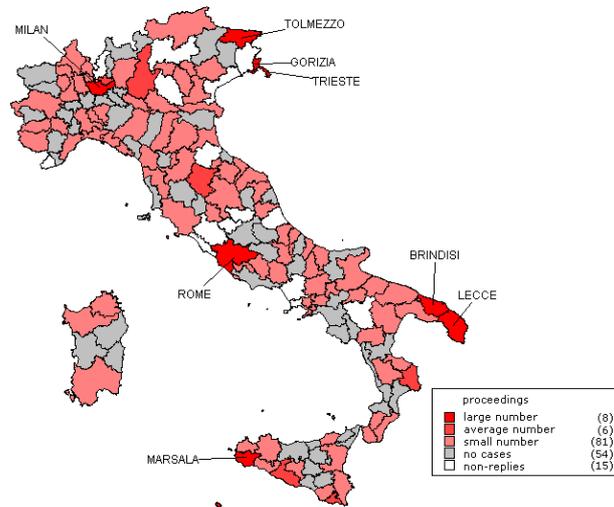
that these are established routes and, despite the risks involved, the smugglers continue to use them, only slightly altering them according to contingent needs; 2) the prosecutor's offices – in whose districts the smuggling may have moved as a consequence of the action take against it by the prosecutor's offices on the former routes – are not yet ready to combat the phenomenon. This scant capacity may explain why smuggling is not recorded by maps of the prosecutor offices' activity.

Table 6 – Proceedings brought for smuggling of migrants. Absolute values and percentages (June 1996 – June 2001)

AGRIGENTO	74	IMPERIA	0	PRATO	10
ALBA	2	ISERNIA	0	RAGUSA	11
ALESSANDRIA	2	LA SPEZIA	3	RAVENNA	3
ANCONA	17	LAGONEGRO	1	REGGIO CALABRIA	3
AREZZO	68	LANUSEI	0	RIMINI	0
ARIANO IRPINIO	3	L'AQUILA	0	ROME	143
ASCOLI PICENO	19	LARINO	3	ROSSANO	5
AVELLINO	13	LECCE	604	ROVERETO	2
BARI	1	LIVORNO	0	ROVIGO	1
BASSANO DEL GRAPPA	16	LOCRI	15	S. ANGELO DEI LOMBARDI	0
BENEVENTO	2	LUCCA	6	SALERNO	0
BERGAMO	28	MACERATA	17	SALUZZO	3
BIELLA	4	MANTUA	15	SASSARI	1
BOLOGNA	9	MARSALA	154	SAVONA	25
BOLZANO	8	MATERA	8	SCIACCA	6
BRESCIA	61	MELFI	5	SIENA	0
BRINDISI	540	MESSINA	0	SIRACUSA	7
BUSTO ARSIZIO	23	MILAN	487	SULMONA	16
CAGLIARI	3	MODENA	2	TARANTO	2
CALTANISSETTA	1	MODICA	32	TEMPIO PAUSANIA	2
CAMERINO	0	MONDOVI'	0	TOLMEZZO	341
CAMPOBASSO	1	MONZA	48	TORRE ANNUNZIATA	20
CASSINO	3	NOCERA INFERIORE	3	TORTONA	3
CATANIA	1	NOLA	17	TRANI	2
CATANZARO	0	NOVARA	1	TRAPANI	8
CHIAVARI	1	ORISTANO	0	TREVISO	6
CHIETI	6	ORVIETO	9	TRIESTE	1
COSENZA	1	PADUA	14	TURIN	2042
CREMONA	7	PALERMO	28	URBINO	1
CROTONE	32	PALMI	10	VARESE	29
CUNEO	1	PARMA	1	VASTO	8
FERMO	0	PATTI	2	VELLETRI	1
FLORENCE	4	PAVIA	0	VERBANIA	3
FOGGIA	6	PERUGIA	15	VERCELLI	9
FROSINONE	23	PESARO	3	VIBO VALENTIA	0
GENOA	24	PESCARA	12	VICENZA	1
GORIZIA	817	PISA	0	VIGEVANO	0
GROSSETO	1	PISTOIA	21	VOGHERA	1

Source: Transcrime calculations on data furnished by the AND database

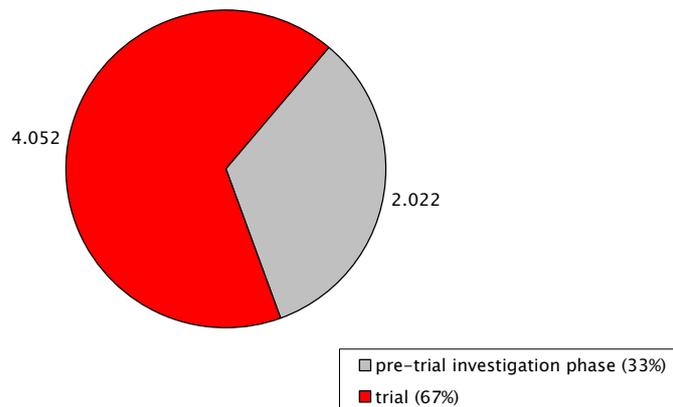
Figure 16 - Distribution of proceedings for smuggling of migrants by prosecutor's office (June 1996 - June 2001)



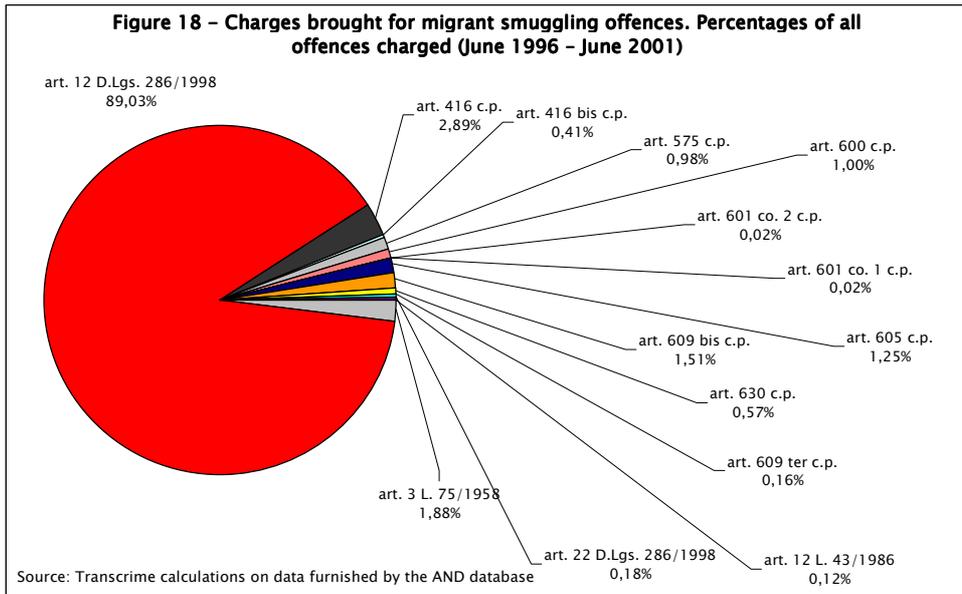
Source: Transcrime calculations on data furnished by the AND database

During the years considered by this study, 33% of proceedings for smuggling were still at the pre-trial investigation stage, while 67% had gone to trial (Figure 17). Figure 18 shows that article 12 of legislative decree no. 286/1998 is most frequently cited by charges brought for the criminal offence of migrant smuggling. Indeed, 89% of the total number of the crimes charged relate to the offence set forth by this provision. The others account for only small percentages.

Figure 17 - Proceedings brought for smuggling of migrants by phase of the proceeding. Absolute values and percentages (June 1996 - June 2001)



Source: Transcrime calculations on data furnished by the AND database



11.2.2 Persons investigated/prosecuted/sentenced

The total number of persons investigated/prosecuted and sentenced for crimes related to migrant smuggling during the period considered was 7,540, of whom 801 were females, equal to 10.62% (see Table 7). Comparison of these data with those on the proceedings for trafficking prompts two considerations:

1. proportionally fewer women are involved in smuggling than in trafficking. In the former case female perpetrators accounted for 10.62% of the total, in the latter for 16%;
2. a total of 7,540 persons were investigated/prosecuted and sentenced in 6,074 proceedings for smuggling, which was an average of around one person per proceeding (1.24). One may thus infer that proceedings for smuggling are rarely brought against criminal groups; by contrast, they are more often brought against individual *passseurs*, who are the last and most visible link in the chain. This last aspect is even more evident when comparison is made with proceedings for trafficking. In this case, 7,582 persons were investigated/prosecuted and sentenced in 2,930 proceedings, with an average number of 2.59 persons for each proceeding. These figures do not reflect the actual reality but rather the action of prosecutor's offices, which are rarely able to investigate the complex process of smuggling in its entirety. Migrant smuggling is often a more organised illegal activity than the trafficking of persons for the purpose of exploitation.

Like trafficking, the smuggling of migrants is an activity largely undertaken by foreign nationals, who represent 72.04% of the total number of perpetrators. Only 27.96% are Italians. Apart from Italians, who furnish assistance to the foreigner smugglers, as in the case of trafficking and as shown by the interviews conducted with the prosecutors (see chapter 12), the nationalities mostly frequently represented among the perpetrators are Albanian (1,428 persons, 18.94% of the total), Romanian (629 persons, 8.34%), Chinese (583 persons, 7.73%) and Yugoslavian (454 persons, 6.02%). Figures 19–23 show the prosecutor's offices which brought the largest number of proceedings against the nationalities most

frequently involved in smuggling (Italian, Albanian, Romanian, Chinese and Yugoslavian).

Table 7 – Persons investigated/prosecuted/sentenced for smuggling of migrants, by nationality. Absolute values and percentages (June 1996 – June 2001)

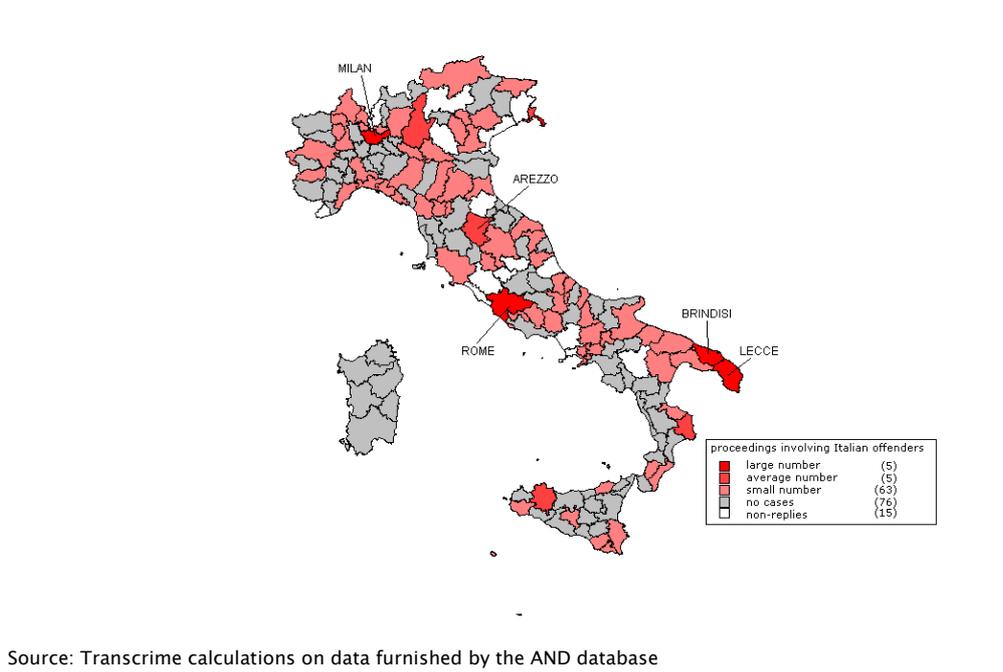
Nationality	Males	Females	Totale	% Males	% Females	%Total
Albania	1370	58	1428	20,33	7,24	18,94
Bosnia	88	6	94	1,31	0,75	1,25
Bulgaria	38	3	41	0,56	0,37	0,54
China	510	73	583	7,57	9,11	7,73
Colombia	21	10	31	0,31	1,25	0,41
Croatia	88	11	99	1,31	1,37	1,31
Czech Republic	20	3	23	0,30	0,37	0,31
France	16	1	17	0,24	0,12	0,23
Germany	28	3	31	0,42	0,37	0,41
Hungary	37	3	40	0,55	0,37	0,53
India	56	6	62	0,83	0,75	0,82
Italy	1842	266	2108	27,33	33,21	27,96
Lithuania	1	0	1	0,01	0,00	0,01
Macedonia	151	3	154	2,24	0,37	2,04
Moldavia	31	16	47	0,46	2,00	0,62
Morocco	222	3	225	3,29	0,37	2,98
Nigeria	26	13	39	0,39	1,62	0,52
Pakistan	42	1	43	0,62	0,12	0,57
Philippines	33	17	50	0,49	2,12	0,66
Poland	27	15	42	0,40	1,87	0,56
Romania	565	64	629	8,38	7,99	8,34
Russia	10	9	19	0,15	1,12	0,25
Santo Domingo	0	2	2	0,00	0,25	0,03
Serbia	9	0	9	0,13	0,00	0,12
Slovakia	3	0	3	0,04	0,00	0,04
Slovenia	216	20	236	3,21	2,50	3,13
Sri Lanka	44	1	45	0,65	0,12	0,60
Tunisia	166	35	201	2,46	4,37	2,67
Turkey	168	2	170	2,49	0,25	2,25
Ukraine	21	12	33	0,31	1,50	0,44
United Kingdom	4	1	5	0,06	0,12	0,07
Yugoslavia	423	31	454	6,28	3,87	6,02
Others	463	113	576	6,87	14,11	7,64
Total	6739	801	7540	100,00	100,00	100,00

Source: Transcrime calculations on data furnished by the AND database

The prosecutor's offices which brought the largest number of proceedings for smuggling against Italians were Lecce, Brindisi, Rome, Arezzo and Milan (Fig, 19). As highlighted by the interviews conducted with the prosecutors (see chapter 12), Italians are most active in assisting foreign smugglers in Lecce and Brindisi. The services that they provide range from providing transport in taxis to escorting as guards, to supplying accommodation for irregular migrants.

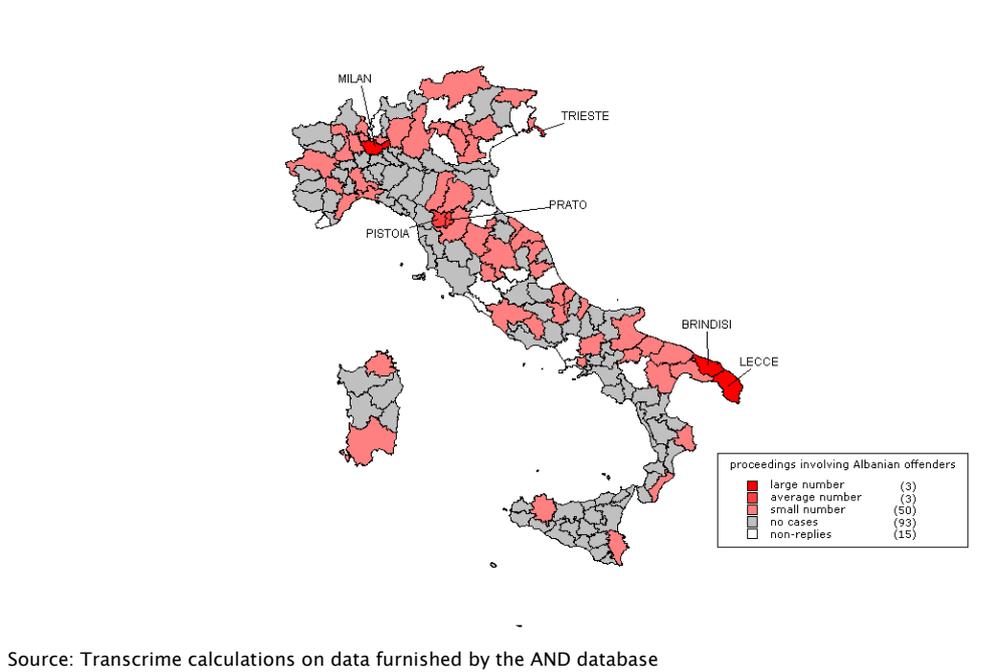
Also involved in these activities are criminals who in the past engaged in less serious forms of smuggling. In cities like Rome and Milan it is probable that criminal groups collude with travel agencies, law enforcement officers working at airports, and hotel managers.

Figure 19 - Proceedings for smuggling of migrants involving Italian persons investigated/prosecuted/sentenced. Distribution by prosecutor's office (June 1996 - June 2001)



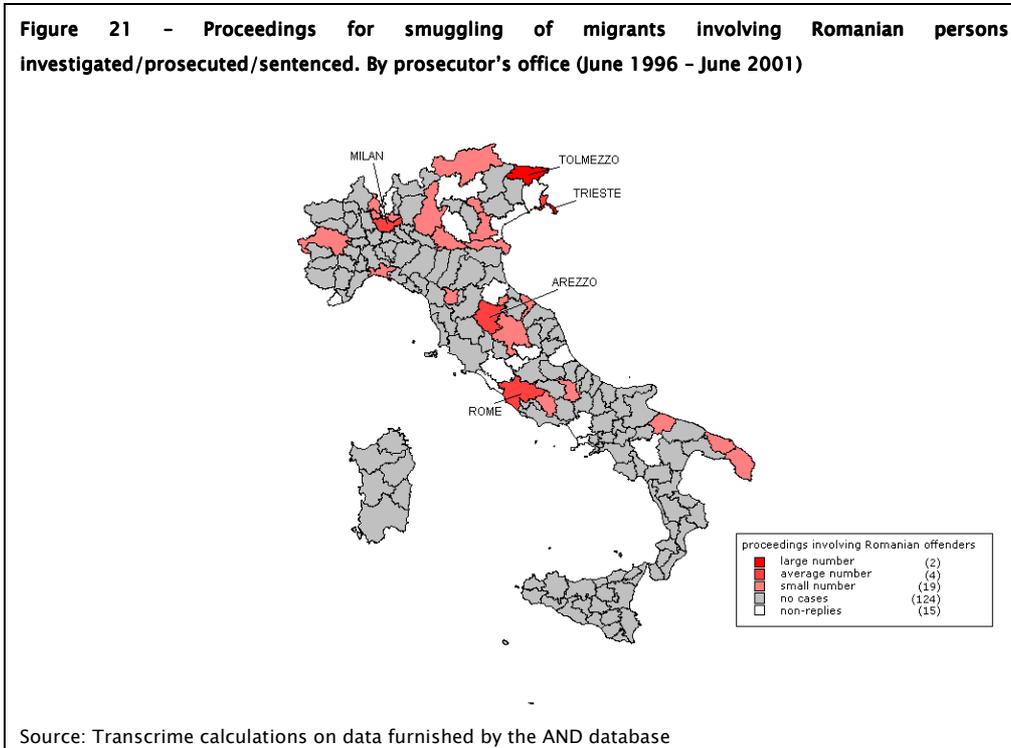
The prosecutor's offices that brought the largest number of proceedings for trafficking against Albanian citizens were Brindisi, Lecce, Prato, Pistoia and Milan (Figure 20). Proceedings against Albanians, however, were distributed among different parts of the country. As in the case of trafficking, the majority of cases of smuggling by Albanians concerned Lecce and Bari. Proceedings in other coastal towns highlight smuggling to Adriatic zones different from those in Puglia.

Figure 20 - Proceedings for smuggling of migrants involving Albanian persons investigated/prosecuted/sentenced. By prosecutor's office (June 1996 - June 2001)



Romanian perpetrators were mainly involved in proceedings brought by prosecutor's offices located in the North, while proceedings brought against Romanian smugglers were mainly concentrated in Trieste and Rovigo (Figure 21).

Figure 21 - Proceedings for smuggling of migrants involving Romanian persons investigated/prosecuted/sentenced. By prosecutor's office (June 1996 - June 2001)



Proceedings against Chinese defendants were brought in many areas of the country, but principally by the prosecutor's offices of Milan, Monza, Brescia and Trieste (see Figure 22). These cities are the strategic nodes for migrant smuggling, and they act as bridgeheads for the criminal organisations that manage the entire process, from the country of origin to the country of destination.

Chinese migrants may arrive in Milan by plane, in which case the smugglers are already present *in loco* or in nearby towns; or they may arrive along the eastern route passing through Slovenia.

Finally, proceedings were brought against Yugoslavians in various parts of the country, but they were most frequent in Milan, Monza and Brescia (Figure 23).

Figure 22 - Proceedings for smuggling of migrants involving Chinese persons investigated/prosecuted/sentenced. By prosecutor's office (June 1996 - June 2001)

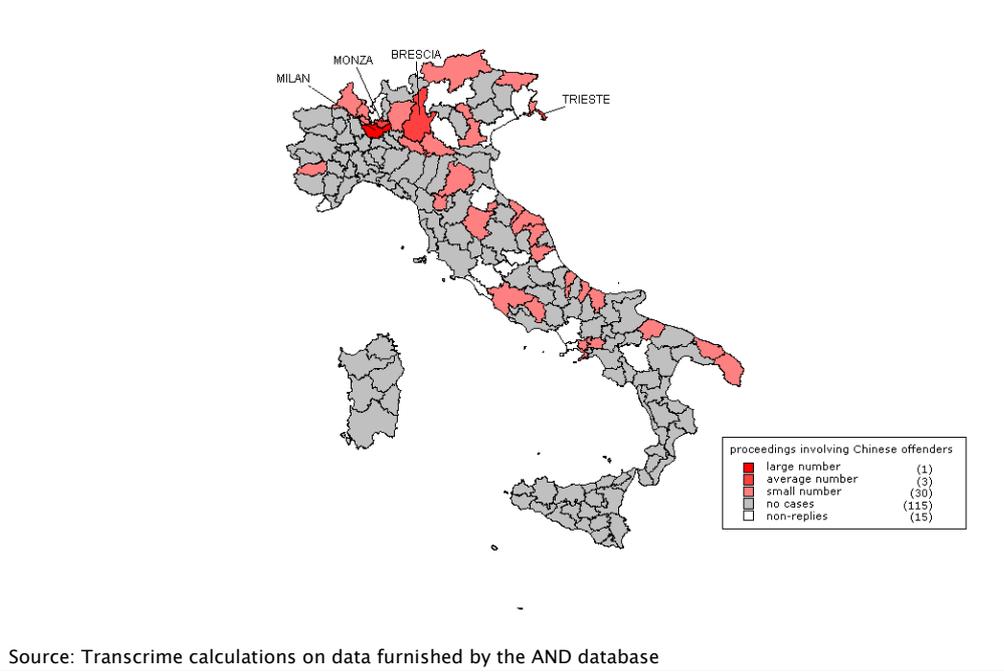
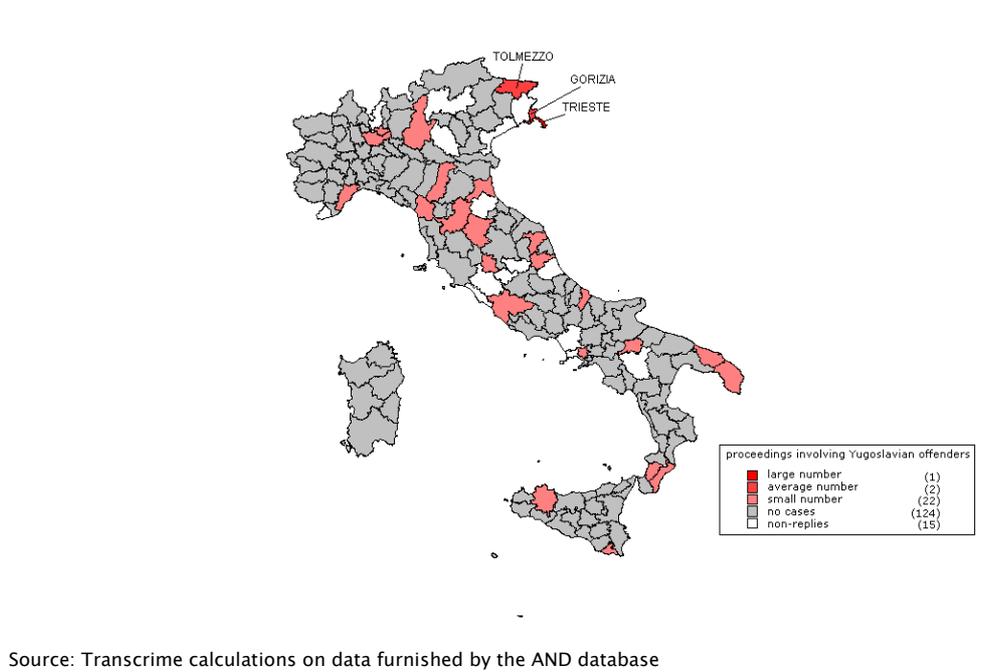


Figure 23 - Proceedings for smuggling of migrants involving Yugoslavian persons investigated/prosecuted/sentenced for migrant smuggling. By prosecutor's office (June 1996 - June 2001)



11.2.3 The victims

The total number of victims in proceedings for migrant smuggling during the period considered was 4,262 (see Table 8). Of these 3,662, or 85.92%, were males, whilst 600 were females, equal to 14.08%. It is consequently males that are most frequently smuggled, and this is the case of all ethnic groups.

Table 8 - Victims in proceedings brought for smuggling of migrants, by nationality. Absolute values and percentages (June 1996 - June 2001)

Nationality	Males	Females	Totale	% Males	% Females	%Total
Albania	141	117	258	3,85	19,50	6,05
Bosnia	11	0	11	0,30	0,00	0,26
Bulgaria	1	10	11	0,03	1,67	0,26
China	98	24	122	2,68	4,00	2,86
Colombia	3	3	6	0,08	0,50	0,14
Croatia	1	1	2	0,03	0,17	0,05
Czech Republic	0	0	0	0,00	0,00	0,00
France	0	2	2	0,00	0,33	0,05
Germany	2	1	3	0,05	0,17	0,07
Hungary	0	2	2	0,00	0,33	0,05
India	6	2	8	0,16	0,33	0,19
Lithuania	0	0	0	0,00	0,00	0,00
Macedonia	14	5	19	0,38	0,83	0,45
Moldavia	7	34	41	0,19	5,67	0,96
Morocco	518	10	528	14,15	1,67	12,39
Nigeria	5	17	22	0,14	2,83	0,52
Pakistan	14	1	15	0,38	0,17	0,35
Philippines	1	2	3	0,03	0,33	0,07
Poland	2	41	43	0,05	6,83	1,01
Romania	222	34	256	6,06	5,67	6,01
Russia	2	10	12	0,05	1,67	0,28
Santo Domingo	1	0	1	0,03	0,00	0,02
Serbia	2	0	2	0,05	0,00	0,05
Slovakia	1	1	2	0,03	0,17	0,05
Slovenia	0	1	1	0,00	0,17	0,02
Sri Lanka	6	1	7	0,16	0,17	0,16
Tunisia	414	9	423	11,31	1,50	9,92
Turkey	158	0	158	4,31	0,00	3,71
Ukraine	62	95	157	1,69	15,83	3,68
United Kingdom	0	0	0	0,00	0,00	0,00
Yugoslavia	94	16	110	2,57	2,67	2,58
Others	1876	161	2037	51,23	26,83	47,79
Total	3662	600	4262	100,00	100,00	100,00

Source: Transcrime calculations on data furnished by the AND database

Brief discussion is required of considerations arising from the comparison between: a) the total number of smuggling victims (4,262) and trafficking victims (2,741), and b) the number of proceedings for smuggling (6,074) and for trafficking (2,930). In this regard:

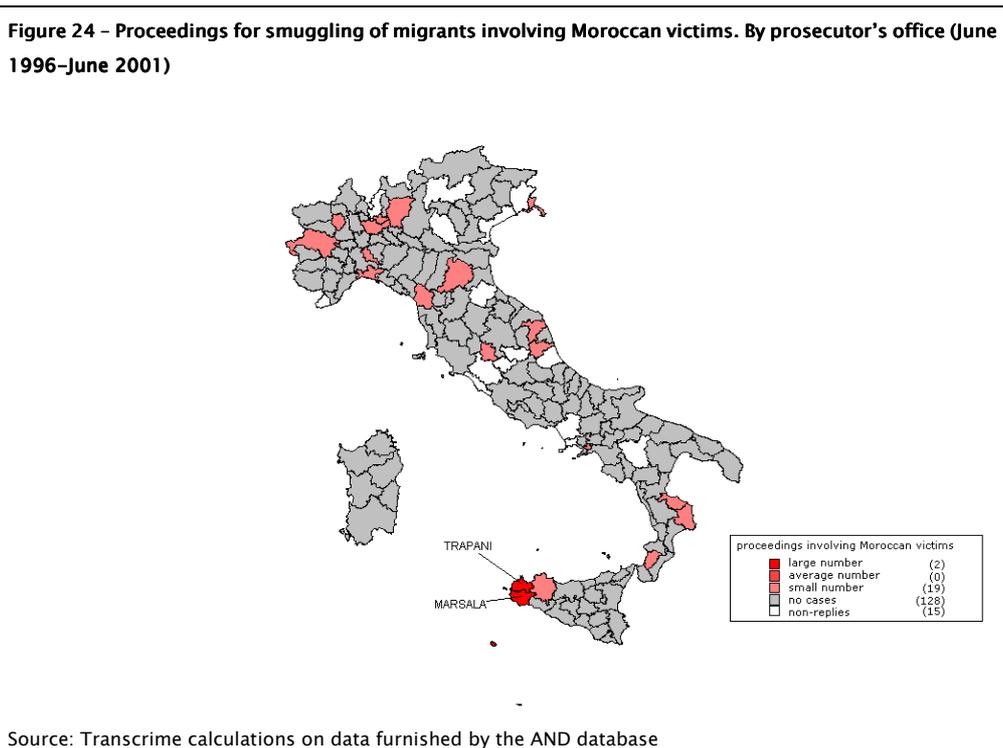
- *it is likely that smuggling victims contact the judicial authorities more rarely than do trafficking victims*, with the consequence that they are less likely to be recorded by the judicial authorities than are the victims of trafficking. A possible explanation for this resides in the following factors: a) victims remain in Italy for shorter periods of time because they are often turned back at the frontiers or expelled; b) the high mobility of these persons makes them difficult to trace after they have first been questioned; c) the victims often arrive in large groups, which reduces the likelihood that they will be deemed victims when their cases come to trial;

- *the data presented should be treated with caution.* The researchers noted that some prosecutor offices had not completed the part of the questionnaire regarding the victims of smuggling, so that the total number of victims may have been underestimated.

The five nationalities most frequently represented among victims were Moroccan (528 victims, 12.39% of the total), Tunisian (423 victims, 9.95%), Albanian (258 victims, 6.01%) and Turkish (158 victims, 3.71%).

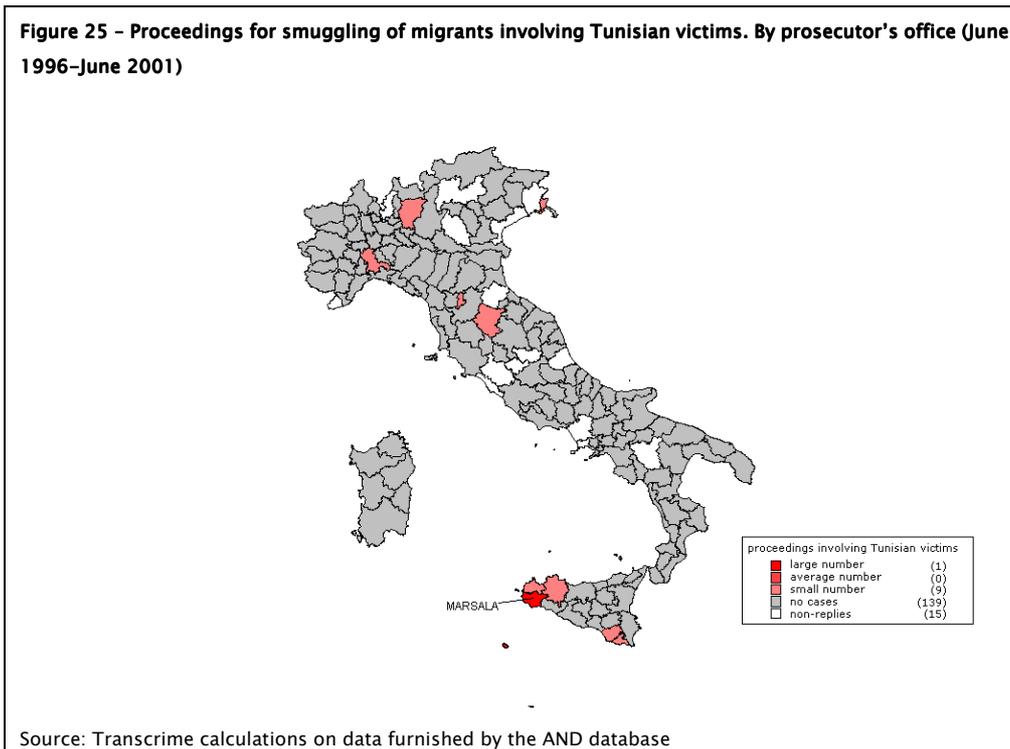
Figures 24–28 show the prosecutor's offices which brought the largest numbers of proceedings involving victims with the nationalities most frequently represented during the five years considered.

Trapani and Marsala were the two prosecutor's offices with a large number of proceedings involving Moroccan victims (Figure 27). In the period considered, large part of the smuggling across the Mediterranean was intercepted as a result of judicial activity by these offices: indeed, most of the smuggling from Morocco is directed towards Sicily.



The previous considerations concerning Moroccan victims also apply to Tunisian ones. In this case, too, most proceedings are brought in Sicily, with the largest number at the prosecutor's office of Marsala (Figure 25). The Sicilian situation is thus complicated by massive illegal immigration by sea which involves African victims.

Figure 25 – Proceedings for smuggling of migrants involving Tunisian victims. By prosecutor's office (June 1996–June 2001)



Lecce, Trieste and Milan are the prosecutor's offices with the largest numbers of proceedings in which Albanian victims are involved (Figure 26). The routes used to smuggle Albanians pass mainly through Puglia and Friuli Venezia Giulia, while Trieste and Rovigo are also staging posts for the smuggling of Romanians (Figure 27), which is probably organised by the same smugglers as transport Albanian victims. The coast near Rovigo is therefore an arrival point for organised illegal immigration across the Adriatic Sea.

Figure 26 – Proceedings for smuggling of migrants involving Albanian victims. By prosecutor's office (June 1996 – June 2001)

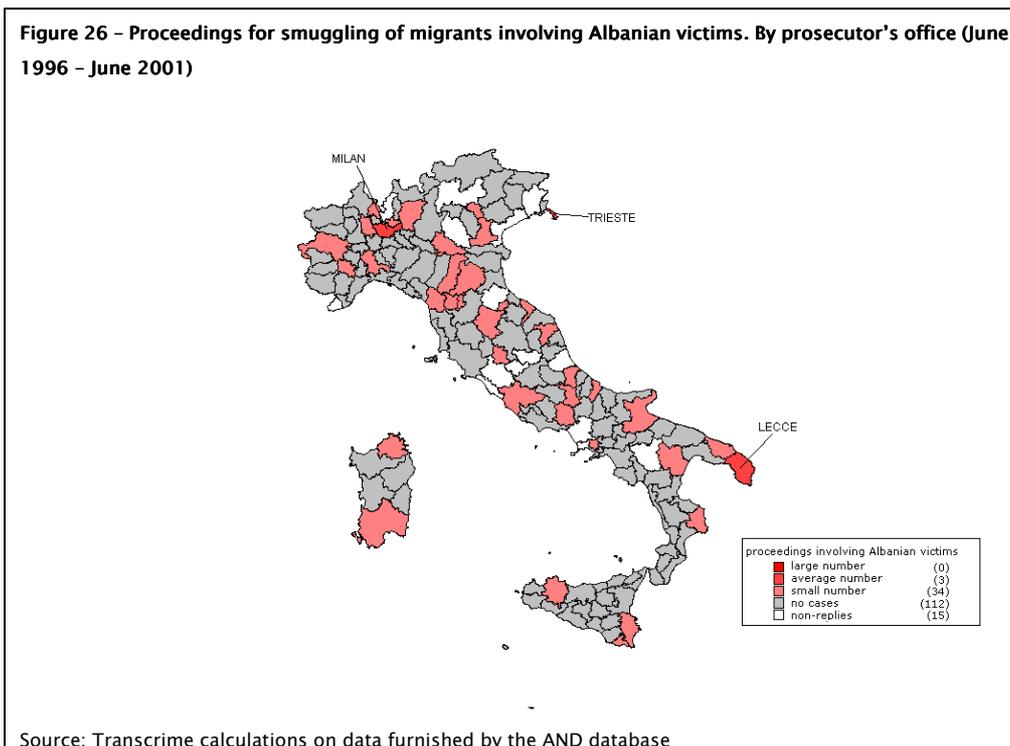
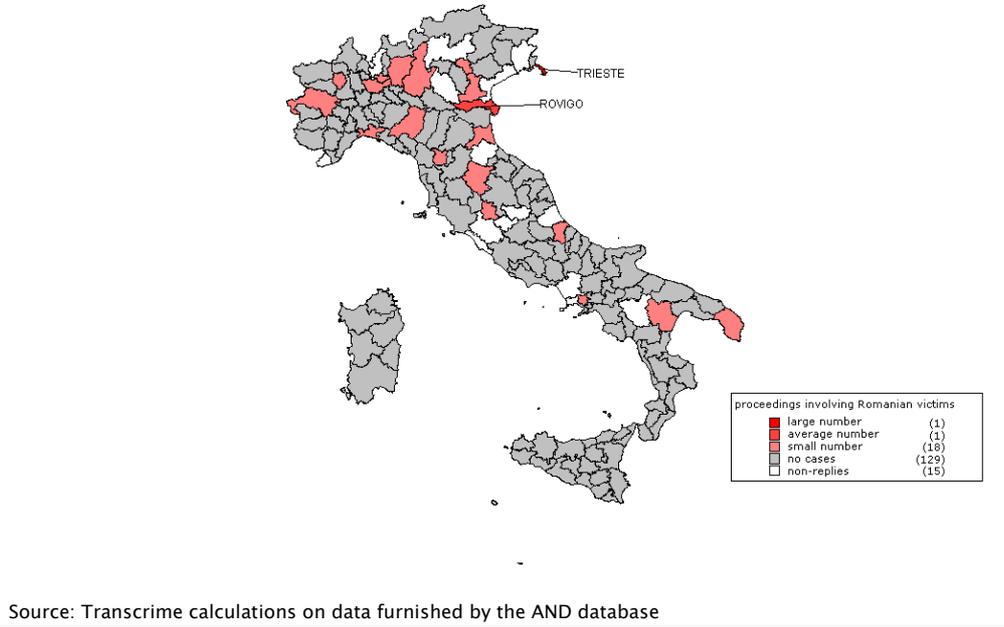
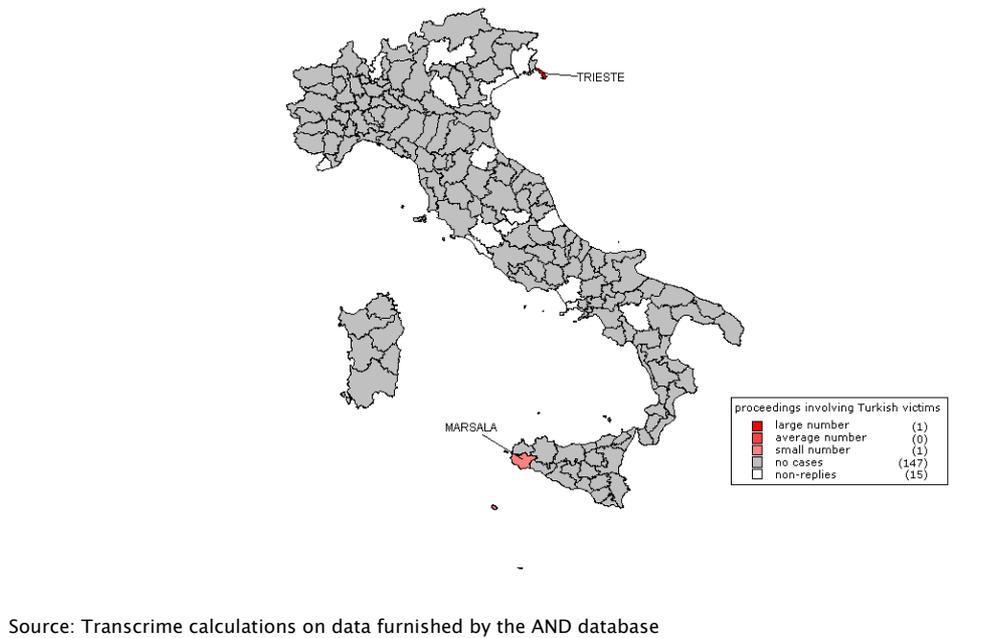


Figure 27 – Proceedings for smuggling of migrants involving Romanian victims. By prosecutor's office (June 1996 – June 2001)



Finally, the smuggling routes for Kurdish immigrants pass through Marsala and Trieste (Figure 28).

Figure 28 – Proceedings for smuggling of migrants involving Turkish victims. By prosecutor's office (June 1996 – June 2001)



11.2.4 An estimation of smuggling victims

It has been already explained (§ 10.1.4) that quantification of the real number of trafficking victims of trafficking is crucial, and that the monitoring of judicial activity in order to obtain realistic estimates is of equal importance. The same considerations apply to smuggling. Official statistics on the number of victims in judicial proceedings is an important basis for estimation of the real figure. It then suffices to calculate, with the help of experts or using the results of victimization surveys, the ratio between the victims who contact the judicial authorities and those who do not (i.e. *the hidden number of the victims*). If this ratio is defined with precision,²⁵³ reliable estimations can be obtained.

The data reported in section 10.2.3 can therefore be used to attempt an estimation of the real number of smuggling victims in Italy between June 1996 and June 2001. As in the case of trafficking, so in that of smuggling one must first define the ratio between the victims reported by the monitoring of smuggling offences and the real number of the victims.

In the case of trafficking, given the reasons for the criterion adopted, a ratio of between 1/10 and 1/20 was used. In the case of smuggling, defining this ratio required account to be taken the considerations set out at the beginning of § 10.2.3: 1) it is likely that smuggling victims have fewer contacts with the judicial authorities than do trafficking victims; 2) the total number of victims reported by this monitoring study may be underestimated.

Accordingly, it seemed reasonable to set the ratio between the numbers of smuggling victims reported by this monitoring study and the real number at 1/20–1/40.

Table 9 shows the results of this estimation. According to the criterion suggested, the real victims of migrant smuggling in Italy between June 1996 and June 2001 amounted to a minimum of 85,240 and a maximum of 170,480.

²⁵³ On this point see Transcrime, *op. cit.*

Table 9 – Victims in proceedings brought for smuggling of migrants and estimates of actual number of victims. By nationality (June 1996 – June 2001)

Nationality	Victims in proceedings			Estimates of the actual number of victims of smuggling					
	Males	Females	Total	Males		Females		Total	
				Min.	Max.	Min.	Max.	Min.	Max.
Albania	141	117	258	2820	5640	2340	4680	5160	10320
Bosnia	11	0	11	220	440	0	0	220	440
Bulgaria	1	10	11	20	40	200	400	220	440
China	98	24	122	1960	3920	480	960	2440	4880
Colombia	3	3	6	60	120	60	120	120	240
Croatia	1	1	2	20	40	20	40	40	80
Czech Republic	0	0	0	0	0	0	0	0	0
France	0	2	2	0	0	40	80	40	80
Germany	2	1	3	40	80	20	40	60	120
Hungary	0	2	2	0	0	40	80	40	80
India	6	2	8	120	240	40	80	160	320
Lithuania	0	0	0	0	0	0	0	0	0
Macedonia	14	5	19	280	560	100	200	380	760
Moldavia	7	34	41	140	280	680	1360	820	1640
Morocco	518	10	528	10360	20720	200	400	10560	21120
Nigeria	5	17	22	100	200	340	680	440	880
Pakistan	14	1	15	280	560	20	40	300	600
Philippines	1	2	3	20	40	40	80	60	120
Poland	2	41	43	40	80	820	1640	860	1720
Romania	222	34	256	4440	8880	680	1360	5120	10240
Russia	2	10	12	40	80	200	400	240	480
Santo Domingo	1	0	1	20	40	0	0	20	40
Serbia	2	0	2	40	80	0	0	40	80
Slovakia	1	1	2	20	40	20	40	40	80
Slovenia	0	1	1	0	0	20	40	20	40
Sri Lanka	6	1	7	120	240	20	40	140	280
Tunisia	414	9	423	8280	16560	180	360	8460	16920
Turkey	158	0	158	3160	6320	0	0	3160	6320
Ukraine	62	95	157	1240	2480	1900	3800	3140	6280
United Kingdom	0	0	0	0	0	0	0	0	0
Yugoslavia	94	16	110	1880	3760	320	640	2200	4400
Others	1876	161	2037	37520	75040	3220	6440	40740	81480
Total	3662	600	4262	73240	146480	12000	24000	85240	170480

Source: Transcrime calculations on data furnished by the AND database

12.

THE RESULTS OF THE INTERVIEWS CONDUCTED WITH THE MOST ACTIVE PROSECUTOR'S OFFICES: THE PHENOMENON AND ITS PREVENTION

The mapping of ongoing proceedings at the prosecutor's offices (see chapter 12) enabled the Scientific Committee of the research project to select the fifteen prosecutor's offices most active in the fight against trafficking in persons for the purpose of exploitation and the smuggling of migrants. These were the prosecutor's offices of: Arezzo, Ascoli Piceno, Brescia, Brindisi, Crotona, Genoa, Gorizia, Lecce, Milan, Palermo, Perugia, Rome, Tolmezzo, Turin, Trieste.

The most experienced prosecutors were identified in each prosecutor's office on consultation with the person in charge of that office. These prosecutors were interviewed using a semi-structured survey instrument (see Annex B). The questionnaire divided into two parts: the first covered the phenomenon in itself and its prevention; the second dealt with judicial activity.

This chapter reports the replies given by the prosecutors to the first part of the questionnaire (the phenomenon and its prevention). The information furnished refers to judicial proceedings – as regards the pre-trial investigation phase and the trial phase, or proceedings adjudicated with a conviction – brought by the prosecutor's offices between 1996 and 2002.

The fifteen most active prosecutor's offices were located in crucial areas of the national territory, viz.:

1. *along land and maritime borders.* Friuli Venezia Giulia and Puglia are the regions most affected by the phenomenon, the former with the prosecutor's offices of Gorizia, Tolmezzo and Trieste, the latter with those of Brindisi and Lecce;
2. *in cities with large railway stations, airports or other communications hubs (also for travel abroad).* In the North these prosecutor's offices were those of Genoa, Turin, Milan, and Brescia; in the Centre that of Rome; and in the South the prosecutor's office of Palermo;
3. *in small towns located in the central regions whose economies are based on tourism and small-to-medium sized industry in the footwear and leather goods sectors,* these being activities that potentially generate demand for illegal services. The prosecutor's offices concerned were those of Perugia, Arezzo and Ascoli Piceno.

The aim of the interviews was to acquire updated information on traffickers for exploitation and migrant smugglers which was comparable among the various Italian regions. The focus was on the operational features of the criminal activities in question and on the characteristics of the perpetrators and victims, the intention being to improve prevention of these offences on the basis of the knowledge acquired and the suggestions made by the prosecutors. Understanding the *modus operandi* of organised crime – and especially the resources and opportunities that it exploits, as well as the vulnerabilities of the institutions and the victims concerned

- enables the development of effective preventative measures: this being the so-called 'knowing in order to prevent' approach.²⁵⁴

The participation of the prosecutors and the help provided by officials of the judicial police operating at the prosecutor's offices guaranteed the quality of the results obtained.

It should be pointed out that, despite similarities in the methods used to enter the country in the case of both trafficking and smuggling, it was decided to conduct separate analyses of the two criminal activities. This twofold approach replicates the scheme of the interviews conducted with the prosecutors, and it ensures that the information supplied is reported accurately.

The first feature that emerges from the results of the interviews is that each prosecutor's office is mainly concerned with just one of the two illicit activities. Thus, for example, the prosecutor's offices of Trieste, Gorizia and Crotone almost exclusively bring proceedings for the smuggling of migrants, while Brescia, Perugia, Arezzo and Ascoli Piceno do so for trafficking for the purpose of exploitation. This prevalence of one criminal activity over the other in the judicial workload appears to depend on location and the economic resources available in the prosecuting office's district. There is consequently a connection between trafficking and smuggling and the geographic, social and economic context.

What are the characteristics of the illicit phenomena in question, of their perpetrators and of the victims? What operational methods were used by the criminal groups involved in the trafficking and the smuggling? What kind of information supplied by the prosecutor yields, if systemised, a nationwide overview of the offences and enables effective strategies for their prevention to be devised? What, in particular, were the suggestions made by the prosecutor as regards prevention? The following sections seek to answer these questions, distinguishing as it does so between trafficking and smuggling.

12.1 INFORMATION ON TRAFFICKING IN PERSONS FOR THE PURPOSE OF EXPLOITATION

The prosecutor's offices interviewed which had investigated cases of trafficking for the purpose of exploitation were Turin, Genoa, Brescia, Milan, Ascoli Piceno, Perugia, Arezzo, Rome, Lecce, Brindisi and Palermo. By contrast, almost no information on this phenomenon was forthcoming from prosecutor office's located along national borders.²⁵⁵ This is not to imply that there were no cases of trafficking for the purpose of exploitation, especially sexual exploitation, in those areas; rather, that the territorial competence of these prosecutor's offices comprises only the illegal crossing of national borders and not exploitation, which,

²⁵⁴ D.B. Cornish, R.V. Clarke, "Analysing Organised Crime", in A. R. Piquero, S. G. Tibbetts (eds.), *Rational Choice and Criminal Behaviour*, Routledge Press, New York, pp. 41–63; A. Di Nicola, "Trafficking in Women for the Purpose of Sexual Exploitation: Knowledge-based Preventative Strategies from Italy", in M. Gill (ed.), *Managing Security. Crime at Work. Volume 3*, Perpetuity Press, Leicester, 2003.

²⁵⁵ In particular Trieste, Gorizia, Tolmezzo and Crotone.

though evident, almost always occurs elsewhere and outside their territorial jurisdiction.

The cases of trafficking for the purpose of exploitation investigated by these prosecutor's offices can be divided by type of exploitation:²⁵⁶ irregular work, juvenile exploitation, prostitution, begging, and so forth. The prevalence of one particular form depends on various factors, among which: the geographic location of the area falling within the competence of the office; local socio-economic resources and productive activities. The main forms of exploitation are, however, prostitution and underground irregular work. The former seems to be much more widespread than the latter.

As regards trafficking for the purpose of sexual exploitation, in the last five years the phenomenon has grown to alarming proportions in the area of Turin.²⁵⁷ Women from Nigerian women and Eastern Europe, with an increasing number of Romanians, are involved. The proceedings brought mainly concern the exploitation, inducement and facilitation of prostitution, personal injury, and attempted murder. Charges have also been brought for extortion in relation to the seizure of identity documents, which are returned to the victim only when she has completely repaid the debt contracted on departure.

The prosecutor's office of Genoa has also dealt with cases of sexual exploitation of women of various nationalities. Investigations into the organisers of the traffic are primarily directed against Albanians, Nigerians, and other persons from Eastern Europe.

Most investigations by the prosecutor's office of Perugia into persons trafficking concern the exploitation of prostitution on the streets, in hotels, or in premises expressly used for the purpose. The two most significant investigations (called *Girasole* or 'Sunflowers') of the five-year period between 1996 and 2001 discovered the involvement of Italian professionals and entrepreneurs and led to the arrest of more than 200 people.

A large number of cases of trafficking in persons for sexual exploitation have been reported in the territory falling within the jurisdiction of the prosecutor's offices of Rome and Palermo. The prosecutor's offices of Lecce and Brindisi, which are primarily concerned with combating migrant smuggling, reported some sporadic cases.

The prosecutor's offices of Milan, Brescia, Arezzo and Ascoli Piceno, besides sexual exploitation, also reported cases of irregular work and begging by underage persons.

There is no doubt that the economic and industrial resources of the northern regions make them attractive destinations for irregular immigrants, who, owing to their illegal status, are more frequently subjected to exploitation in sectors where labour is in short supply. The area of Milan and Brescia, for example, exerts

²⁵⁶ The kinds of exploitation envisaged by article 3 of the Protocol on Trafficking in Persons supplementing the United Nation Convention on Transnational Organized Crime in December 2000 are: exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

²⁵⁷ An average of 100 cases annually.

powerful attraction. Its geographic location and wealth are ideal factors for the development of forms of exploitation like prostitution and irregular work.

The province of Arezzo is also concerned with these two kinds of exploitation. The exploitation of labour takes place mainly in the construction industry.²⁵⁸

The prosecutor's office of Ascoli Piceno has handled cases of sexual exploitation and, to a lesser extent, cases of exploitation of irregular work in the flourishing sectors of tourism, footwear and leather goods.²⁵⁹ The presence of small and medium-sized firms active in the leather and local crafts industries fosters the growth of an underground economy which exploits the labour of illegal immigrants to gain competitive advantage.

The exploitation of illegal migrants in irregular work mainly but not exclusively concerns Chinese immigrants. The business is run by ethnic organisations which set up illegal sweatshops where the immigrants are compelled to live and work in inhuman conditions.²⁶⁰

Also in the case of trafficking in persons for the purpose of exploitation, knowledge of the *modus operandi* may lead to identification of the conditions that facilitate commission of the crime and suggest measures with which to fight it. In what follows, the operational modes of the main phases of trafficking are analysed.

12.1.1 The phenomenon

Trafficking in persons for the purpose of exploitation bears a number of similarities with migrant smuggling as regards recruitment, transport, and entry into the national territory.

In order to render the description more logical and comprehensive, a distinction will be drawn between the two most common forms of exploitation in Italy: irregular work and prostitution.

²⁵⁸ In the proceeding cited by the interviewee, article 22 of the consolidated text of the law on Immigration, paragraph 10, was applied, i.e. "employment of foreign workers without the residence permits required by law or whose permits have expired, been revoked or voided". The reason was that the 'exploitation' was not clearly apparent because of the devices used to disguise it or the bilateral nature of the employment relationship. This is why it was not possible to charge crimes of "reduction to servitude" or "activity facilitating the illegal stay of a foreign national for profit", pursuant to article 12, paragraph 5, consolidated text of the law on Immigration.

²⁵⁹ The market for sexual services in the province has been developed by a distinctive mechanism which has increased the presence of Eastern Europeans since the first half of the 1990s. The middle class of the former Soviet Union used to go to the province of Ascoli Piceno to buy leather goods and local crafts which they then resold in their home countries. A system consequently developed whereby girls wishing to improve their living standards engaged in prostitution, charging lower prices than Italian prostitutes.

²⁶⁰ The involvement of local companies has not been directly proved because the relationship between these and the Chinese businesses is based on regular supply contracts. Nevertheless, by ordering products/services from companies that use illegal workers, the local companies subscribe to these practices and create the demand that fosters the growth of these companies "on the verge of illegality".

A. Exploitation in the irregular labour market

A) RECRUITMENT

Recruitment for exploitation in the irregular labour market usually takes place through direct contact. A member of the organisation specialised in trafficking contacts the victims in the country of origin and describes to them opportunities for well-paid employment abroad. These emissaries usually belong to the same ethnic group as the victims. It may sometimes happen that the recruits are ordered by someone who is himself a migrant, legally resident in Italy and running a business. The victims are often deceived about the kind of job that awaits them and the pay that they will receive.²⁶¹

Sometimes the contact is directly sought out by the victim. These are cases in which the victim has been compelled to leave his or her country by urgent need and – this being most frequent among Chinese immigrants – becomes an outright slave of the organisation.

It appears that the selection is made with account taken of the migrant's ability to pay for the journey and his or her capacity for work.

B) TRANSPORT

It is not always possible to identify trafficking routes. Migrants use a variety of methods to reach their destinations and, in the majority of cases, rely on conventional public/private means of transport. For Chinese nationals, the means and the routes are those usually used for smuggling (see section 11.2).

C) ENTRY

As for transport, so for entry it is difficult to identify entry points with precision, owing to their variety and a lack of information on the phenomenon.

What is certain is that entry into Italy may take place even in what is apparently legal manner with false documents, or documents concealing the real identities and occupations of the victims.

In the cases investigated by the prosecutor's office of Arezzo, it emerged that Romanians were able to enter Italian territory by using stay permits for 'posted workers'. These permits, apparently legal, had in fact been obtained improperly by the Romanian owner of an Italian building firm so that he could use the workers on subsequent contracts or assign them to other businesses.

²⁶¹ An example is the case of highly qualified persons (such as engineers) employed as simple labourers and forced to work in inhuman conditions for meagre wages.

Investigations by other prosecutor's offices on this matter uncovered the existence of a flourishing market for stay permits obtained by false pretences (fake declarations of employment, often with the complicity of legal operators).²⁶²

D) EXPLOITATION

The information gathered on cases and forms of exploitation is scarce and unreliable.

Investigations by the prosecutor's office of Brescia showed that illegal Chinese immigrants were mainly put to work in Chinese-run garment workshops. These migrants were forced to work inhuman shifts in conditions that violated even the most elementary health and safety standards. The phenomenon indirectly benefited customers for the finished products, in that they were able to buy goods at prices lower than market ones because irregular labour had been used.

The prosecutor's office of Arezzo found immigrants being used by construction firms as labourers. These immigrants initially worked for the person who had brought them into the country on work permits, but were then transferred or leased to other firms. The traffickers continued to exert control over the exploited workers by taking away their documents and threatening their families.

SUMMARY

CHARACTERISTICS OF AND TRENDS IN TRAFFICKING FOR THE EXPLOITATION OF IRREGULAR LABOUR

1. *Regularisation of the presence of the migrant in Italy by false pretences* (fake declarations of employment, often with the complicity of legal operators).
2. *The attractiveness to consumers of products costing less than market prices* facilitates the exploitation of irregular labour.

B. Sexual Exploitation

A) RECRUITMENT

The methods used to recruit women for prostitution vary according to the victim's origin (both ethnic and geographic). The victims are usually from Nigeria, Albania, and other countries of Eastern Europe.²⁶³

²⁶² Recent interceptions reveal a new tariff for regularisation under the amnesty instituted by the 'Bossi-Fini Law': a fake declaration of employment can cost up to € 2,500. This curative statute, like previous ones, seems to have created more opportunities for crime.

Nigeria

Nigeria women may be recruited on the basis of:

- sale;
- knowledge/direct contact (friends, acquaintances, relatives);
- co-option.

In the first case, the women are recruited from the poorest villages and are usually sold by their families. No selection criterion is applied, not even aesthetic. The victims seem to be aware from the outset that they will be employed as prostitutes in Italy, although they claim that they have been guaranteed regular employment.

In the second case the women are contacted by acquaintances, family friends or relatives and given false promises of honest employment in Europe, often as hairdressers and/or tailors. Some prosecutor's offices, however, believe that most of the women are aware of the type of work that awaits them, which they consider anyway an attractive opportunity to earn a lot of money in a short time.

Finally, the recruitment may take place by co-option. Once women already trafficked and exploited in Italy have repaid their debts to the exploiters, they join the criminal organisation, serving first as recruiters of victims and then as their supervisors.²⁶⁴

Albania

Unlike the case of Nigerian women, in Albania recruitment is based on:

- the orders of a member of the clan to which the woman belongs;
- violence and, in extreme cases, abduction;
- sentimental attachments and false promises of marriage.

The first form of recruitment pertains to Albanian culture, where relationships among the members of the clan are regulated by a moral code which replaces the law and establishes roles, powers and obligations and assigns women to the lowest position in society.

A more persuasive approach is usually adopted with younger women. When this does not work, violence, and even abduction, are used. In some cases the girls are abducted and raped when still minors in order to prevent any form of rebellion.

More adult women are deceived with promises of marriage to the trafficker or improvement in their living standards and in those of the couple (when the woman is engaged to the exploiter).

Eastern Europe

Women from Eastern Europe²⁶⁵ are recruited by methods which differ according to the country of origin and the characteristics of the woman concerned. The most common methods are:

²⁶³ The prosecutor's office of Turin reports a recent tendency towards the exploitation of prostitution in the Chinese community, which is traditionally closed and little involved in crimes outside its milieu. There is no detailed or confirmed information on this development, but investigations indicate the presence of massage parlours providing sexual services, excluding full intercourse. The Chinese women are exploited by co-nationals.

²⁶⁴ These are the *mamans*, Nigerian women not young enough (or simply not able) to work as prostitutes and who exploit Nigerian girls for themselves or for a criminal organisation, keeping their earnings and managing their lives, not just their work.

²⁶⁵ Romania, Baltic countries, Ukraine, Russia, Belarus, Moldavia, and the former Soviet Republics in general are among the countries most closely involved.

- contacts in night clubs (in the cases of women already working as prostitutes in the country of origin);
- fashion and entertainment agencies and/or study-travel agencies, via advertisements in local newspapers;
- direct and/or indirect knowledge of friends, relatives and similar;
- recruitment in Italy.

Women who have already been prostitutes in their own country are contacted by individuals (sometimes known to them) who offer them employment in Italy as night club dancers or prostitutes, luring them with promises of large and rapid earnings.²⁶⁶ In this case the victims are entirely aware of their future form of employment but they do not know the conditions in which they will be forced to work, nor that most (if not all) of their earnings will be appropriated by the criminal organisation.

There are then various agencies specialised in the organisation of study-holidays and travel and/or employment abroad in the fashion and entertainment industries. These agencies place advertisements in local newspapers. In the case of the fashion and entertainment agencies, the victims are attractive girls lured by a future on the catwalks or in front of the cameras.

Recruiters may also use their knowledge (direct or indirect) of the victim: former boyfriends or childhood friends contact the girls and persuade them that, thanks to their friendship and trust, they can get rich quickly by working as prostitutes abroad.

Finally, there is recruitment in Italy. In this last case, women who have illegally entered the country without the assistance of a criminal organisation, or who have legally entered the country on tourism or study visas, are persuaded to stay beyond the expiry date of their visas to work as prostitutes. The victims accept this proposal because they need the money, being alone in Italy and without legal documents. Control over this type of prostitution is exercised by local criminals, not by large criminal organisations.

Violent forms of recruitment have not been reported, except for some cases of under-age girls abducted and forced to work as prostitutes in Italy.

Unlike victims from other ethnicities, Eastern European girls are subjected to a selection process based on three criteria: age (they must be young²⁶⁷), physical attractiveness, and sexual skills. Their financial solvency is not considered because they will repay their debts out of their earnings from prostitution.

B) TRANSPORT

Turning to the transport phase, it is possible to identify a number of routes to Italy used by traffickers for the purpose of exploitation. They correspond to the countries previously mentioned during the discussion of victims' origins: Nigeria, Albania, and the countries of Eastern Europe.

²⁶⁶ In this specific type of recruitment, 80% of the women voluntarily decide to come to Western Europe to work as prostitutes.

²⁶⁷ Even under-age, considering the demand for virgins.

Nigeria

After the women have been recruited, they are taken to one of the big Nigerian cities (Lagos, Benin City). Here, while waiting for the documents necessary for expatriation, they are given accommodation in the homes of women belonging to the criminal organisation, where they are subjected to voodoo rituals intended to ensure their obedience. The victims are then put on flights to European capitals (Paris, Berlin, Amsterdam, etc.), whence they travel to Italy by train, heading for big cities like Genoa, Rome, Naples and Palermo. In cases investigated by the prosecutor's office of Turin, some women arrived directly in Italy on flights landing in Milan and/or Rome. From there, with public or private means of transport (usually provided by taxi drivers in the pay of the traffickers), and under the supervision of the criminal group organising their illegal entry into the country, they travelled to other northern cities.

Albania

The journey from Albania consists first in the transfer of the women from the internal areas of the country to Valona or other coastal towns, where they wait to be taken across the Adriatic. In this phase, the youngest and most rebellious women are subjected to sometimes extreme physical and sexual violence. The journey then continues by speedboats across the Otranto Channel.

The landings take place on the coasts of Salento, in Puglia, with the complicity of Italians who warn the traffickers of the presence of the coast guards. The women are picked up by a member of the criminal organisation and transferred by car to the nearest railway station, from where they travel to their final destinations by train.

Eastern Europe

The Otranto Channel is also a pivotal route for trafficking in Eastern European women, in particular from the southern countries of Moldavia, Bulgaria and Romania. Albania is therefore the starting point for Albanian women and the intermediate destination for those from other Eastern ethnic groups.

Owing to their distance from the destination country (either Italy or another state of the European Union), the journey from the Eastern European countries divides into several stages handled by different criminal organisations. The first one consists in transfer overland from the country of origin to Albania across the Balkans, and it is controlled by criminal organisations of the same nationality as the victims.²⁶⁸ A network of individuals arrange the purchase of the women, who are then sold on repeatedly. On each change of ownership, the victim is subjected to physical violence, especially sexual, because each buyer wants to 'test the goods' and to assert his dominance over her. As the number of sales and acquisitions increase, and as the 'goods' (prostitutes) approach the market in which they are to be sold, their prices rise. The final buyers belong to the Albanian criminal groups which arrange their transfer to Italy and then their exploitation. The transfer by sea aboard ferries, or on speedboats belonging to the so-called *scafisti*, is the second and last stage of the journey.

A second route starts from Russia and the Ukraine, and sometimes from Romania, and then winds through Hungary²⁶⁹ and Austria,²⁷⁰ arriving in Italy over the Tarvisio

²⁶⁸ Women exploited in the prostitution market, but also minors used for begging.

²⁶⁹ Hungary is the hub of numerous routes. For this reason the country has become the assembly point for illegal migrants (victims of both trafficking and smuggling), not least because of the increasing corruption

Pass if the victim has legal documents, or across the borders with the province of Trieste in the case of illegal entry.

C) ENTRY

Forms of illegal or apparently legal entry are reported. In the latter case, forged documents and/or fake stay permits, as well as the bribery of police officers, are used. The methods vary according to the ethnic group of the victim.

Nigeria

The cases reported by the prosecutor's offices show that Nigerian women enter Italy legally, or apparently so, and can therefore be transferred using international airports.

The prosecutor's offices of Genoa and Palermo reported entries on *regular documents* (legal passports and/or stay permits and tourist visas). The documents were taken away from the victims as soon as they arrived in Italy. In order to redeem their documents, the women had to pay the criminal organisation large amounts of money earned from prostitution. In the case of apparently legal entries, on their departure the women received a passport with their own photographs but false personal details.

As regards *bribery*, before the women were transferred to Europe they spent waiting periods in large Nigerian towns. This was necessary because the criminal organisation controlling the traffic had to wait until an accommodating official or police officer was available to issue the necessary authorisations.

Moreover, in regard to the involvement of the Italian authorities, to be highlighted is a case of 1996 when the Italian Embassy in Lagos was involved in the issue of spurious tourist visas. Members of the trafficking organisation went to the Embassy with applications for such visas, which were then issued against payment of sums of money. The visas were of three months' duration, so that the women were able to enter Italy legally and thereafter remain in the country illegally.

Albania

Albanian women illegally enter Italy when they arrive by speedboats belonging to the *scafisti*; whilst their entry is apparently legal when they arrive by ferry. In the latter case, they are provided with documents (passports) falsified by substituting their photographs for the original ones and by using other devices to camouflage the bearer's true identity. The non-existence of a register of births, marriages and deaths in Albania precludes identity checks, even in the case of apprehension by Italian law enforcement.

Albanian police officers are systematically corrupt. They supervise loading operations and the falsification of documents, and they often commit sexual assault on the women being trafficked. This causes a high degree of distrust by victims in all police officers, even Italian ones.

of the country's customs officials. Along this route the victims never prostitute themselves in the country of transit, but they sometimes undergo sexual assault by their transporters.

²⁷⁰ Crossings of the Austrian border at Nickelsdorf are very common.

Eastern Europe

Women from Eastern Europe legally enter Italy on their own valid documents and, when required, with a visa, usually issued for tourism. Their entry is arranged by tour operators in the country of origin which organise the journeys for women intending to work as prostitutes abroad.

These tour operators may be an integral of the criminal organisations engaged in the exploitation, or they may provide only support services (outsourcing). For this reason, besides supplying the documents necessary to enter Italy legally, they furnish false passports, medical insurance and the minimum sum (€ 500) required by the women to show customs that they have sufficient means of support. Finally, they handle the distribution of the women transported in the Italian prostitution market.

On their arrival in Italy all women are compelled to change their identity. Deprived of valid documents, they are supplied with false passports, perfectly forged,²⁷¹ giving false personal details.

The Italian prosecutor's offices note increasingly numerous cases of corruption concerning the issue of passports, both in the Eastern European countries and the former Soviet Union, and in the countries traversed during the journey to Italy (especially Hungary)

D) EXPLOITATION

Each prosecutor's office emphasised the distinctive features of the exploitation taking place in its particular area of competence. Three main forms exploitation of prostitution emerged, according to where the sexual services were supplied:

- prostitution in night clubs;
- apartment prostitution;
- street prostitution.

Prostitution in night clubs is the 'up-market' form of prostitution where the girls ostensibly work as escorts or hostesses who encourage clients to purchase drinks. This is a less clear-cut form of prostitution, more accurately termed 'semi-prostitution', whose features are difficult to describe with precision.²⁷²

According to the information obtained, the girls may be in situations of:

- a) total dependence on and subjugation to the exploiter/owner of the night club;
- or

²⁷¹ Forged passports can only be identified with careful scrutiny. The photograph is always authentic, i.e. it depicts the victim. The victims themselves provide their photographs to the criminal organisation before departure from the country of origin. In the case of trafficking from Romania, the forgery involves substitution of the first page of the passport (the one with the plastic-covered photograph of the bearer). The original page is carefully excised (the cut being hardly visible to the naked eye) and replaced with the bogus one.

²⁷² This is confirmed by the fact that the starting point for detection of cases of trafficking for sexual exploitation in night clubs is fiscal investigation, inspections conducted for social security offences, and ones relating to the commercial activities which conceal the exploitation, more than reports from the victims. This crime is hard to detect because it is mingled with legal business activities.

b) semi-dependence (especially if they are able to meet clients outside working hours).

In the former case the club has rooms (so-called *privés*) where the women provide sexual services, and for which part of the payment is kept by the club owner.²⁷³ In other cases, the women can choose to receive clients in their own homes.²⁷⁴

The women working as prostitutes in clubs are (relatively) more protected because they have margins of choice and personal freedom, and their clients are more affluent.

This form of prostitution tends to involve women from Eastern Europe. This is because the massive inflow of Nigerian and Albanian women has forced the other prostitutes to find different places to ply their trade. Before they are employed in a night club, the girls are carefully selected on the basis of their physical appearance and youth in order to cater to the tastes of the Italian clients.

Apartment prostitution has developed in order to find alternatives to the streets or night clubs, which have by now become saturated. It is especially common in the country's central regions, whilst it is still developing in the South²⁷⁵ and the North.²⁷⁶ This is medium-level prostitution run by criminal organizations from Eastern Europe which exploit co-nationals.

According to the investigations conducted and the proceedings brought by the prosecutor's office of Ascoli Piceno, the women are accommodated in couples (rarely three of them together) in apartments rented (in the names of the women themselves, who sign the contract) from local estate agencies. The sexual services on offer are advertised in local newspapers, with photographs of the women, their (mobile) telephone numbers, and sometimes their measurements and details on the sexual services provided. The girls live in semi-reclusion. They work an average of fourteen hours a day from 10.00 to 24.00, although they may work even longer hours on demand/call. The duration – imposed by the organisation – of a sexual encounter cannot be longer than 15–20 minutes. At other times – when the women are still available to receive clients if called – the women cannot leave the apartment. They can only go outside to buy food or other essential items if they have been given permission by their supervisor, who contacts them only by telephone.

The most commonly used forms of control are:

- mutual supervision among housemates (one over the other; any form of friendship is banned);
- control over all movements (permission must be requested for any movement; obligation not to attract attention, a rule that also applies to the members of the

²⁷³ The prosecutor's office of Arezzo has found that exploitation by the managers of these night clubs is done by 'deduction' of the cost of the time spent privately with clients from the wages of the foreign women employed in the clubs as hostesses and/or dancers. This enables the owners to levy a percentage on the prostitution of their employees.

²⁷⁴ This kind of treatment is quite rare, however, because the women receive a percentage of the sums paid for drinks by clients, who usually do not return to the woman with whom they have had sexual intercourse. Providing sexual services to clients outside the club thus means losing a source of income.

²⁷⁵ A proceeding investigation in Palermo discovered a brothel in a residential area of the city which was used by middle and upper class clients. Unlike in the rest of Italy, the exploited women were from Colombia and very young. They did not work during the day but only at night. This is a less widespread phenomenon than the exploitation of Nigerians for street prostitution.

²⁷⁶ The only report of this is from the prosecutor's office of Genoa.

- criminal organisation who, when on Italian territory, must never flaunt their wealth, as they instead do in their country of origin);
- psychological control (deprivation of valid documents on arrival in Italy and their replacement with false ones, and any personal object that might help in determining the real identity of a victim);
 - achievement of imposed economic targets;
 - violence, coercion and threats, intimidation, subjugation, punishment and blackmail (extreme form).

All movements of the women come about through the complicity of taxi drivers conniving with the criminal organisations. Once a week the taxi drivers take the women to hand over their earnings to their supervisor in the organisation, at a place decided by the latter.

Owing to its covert nature, this type of prostitution more easily eludes law enforcement. It is difficult to prove contact between the women and their exploiters,²⁷⁷ as well as the complicity of some sectors of legal society: for instance, the estate agents that rent the apartments at higher prices than market ones²⁷⁸ or the taxi drivers that supply transport services.

Finally, *street prostitution* is the lowest form of prostitution and mainly involves women from Nigeria and Albania.²⁷⁹ The victims are forced to work long hours, and their clients are usually of low social extraction and with scant economic means.

A distinct feature of street prostitution is commuting: the prostitutes ply their trade in venues different from their places of residence, moving from one town to another one some distance away but easily and quickly reached by public transport.²⁸⁰ Sometimes the inefficiency of local public transport services, especially as regards connections, forces the women to use taxis, in which case connivance between the taxi drivers and the criminal organisations has been established. The fact that the victims work at a distance from their places of residence reduces the risks of discovery for their exploiters.

The relative freedom enjoyed by street prostitutes is only apparent. Their exploiters are able to maintain close control over them by patrolling their working places,²⁸¹

²⁷⁷ The prosecutor's office of Arezzo claims that apartment prostitution involves 'self-employed workers', so that there is no exploitation.

²⁷⁸ According to the prosecutor's office of Perugia, the rent for a flat used to receive clients may be as high as € 2,000 a month.

²⁷⁹ The kerbside patch is often shared by prostitutes from different ethnic groups.

²⁸⁰ The prosecutor's office of Arezzo has found that prostitutes are often domiciled in Rome and travel to Arezzo and other Tuscan towns by train. The prosecutor's offices of Brescia and Genoa state that Nigerian prostitutes always work in different places, even far away from their abodes (for example, lower Piedmont for those living in Genoa, or the Milan hinterland for those living in Turin). According to the prosecutor's office of Ascoli Piceno, the women working in the Bonifica del Tronto area arrive by train late in the afternoon from the nearby coastal resorts of Romagna (Rimini) and then return home the next morning.

²⁸¹ The exploiter patrols the working areas, which are rigidly divided up among criminal organisations, also to prevent encroachment on their 'turf' by other women. In this case the women either pays a tax to use the stretch of kerbside or is forced to leave.

intimidating them with magic rites,²⁸² and subduing every even minimum attempt at rebellion with violence and menaces.²⁸³

As regards the *duration* of trafficking, a distinction should be drawn between the phases of recruitment, trafficking and entry on the one hand, and the exploitation proper on the other. The time necessary for the first three phases varies according to the country of origin and of destination. The only relevant feature of exploitation is the nationality of the victims and the exploiters, because the modes, and consequently the duration, of the exploitation are different for each ethnic group.

Nigerian women, for example, are exploited until they have repaid the debt undertaken. This period usually lasts for a couple of years and depends on the percentage of the earnings that the victims pay to the exploiters every month. It should be borne in mind, however, that the living and working conditions of the Nigerian women give them short life expectancy, which sometimes does not extend much beyond the time needed to extinguish the debt. Those who manage to survive usually join the criminal organisation and work as *mamans*.

Albanian women are instead forced to work as prostitutes for their entire lives. The rules imposed on them and the modes of their recruitment (i.e. deceit or abduction) imply unconditional exploitation and for an indeterminate period of time. For this reason, their only chance of escape is to contact the public authorities and report their exploiters, or be caught by the law enforcement agencies and persuaded to report the crimes committed against them.²⁸⁴

Finally, according to the prosecutor's office of Ascoli Piceno, the Eastern European women arrive with the intention of prostituting themselves for some months: that is, for the time needed to save the money necessary to live a comfortable life in their own country. But they in fact stay longer, changing zones every six to seven months, both within Italy and in other countries. These changes are the consequence of both market forces (clients always want new girls) and the need to protect the criminal organisation against capture by the police.²⁸⁵

The principle mentioned above in relation to Albanian women also applies to Eastern European ones: namely, their state of subjugation prevents them from contacting the police in order to put an end to their situation. In these cases too, therefore, intervention by the police represents one of the victims' few chances of being saved.

No cases of *bribery* have been detected during the exploitation phase in Italy. Nevertheless, mention should be made of a report by the prosecutor's office of Genoa concerning cases of misconduct by police officers. These were isolated episodes of officers who omitted to report criminal activities related to the

²⁸² An older woman (known as the *maman*) uses voodoo rituals to subjugate the Nigerian women because, besides organising the women and collecting their earnings, she must also prevent their escape.

²⁸³ It is almost always a man who controls the exploitation of Albanian and Romanian women; if they break the rules, he uses often extreme physical abuse on them.

²⁸⁴ Spontaneous reporting by these women is almost impossible, because they are entirely in thrall to their exploiters, who convince them that the Italian police are just as corrupt as the Albanians. The fear of sexual assault by the Italian police stops them from reporting the members of the organisation that exploits them.

²⁸⁵ If the girls remain in the same place too long, they may become known or establish friendly relations with local people. This may facilitate reporting or at any rate rebellion against the criminal organisation, as happened in the province of Ascoli Piceno and prompted an inquiry into the trafficking of girls from Eastern Europe.

exploitation of prostitution in exchange for sexual services. There may also have been *connivance* by some police officers with members of criminal groups, given the almost complete lack of controls in some urban areas, especially over apartments occupied by groups of foreign women. However, this information has not been judicially confirmed.

SUMMARY

CHARACTERISTICS OF AND TRENDS IN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION

1. *Different degrees of 'consent' given by the women to prostitute themselves* in Italy, according to the ethnic group concerned (reduction to servitude for Albanian women; voluntary decision – though caused by deception about living and working conditions – for Eastern European and Nigerian women).
2. *Trafficking and exploitation planned in each phase by specialised and organised structures* (total control over the process).
3. *Well-defined and well-established routes.*
4. *Three types of prostitution: prostitution in night clubs, apartment prostitution and street prostitution.* These can be distinguished according to the degree of control exerted over the victims by the criminal organisations and the extent to which the victims are deprived of their freedom.
5. *Commuting.* Street prostitutes are exploited in places different from those where they live, the purpose being to conceal the exploiters.
6. *Importance of apartment prostitution.* This phenomenon, flourishing in the country's central regions, is increasing in the North and South owing to the need to find alternatives to the street and night clubs. Although also this type of exploitation is perpetrated with violence, coercion and menaces, it more easily eludes control by law enforcement. It is difficult to prove the relationship between the women and their exploiters, as well as forms of assistance provided by some 'links' in legal society, such as estate agents and taxi drivers.
7. *Involvement of 'legal' actors who facilitate the exploitation of prostitution, such as letting agencies, taxi drivers, hotel owners.*
8. *Mobility both national and international of the women working in night clubs and apartments, and exchange of the women among criminal organisations in order to facilitate such mobility.*
9. *Use of expedients by organised crime in order to disguise the exploitation* (for example, stay permits for 'posted workers', deduction from the dancer/hostess's wages of the hours spent with clients).
10. *Use of forged documents pertaining to nationalities different from those of the victims.*
11. *Frequent cases of bribery of foreign public officials, seldom of Italian ones.*

12.1.2 The perpetrators of the trafficking

The perpetrators of *trafficking for the purpose of exploitation of irregular labour* are difficult to identify and describe. The information obtained from the prosecutor's offices suggests that often involved are persons who act individually to find labour for their enterprises. This phenomenon is typical of enterprises managed by foreigners, who recruit personnel from among their co-nationals.

Likewise, it sometimes happens that the labour supply of illegal migrants matches the seasonal demand by Italian entrepreneurs (especially in the textiles, construction, manufacturing and agricultural sectors). Space is thus created for various forms of exploitation of irregular labour which are not always controlled by criminal organisations.

However, criminal organisations seemingly intervene when the irregular migrants have already been smuggled into Italy and seek jobs and stay permits for work purposes. In other and probably better-known cases, the Chinese organisations traffic co-nationals into Italy and bind them in 'forced labour' to repay the debts contracted for the journey.

As regards *trafficking in persons for the purpose of sexual exploitation*, the market is controlled by traffickers from Nigeria, Albania and Eastern Europe. The degree of organisation of these criminal groups and their methods vary according to ethnicity and culture.

Trafficking from Nigeria is organised and controlled by *Nigerian criminal networks* believed to be complex and ramified. Although they operate mainly in Nigeria, they can count on solid bases in foreign countries, usually European, through which the women sometimes transit before arriving in Italy. These criminal groups recruit and transfer the victims, whilst they are exploited by Nigerian women, the so-called *mamans* or *madames*, who administer and control the workforce (the victims), sometimes in cooperation with Nigerian men.

These *mamans* buy the women²⁸⁶ from the organisers of the journey, with whom they are usually directly in contact. In some cases they have themselves been victims of trafficking who, once they have gained their freedom, have joined the Nigerian criminal groups to supervise and control the newly recruited women.

In the cases considered by the prosecutor's offices a clear distinction emerged between the criminal organisation operating in the country of origin, which recruits the women and organises their transport to Italy, and the subjects at destination, who having ordered the women from these organisations, take them against payment. The connections between these two components of the criminal chain have to date been difficult to prove, although their existence has been confirmed by the victims themselves. For these reasons, they are usually viewed more as networks than as compact groups.

From the operational point of view, the exploitation seems to be carried out in simpler²⁸⁷ and less structured manner than by criminal groups of other ethnicities.

²⁸⁶ In a case recently encountered by the prosecutor's office of Turin, the *maman* had created a kind of cooperative into which the associates paid sums of money used to finance the purchase of new women.

²⁸⁷ These activities are usually accompaniment of the women to their working places, close physical control over them, the immediate collection of their earnings, and violence.

The distinctive feature of these ethnic groups is their use of voodoo rituals to subjugate the victims, taking advantage of religious beliefs in the country of origin. In extreme cases use is also made of violence and menaces.

Some Nigerian exploiters are also involved in drug trafficking, which they manage separately from prostitution.

The Albanian crime organisations operate in different areas of the country according to an organisation model based on shared ethnicity and the bonds of clan membership. The criminals act in small and autonomous groups, but nevertheless maintain links with the criminal organisation to which they belong. These small groups have an internal hierarchical organisation (the chief is usually the member of the group with the most knowledge and skills), although it is attenuated by the flexibility necessary for transfer, surveillance and financial management. The hierarchical organisation of the Albanian groups – which is typical of other ethnic criminal organisations as well – is reinforced by the use of violence, which are also applied to the victims in order to intimidate and subjugate them.²⁸⁸

A number of relatively unsophisticated Albanian groups operate in Puglia and may sometimes collaborate with each other. The prosecutor's offices in Puglia stressed the presence of individual 'criminal entrepreneurs'. Not always, in fact, do the criminal organisations involved in recruitment also supervise the exploitation. On the contrary, the latter is often entrusted to more stable criminal groups more solidly established in the country, or to single individuals.²⁸⁹ Moreover, a role may be played in the exploitation by groups or people belonging to the victims' country of origin or to the countries of transit (as said, the women are repeatedly sold and bought during their journeys). Although the exploiters in Italy usually belong to Albanian groups or mixed groups of Italians²⁹⁰ and Albanians, alliances have begun to develop among criminal organisations from the victims' countries of origin and Albanian and Slav groups.²⁹¹

Unlike other mafias, the Albanians also supervise the smuggling, trafficking and/or exploitation of women from other Eastern European countries.

Furthermore, the Albanians are active in other illicit activities as well, such as the trafficking of weapons and drugs. The exploitation of prostitution is therefore a source of 'easy' financing for other types of trafficking.²⁹²

²⁸⁸ These Albanian organisations sometimes manage to buy back the women previously sold to nightclub owners after they have been used as hostesses, to exploit them on the streets.

²⁸⁹ In the province of Brindisi several foreign women were 'delivered' to exploiters unconnected with any criminal group, who simply bought them for their personal pleasure.

²⁹⁰ Italians are only marginally involved in street prostitution and more directly involved in the management of night clubs with dancers and hostesses.

²⁹¹ The prosecutor's office of Milan reported collusion among criminal groups of the same nationality as victims and Albanian and Slav criminal organisations. The former handled the recruitment phase and the first part of the journey, while the latter, to whom the women were sold (on the basis of photographic 'portfolios'), dealt with entry into Italy and the actual exploitation. Since July 2002 the Romanians have acquired a greater role in exploitation. According to the prosecutor's office of Turin, Romanians within a particular organisation maintained links with the country of origin and organised the recruitment of Romanian women, while Albanians in the same organisation controlled the area of Turin, where the girls were forced to prostitute themselves by the Romanians.

²⁹² The proceeds from prostitution are used to buy drugs.

The ability of these criminal groups to use local logistical bases to conduct their activities efficiently demonstrates their flexibility. In this regard, connections among criminal organisations and taxi drivers, hotel owners, landlords, and other Italian 'legal' operators have been discovered, as well as close connections with certain nightclub managers.²⁹³ The latter intervene in the exploitation phase, retaining a high percentage of the women's earnings.

The *crime groups* that supervise the trafficking of *Eastern European* women seems to be less structured, and the trafficking process is highly fragmented, due to the fact that the victims are repeatedly bought and sold during the journey from their countries of origin.

According to the prosecutor's office of Genoa, the activity is run in largely unprofessional manner without the intervention of a solid organisation. However, there is evidence that, especially in the case of the routes starting from the former Soviet Union, several organised criminal groups are involved which use particular methods to elude police controls.²⁹⁴

This hypothesis seems confirmed by the prosecutor's office of Ascoli Piceno, which recently discovered a Romanian criminal network engaged in the trafficking for sexual exploitation of young Romanian women. In this case, the criminal organisation, on the basis of emissaries who supervised each individual phase, was responsible for the entire process (from recruitment to exploitation). The trafficking and the exploitation were systematically organised, not sporadic. The division of tasks was well established: the heads (first level) coordinated the organisation from the country of origin and planned the movements of the women and reinvested the illegal profits; the other members of the organisation (rank-and-file, or second level) were posted at key nodes and controlled individual phases, or supervised the women during their daily work (third level). The prosecutor's office also found logistical support being provided by Italians (taxi drivers, landlords, etc.).

It is however clear that the trafficking and exploitation in Italy of women from Eastern Europe is still controlled by Albanian organisations, with the co-nationals of victims playing purely supporting roles. The case of the Romanian organisation mentioned above underlines, however, that the possibility of greater organisational and managerial autonomy of the ethnic criminal groups from Eastern Europe should not be underestimated.

One may legitimately enquire whether Mafia-type organisations are involved in the exploitation of Eastern European women in Italy. In this regard, although the 'Sunflower' operation by the prosecutor's office of Perugia found a link between the Russian and the Italian organisations, the prosecutor's office of Palermo reports that the trafficking and smuggling are, at least in Sicily, largely monopolised by small-scale crime, which is organised to a greater or lesser extent, excluding the involvement of the Sicilian Mafia families affiliated to *Cosa Nostra*.²⁹⁵

As regards the geographical distribution of the foreign criminal organisations involved in the trafficking of persons for sexual exploitation, they operate in every

²⁹³ The 'Sunflower' operation conducted by the prosecutor's office of Perugia with the assistance of the AND and the *Carabinieri* of the ROS of Perugia since 1999 has uncovered a prostitution ring using women from the former USSR countries and Eastern Europe (Belarus, Moldavia, Ukraine, Romania) as well as Albania.

²⁹⁴ One of these expedients is to organise beauty contests in night clubs so that the women can enter the country without arousing suspicion.

²⁹⁵ The exploitation of prostitution is not regarded as worthy of 'men of honour'.

part of the country. Their structure is ramified, with logistical nodes in both Italy and abroad.²⁹⁶

Recent investigations by the prosecutor's office of Rome have revealed other distinctive features of the *modus operandi* adopted by all criminal organisations engaged in trafficking for the purpose of sexual exploitation, as follows:

- the use of foreign languages in conversations among the members of the organisation so that intercepted telephone calls are more difficult to understand;
- limited use of mobile phones, as well as the total exclusion of fixed telephones;
- the investment of significant amounts of money to pay the defence's fees in case of arrest;
- the constant use of threats and blackmail against the victims' relatives in their countries of origin.

Besides drug trafficking, the Albanian groups are sometimes involved in the arms trade. The Eastern European criminal organisations engage in *other illicit activities* such as drugs trafficking, trafficking in stolen cars,²⁹⁷ and the laundering of money earned from prostitution. The money laundering involves the purchase of gold and precious stones, which are goods that also facilitate the transfer of illicit capital to the country of origin. There is then the phenomenon, although it is still limited, of the smuggling of local crafts products from Italy to Eastern Europe, which is driven by high demand for such goods in those countries.

These activities are coupled with the commission of other cognate crimes, that is, ones functional to the main illicit activity, such as the falsification and forgery of identity documents.

Some exploiters in the Nigerian criminal groups engage in drug trafficking, although they do so separately from prostitution.

An area of inquiry still little explored is the *proceeds* of trafficking in persons for the purpose of exploitation. Some prosecutor offices,²⁹⁸ although they have never conducted thorough financial investigations, estimate from calculations of the amount of the proceeds of prostitution that the turnover of the criminal groups involved is considerable.

Various elements can be taken into account when estimating profits: the daily earnings of each woman, the number of women exploited, their individual value, and the terms for repayment of their debts.

The high profits earned by Albanian criminal groups are indirectly confirmed by the existence in Albania of facilities – camps and hotels – able to accommodate large numbers of women on their way to work as prostitutes abroad.

Women arriving from Albania do not pay for their transfer across the Otranto Channel. The exploiter accompanying the women usually pays in advance for them

²⁹⁶ According to investigations by the prosecutor's office of Ascoli Piceno, the Romanian organisation operating in that province has created an international exploitation network with connections in Italy (especially in tourist resorts on the Adriatic (Marche coast) and the Tyrrhenian Sea (Rapallo)), and in Spain (Costa Brava) acting as channels between supply and demand.

²⁹⁷ With the involvement of the owners of the cars and the consequent frauds committed against the insurance companies.

²⁹⁸ Prosecutor's offices of Turin, Perugia and Genoa.

(a sum of money normally ranging from € 75 to € 250), and then demands repayment on the victims' arrival in Italy.

In relation to trafficking from Nigeria, various prosecutor's offices confirmed that the women must repay to the criminal organisation the cost of their transfer to Italy, the accommodation provided, and transport during their prostitution work. In addition this is a sum that must be paid for the release of the document seized at the arrival in Italy. The total amount is approximately € 40,000. Usually, € 25,000 is paid on departure from the country of origin, as a deposit for travel expenses, while the final payment occurs through seizure of the woman's earnings from prostitution. Most women must pay between a minimum of € 250 to a maximum of € 500 every month to their *madame*; otherwise they are beaten. The women are allowed to keep a small sum from the proceeds of their work.

The prosecutor's office of Genoa found that Nigerian women had to work steadily for at least two years in order to obtain their freedom by repaying the debt undertaken

As regards the Eastern European women, their testimonies reveal that they earn € 500 per night on average:²⁹⁹ this is the target imposed by the exploiters if the women are to avoid sanctions/punishments. The girls are allowed to keep almost nothing. They are obliged to repay the sums paid in advance by the criminal organisation for their journey (around € 1,000 from Romania) and for their false documents (€ 1,500–2,500), and they must also pay for services supplied by the organisation, such as accommodation (€ 10 per night) and transport to their places of work (€ 5 per night). Fines are levied for any minimal infraction of the rules (too long intercourse with clients, not wearing short skirts, etc.).

This information on the 'expenses' sustained by the women once they have arrived in Italy is also confirmed by the prosecutor's office of Ascoli Piceno, which provided one of the most comprehensive financial analyses of the profits made by the criminal organisations active in this illicit activity. The office also ascertained the profits made from prostitution and, on the other hand, the costs sustained by the criminal groups. These data, together with an estimate of the number of women controlled by a criminal organisation,³⁰⁰ enable indirect calculation of turnover, which varies according to the type of sexual exploitation.³⁰¹

As regards the exploitation of Romanian women, the prosecutor's office of Ascoli Piceno provided the following figures:

- tariffs for sexual services: from a minimum of € 50 for normal intercourse to € 100 for special services, to more than € 200 for any other exceptional services;
- number of clients per woman per day: 10 (average);
- average daily earnings: € 500–600;
- working days per month: 30/30;
- number of women controlled by a criminal organisation: not known with precision, but presumably some dozens;

²⁹⁹ According to the prosecutor's office of Lecce, some foreign prostitutes earn up to € 2,000 a day.

³⁰⁰ By way of example, as regards trafficking from Romania, 77 false passports assigned to Romanian women were seized in September 2002. It is probable that even more women are now involved.

³⁰¹ Apartment prostitution is more expensive (on average € 150 per sexual service) than street prostitution, where a larger number of services are provided in a given time.

- percentage of the earnings from prostitution appropriated by the criminal organisation: minimum 50% (this is an exceptional case, however, because the percentage is usually higher);
- extra costs: fines for 'misbehaviour', percentage on personal expenses, purchases, living expenses.

The main expense sustained by the women is the cost of their journey to Italy, which comprises:

- travel: € 500 per round trip;
- passport: if false, € 300; if valid, US\$300³⁰²;
- medical insurance and liquid money given in advance: € 500.

On average, the sum to repay out of the first earnings from prostitution is around € 1,000–2,000 per woman.

In addition to these expenses *ab origine*, there are the daily ones that the victims must meet independently of the sum that the exploiters decide to leave to them. They comprise board and lodging (the monthly rent amounts to around € 750 a month), the bills for mobile phones³⁰³ and other essential goods and services, including the purchase of condoms.³⁰⁴

The criminal organisations, by contrast, sustain no costs in running their unlawful business apart from the payment in advance for the transport of the victims.

Moreover, the criminal organisations are able to finance themselves because the proceeds from exploitation are used in subsequent trafficking operations ('self-feeding circuit'). What remains, i.e. the profit, is reinvested in the country of origin, also in legal activities.

The money is usually remitted via money transfer agencies,³⁰⁵ or it is laundered by buying precious metals, especially gold, and gemstones, which are easier to transfer to the country of origin.

When these methods are not adopted, the money is transferred in cash by the member of the criminal organisation bringing the women into Italy, who then returns to the country of origin with the illicit profits.

These methods have raised a number of obstacles against financial investigations.

³⁰² Interest rates as of 2001–2002, when the dollar was higher than the euro.

³⁰³ The Romanian working in central Italy had two lines, one for clients and one for communications with the criminal organisation, which usually only received calls.

³⁰⁴ As an example, out of around € 4,500 earned weekly, the woman keeps € 500 on average.

³⁰⁵ Western Union, UPS and, for Romania, ALTRISIB, a transport company delivering goods to and from the East with a direct Romania – San Benedetto del Tronto – Taranto connection.

SUMMARY

CHARACTERISTICS OF THE PERPETRATORS OF THE TRAFFICKING

1. *Same ethnicity of the exploiters and victims.* Shared ethnicity ensures effective control over the women, and it is the factor that gives some criminal groups dominance over others.
2. *Presence of Nigerian criminal organised networks sharing the same aims, although they operate in different phases of the trafficking process* (the Nigerian organisations keep trafficking sharply distinct from exploitation, which is supervised by a *madame* or *maman*).
3. *Flexibility of the structure so that local logistical support can be used* (connivance with 'legal' actors).
4. *International exploitation network, also for the transfer of victims from one place to another.*
5. *In the country's southern regions, involvement of small-scale local crime in the exploitation of street prostitution.*
6. *Involvement not only in trafficking but also other illicit activities, principally drugs trafficking. The exploitation of prostitution is used to finance other illicit activities.*
7. *Systems for controlling the victims at a distance by means of mobile phones.*
8. *Money transferred in cash form to the countries of origin by emissaries or via money transfer agencies.*
9. *Self-financing of the criminal enterprise by reinvestment of criminal proceeds.*
10. *Purchase of gold or gemstones for the purpose of money laundering.*
11. *Connections between Russian and Italian Mafias.*³⁰⁶

12.1.3 The victims of the trafficking

The victims of trafficking have a number of features in common, whether they are exploited as prostitutes, as irregular workers, or as beggars. Some of these features are the 'push' factors of trafficking and they may be *objective* or *subjective*. The former category comprises difficult socio-economic conditions in the victims' countries of origin. Belonging to the latter are the mirage of a better life made possible by guaranteed earnings (and considerable and rapid ones in the case of prostitution), and the attraction exerted by the Western countries, often as a result of a false belief that well-being and affluence are readily available in them.

In the specific case of prostitution, poverty is indubitably one of the main reasons for leaving the home country. However, there are other concurrent causes, among which:

³⁰⁶ The prosecutor's office of Palermo excluded any connection between traffickers in persons for sexual exploitation and the criminal organisations associated with *Cosa Nostra*.

1. *The influence exerted by the accounts of other women.* It may happen that younger women, especially in Eastern Europe, are attracted by the direct testimonies of women of the same age who have returned to their home countries and describe prostitution in the Western European countries (even for a short period) as a way to make easy earnings and return to a comfortable life at home;
2. *The social condition of women.* In some ethnic groups, especially Albanian, the social status of women forces them to accept decisions taken by their clan, which facilitates their subjugation to the traffickers/exploiters. In this case, the trafficking phenomenon originates from a lack of education into gender equality and the value of human dignity;
3. *Sentimental relationships.* Albanian victims may be persuaded to leave for Italy by sentimental relationships formed with men who then prove to be their exploiters when they have reached their destinations.

The *characteristics of the victims* vary considerably. First of all, *origin*. As said, the victims exploited in the underground labour market are mainly from China (textiles industry) and Eastern Europe (building, agriculture), whilst the women employed in the sex market are primarily Nigerian, Albanian, and from Eastern Europe, mainly Romanian, Moldavian, Ukrainian, Belarusian and Russian. Smaller percentages are from the Baltic region and South American countries (Ecuador, Columbia).

All the women are young or very young, the average *age* being between 18 and 22–23 years old. There are also cases of under-age girls, especially from Eastern European countries and Columbia. This is due to the strong demand in the market for virgin girls and to their more attractive physical appearance. The under-age girls, however, are given false documents made out to women of older age. The exploitation of under-age girls is largely non-existence among Nigerians, most of whom are born between 1970 and 1977.

The majority of victims are from rural areas and belong to low or very low *social classes* (this being the case of women from China, Nigeria, and sometimes from Eastern Europe). Arriving in Italy from Albania and from some Eastern European countries are also women belonging to the urban middle class, although their homes are located in the hinterlands of big cities and degraded neighbourhoods.

The *educational level* is usually low; victims possess (though not always) elementary and/or basic vocational qualifications.³⁰⁷ Women from Eastern Europe, however, have higher educational levels and are better intellectually endowed. Romanian men employed in irregular work in the building sector have usually finished high school or are graduates (engineers).

To be stressed is the reaction of victims when they come into contact with the law enforcement agencies. Women tend to withdraw into themselves. Initially, any attempt to communicate with them is fruitless. This attitude can be explained by the natural distrust that the victims feel towards the police officers that they have encountered during their journeys. This situation only changes when they arrive at the reception centre and meet other women who have lived through the same experience and persuade them to cooperate.

³⁰⁷ The Nigerians are usually hairdressers and tailors, and are therefore persuaded to move to Europe to continue their professions.

SUMMARY

CHARACTERISTICS OF THE VICTIMS OF TRAFFICKING

1. *Poor and degraded socio-economic conditions in the countries of origin.*
2. *Decision taken voluntarily to leave the home country for prostitution in Italy, attracted by the prospect of easy and quick money.*
3. *Objective and subjective 'push' factors for emigration.*
4. *Fear of rebelling against the traffickers/exploiters, for various reasons: physical violence, menaces, and threats of retaliation against relatives, etc.*
5. *Failure to perceive themselves as victims.* Although prostitution and irregular work do not match the expectations formed by traffickers when the women leave the country, those in the circuit do not see themselves as victims, their sole concern being to remain in Italy and not be repatriated.

12.1.4 Prevention of trafficking

During the interviews conducted with the prosecutors they were asked to draw on their experience to envisage feasible strategies to prevent the trafficking of persons for the purpose of exploitation. The following non-criminal measures were suggested to reduce the opportunities for organised crime and to render potential victims less vulnerable:

1. *closer control of the territory and borders, deploying more personnel and means.* Such preventative control should complicate the operations of the criminal organisations. This would require improved equipment and greater financial and human resources available to the law enforcement agencies so that they can maintain close control over the territory;
2. *improved planning of regular migration flows and increasing the maximum number of legal migrants allowed into the country.* Unconditional border closure may become criminogenic by fostering trafficking and smuggling. Migrants with no other alternative rely on the services supplied by the traffickers in order to reach the Western countries. Of course the balanced planning of inflows implies that the entry into the country should be allowed only to those with concrete prospects of employment. The issuing of short-term stay permits for job search purposes has been suggested;
3. *improved social and economic conditions in the victims' countries of origin by means of well-designed policies for economic support and international cooperation in loco.* International economic cooperation should seek to eliminate the primary causes that induce victims to resort to trafficking and/or smuggling services. Action to remove differences between countries is required, fostering economic growth in the countries where migration flows originate;
4. *agreements with the countries of origin in order to regulate the flow of migrants,* which must match actual demand in the regular labour market. This

solution was suggested by some prosecutors as the only truly feasible way to combat trafficking and smuggling;

5. *more rapid procedures for the regularisation of foreigners;*
6. *action to regulate prostitution.* According to some prosecutors, the lack of a reasonable regulatory framework for the sex market in Italy, like that of other countries, aggravates the currently illegal and violent nature of prostitution in Italy.

In this respect, the legalisation of prostitution has been suggested, with in particular the opening of legal brothels so that the phenomenon can be more closely controlled from the point of view of both security and hygiene–health

or alternatively,

the control of prostitution³⁰⁸ by introducing stricter administrative measures against street prostitution, seeking to divert it to venues more easily controlled from the point of view of both security and hygiene–health;

7. *electronic documents and more accurate official registration of personal details in the countries of origin,* with the possibility envisaged of providing subsidies and technical assistance to overhaul the administrative systems of developing countries. Also necessary is *reform of the current procedures for reporting the loss of identity documents.* Adoption of such measures would prevent the abuses made possible by the weaknesses of administrative systems and the use of false documents;
8. *action to support victims* which identifies critical situations and prevents further exploitation. Significantly useful to this end would be the economic and operational strengthening of the protection measures provided by article 18 of the consolidated text of the Law on Immigration, both as regards finance and means;
9. *tighter controls by the labour market monitoring authorities in Italy.* This would require verification that a work permit has been issued for a real job and not a false one, and would also apply to seasonal labour, thereby bringing any exploitation out into the open;
10. *improved monitoring of property rentals.* The prosecutor's offices mainly concerned with apartment prostitution noted that the monitoring of residential rentals can be an effective deterrent. Most of the rental contracts signed by victims appear to be legally registered.

³⁰⁸ According to the prosecutor's office of Turin, introducing the crime of prostitution and criminalizing clients will not prevent prostitution, because the latter caters to a high level of demand. Regulation of the phenomenon seems to be the most appropriate response in that it removes business from the crime groups engaged in the activity.

12.2 INFORMATION ON THE SMUGGLING OF MIGRANTS

The smuggling of migrants has increased exponentially in the past few years, and especially in those border areas where it is easier to enter the country illegally.

The prosecutor's offices of Trieste, Gorizia and Tolmezzo in northern Italy – which stand in the front line in the fight against smuggling – have seen exponential increases in their workloads. These areas are traversed by movements of illegal immigrants, most of them heading for other destinations. For the prosecutor's offices of Trieste and Gorizia, this phenomenon is mainly due to the topography of the province, which shares a border with Slovenia. The second-level border crossings and the natural frontier are obviously preferred to main roads and ordinary border crossings. In the province of Gorizia alone there are at least ten of these secondary border points, which are unprotected, like pedestrian crossings and usually without fences, and agricultural ones across farmland. In addition to these are the crossing points along the Italian-Slovenian railway. This frontier is mainly used by traffickers from the Eastern European countries (Romania, Moldova and also Bulgaria, Hungary, the Baltic countries and the Balkans), from South-East Asia (China, Philippines, Bangladesh, India, Pakistan and Afghanistan), and from Kurdistan (Turkey). There is a direct connection for the former group of countries, while for the others the route is more complex, comprising stopovers in Eastern European countries.

In the south of Italy, the provinces of Brindisi, Lecce and Crotona are those most affected by smuggling, although proceedings for trafficking for the purpose of exploitation have also been brought. In this case, too, the topography of the land explains the phenomenon: long coastal stretches are practically impossible to patrol and are exploited by organized criminals. The trafficking takes place by sea, sometimes using the ferries which connect Albania, Turkey and Greece with the coastal towns of Puglia. The area has long experienced illegal immigration from those countries, with methods that have changed over time: the large-scale and relatively infrequent large scale landings of hundreds of non-EU nationals packed onto ramshackle medium-sized boats have now given way to small-scale landings of 20 to 30 people from rubber dinghies. The people smuggled by these means are mainly from Albania or Kosovo, often destined for exploitation, but there are also Asians, Middle-Easterners, and especially Kurds. As regards these latter, their landings used to take place along the coasts of Calabria but have recently shifted to Puglia, although Calabria is still affected.

Finally to be considered is the situation in large urban areas. The provinces of Milan and Rome, but also minor ones with airports and harbours, are destinations, though not always the final ones, for the smuggling of migrants along routes originating in such distant geographical areas as West Africa (Senegal), South America (Ecuador, Peru) and South-East Asia (China, Philippines, Sri Lanka).

It should be pointed out that it is possible to obtain a more complete and accurate picture of smuggling when the prosecutor's offices concerned have taken a global investigative approach to criminal activities, acquiring information on all their relevant phases, rather than restricting their investigation to the illegal crossing of national borders. This approach, when it has been practicable, has led to the

dismantling of complex criminal networks engaged in the smuggling of migrants, and not just the last links in a long chain.³⁰⁹

12.2.1 The phenomenon

The smuggling process moves through three phases: recruiting, smuggling, and entry into Italy.

Despite differences among particular cases (differences which mainly concern the nationality of the victims, their origins, and points of entry into Italy³¹⁰), there are commonalities among all instances of smuggling. These are examined in this section.

A) RECRUITING

The recruiting methods used by the criminal organizations vary according to the country of origin. The most common are:

- 'travel agencies' which organize the migrants' transport;
- word of mouth among relatives/acquaintances;
- advertising in local newspapers or on the Internet.

Investigations conducted by the prosecutor's offices of Crotone and Lecce on immigration from Kurdistan (but also originating in Iran and Afghanistan) have shown that contacts between criminal organizations and prospective migrants are established by legal travel/transport agencies which channel the demand for migration. Persons wanting to emigrate illegally resort to these agencies, doing so usually via intermediaries. The agencies organize land transfers, almost always by bus, more rarely by taxi, to the departure cities for Europe, which are usually Istanbul, Smyrna or Canakkale (Turkey). Here the migrants are put in hotels whose owners know and participate in the smuggling, and where they stay until departure. These groups usually consist of 20 to 30 people, and the Kurds may remain in the city for several months until the number of people required to fill a boat has been reached.³¹¹

This form of recruitment is also common in Romania and Moldova.

In Albania, it is sufficient to travel to the port of Valona to contact the Albanian smugglers offering a ferry service to Italy.

³⁰⁹ For example, consider the difference of approach between prosecutor's offices of Gorizia and Trieste, which increasingly investigate the links in the chain prior to the *passeurs* apprehended at frontiers, and the prosecutor's office of Tolmezzo, which restricts its action to the prosecution of individual *passeurs* and is uninterested in the organization for which they work. Obviously, whether or not more far-ranging action is possible depends on the size of the prosecutor's office and on the organizational and technical means at its disposal.

³¹⁰ The choice of route is usually determined by a combination of these three elements.

³¹¹ From a minimum of 400/500 to a maximum of 900 people.

The *word of mouth* method is typically used in China, where criminal organizations exploit the ethnic factor and common geographical origins to recruit their victims: this feature was reported by the prosecutor's offices of Genoa and Turin, the Italian cities with the largest Chinese communities. In the cases investigated in Genoa, the smuggling organization operated in one particular region of China – *Tzei-Yang* – from which all the victims intercepted in Italy had originated. The prosecutor's office of Turin has uncovered the following smuggling method: Chinese persons wanting to enter Italy are managed locally by other Chinese individuals with specific contacts in Italy, and once they have arrived in Italy, their reception and accommodation is organised by a Slav.

Recruitment based on *advertising in local newspapers or on the Internet* is usually intended to find victims for the foreign prostitution market. In cases investigated by the prosecutor's offices of Gorizia, Tolmezzo and Trieste, this recruiting method was used for immigrants from Romania, Moldova, and sometimes also Kosovo. The advertisements in local newspapers either refer those interested to travel agencies which organize the smuggling journeys, or they establish direct contact between the smuggler and the prospective emigrant.

Rome's prosecutor's office also reports the existence of individual 'headhunters' who recruit prospective migrants in the countries of origin and then deliver them to organized smuggling rings.

Irrespective of recruiting method, the solvency of the smuggled person is the prime requisite for gaining access to the smuggling 'service'. The *selection* of migrants was not evidenced in any investigation by a prosecutor's office: during the interviews, only the offices of Tolmezzo, Brindisi, Crotone and Genoa reported some form of selection, and it concerned ascertainment by the criminal organization that the smuggled person would be able to pay or repay the cost of the journey. In reality, however, many criminal organizations offer the service in any case and ensure that they are repaid by the smuggled persons, possibly in illicit manner.

There are several ways to repay the cost of smuggling, and they vary according to the nationality of the migrants and of the traffickers. Payment is usually made in advance;³¹² otherwise the 'agency' lends all or some of the money, which is returned to the organization when the destination has been reached. This is not selection, because the money is lent anyway, and in the case of non-repayment these organizations threaten and physically abuse the migrants until they have been reimbursed.³¹³

B) TRANSPORT

Transport is a complex phase which consists of several sub-phases, each of which relates to a specific level of the overall organization supervising the transfer of migrants from their country of origin to the nearest possible place to the Italian frontier, with its subsequent crossing and transport to the final destination. For the

³¹² The prosecutor's office of Brindisi says that this is typical of the Balkans and Asia Minor.

³¹³ This is typical of Chinese migrants, as reported by the prosecutor's offices of Genoa and Milan.

sake of simplicity, this fundamental phase has been into two stages: actual transport from the country of origin to the frontier, and from crossing of the border until the final destination.

As for the transport phase, the prosecutor's offices provided information on the operational methods used to transfer migrants as far as the Italian borders. On the basis of this information it is possible to identify some of the main migrant smuggling routes into Italy. The planning of these routes and their selection depend on various factors: the departure point for the human cargo, the entry point selected (ease of frontier crossing, need for a visa), and the accommodating behaviour of customs officers along the way.

A first classification of routes is based on whether transport takes place via *land*, *sea* or *air*.

The *East European route* brings migrants to the Italian north-eastern border (with Austria and Slovenia) from the East European countries. There are two main ramifications to this route:

- the first originates in the East European countries (Bulgaria, Romania, Moldova), passes through Budapest (Hungary) and Prague (Czech Republic), continues to Austria or Slovenia, and thence to Italy;
- the second starts in the Baltic republics of Latvia and Lithuania and then passes through Austria or Slovenia to Italy.

This route is also used for smuggling from China, which divides into numerous stages. Starting from China, first required is a flight from Beijing (or another city) to Moscow. The Chinese emigrants leave the country on regular documents,³¹⁴ while for the rest of the journey they use false ones. From Moscow the journey continues by bus or car to a East European country, usually Hungary. Budapest is known to be the largest gathering and distribution centre for humans smuggled from the East. From Budapest they travel on to Slovenia. Once in Italy, having crossed the Italian-Slovenian border on foot with the help of *passeurs*, the migrants are delivered to their final destinations: cities with large Chinese communities, mainly Genoa, Brescia, Milan and Turin.

Owing to the length and complexity of the journey, and whether the point of departure is in Asia or in Eastern Europe, the transport of migrants is not handled in its entirety by a single criminal organisation, but rather by several, each of which supervises an individual phase. According to a classification drawn up by the prosecutor's office of Trieste, the main sub-phases of the transfer are:

- a) the overall process supervised by an executive organisation (first level);
- b) smuggling in the area bordering on Italy, within a radius of about 100 Km, under the supervision of small organisations (second level)
- c) logistical support on Italian territory, which usually begins immediately after the border has been crossed and is provided by single individuals, drivers and *passeurs* (third level).

³¹⁴ The legal documents include short-term visas, usually for tourism (rarely for study).

Various means of transport are used along the route: apart from the initial leg of the journey by plane for Chinese migrants,³¹⁵ transfers are by bus or by car, depending on the number of persons. When the smuggled migrants cross the border they are accompanied by a *passeur*, this being a person familiar with the border area who guides them through forests or patrolled areas until they reach Italian territory. Recently, Slovenian drug addicts have been used for crossings both on foot and by car. Once the migrants have arrived in Italy, they are taken by the organisation's third-level emissaries to the agreed sorting point, usually Mestre train station, from where they travel to their final destinations.

The second overland route to Italy is the so-called *Balkan route*, which is an alternative used mainly to smuggle migrants from Kurdistan (Turkey) who are assembled in Istanbul, sorted, and then packed into trucks or ships.

In the former case, the journey passes through the Serbian Federation (Sarajevo³¹⁶), Croatia and Slovenia. Entry into Italy may thus be either by sea (across the Bay of Trieste) or by land across the border – difficult to patrol – between Slovenia and the provinces of Gorizia and Trieste.

Transfer by sea is the second alternative for smugglers from Kurdistan. The southern coasts of Italy are involved in this case, mainly those of Puglia and Calabria. This is the *Ionian route*.

According to the prosecutor's office of Lecce, Kurdish migrants are transferred by trucks and other forms of land transport to the southern and south-western ports of Turkey, where they are loaded onto tramp ships for transfer to the Italian coasts. The journey may then continue in two different ways:

1. When the ship enters Italian waters, near the coast of Calabria or the more southerly coast of Puglia,³¹⁷ the crew abandons ship, usually on sighting a vessel of the Italian Navy, or the *Guardia Costiera* or *Guardia di Finanza*, which mount rescue operations. The crew returns to Turkey in small boats which have accompanied the tramp ships during the crossing in order to provide a rapid and secure getaway. Recently, also because of pressure by the government for more effective action against illegal immigration across the Adriatic, the criminal organisations have used rubber dinghies for the last leg by sea, since these are more difficult to intercept, while the bigger ship is left in open sea.

2. An alternative route has been developed after recent successes in the fight against illegal immigration. In this case, once the ship has arrived close to the Albanian coast, it is handed over to the Albanian organisations, which transport the human cargo in motorboats to the usual landing points in the area of Salento. The Turkish smugglers thus only provide a transport service, which may last even for months.

The prosecutor's offices of Lecce and Crotone describe the ships used to transfer illegal migrants as hulks of scrap metal which the smugglers use for a last voyage,

³¹⁵ This method is sometimes also used for Singhalese, Indians and other nationalities along this route.

³¹⁶ On some occasions, Kurds are transported by plane to Sarajevo, where they are loaded onto trucks to be taken to Slovenia.

³¹⁷ The Ionian Sea, landing at Santa Maria di Leuca.

considering them disposable because they know that they will be seized and confiscated by the Italian authorities.

People of ethnicities other than Kurdish travel the Ionian route. For example, the sea connections between the Brindisi coast on the one hand and Turkey, Greece and Albania on the other, are also used by apparently legal traffic on the ferry lines across the Adriatic. The smuggled persons are in possession of tourist visas on whose expiry they remain in Italy illegally, being helped to do so by co-nationals already present in the country.

Another example is smuggling into Calabria. Most of the illegal migrants heading for this region are from Turkey, although a minority are from Libya. The route taken is the shortest one, which passes through Greece and across the sea to Crotona. Sometimes, because of sea currents or bad weather, the boats are driven southwards to the area of Locri, Reggio Calabria, and Punta Stilo. The crews are expert, especially the captains, given that they have made the same voyage numerous times and are able to complete it within three to seven days.

The last route by sea is the better known and more frequently used one from Albania. This country has become the principal hub for the illicit trafficking in persons for the following reasons:

- a) the very short distance between the Albanian coast and the southern coast of Puglia,³¹⁸ as well as the favourable morphological characteristics of the two coasts;
- b) the extremely uncertainty political situation of Albania and the precariousness of its institutions. In this situation no control by law enforcement can be guaranteed, and serious cases of corruption of officers and connections among criminal gangs and police officers and important politicians at national level are tolerated (when not facilitated);
- c) an unlimited labour supply for organised criminal groups, given the total lack of jobs in the country and the concurrent low educational level of the population.

The departure towns are Scutari, Durazzo, Valona, Porto Palermo and Saranda, whilst the destination is the coast of Puglia. The illegal migrants are assembled and put in apartments or sheds close to the Albanian ports used for boarding, where they remain until departure.³¹⁹ The boarding operations take place openly amid the normal routine of the harbours and under the supervision of armed guards. Entry into Italy takes place at one of the many landing points on the coast of Puglia: at Brindisi, or Otranto, or along the coast of Salento if the departure is from the most southerly Albanian port of Valona.

According to investigations by the prosecutor's office of Lecce, the migrants are transferred from Albania by rubber dinghies and/or motorboats.³²⁰ The voyage is often made at night in order to evade interception by the Italian authorities. In the

³¹⁸ The coasts of Valona and Brindisi are about 50 nautical miles distant from each other, which is an approximately two-hour trip on a fast boat.

³¹⁹ Sometime the wait lasts for days, owing either to a lack of available places or to bad weather.

³²⁰ These boats are about 10–12 meters long and have 2–3 900 HP engines. They can reach speeds of about 60–70 knots and can carry some dozens of people.

majority of cases, the rubber dinghies transport heroin, cocaine and marijuana together with the illegal migrants.

The Albanians are preferred by many other criminal groups, even ones of different ethnicity. In recent years, since the 1993 *Caronte* investigation,³²¹ the Albanians have been increased their operations thanks to their expertise in crossing the Otranto Channel. This circumstance has expanded other kinds of criminal trafficking as well, and provided new criminal opportunities, so that Albania is now the fulcrum of criminal trafficking from Eastern to Western Europe. The only evident difficulty faced by these groups is the shortage of boats to be used for smuggling. Initially, the boats were purchased in Italy, later their construction began in Albania, and today, once again, they are bought in Salento. However, the large number of seizures and confiscations of rubber dinghies by the prosecutor's office of Lecce and the destruction, during August and September 2002, of boats in Albania as well, have reduced the supply even further.³²²

The forms of transport described above are illegal – with the exception of ferries landing in Brindisi. It should be borne in mind that in some cases false or forged identity documents are used. In these cases, the so-called 'open ways' are preferred, primarily the route by air to Italy's large airports (for example, Fiumicino). The prosecutor's office of Rome has found that these routes often pass through the 'weakest' Schengen countries (such as Greece), using largely unpatrolled roadways leading to large cities. Also discovered has been connivance between criminal organisation and local agencies.

C) ENTRY

The main points of access to Italian territory are the border zones in the north-western part of the country – the Italian-Slovenian and Italian-Austrian borders – the southern coasts of Italy, especially the south-eastern and southern ones, and the large airports of Rome and Milan.

As regards the Italian-Slovenian border, illegal crossings fall within the territorial competence of the prosecutor's offices of Trieste and Gorizia. The cases investigated by the former have involved various forms of entry organised by different subjects unknown to each other. This fragmentation of tasks during this last phase of entry is due to the high risks involved. There are two main methods of entry:

- by sea, with landings in the Bay of Trieste and the upper part of the Adriatic coast; or

³²¹ The *Caronte* investigation by the prosecutor's office of Lecce centred on migrant smuggling from China, India, Egypt, Iraq, Pakistan, Sri Lanka and Russia. The investigation uncovered documents evincing connections among criminal organizations in Albania, China, Turkey and Russia.

³²² In this regard, the prosecutor Cataldo Motta, when revising his interview on 3 January 2003, said that this situation had recently changed. For Albanian criminals it is now more difficult to find boats, because numerous rubber dinghies have been destroyed. This report is confirmed by other investigations and by the lack of landings along the coasts of Lecce in the months of September and October 2002. The numbers of interceptions were: September 2000, 1226; September 2001, 640; September 2002, 10 – October 2000, 1,942; October 2001, 400; October 2002, 19.

- by land, through the frontier zones of Trieste and Gorizia.

The most frequently used route for entry is by land in the frontier zone of Gorizia. This is considered a valid alternative to the sea route, especially when the weather is bad, and to the overland route in the Trieste area, which is more easily controlled. It seems, however, that more frequent and stricter checks in the frontier zones near Trieste and Gorizia have shifted smuggling to the province of Udine. The preference for the area around Gorizia is due to the configuration of the terrain, which also determines the feasible modes of entry. Indeed, besides road crossings and the ordinary mountain passes, various secondary border crossings (such as those for local residents, which lack protective barriers) can be used. Alternatively, it is possible to enter on foot by passing through forests and across farmland, or along railway lines. The border is usually crossed with the assistance of *passseurs* controlled by and/or belonging to Croatian or Slovenian ethnic groups. Once the illegal immigrants have entered Italian territory, they head for the main train station of Gorizia, usually alone and using maps and directions that have been given to them. At Gorizia they take trains for Milan and/or Bordighera/Ventimiglia, respectively to remain in Italy or to go abroad. During the journey they may stay in small hotels serving as logistical bases for the criminal group.

The suspicion that entries into national territory are shifting to the province of Udine seems confirmed by information provided by the prosecutor's office of Tolmezzo. The points of access in this zone consist of eight passes, of which the most frequently used are Tarvisio (by road and, more rarely, by train) and Fusine, for entry into Italy from Austria and Slovenia respectively. These are also the most vulnerable points along this route: Austria,³²³ where checks are strict, and the Fusine Pass (Slovenia), which can be transited on foot through forests and therefore with no need for *passseurs*. A significant finding by the prosecutor's office of Tolmezzo concerns a change in the behaviour of criminal organisations during the phases of entry since enactment of the law of 1998. Previously, the *passseurs* smuggled up to 15/20 persons at a time; today, due to the greater severity of punishment, they smuggle a maximum of 4 persons in order to avoid application of article 12, paragraph 3, of the consolidated text of the Law on Immigration.

The situation along the southern coast of Italy is perhaps even worse, because the extensiveness of the coast prevents its ubiquitous patrolling. As regards entry from Albania, the journey is very short and direct. Over the years, techniques to evade checks and interceptions have been refined. The entry is illegal, because the passengers on the ferries either do not possess identity documents or have false ones. Until a few years ago, the Albanians had 'bridgeheads' consisting of co-nationals who received the illegal migrants and transported them to the closest towns. These individuals also took delivery of drugs to be transported to the North. By contrast, the Albanians now increasingly rely on the support of Italians. Their accomplices in Salento may be associates of gangs linked with the Albanian organisations, or they may have formed their own groups, sometimes sporadic in form or family-based. However, they operate at a low criminal level.³²⁴ There is no evidence of connections with the *Sacra Corona Unita* (Puglia's counterpart to the

³²³ Austria is an easy access point for illegal immigration into Italy.

³²⁴ One can discern several phases: at the beginning of the 1990s Albanians used Italians as 'bridgeheads'. In the mid-1990s they developed greater autonomy and set up local mixed groups. Later, the local criminals were increasingly ousted as the Albanians increased in strength.

Sicilian Mafia). Once the human cargo has reached its destination, taxi drivers³²⁵ paid by the criminal organisations transfer the illegal migrants. They are usually hidden in forests near the coast, where they are picked up by the taxi drivers, who are Italian and rarely unemployed. This fact shows that the smuggling of migrants generates an extensive system of subsidiary services which provide employment for residents in the area of Salento: as used to be the case of contraband, which was not seen as criminal.³²⁶

As regards the smuggling of Kurds, or smuggling along the Ionian route in general, the migrants enter the country without any documents. This explains why, especially in the case of mass movements on tramp ships, these persons have an especial interest in being intercepted: only in this way, in fact, can they apply for political asylum in Italy. This also happens when they are smuggled by Albanian traffickers, which is why they never carry illicit goods with them. As regards landings in Calabria, ships heading for its coasts mainly arrive at Crotona. Nevertheless, the entire Ionian coast is considered a 'weak point', because it is difficult to patrol and also because of a shortage of radar installations and personnel. The typical method is for ships loaded with migrants to be beached, and thus promptly intercepted by the authorities. If the crew members do not manage to escape, they try to hide themselves among the migrants, declaring that they are illegal migrants themselves, or if they are discovered, they state that they have been forced by violence to crew the ship. The illegal migrants may enter without documents or show false ones to the authorities, usually Turkish identity cards, in order to disguise their identity. Political asylum is frequently requested because it gives entitlement to a stay permit. The procedures to be complied with immediately on entry require spending a period at the S. Ana di Isola Caporizzuto reception centre which varies according to the amount of time necessary for the stay permit to be issued.

Finally to be described is *entry through airports or ports*. As said, the most frequently used airports are Rome Fiumicino and Milan Malpensa, mainly because of their large size and massive amounts of daily traffic, which makes it easy to disguise the smuggling. In these cases, the illegal migrants arrive either with valid documents or false or forged ones. To be stressed is the report by the prosecutor's office of Milan concerning the cases of entry through Malpensa airport. This phase of the smuggling is supervised by a single criminal organisation with the collaboration of the (corrupt) border police and the help of conniving travel agencies. The migrant is sold a travel 'package' which comprises entry into Italy, this being backdated, and a false regularisation certificate. The mechanism is as follows: the organisation ensure that the migrants arrive when the corrupted police

³²⁵ Taxi drivers have been convicted for aiding and abetting, not for complicity. It is very difficult to prove the connection, and therefore complicity, between these drivers and the criminal organisations. Statements by migrants could prove complicity but, unless recorded in the *incidente probatorio*, they are not valid in court because they have not been made before a judicial authority.

³²⁶ There is a direct relationship between the smuggling of migrants and smuggling in itself. As suggested by Dr. Cataldo Motta of the prosecutor's office of Lecce, the local population does not perceive this phenomenon as criminal at all. This aspect enables the criminals to rely on help from the general public, which is essential if they are to achieve their goals: indeed, among those helping the Albanians are a number of former smugglers. In Lecce and Brindisi there are networks of smugglers once engaged in contraband peddling who provide back-up for the criminal organisations of those towns, having now moved on to migrant smuggling with Albanians.

officer is on duty.³²⁷ The tickets are bought in series from a couple of legal travel agencies in Milan, and always with advantageous financial conditions. This demonstrates the organisational efficiency of the criminal group. The illegal migrants are then kitted out as tourists (with cameras, tourist guides, dollars), in order to justify their tourist permits, which are false. Chinese migrants are disguised as Japanese or Korean tourists and given documents for those nationalities. Once they have arrived in Milan, they go to local markets in order to buy clothes and improve their camouflage as tourists, and they eat at take-away restaurants on contract to the organisation. The instructions on what the migrants/tourists should wear and buy are given directly by the corrupted police officers. Sometimes English courses are held to teach the migrants the general vocabulary used by tourists. The migrants then leave for other extra-European destinations (USA), where they are usually accommodated for short periods in hotels run by Italian associates and at which they register with false Japanese or Korean passports. Those migrants whose final destination is Italy are employed as housekeepers in affluent families (Philippine, Ecuadorian, Singhalese migrants) or as irregular workers in businesses owned by persons of the same ethnicity (Chinese migrants).

A feature shared by all the various forms of entry is the use of *documents*.³²⁸ When the smuggled persons are in possession of false or forged identity documents, they enter 'openly' (for example by planes or ferry), whilst in all the other cases they prefer the illegal methods of entry. The largest amount of information on forgeries was provided by the prosecutor's offices of Rome and Milan, which are at the forefront in combating illegal entry, owing to the large airports in those cities.

In Rome, the falsification and forgery of documents is common, although it is hard to prove because of the corruption and complicity of foreign officials. However, there are also some corrupt Italian officials, as confirmed by the prosecutor's office of Milan, which has dealt with cases involving Italian police officials at the Foreign Office, who issued documents which were not entirely bogus but were made out on the basis of false documentation. This case involved officials at the Immigration Office, who forged the signature of the director responsible for validation.

Illegal migrants with false or forged identification documents have been also intercepted close to the north-eastern frontier, areas typified by illegal entry without documents. The prosecutor's office of Gorizia has found that illegal migrants who travel through Italy heading for other EU countries often conceal their false documents in order to use them in other countries. This is particularly the case of those intending to request asylum elsewhere.

Non-regular documents are also frequently found along the southern coasts. In 2001 some 20,000 false documents and 10,000 blank passports ready for use were seized in Albania. These figures show that Albania is the main centre for the forgery of documents to be used in smuggling from the south. Albania is also the country in which the corruption of public officials is most systematic. The role of these officials is to ensure the regularity of embarkation operations and of document

³²⁷ Interceptions have shown that in case of delays or strikes, they were contacted on the same telephone numbers.

³²⁸ IDs, visas, wedding certificates, work contracts, etc.

forgery.³²⁹ Reports of the corruption of foreign officials, usually working for customs, also come from Trieste, Gorizia and Tolmezzo in regard to the border with Slovenia.

Also important is the role of the *accessories* who collude with criminal organisations to facilitate smuggling operations through the supply of food, accommodation, and transport (in general, assistance and logistical support). This role is undertaken almost entirely by Italians.

The smuggling process does not have a predetermined *duration*, in that it is conditioned by several variables: origin of the migrants, the route chosen, distance, weather conditions, police controls, size of the group to smuggle, availability of means, taxi drivers and forged documents. The entire process may last for months, while the transfer from the point of entry to the final destination in Italy takes only a few days. The prosecutor's office of Brescia noted that, in the case of smuggling from China, the time elapsing between expatriation and interception of the illegal migrants in Italy is about one month. For Albanians the time is much shorter. Transport from Turkey to the Ionian coasts takes from three to seven days, plus the time necessary for the transfer from the place of origin to the coast where the embarkation takes place.

D) EXPATRIATION

Specific discussion is required of the phenomenon of 'illegal expatriation',³³⁰ as reported by various prosecutor's offices, including Genoa, Milan, Gorizia. On the basis of information gathered between 2000 and 2002, Italy has become a transit country for destinations overseas as well as in other European countries. There are three ways in which Italy is used as a transit country:

1. illegal migrants enter Italy from various foreign locations and are assembled in two main distribution centres in Italy: around Bolzano/Bressanone/Vipiteno for destinations in North Europe, and Imperia/Ventimiglia for France and Spain;³³¹
2. illegal migrants make various stopovers in Europe, including the Malpensa Airport of Milan, whence they depart for the USA;³³²
3. illegal migrants leave Italy concealed in containers at the Port of Genoa³³³ and bound for other extra-EU countries (North America, Canada and others).

³²⁹ This phenomenon is diminishing as a consequence of the posting of Italian police forces to Albania.

³³⁰ The recent law on immigration (law no. 189, 30 July 2002, known as 'Bossi-Fini') has modified article 12 *Testo Unico* on Immigration, punishing illegal expatriation, that is, "any act aimed at procuring the illegal entry into another State of which the person is not a citizen and for which a valid stay permit has not been issued" (article 12, paragraph 1). See *supra* §§ 10.5.1 and 10.6.1.

³³¹ Germany, France, Belgium and the UK being the preferred destinations.

³³² A new route was discovered in November 2001, created as a consequence of the September 11 terrorist attacks, for Chinese migrants, who are first taken to Cancun (Mexico) and then enter the USA overland (source: prosecutor's office of Milan).

³³³ This as reported by the prosecutor office of Genoa, but we cannot rule out that this phenomenon is present in other Italian ports as well, as highlighted by the prosecutor's office of Rome.

This phenomenon explains why the illegal migrants intercepted prefer an expulsion order (*decreto di espulsione*), which requires them to leave the national territory within fifteen days, to repatriation or escort by the police to the frontier.

SUMMARY

CHARACTERISTICS OF AND TRENDS IN MIGRANT SMUGGLING

1. *Presence of "weak" geographical points* along Italian borders which, due to their extensiveness, cannot be properly patrolled.
2. *Presence of alternative entry points* (via air, sea, land or other routes).
3. *Corruption of foreign officers* for visas and expatriation documents as well to cross frontiers. Also Italian police officers and frontier guards are involved, but only to a limited extent.
4. *Use of false, forged or stolen passports*, usually of nations for which a visa for Italy is not required.
5. *'Illegal expatriation'*. Italy seems to be increasingly a country of transit for other destinations.
6. *Trend towards displacement, especially in the entry phase*,³³⁴ i.e. the phenomenon whereby criminal activity tends to shift to less closely controlled zones in order to elude interception by the authorities (for example from the provinces of Trieste/Gorizia to the province of Udine, or from the coasts of Calabria to those of Puglia).
7. *Strong demand for labour as a key pull factor responsible for immigration into Italy, also illegal.*
8. *Serial and sequential phenomenon (same connections among ethnic criminal organisations),*³³⁵ *same routes, same methods).*
9. *Criminogenetic effect of curative statutes.*³³⁶

12.2.2 The perpetrators of the smuggling

The smuggling of migrants is organised and supervised by complex criminal groups that are involved in the entire process from the country of origin to that of destination. These foreign criminal organisations are supported by Italian

³³⁴ In this case, implementing and strengthening measures and policies to counteract the phenomenon do not reduce or eliminate it; rather, they induce the criminal activity to move to another area outside the range of action against it. The displacement phenomenon could in principle concern the routes taken during the transport phase. However, changes of routes during this phase do not result solely from the measures currently taken by the local authorities but depend on other factors as well.

³³⁵ Especially between Puglia and Albania, Gorizia/Trieste and Slovenia.

³³⁶ The spread of crimes against the public administration, committed during the regularisation of illegal immigrants is a phenomenon to be treated seriously. (Source: prosecutor's office of Milan).

individuals or criminal groups, most of which are locally based. The *ethnic bond* is significant in various respects: distinctiveness of the associative link, level of cohesion and trust, *modus operandi*, and types of crimes committed.

The criminal organisations operating on Italian territory tend to be structured on a vertical hierarchical basis, though considerable differences exist among ethnic groups. Tasks are generally distributed by the boss-in-chief. The most typical example is provided by the *Chinese organisation*:³³⁷ ethnic-based, hierarchical and rigidly structured. The heads of the organisation never come to Italy, but remain in China, while the 'lieutenants' are sent abroad, for example to Italy, to accompany migrants and then allocate them among their destinations. The heads are also the 'brains' of the smuggling organisation. Interceptions of telephone calls made to Chinese perpetrators in Italy show that they supervise the market, control their emissaries abroad, issue instructions, and command respect from their subordinates.³³⁸ The organisations used methods which in view of their rigidity and firmness can be defined as of military type. This applies in particular to movements within Italy. The harsh prison-like discipline borders on illegal confinement, a crime sometimes charged against these organisations.³³⁹ However the management methods of the Chinese smugglers seem to have changed over the years. In the light of proceedings brought in Milan, it seems that a profound shift took place between cases investigated in 1993–1994 and those in 2000–2001: whereas the Chinese mob initially used kidnapping with torture for ransom, brutality, and threats against relatives in the country of origin, and usury, since 1999 no abduction cases have been recorded, because activities are more closely based on contractual relationships.

The strong and well-defined Chinese hierarchy leaves little space (apart from recently) for *flexibility*, a feature that instead seems to characterise the other ethnic criminal organisations. The term 'flexibility' refers to a criminal management method which, despite the presence of a single directive body, relies on operational models adaptable to needs and obstacles as and when they arise. Examples are provided by the Albanian organisations working the Otranto Channel, and by the East European ones. In the former case, because there is no hierarchical organisation that controls the trafficking, one may presume the existence of different flexible groups which also engage in the trafficking of marijuana, heroin, cocaine or cigarettes. In the latter case, the existence has been discovered of a ramified structure which handles the different phases of the process, delegating specific phases related to transport to other groups, though continuing to supervise their operation.

In this last case, the phenomenon is also referred to as the 'fragmentation' of the trafficking process, this being the most typical aspect of flexibility. The criminal organisations overseeing the entire process often, if not always use, other small organisations or individuals – depending on the task – for certain phases, or parts of them, of the trafficking operation as a whole. A typical example is that of the *passeurs* used along the Italian–Slovenian border, who often work for several

³³⁷ Especially the Chinese mob.

³³⁸ Further confirmation regarding the residence of the bosses in China is provided by the fact that the passports are falsified in China – in particular in Hong Kong, whence they are to Italy by DHL – and that the credit cards found in possession of traffickers in Italy are issued by Chinese banks.

³³⁹ Prosecutor's office of Genoa.

organisations, supplying all of them with the same border-crossing service. This finding is confirmed, at least with respect to these areas, by the lack of conflict and rivalry among the various organisations, which maintain their control over a specific territorial area or a particular phase of the trafficking process. Indeed, more frequently found are cases of mutual help and support.

In the majority of cases, however, if the criminal groups are to maintain control over the entire trafficking process, they require mixed organisational modules: that is, a hierarchically organised structure but with a marked division of roles. This pattern is characteristic of the so-called *Turkish mafia*. All Kurdish migrants³⁴⁰ are managed by small group of individuals who mastermind all the operations, and whose consent is required before any action is taken. There are then different roles within the organisation: from the persons entrusted with the task of gathering the migrants and boarding them on the ships, to those who accompany them during the journey, to those who are the contact persons in the country of destination. The latter continuously travel between Italy and Turkey; they usually have other jobs in Italy and supplement their incomes with earnings from the illicit activity. The members of the head group, on the contrary, never leave Turkey, taking advantage of the safety assured them by that country. It seems, in fact, that this illicit activity is tolerated by the Turkish authorities in that it represents some sort of 'ethnic cleansing'.³⁴¹

The 'solidarity' existing among the various criminal organisations engaged in the smuggling of migrants across the Italian-Slovenian border does not seem to be present on the Ionic route, where the prosecutor's office of Crotona has found the presence of a large number of rival criminal organisations, mostly formed by Turkish nationals. However, also Kurds are employed in these organisations, and the help of persons belonging to other ethnicities or nationalities is readily accepted. Which shows that, at least in this case, the ethnic bond is not influential; rather, business and opportunistic factors are what matter most.

The Turkish mafia's 'business-like' methods used in its smuggling operations, as well as those of the Albanian criminal organisations, have been confirmed by the prosecutor's office of Brindisi, whose most recent investigations point to the Turkish mafia as masterminding the worldwide exploitation of illegal immigration, and as the main point of contact among the numerous criminal groups involved in the business (Albanian, Italian and Greek). Significant in this context is the role played by Italian criminal organisations. Unlike what usually happens in the division of national illicit activities, the local Italian criminal organisations³⁴² act as support groups for the foreign organisations (Turkish and Albanian), carrying out merely routine tasks. The Italians are not paid by the illegal migrants, but directly by the

³⁴⁰ The exacerbation of the 'Kurdish question' has played a crucial role in shifting the interests of these criminal organisations from the trafficking in weapons and drugs to that in persons – especially Kurdish – which is more profitable and less risky.

³⁴¹ According to the substitute prosecutor of Gorizia, Dr. Massimo De Bortoli, the opposite phenomenon also exists: i.e. that whereby the more enterprising Kurds who have been trafficked to another country integrate into its society and then send part of their earnings back to Turkey in order to support resistance groups there.

³⁴² The situation in Puglia replicates the one at national level. In this context, even criminal organisations not belonging to the mafia-type groups present in Puglia, such as the *Sacra Corona Unita* and/or the *Sacra Corona Libera*, are involved in illicit activities related to the smuggling of migrants.

principals, on the basis of the number of persons transported and/or the kilometres covered.³⁴³

There are close linkages between foreign and local crime groups in the Talento area, where the *Albanian groups* operate. The creation of alliances, agreements, and the allocation of markets and zones of influence among groups, has been made possible by the dominance of the Albanian organizations deriving from their proximity to the country of origin, knowledge of the Italian language and society, as well as their ability to integrate into society. These groups reproduce in Italy associative models already present in Albania and characterised by shared regional or local origin and/or by kinship bonds. The Albanian groups have large stocks of weapons (from Eastern Europe and Kosovo) and operate with determination and violence, as systematically manifest in the settling of scores among rival groups and the subjugation of co-national victims.

The *Eastern European* criminal organisations, whatever their ethnicity (Slovenian, Serbo-Croat, Romanian – the latter being among the most active), are more properly described as criminal networks, that is, as groups of individuals and organisations that associate and cooperate in pursuit of the same criminal goal. The organisational model of these 'total organisations' is divided into three main levels:

- I. an executive organisation which coordinates the entire process;
- II. smaller and less authoritative organisations which undertake parts or phases of the process (depending on the distance between the origin and destination of the smuggling);
- III. single individuals or local criminal organisations which provide logistical support at the destination (*passeurs*, drivers, hoteliers, rental agents, sometimes also public officials and police officers³⁴⁴).

The more widespread phenomenon of '*large-scale smuggling*' is flanked in border areas by the '*small-scale smuggling*'³⁴⁵ whose most distinctive feature is frequent frontier crossings by small groups of self-managed individuals. There are no criminal organisations behind this type of smuggling, but rather common criminals or the migrants themselves, who organise their journeys without using *passeurs*. Cases of 'small-scale smuggling' are now detected on a daily basis,³⁴⁶ but the core of the problem is the 'large-scale smuggling'. For this reason, deeper knowledge of the phenomenon requires particular efforts to be made by the prosecutor's offices; judicial operations that go beyond mere investigations into the trespassing of national borders and track the entire criminal network and the entire smuggling process .

As regards *other illicit activities*, all the main criminal groups are involved in crimes functional to the smuggling of migrants: falsification of documents, corruption of

³⁴³ In this respect it has been found that the number of kilometres covered is proved by subsequent delivery by the taxi driver of a receipt issued by a coffee bar located in a service station close to the place where the illegal migrants are dropped, or by the consignment to the organiser of the journey of two parts of the same banknote, one given to the migrant and the other to the taxi driver.

³⁴⁴ In most cases these are Italians (apart from some recent Slovenian *passeurs*), who are rank-and-file members of the criminal organisations and never their heads. As regards public officials and police officers, the reference is obviously to cases of corruption: their role is to facilitate the execution and outcome of illicit activities.

³⁴⁵ This distinction was drawn by the procurator's office of Trieste, but reports of this dual phenomenon have also been made by those Gorizia and Tolmezzo.

³⁴⁶ The prosecutor of Tolmezzo calls this "Slovak commuting".

frontier police officers, complicity to obtain ships, lodgings in the transit areas. Sometimes, even more serious crimes are committed, such as kidnapping for ransom, violence, usury, personal injuries. Moreover, a worrying phenomenon is the spread of crimes against the public administration committed to obtain stay permits or other documents, especially in specific areas of the country.³⁴⁷

Besides these crimes, which are complementary to the main activity of smuggling, some of the criminal organisations are active in the exploitation of prostitution and the trafficking of drugs and weapons. However, this only happens along the Balkan route from Albania to Italy, and along the Ionic one to the coast of Puglia.³⁴⁸ At all other points of access, no cases of other forms of illicit trafficking are reported, this being because the criminal organisations engaged in migrant smuggling are specialised in this activity and adhere to it because of its profitability and low risk.

Significant for understanding the magnitude of the phenomenon, as well as the reasons for becoming a smuggler, is the *profit* made by the criminal organisations, which all the prosecutor's offices agreed is impossible to calculate with precision; however, it is estimated to amount to some millions of Euros. The impossibility of quantifying the turnover from this market is also due to the absence of financial investigations into the matter. The prosecutors report that such investigations are often not justified due to the lack of material evidence – or when current accounts can be identified at financial institutions, due to the absence of any large amounts of money deposited therein.³⁴⁹ Further difficulties arise when financial investigations are conducted into certain foreign banks. This is the case of the *Bank of China*, for example, where accounting is done in Chinese and must be translated, which reduces the time available for seizure and subsequent confiscation and thus facilitates the activity of the criminals.

If one excludes the 'local' links in the criminal chain, those that deal with specific and limited phases and are paid directly in cash by the smuggling managers, the organisational heads usually prefer to transfer money to their home country. This gives them greater security because it reduces the risk of seizure and confiscation. When the money is not physically moved,³⁵⁰ use is made of anonymous means of transfer via financial agents like *money transfer* agencies (Western Union, Money Express).³⁵¹

Realistic estimates of criminal profits can be obtained from smugglers' notes, telephone interceptions, and indirectly from credit card statements.

The most useful and meaningful element is the cost sustained by the smuggled persons for their journeys to Europe: prices and payment methods vary according to the country of origin and the route used.

³⁴⁷ Prosecutor's office of Milan.

³⁴⁸ The prosecutor's office of Crotona reports no cases of other types of illicit activity.

³⁴⁹ The traffickers often bring proceeds of their trafficking with them.

³⁵⁰ This is typical of Chinese traffickers, who are often stopped at frontiers on their way to their home countries with substantial amounts of cash on their person.

³⁵¹ In a case of Kurd smuggling investigated by the prosecutor's office of Trieste, financial analysis of a 'minor boss' revealed a turnover of around € 75,000, all of it invested in Turkey. In 2000 financial analysis of one of the four Italian companies belonging to Western Union showed a turnover of between € 750,000 and 1,000,000 in Italy alone.

A journey from China costs between € 10,000 and € 14,000, of which € 3,500/4,000 goes to the Slav organisations who handle entry into Italy, and the rest to the Chinese organisation. The smuggled person pays a portion (about half) on departure and the rest when s/he arrives at destination. The remaining amount may be provided by relatives already resident in the destination country³⁵² or repaid by the smuggled person out of earnings made by working illegally for the criminal organisation. This payment is always made in local currency so that it can be immediately recycled.

Smuggling from the Philippines (and China until 2000) is managed by criminal associations engaged in extortion and usury. The price is between € 9,000 and € 10,000 and can be paid in instalments: in which case, illegal interest rates are applied, together with violent extortion methods.

For those arriving from Bangladesh, the price is paid to a guarantor in Italy, who disburses the money only when the smuggled person arrives at destination.

The prices for Singhalese are lower: € 4,000 for the transport and a fake stay permit.

The only figure available for the Eastern countries is € 2,000 for transport from Lithuania to Italy alone.

Prices for the journey from Kurdistan vary according to the final destination and the route chosen. The price for the Balkans route is about DM 5.000 – 6.000³⁵³ per smuggled person. Around half of this is kept by the central organisation, while the rest is distributed among the lower links in the chain. The *passeurs* can be paid up to DM 300.³⁵⁴ On the Ionian route, Kurds pay DM 3.000³⁵⁵ if the final destination is Italy, DM 7,000³⁵⁶ for the U.K. The prosecutor's office of Crotona estimates that the cost of the journey from Kurdistan ranges between € 1,000 and € 2,000 per person. Given that 50 to 60 migrants are crammed into a single boat, this represents a net gain of € 50,000 to € 120,000. A portion of the agreed cost is paid to the recruiters, while the final bill is settled at destination.

Finally, as regards transport across the Otranto Channel, the amount charged by the Albanian groups is about € 350 – € 600 per person.³⁵⁷ Minor differences are due to the different kinds of boats used, but the main ones arise in the previous transport phases (distances and risks at frontiers).

³⁵² This method is typically used by Chinese emigrants to the USA or other rich Western countries for family reunification. These persons are wealthy and already well connected in the communities of the destination country.

³⁵³ Equivalent to about € 2,500 – € 3,000. The payments are denoted in the actual currency used, both for accuracy of the figure and to indicate the currency used before the introduction of the Euro.

³⁵⁴ Equivalent to about € 150.

³⁵⁵ Equivalent to about € 1,500.

³⁵⁶ Equivalent to about € 3,500.

³⁵⁷ According to the prosecutor's office of Brindisi the price is € 500. Payment is usually made on departure to members of the criminal organisation, although in some cases a second instalment is paid at destination. For the prosecutor's office of Lecce the price is instead between € 350 and € 600. This usually includes transport to train stations in Puglia by Italian taxi drivers. Only rarely does this final transfer give rise to an additional cost.

It is possible to gain precise data on the prices paid to the *passeurs* for their services. This is because frontier crossing is a service furnished by a single individual, or at any rate by a single organisation. The cost paid to a *passeur* per smuggled crossing varies between € 150 and € 400 according to the route chosen and the nationality of the smuggled person.

The above-mentioned difficulties concerning financial investigations conducted to identify and/or estimate profits also impede indictments for money laundering in relation to migrant smuggling. Charges for this offence have not been brought by any of the Italian prosecutor's offices most closely involved in the fight against migrant smuggling.

Almost all prosecutor's offices instead stressed the importance of *seizure* and *confiscation* in combating this criminal phenomenon. Operations of this kind have involved both money³⁵⁸ and other mobile goods, mainly boats and vehicles,³⁵⁹ and they have dealt a heavy blow to the criminal organisations by depriving them of the means necessary for their illicit activities.

SUMMARY

CHARACTERISTICS OF SMUGGLERS

1. *Foreign nationality of the smugglers.*
2. *'Ethnic' criminal organisations:* impenetrable from outside, with internal codes of silence strengthened by kinship bonds and localist relationships.
3. *Strong ties with the countries of origin.*
4. *Foreign domicile of the heads of the smuggling organisation.* The bosses never enter Italy but reside in their country of origin.
5. *Criminal groups with (hierarchically) structured organisational models but flexible and fragmented in their actions* (centralised direction coupled with an effective peripheral organisation, i.e. comprising numerous micro-associations which are constantly created and disbanded to handle distinct phases of the process).
6. *Ability to intimidate others* (violence, menaces, etc.).
7. *Powerful and locally rooted organisations* enjoying high prestige.
8. *A business-like approach* which implies collaboration with local criminal organisations (although these continue to perform secondary roles).
9. *Involvement of Italian citizens for local logistical support.*

³⁵⁸ The main problem is the slowness of acquiring information on bank deposits. This gives the criminals time to transfer their money elsewhere, so that all the effort has been made in vain.

³⁵⁹ The prosecutor's office of Lecce has seized and confiscated a large number of often sophisticated rubber dinghies, when have then been used by the Italian police in various parts of the peninsula. Cars have also been confiscated in Trieste.

10. *Same routes used to smuggle migrants and drugs (especially in the South).*
11. *Frequent use of international money transfer agencies (Western Union) for payments and money transfers.*
12. *Use of foreign financial institutions (e.g. the Bank of China), with subsequent investigative difficulties due to the use of foreign languages and methods different from those of the Italian banking system.*
13. *The passeurs are domiciled in EU countries and are sometimes their citizens.*

12.2.3 The victims of the smuggling

The characteristics of the migrants involved in smuggling differ greatly in terms of origin,³⁶⁰ age, and educational level. As far as the connection between perpetrators and victims is concerned, however, they often belong to the same ethnic group.

Of the *factors that facilitate smuggling*, socio-economic deprivation induces millions of people to leave the poorest areas of the world to seek better lives in the richer countries. This is the case of migrants from China, the Philippines, Sri Lanka, India, Pakistan, but also from Albania, Romanians, Ecuador, Senegal, as well as others.

This primary economic motive for migration is flanked by socio-political ones, particularly in some regions of the world: denial of the right to self-determination, the restriction or annihilation of civil and political rights, and of religious freedom, induce, for example, the Kurdish minority to migrate³⁶¹ from Turkey to Iraq, using traffickers to escape from the harsh punishment³⁶² meted out to rebels.

Unlike the majority of trafficking victims, Kurdish migrants are often well-educated and multi-lingual, although they seek to conceal their ability to speak foreign languages and to understand Italian. They sometimes have ties to organisations and movements fighting for the liberation of the Kurdish people, which they finance out of their earnings from work in the countries of the European Union.

Finally, wars, epidemics, and other emergencies induce people of different social classes and educational levels to leave Albania, Kosovo and the Middle East, relying on the networks run by criminal organisations.

All these factors generate strong demand for illegal immigration; demand which is an opportunity exploited by the networks of criminal organisations furnishing services of international illegal immigration. Recourse is made to these organisations because there is no alternative to smuggling to leave the country of origin and reach Western countries, evading the legal barriers to entry by foreigners raised by the destination countries. In this context, the *objective factors* that characterise reliance on criminal groups are:

³⁶⁰ Chinese migrants originate from rural zones. All the members of the communities located in the various municipalities of Italy come from the same geographical area. It is believed that they cannot be particularly poor, given that they pay the criminal organisations considerable amounts of money to leave the country. By contrast, irregular migrants from Eastern Europe usually belong to low and indigent social classes.

³⁶¹ Migration for the purpose of claiming political asylum.

³⁶² Including the death penalty.

- the traffickers' knowledge of the routes;
- the trafficked person's need to acquire false documents and transportation;
- the trafficked person's economic need for a loan to meet the costs of the journey.

It is difficult to single out uniform *characteristics* among *victims*, given their different origins, educational levels, ages and social backgrounds.

Information regarding the *prices* paid by illegal migrants for smuggling services to Western countries was provided above when analysing the profits made by the criminal organisations engaged in smuggling (see § 12.2.2). However, in addition to the sum paid to reach Italy, illegal migrants sustain further expenses in order to remain in the country, for example the cost of a false employment contract, the price of which may amount to € 3,600.

If the final destination is not Italy, but – as is often the case – another Member State of the European Union (France, Germany or Great Britain are favourite destinations), the illegal migrant must pay between a minimum of DM 600 for France, DM 1,000 to 3,000 for Germany, and a maximum of DM 5,000 for a journey to Great Britain.

SUMMARY

CHARACTERISTICS OF THE SMUGGLED PERSONS

1. *Primary need to escape from adverse socio-economic and socio-political conditions.*
2. *Diverse human typology and diverse reasons for the decision to resort to the services of smugglers (common criminals, political dissidents, poor persons; poorly educated persons and sophisticated intellectuals).*

12.2.4 Prevention of smuggling

During the interviews, the prosecutors were asked to draw on their experience of smuggling in Italy to propose feasible prevention strategies. The following non-criminal measures were suggested to reduce the opportunities for organised crime and to render potential smuggling victims less vulnerable:

1. *improved control over the territory and borders, deploying more personnel and means.* Such preventative control should impede the operations of criminal organisations. This would require improved equipment and greater financial and human resources for law enforcement so that they can maintain thorough control of the territory;
2. *bilateral cooperation with the countries of origin, for both political and socio-economic development.* The aim of cooperation should be (i) to give greater stability and transparency to the economies and institutional systems of the countries of origin and transit of migrants, and (ii) to improve the life-

conditions of potential migrants. In this respect, the gap between the countries of origin and destination should be reduced by acting on the factors that induce migrants to leave their home countries, the purpose being to limit the demand for smuggling as much as possible. The causes relating to conflicts, civil wars, discrimination and persecution against ethnic minorities are more difficult to eliminate. Improving welfare provision may ameliorate these situations but probably not resolve them completely. Italy can work to this end by issuing stay permits for asylum seekers on the basis of rapid and certain procedures which respect fundamental human rights;

3. *detailed information for potential migrants on migration channels.* The Italian embassies abroad should furnish foreign nationals with more precise information on the legitimate opportunities for immigration offered by Italy;
4. (with reference to the Turkish situation) *international pressure on the Turkish political authorities* for improved internal and coastal controls, but above all for more correct handling of the 'Kurdish problem';³⁶³
5. *improved planning of legal migration flows and increasing the maximum number of legal migrants allowed into country.* Unconditional border closure may become criminogenetic by fostering trafficking and smuggling. Migrants with no other alternative rely on the services supplied by the traffickers to reach the Western countries. Of course the balanced planning of immigration flows implies that entry into the country is allowed only to those with concrete prospects of employment. However, the issue of short-term stay permits for job search purposes has been suggested;
6. *attention to regularisation procedures.* The prosecutor's office of Milan stressed that regularisation may be criminogenetic. Regularisation, that is to say, may increase the level of deviance associated with immigration (with an increase, for example, in crimes against the public administration committed during the period when curative statutes are applied). This acts as an inducement for those who do not fulfil the criteria to take advantage of 'easy' occasions to acquire legal status, and it is an opportunity for criminals active in the business of illegal immigration. This is not to imply that curative statutes are deleterious. Quite the opposite: they respond to needs that should be protected. However, to be recommended is more careful appraisal, also by means of further research, of whether and to what extent amnesties are associated with variations in the market for migrant smuggling and/or the number and types of crimes committed (falsification of documents, bribery, etc.). If a relationship between them is found, it should be asked whether it is not preferable to increase the percentages of legal immigrants and improve policies for their reception, rather than resort to *ex post* remedies which generate further crime and problems of integration;
7. *careful selection of the frontier police officers and of those working for the Foreign Office,* including specific training, together with strict criteria for the selection of personnel and deployment of the better officers in key roles, the aim being to make law enforcement less vulnerable to infiltration by organised crime;

³⁶³ Currently, this borders on 'ethnic cleansing'. The presence of NATO in Turkey and especially the country's its candidature for membership of the European Union may accelerate solution to the 'Kurdish question'.

8. *devising of anti-corruption strategies in the countries of origin, transit and destination.* The facts demonstrate that corruption facilitates all the phases of smuggling. There is a consequent need for anti-corruption policies tailored to the diverse characteristics and requirements of countries;
9. *simplification of immigration administrative systems.* Bureaucratic difficulties generate opportunities for corruption and smuggling. Simplifying the immigration administrative system to the maximum would eliminate numerous instances of corruption;
10. *improved integration of migrants* in order to protect their rights and, by reducing marginalisation, reduce opportunities for criminal organisations to abuse co-nationals, and for the latter to become involved in crimes;
11. *improved controls over international money transfers.* The frequent use of these means by traffickers requires action to prevent their abuse;
12. *improved the knowledge of the organisational methods used by smugglers* in order to plan targeted and effective intervention.

13.

THE RESULTS OF THE INTERVIEWS CONDUCTED WITH THE MOST ACTIVE PROSECUTOR'S OFFICES: BEST PRACTICES IN JUDICIAL ACTIVITIES

This chapter presents the results of the interviews carried out at the fifteen prosecutor's offices most active in the fight against the trafficking of persons and migrant smuggling in regard to the questions in the second part of the questionnaire on judicial activity at prosecutor's offices. The information concerns judicial proceedings – pre-trial investigations, or the trial phase, or adjudications with a conviction – at the prosecutor's offices between 1996 and 2002. The questions on judicial activity were divided into four sections (see Annex B):

- investigation (§ 13.1);
- trial (§ 13.2);
- international judicial cooperation (§ 13.3);
- relationships between non-governmental organisations (NGOs) for application of article 18 of the consolidated text of the Law on Immigration (§ 13.4).

This division was made on the basis of the importance of each of the activities listed in the fight against people trafficking and migrant smuggling. Analysed for each these areas of action are the difficulties encountered and the best practices developed by the most active prosecutor's offices to overcome them. Then discussed are those activities which, as the prosecutor's offices reported, have had positive effects, yielding significant and rapid results. These practices – which sometimes push the legislation to its extremes – reveal gaps and contradictions in the current regulations and prompt a number of recommendations for reform set out in the 'summaries' provided at the end of each section³⁶⁴ and whose purpose is to highlight the most interesting proposals *de iure condendo* developed by the prosecutors interviewed for each of the four areas considered.

Two caveats are in order.

The summaries report the opinions of the prosecutors interviewed: given the diversity of investigative situations and of the actual crimes investigated, these sometimes diverge as to the best response to the phenomenon in question.

The interviews with the prosecutors at the most active offices were conducted between 8 July 2002 and 29 November 2002. Consequently, their replies and proposals *de iure condendo* do not take account (a) (always) of the legislative changes introduced since then by the Bossi-Fini Law (no. 189, 30 July 2002, "Modifica alla normativa in materia di immigrazione e di asilo"; "Amendment to the law on immigration and asylum") and (b) (never) law no. 228 of August 28 2003, "Misure contro la tratta di persone": "Measures against people trafficking"). The *de iure condendo* proposals should be interpreted bearing in mind the laws extant at

³⁶⁴ The 'summaries' refer to each of the four areas on which the prosecutors were interviewed: investigation, trial, international judicial cooperation, relationships with NGOs on application of article 18 of the *Testo Unico* on Immigration.

the time of the interviews and which have been partly incorporated into the new legislation.

Exposition of the results from the interviews begins with description of investigative activities, these being the starting points for the entire judicial action undertaken by the prosecutors interviewed. Ample space is devoted to the practices adopted in this phase, compared to the other activities covered by the chapter, because they determine the initiation and outcome of proceedings against smugglers and exploiters. It is during the investigative phase that one finds the highest number of operational practices intended to facilitate acquisition of the *notitia criminis* (notification of a crime) and to reconstruct the criminal sequence that may have engendered it.

The next phase is that of the trial itself, which verifies the validity of the activities carried out during the pre-trial investigations. In this regard, the prosecutors interviewed stressed a series of difficulties arising from the recent introduction of the so-called 'fair trial principle', whose application of the latter may frustrate previous investigations in their entirety. It should therefore be thoroughly examined in order to determine the form that investigations and evidence-gathering should take, as well as the appropriate trial strategy that should be adopted.

International judicial cooperation is indispensable in proceedings relating to crimes which, like the ones examined, have transnational victims (moved from one country to the other) and are committed by transnational criminal groups (operating in different countries). The activities of the prosecutors, and of the agencies collaborating with foreign authorities, are essential both during the investigative phase (identifying suspects, obtaining precautionary measures, deploying evidence-gathering resources in foreign countries, etc.) and during the trial phase (extradition, enforcement of sentences, etc.).

A specific section in what follows is devoted to the relationship with NGOs in application of article 18 of the consolidated text of the Law on Immigration, because these bodies perform a highly significant role in the investigation and adjudication of trafficking and smuggling offences.

13.1 INVESTIGATIVE ACTIVITY (PRE-JUDICIAL INVESTIGATION PHASE)

Preliminary investigations constitute the initial phase of a criminal proceeding.³⁶⁵ They officially begin with notification of the crime in the relevant register, and in ordinary proceedings they conclude with the preliminary hearing, at which it is decided whether or not the case should go to trial.

³⁶⁵ By the term 'criminal proceeding' is meant the sequence of actions that ensue from notification of a crime. The latter is verified by means of detailed inquiries, on completion of which, in ordinary proceedings, it is decided whether the case should go to trial so that the guilt or otherwise of the defendants may be determined by examination of the evidence. After the trial and if conviction is forthcoming, the 'executive' phase begins, during which the punishment is applied. See Fortuna et al., *Nuovo manuale pratico del processo penale* [New Practical Handbook on the Criminal Trial], CEDAM, Padua, 2002, pp. 209–210 and pp. 559–560.

Investigative activity by the prosecutor's office and the Judicial Police (*Polizia Giudiziaria*) starts when a crime is reported, or when 'notification of a crime' is received.³⁶⁶

However, the judicial police may launch their own inquiries before the official start of the pre-trial investigations if they wish to verify suspicious circumstances or check particular situations or persons. These activities (such as surveillance, the taking of statements, etc.), however, cannot be invasive (e.g. interceptions) or coercive (e.g. arrests).³⁶⁷

The investigative activity of the most active prosecutor's offices and of the judicial police will be examined in what follows by starting from the moment when they receive a *notitia criminis* or acquire one themselves (§§ 13.1.1 e 13.1.2).

Investigative practices in cases concerning people trafficking and the smuggling of migrants have distinctive features consequent on the need to combat a criminal phenomenon widely present in the country and often perpetrated by criminal organisations.

The next sections discuss the 'typical' investigative instruments (§ 13.1.3) expressly envisaged by the criminal procedure code. They examine the investigative methods deemed most effective (wiretapping, statements from key informants, the coordination of joint investigations). Mention of preventive measures in this context may seem inappropriate from a technical-procedural point of view, given that they serve purposes other than investigative. Nevertheless, they figure among the (precautionary) measures usually taken by prosecutors during investigations. Consequently, so that the order in which the prosecutors' replies were given can be respected, they have been included among 'typical investigative activities'.

A sub-section on its own is devoted to the coordination of investigations among different prosecutor's offices by the National Anti-Mafia Division (§ 13.1.4). Such detailed treatment is necessary because where people trafficking and migrant smuggling are concerned, coordination is crucial to ensure the collaboration and information-sharing essential for any effective strategy to combat criminal organisations with extreme geographical mobility.

Then examined are certain 'atypical' investigative techniques (§ 13.1.5) developed to address issues distinctive of trafficking and smuggling cases (databases, inter-force pools, investigative centralisation, and the measures made available by the consolidated text of the Law on Drugs).

³⁶⁶ The role of the prosecutor and the judicial police following notification of a crime is specified by article 330 of the criminal procedure code, which envisages a 'passive' function (receiving information on a crime from an external source) and an 'active' one (direct acquisition by the police and the prosecutor of the *notitia criminis*). Article 55, paragraph 1, criminal procedure code, further specifies the tasks of the judicial police, stating that they must "acquire information on crimes, prevent their further consequences, seek out the perpetrators, take any action necessary for acquiring the evidence, and gather any other information required for application of the criminal law". Hence, the activity of the judicial police and the prosecutor is legitimated by the commission of the crime and the relevant *notitia criminis*. See M. Murone, commentary on the decision of the Criminal Court of Cassation, sec. I, 29 October 1993, in *Giust. Pen.*, 1997, pp. 399 ff.

³⁶⁷ Investigations to acquire a *notitia criminis* by means of "extensive inquiries aimed at verifying alleged violations of the law" pertain to general preventative activity, which does not fall within the competence of either the prosecutor or the judicial police, but rather within that of the administrative police "as the typical expression of the activity of the executive": see Criminal Court of Cassation, sec. III, 2 December 1999, in *Cass. Pen.*, 1999, pp. 3458 ff.

Included among investigative activities, and not procedural ones, is the *incidente probatorio* – or the taking of evidence during the pre-trial stage (§ 13.1.6). This is more consistent with the provisions set out in the criminal procedure code, which sets the institute within the context of pre-trial investigations.

Finally considered are the main difficulties encountered by the prosecutor's offices during investigations (§ 13.1.7), with particular attention being paid to problems arising from territorial competence, the identification of suspects, methods for taking statements from victims, and compliance with the legal time limits on pre-trial investigations.

13.1.1 The provenance of a notitia criminis: surveillance and operative protocols between the police and the prosecutor's office

At some of the fifteen prosecutor's offices studied by this report, the police conducted close surveillance of their areas of jurisdiction (patrols, the tailing of suspects, watches on nightclub entrances, etc.) in order to identify members of criminal organisations suspected of trafficking and smuggling.

The most significant experiences in this regard involved *collaboration* between the prosecutor's offices interviewed and their relative judicial police units, assisted by other branches of law enforcement, and sometimes also by the frontier police. To this end, protocols for joint action have been developed to improve surveillance on the crimes in question and to facilitate the gathering of information useful for prosecution. The prosecutor's offices of Lecce, Brindisi, Trieste, and more recently also those of Gorizia and Brescia, have set up teams specifically concerned with migrant smuggling which coordinate action by the judicial police and the administrative police.

In 1994, the prosecutor's office of Lecce adopted a joint protocol with the judicial police for the gathering of statements from smuggling victims. Thus, in cases of the landing of illegal immigrants, for example, the prosecutor office instructs the police on the questions that they must ask and the procedures to follow in searches and detentions. The prosecutor's office described this strategy as "extremely useful" in yielding better quality information. The prosecutor's office of Brindisi has also drafted a standardised protocol on investigation procedure, which is similar to that of the Lecce office and intended to create a judicial police unit which assists prosecutors investigating trafficking/smuggling offences.

Since 1997 the prosecutor's office of Trieste has collaborated with the frontier police, with results described by the prosecutors of Trieste as "exceptional" and which have enabled identification of a number of international criminal organisations. In particular, in order to facilitate the gathering of information, a directive has been issued to the judicial police which instructs them to take statements from the largest possible number of illegal migrants before they are turned back at the frontier. In 1998 and 1999, hundreds of illegal migrants were questioned, with the relative statements being entered into a database (see §

13.1.5). It was thus possible to gather information which proved crucial in identifying complex criminal organisations.³⁶⁸

Similar procedures have been adopted by the prosecutor's office of Gorizia (2001 administrative circular), which questions all immigrants intercepted and records their statements, and especially in the case of illegal migrants found in possession of mobile phone numbers. In these situations the judicial police is recommended to open a file, even if against unknown persons and also if the detainee is not a *porteur*. The reason for this is that the crossing of the frontier by illegal migrants, especially if they are from distant countries, is in itself sufficient grounds for assuming the existence of migrant smuggling and to register the relative *notitia criminis*.

In the Brescia area, the local police have adopted systematic monitoring procedures which they call 'planned services' (checks in nightclubs and on streets used by prostitutes) and which have uncovered several cases of migrant exploitation.

13.1.2 Continued: other sources of *notitia criminis*

In cases of trafficking for exploitation and migrant smuggling, the *notitia criminis* derives, besides the above-mentioned surveillance activities, also from:

- statements made by victims;
- reports filed by the trade unions;
- reports made by private individuals (clients, prostitutes and employers);
- investigations into other crimes (drug trafficking, financial crimes, crimes against the public administration and against persons – murder, personal injury);
- statements made by co-suspects.

More specifically, a *notitia criminis* derives from reports and spontaneous statements of victims, especially in areas where exploitation is most intense (Ascoli Piceno, Genoa, Lecce, Milan, Palermo, Perugia and Turin). In these situations, the victims have diverse reasons for denouncing their exploiters to the police; In Genoa, for example, the prosecutors believed that exploiters had used excessive violence against prostitutes (e.g. the murder and torture of Albanian women who had "transferred to the competition") and it was this violence that had induced them to rebel; in other situations, amongst them Lecce, the NGOs had played a crucial role by re-socialising the victims and persuading them to collaborate with the authorities and denounce their exploiters (see § 13.4).

In other cases, the *notitia criminis* originated from investigations conducted as part of proceedings for other crimes: financial crimes (Arezzo), drug trafficking (Genoa),

³⁶⁸ For a thorough description of the methods set forth by the directive issued to the judicial police by the prosecutor's office of Trieste, see F. Frezza, "Il traffico e lo sfruttamento di esseri umani: condotte delittuose e tecniche investigative nei procedimenti riguardanti cittadini extracomunitari" [Trafficking in and Exploitation of Human Beings in Proceedings Involving Non-EU Nationals], report presented to the *Terzo corso di formazione sulla funzione inquirente e requirente "Falcone e Borsellino"*, Consiglio Superiore della Magistratura, Rome, 21–24 May 2001.

crimes against the public administration (Milan), and violence against prostitutes (Palermo). As regards the cases reported in Arezzo, investigations into labour exploitation were prompted by complaints lodged by the trade unions concerning the non-payment of social security contributions for migrants irregularly employed on building sites. At the prosecutor's office of Milan, reports of false or forged files on the regularisation of illegal immigrants gave rise to documentary investigations which uncovered several cases of migrant smuggling.

Finally, investigations may ensue from denunciations lodged by private individuals (Milan, Palermo) or from statements made by co-suspects (Perugia, Brescia and Lecce). In the cases reported in Milan, private individuals who were the 'employers' of migrants (mainly from The Philippines and Sri Lanka) became themselves the victims of smugglers, who demanded that they repay the debts contracted by the smuggled persons for their journeys to Italy. When subjected to menaces, the employers reported the situation to the police.

Co-suspects only rarely make statements, owing to their fear of reprisals. When they have done so, however, the information has proved invaluable for identification of the criminal organisation involved in the smuggling and/or trafficking. Unlike in the case of private reports, co-suspects possess detailed information on the organisational structure of criminal groups and on the routes used by the smugglers.

13.1.3 The 'typical' investigative instruments

Besides the surveillance activities described in the two previous sub-sections, the prosecutor's offices interviewed directed and carried out:

- checks on the evidence gathered by the judicial police (searches of persons and premises, inspections of premises and property, and seizures);
- identification of suspects (detainment, photographic and biometric data, documentary investigations, verification of personal and commercial details);
- evidence gathering (telephone interceptions and electronic eavesdropping, searches, statement-taking, questioning);
- preventive activity (preventive detention, arrests).

As shown by the above list, the prosecutor's offices used all the typical investigative instruments made available to them by the criminal procedure code, to extents depending on the type of investigation conducted (on criminal organisations or a single criminal event) and the crime investigated (mere smuggling or trafficking for the purpose of exploitation). The following sub-section examines the investigative techniques deemed by the prosecutors most effective in these various contexts.

A) INTERCEPTIONS³⁶⁹

The investigations conducted by the prosecutor's offices located close to national borders, or those in areas where illegal immigrant entry by sea, land or air most frequently occurs (Trieste, Gorizia, Lecce, Brindisi and Milan), are essentially of two types: 'narrow-gauge' investigations (which usually involve only one speedboat smuggler or a *passeur* caught *in flagrante*) and those targeted on criminal organisations. This latter type of investigation is more complex, and it requires the frequent use of interceptions, which are crucial for reconstructing the organisation's structure and for appraising the evidence to be presented at trial.

The prosecutor's offices of Trieste, Gorizia, Tolmezzo, Lecce and Brindisi, where the most thorough investigations on organised crime controlling the smuggling of migrants had been conducted, regarded telephone interceptions as the most effective investigative device. The figures reported are significant. In Trieste more than 14,000 conversations were intercepted per proceeding, and in Gorizia up to 10,000. Decisions to tap telephone lines ensue both from statements made by migrants and from the notes found during searches of migrants.

Besides the prosecutor's offices at the country's borders, also those of Turin, Rome and Perugia have often used telephone interceptions, doing so for various purposes: to verify statements by victims, prove the involvement of persons apparently unrelated to the offence (taxi drivers, hotel owners, night club managers), and create a body of evidence for the trial.

It has been noted in particular that the efficacy of telephone interceptions as investigative devices derives from certain factors:

- foreign smugglers are less mistrustful of telephone conversations than are their Italian 'colleagues' (though smugglers are becoming more cautious);
- telephone conversations are often made necessary by distance and the difficulties and risks of using common means of transport;
- the possibility to use so-called 'funnel interception', i.e. the interception of all outgoing calls from Italian numbers to known foreign ones, i.e. to Italian GSM numbers enabled for use abroad.

The experience of the Milan prosecutor's office offers a clear example of the usefulness of telephone interceptions in reconstructing a criminal chain. The method has been used to identify the people responsible for illegal migration via air flights. Monitoring the telephone records of members of the criminal organisation led to identification of the travel agencies involved. Attention focused on numbers called in the event of strikes/delays/problems concerning flights carrying illegal migrants and the shift changes of immigration officers corrupted by the smugglers.

The prosecutor's office of Genoa stressed that telephone interceptions, together with statements by victims, have been important starting points for investigations, but stresses the fragmentary nature of this method of evidence-gathering. For the

³⁶⁹ The effectiveness of wire-taps and electronic eavesdropping is acknowledged by article 9 of law 228/2003, which was enacted subsequently to these interviews with prosecutors and authorises the use of these measures by extending the scope of article 13 of the *decreto-legge* 13 May 1991, no. 152 (converted, with amendments, into law on 12 July 1991, no. 203). See *supra* § 10.3.2.

prosecutors of Genoa, interceptions *on their own* do not yield an accurate reconstruction of criminal dynamics, at least not in cases where exploitation prevails over the simple smuggling of migrants: the method must be used in conjunction with other sources of investigative information (victim and co-suspect statements), as specified in the next sub-section.

B) THE TAKING OF INFORMATION FROM PERSONS INFORMED OF THE FACTS AND QUESTIONING BY THE JUDICIAL POLICE AND THE PROSECUTOR

The statements provided by persons possessing inside information are, as said, important starting points for investigations. Such informants are considered to be among the most effective investigative instruments (also for the trial, see § 13.2), particularly at the prosecutor's offices dealing with cases of smuggling for exploitation. In areas of the country where the offence of migrant smuggling predominates, greater use is made of other investigative techniques (interceptions, surveillance), but in this case too the questioning of smuggled persons is an important source of information for the investigation. We anticipate here that, because of its procedural importance, information is sometimes gathered from victims using a specific procedure of evidence verification, the *incidente probatorio* or pre-trial evidence hearing, which is described below (see § 13.1.6).

The model created by the prosecutor office of Genoa is an interesting example of how improvements can be made to the procedures for gathering information from victims of trafficking and smuggling.

The Genoa prosecutors have divided investigations by geographical area in order to deal with the problem of the *cultural differences among the ethnic groups to which victims belong*, given that the difficulties for victims to report their exploiters vary according to the nationality. For example, it has been noted at the Genoa office that the main factors which prevent Albanian trafficking victims from giving full statements are the fear of physical violence, subjugation to the *clan*, and distrust of the police, while those for Nigerian women are of a different kind (language barriers, fear of voodoo 'spells'). From these observations one can infer that knowledge of cultural differences and of the specific nature of the exploitation is fundamental for communicating with the victims and acquiring as much information as possible. Whence derived the decision to 'specialise' the work of the prosecutor's offices by geographical area.

In the case of migrant smuggling, it often happens that, during the questioning of key informants immediately after the criminal event, the police are unable to make adequate use of the knowledge possessed by the people questioned. The prosecutor's offices of Brindisi and Lecce have issued specific instructions to the judicial police so that they follow a uniform procedure when collecting information. The purpose of these instructions is to *standardise the procedure for questioning key informants*. The prosecutor's offices have drawn up a set of questions to be put to all informants, the intention being to standardise the collection of data useful for investigations. This has yielded two important results: uniform information (to be entered in specific databases, see § 13.1.5), and guaranteed accuracy of statements.

The cooperation of members of criminal organisations, finally, is crucial for the investigation of trafficking and smuggling. Unlike victims, the co-suspects often possess specific information on the individuals running the organisation, on the routes used by migrant smugglers, and on the methods used to enter Italy. In Perugia, for example, the investigations with the largest number of suspects and/or which concerned the most serious crimes began with the confession of a suspect considered the 'right-hand man' of the criminal organisation's bosses and who provided details which enabled reconstruction of the complex organisational structure of the groups concerned. It is very difficult to obtain the collaboration of members of criminal organisations owing to their loyalty to the clan (Albanians) and fear of reprisals.³⁷⁰

C) THE ORGANISATION OF INVESTIGATION INSTRUMENTS

A significant and frequently observed feature of the investigations conducted by the prosecutor's offices interviewed is the coordination of diverse investigative instruments. Almost all the prosecutors interviewed stressed that the effectiveness of investigative instruments depends on how they are combined: telephone interceptions cannot be made unless the number to be monitored has been previously identified. On several occasions,, the 'right numbers' have only been found through close surveillance, detentions, searches, and the taking of statements. As emphasised by the prosecutors of Trieste, organised and systematic investigations are required to identify the perpetrators of migrant smuggling and thus suppress the criminal phenomenon; otherwise only the marginal links in the criminal chain will be caught.

Coordination is achieved by *procedures developed for systematic use* in cases of trafficking and smuggling (besides those already mentioned and intended to acquire the *notitia criminis*). The prosecutor's office of Crotona, for example, has drawn up an investigative protocol to handle the landings of illegal migrants. This protocol provides for the following (in logical order):

1. seizure of the vessels used;
2. identification of persons suspected of having crewed the vessels or of belonging to the criminal organisation (identification made on the basis of evidence such as the presence of considerable amounts of money of unaccountable origin);
3. detention of suspects (especially the members of the crew, these being most likely to flee);
4. searches of all persons, even if they are not suspects;
5. seizure of mobile phones and telephone notebooks (ordered as a consequence of the above-mentioned searches);

³⁷⁰ In order to promote the collaboration of members of criminal organisations, article 11 of law 228/2003, which was enacted subsequently to the interviews with the prosecutors, provides that state's witnesses may benefit from lighter sentences. See supra § 10.3.2.

6. telephone interceptions (also used to discover further landings), analysis of the telephone records (the so-called 'funnel printouts' which log all calls from Italy to a telephone number found in the telephone notebooks seized);
7. the taking of statements from illegal migrants in order to gather the largest possible amount of information on recruitment and smuggling methods;
8. questioning of suspects, who sometimes become state's witnesses (the information provided by these persons is more complete and enables reconstruction of the organisation engaged in the migrant smuggling);
9. investigation and monitoring of cash flows, also with the collaboration – easily obtained – of financial agencies such as Western Union;

The protocol described is an example of a combination of investigative instruments which the prosecutor's office of Crotona considers to be particularly effective in combating illegal immigration, and which it recommends for use by other prosecutor's offices with similar problems relating to migrant smuggling.

D) PREVENTIVE ACTIVITY

As said, the inclusion of preventive activity among typical investigative instruments, though not correct from the technical-procedural point of view,³⁷¹ is nevertheless functional to the order in which the prosecutors completed the questionnaire: in fact, they often included preventive measures among the activities carried out during pre-trial investigations.

Preventive measures can be divided between measures against persons (e.g. preventive detention) and measures against goods (e.g. seizure). The prosecutors interviewed used both as far as possible: for example, during a particularly complex investigation, the prosecutor's office of Genoa issued 140 orders for preventive detention against Albanian exploiters. The prosecutors stressed that these measures were not particularly effective from the information-gathering point of view, because suspects did not usually cooperate. However, when actions relating to a particular proceeding were undertaken within a wider context – that is to say, taking account also of elements in other proceedings and emphasising the associative aspect (articles 416 and 416-*bis* criminal code), – the suspects sometimes cooperate and provide investigators with important information. Similar assertions were made by the Trieste prosecutors, who frequently applied this preventive measure³⁷² when particularly striking evidence was found.

At the prosecutor's office of Crotona, the seizure of the vessels used by the smugglers was part of the investigative protocol usually followed. The prosecutor's offices handling the largest number of cases of exploitation of prostitution of

³⁷¹ Preventive measures are limitations on personal freedom and on the freedom to dispose of goods. For this reason they can be applied only under specific conditions provided for by the law (articles 273–274, 316 and 321 criminal procedure code). They are not primarily intended to address investigative needs, but to pursue the aims specified by the Code, which include the danger of reiteration of crimes or flight.

³⁷² Accordingly, law 228/2003, which was enacted subsequently to the interviews with the prosecutors, extends the maximum time limit for preventive detention from 18 to 24 months in relation to crimes covered by articles 600 (Reduction to or maintenance in servitude), 601 (Trafficking in persons) and 602 (Purchase and sale of slaves) of the criminal code. See *supra* § 10.3.1.

foreign women frequently used the preventive seizure of premises where it was believed that clients were being solicited.

13.1.4 The coordination of investigations³⁷³

Collaboration and the exchange of information among prosecutor's offices is essential during investigations into people trafficking for the purpose of exploitation and migrant smuggling, given the extreme geographical mobility of the criminal organisations concerned. Exploitation almost never takes place in the same locality as where the illegal migrants have been brought into Italy. Illegal immigrant prostitutes usually work in areas different from those used to enter the country, and they are often moved from one area to another in order to prevent them from establishing close relationships with clients.

All the prosecutors interviewed agreed that coordination activity during investigations is essential to develop a better response to the phenomenon. By means of the intense exchange of information and mutual assistance during linked investigations, it is possible to prevent conflicts of competence and to achieve more accurate reconstruction of the *modi operandi* of the criminal organisations on Italian territory. However, the prosecutors disagreed as to how this coordination could be accomplished in practice.

The two main mechanisms for investigation coordination are set out in the criminal procedure code by article 371 (*Relations among prosecutor's offices*)³⁷⁴ and 371-*bis* (Coordination activity by the National Anti-Mafia Prosecutor).³⁷⁵

In the former case (hereinafter referred to as '*ordinary coordination activity*'), collaboration among prosecutor's offices undertaking 'linked' investigations is prescribed. Under article 371 of the criminal procedure code, such investigations related to proceedings as defined by article 12 of the criminal procedure code, or investigations of crimes committed on the occasion of other offences or to acquire

³⁷³ Article 6 of law 228/2003, which was enacted subsequently to the interviews with the prosecutors, allocates competence for investigations *in subiecta materia* to the District Anti-Mafia Divisions and the relative coordination to the National Anti-Mafia Division; see *supra* § 10.3.1.

³⁷⁴ Article 371 criminal procedure code (Relationships among prosecutors):

1. When different prosecutors conduct linked investigations, they shall coordinate their activities to achieve the speedy, economical and effective conduct of those investigations. For these purposes they shall exchange documents and information, as well as the directives issued to the judicial police. They may also jointly undertake specific actions.

2. [omissis];

3. [omissis].

³⁷⁵ Article 371-*bis* (Coordination activity of the National Anti-Mafia Prosecutor):

1. The National Anti-Mafia Prosecutor brings proceedings for the crimes referred to by article 51 paragraph 3-*bis*. For this purpose, he uses the Anti-Mafia Investigative Division and the central and inter-district police forces, and he may issue instructions concerning their use in investigations.

2. The National Anti-Mafia Prosecutor ensures that district prosecutors efficiently coordinate investigations, that the various branches of the judicial police operate effectively, and that investigations are timely and complete.

3. [omissis];

4. [omissis].

or ensure to the guilty party or other persons the proceeds, price, the product of the crime, or their impunity; or reciprocal crimes committed by more than one person; or when the evidence of a crime or a circumstance of the crime affects the evidence concerning another crime or circumstance; or crimes for which evidence derives from the same source. In these cases coordination is achieved through the exchange of information and documents, as well as the communication of instructions given to the judicial police, and its purpose is to ensure the rapidity and cost-effectiveness of investigations.

Numerous positive experiences in using ordinary coordination measures for linked investigations were reported during the interviews: between the prosecutor's office of Trieste and Lecce (investigations of Slovenian criminal groups), between the prosecutor's offices of Gorizia and Udine (the latter being competent for the national border that crosses the Cividale mountains), between the prosecutor's offices of Perugia and Terni-Viterbo (during the so-called 'Sunflower Operation'). These joint operations also made it possible to avoid conflicts of competence. Significant in this regard is the case of the prosecutor's offices of Milan and Busto Arsizio which, when Malpensa Airport was opened, were confronted by a serious question of competence. Briefly, whilst migrants entered Italy on territory within the competence of Busto Arsizio, they were headed for Milan, where the criminal organisation had its headquarters. The potential problems were solved by collaboration between the two prosecutor's offices which led to a useful exchange of information and facilitated allocation of competences.

In the latter case (hereinafter referred to as 'AND coordination activity'), coordination is undertaken by the National Anti-Mafia Prosecutor through the Anti-Mafia Investigative Division and the district prosecutors, according to the provisions analysed in detail in chapter 10. The means to achieve coordination at this level are particularly sophisticated and effective (specialised teams, concentration of investigations at district divisions, use of centralised databases). However, the law provides for the use of this kind of coordination only for investigations into specific crimes, which do not include migrant smuggling and people trafficking for the purpose of exploitation.³⁷⁶ In this regard, the prosecutors disagreed as to whether the competences of the AND should be extended to encompass these criminal offences as well.

Among those in favour of extending the AND's competences to include people trafficking and migrant smuggling were the prosecutors interviewed at Crotona, Lecce, Trieste and Perugia, where investigations in cooperation with the AND had been particularly successful, and where the enlargement of the latter's competence seemed therefore appropriate.

The prosecutors of Genoa instead considered extension of the Anti-Mafia District Divisions' competence desirable, but *only* in the case of the crimes referred to by

³⁷⁶ The Anti-Mafia District Division (ADD) is competent under article 51, paragraph 3-*bis* for proceedings relating to the following crimes:

- Mafia-type association, even attempted (article 416-*bis* criminal code);
- Kidnapping for ransom (article 630 criminal code);
- committed in the circumstances envisaged by article 416-*bis* criminal code: so-called 'target-crimes' in respect to Mafia-type association;
- committed for the purpose of facilitating the activity described by article 416-*bis* criminal code (so-called 'means-crimes') and conspiracy to traffic drugs (article 74 d.p.r. no. 309, 9 October 1990).

article 12 of the consolidated text of the Law on Immigration. Unlimited extension of AND's competence would distort its functions, they said: moreover, conflicts of competence would not be resolved but only shifted to another level.

Entirely opposed to any such extension was the prosecutor's office of Ascoli Piceno, which maintained that the inclusion within the ADDs' competence of investigations into cases of people trafficking and migrant smuggling was not desirable, given the risk of overwhelming these agencies, which already had heavy caseloads on specific crimes. Moreover, although the criminal organisations engaged in trafficking and smuggling were structurally similar to a Mafia-type organisation, they used different means.

13.1.5 Atypical investigative instruments and the use of those envisaged by the consolidated text of the law on drugs

Besides the investigative instruments just described, the work of the prosecutor's offices most active in combating people trafficking and smuggling comprised the use of other instruments denominated 'atypical' in that they are not expressly envisaged by the Code of Criminal Procedure.

A) DATABASES

A particularly effective atypical investigative instrument has been developed to address one of the main problems arising in investigations into migrant smuggling: identification of the perpetrators. The creation of databases that systematically collect information on cases has enabled reconstruction of the identities and functions internally to criminal organisations of individuals using a variety of aliases and investigated in several proceedings. The most significant experience from this point of view was reported by the prosecutor's office of Trieste, where the creation of a 'pool' of prosecutors and police officers specialised in migrant smuggling had enabled the centralised logging of all notifications of crime and interceptions of illegal immigrants. The information collected was entered into a database containing the names and photographs of illegal migrants and *passeurs* as well as other investigative data such as the telephone numbers and addresses found in the possession of the illegal immigrants. These data have led to a number of important investigative successes. For instance, photographic identification, which on its own would have been useless, has helped in identifying a number of *passeurs* once it has been considered jointly with the statements made by the illegal migrants concerned. In other cases, repeated calls by illegal migrants to a particular telephone number have led to identification of the owner of the telephone in question as a *porteur*.³⁷⁷ A similar success has been achieved in Crotona by setting up a database containing the names of suspects, the telephone numbers found in possession of illegal immigrants, and photographs of their faces.

³⁷⁷ See F. Frezza, *op. cit.*, pp. 4-5.

B) THE CENTRALISATION OF INVESTIGATIONS

At other prosecutor offices, where it was impossible to create a proper database because of the lack of human resources and means, the information collected on people trafficking and migrant smuggling has been coordinated by centralising investigations at the office of an individual prosecutor or by establishing an inter-force pool. This has been done at Brescia (an inter-force investigative group which concentrates on the robbing of luxury country houses by Albanian criminals), Milan (centralisation of investigations to a single prosecutor's office), and Gorizia, Brindisi and Lecce (creation of a specialised pool). These various efforts have yielded a large body of comparable information which has proved useful in identifying the methods used to smuggle migrants and the perpetrators of the offences.

C) THE INSTRUMENTS PROVIDED BY THE CONSOLIDATED TEXT OF THE LAW ON DRUGS

The prosecutors interviewed expressed conflicting opinions on the use of the investigative instruments provided by articles 97 and 98 of the consolidated text of the Law on Drugs³⁷⁸ (hereinafter C.T. Drugs). Before the work of individual prosecutor's office is considered in detail, preliminary explanation of the nature and the functions of these investigative instruments is necessary.

Article 97³⁷⁹ of the C. T. Drugs considers the case of the simulated purchase of drugs, stating that the judicial police officers are not punishable when they pretend to buy a specific amount of drugs in order to gather evidence in cases of crimes involving narcotics. In these cases they act in a manner similar to an *agent provocateur*, to whom the basic principle applies that the crime must not be instigated by the *agent* but deliberately caused by the wrongdoer.

Article 98 of the C. T. Drugs³⁸⁰ introduces into Italian law an investigative instrument typically used in other countries: controlled delivery or, more

³⁷⁸ D.P.R. 9 October 1990, no. 309 (Testo Unico delle leggi in materia di disciplina degli stupefacenti e sostanze psicotrope, prevenzione, cura e riabilitazione dei relativi stati di tossicodipendenze) [Consolidated Texts of the Laws on Drugs and Psychotropic Substances, Prevention, Cure and the Rehabilitation of Drug Addicts]. For a commentary see G. Di Gennaro, G. La Greca, *La questione droga*, Giuffrè, Milan, 1999.

³⁷⁹ Article 97 C. T. Drugs (Simulated Purchase of Illicit Drugs):

1. Under the provisions of article 51 of the criminal code, judicial police officers belonging to special anti-drugs units are not punishable when, for the sole purpose of acquiring evidence in relation to the crimes envisaged by this law and in execution of anti-criminal operations specifically mounted by or on agreement with the Central Anti-Drugs Service, the *questore*, or the chief of the *Carabinieri* of the *Guardia di Finanza*, or the chief of the tax police unit or the director of the DIA (Antimafia investigative division) pursuant to article 3 of the D.L. 29 October 1991, no. 345, converted with modifications into law no. 410, 30 December 1991, they purchase illicit drugs or psychotropic substances.

2. The Central Anti-Drugs Service and the judicial authority must be immediately informed of the purchase of illicit drugs or psychotropic substances. The judicial authorities may, on request by the judicial police, postpone the seizure until the investigations have been completed.

³⁸⁰ Article 98 C. T. Drugs (Delay or omission of capture, arrest or seizure – International collaboration):

1. The judicial authorities may, with motivated decree, delay the issue or order the delayed execution of orders of capture, arrest or seizure when this is necessary for the acquisition of important evidence or the identification or the capture of persons responsible for the crimes envisaged by article 73 and 74.

2. For the same reasons, the judicial police officers belonging to anti-drugs special units, as well as the customs authorities, may omit or delay actions within their competence, giving immediate notice, even by

specifically, delayed arrest. In practice, the article implements the 1988 Vienna Convention and its assertion of the need to use of “the technique of allowing narcotic drugs ... to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences [...]”.³⁸¹

Both the investigative instruments described are used to acquire evidence on migrant smuggling and to identify the perpetrators. The provisions reflect the distinctive nature of trafficking in illicit drugs, where immediate suppressive action (immediate arrest) has proved detrimental to the reconstruction of complex criminal organisational chains. Indeed, delaying the execution of suppressive measures, such as arrest and seizure and the action of an ‘infiltrator’, may yield important investigative results.

The same rationale was at the basis of investigations conducted by some prosecutor’s offices, and it was also applied, albeit using instruments different from those provided by the C. T. Drugs, to cases of migrant smuggling. In this case, too, the criminal phenomenon is particularly complex, and its ramifications are difficult to reconstruct without investigations aimed at identifying the actual perpetrators. Nevertheless, owing to the lack of a specific law in this respect, none of the prosecutor’s offices interviewed was able to use the investigative instruments provided by the T.U. Drugs in cases of migrant smuggling.

The ‘flexible’ use of the typical investigative instruments (arrest, seizure, under-cover agents) was reported.³⁸² For example, the prosecutor’s offices of Turin and Rome did not use delayed arrest in its technical sense, but in practice the arrest of suspects was delayed in order to obtain further confirmation and extend the investigation to other persons. This measure is regarded as useful for verifying the presence of further accomplices and branches of the criminal group concerned. In this regard, the prosecutors of Trieste and Gorizia said that they found ‘controlled deliveries’ useful because they enabled identification of the organisational structure of migrant smuggling.

In some cases of exploitation of foreign prostitutes, the prosecutor’s office of Milan used ‘under-covert’ police officers who pretended to be clients for the purpose of identifying the exploiters. The use of this investigative technique is problematic

telephone, to the judicial authorities, which may decide otherwise, and to the Central Anti-Drugs Service for the necessary coordination, also at international level. The authority concerned must within forty-eight hours submit a report to the judicial authorities which sets out the reasons for its actions.

3. [omissis]

4. [omissis]

³⁸¹ Article 1 lett. K, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, available at <http://www.incb.org/e/conv/1988>.

³⁸² In order to fill this gap, article 8 of law 228/2003, enacted after the interviews herein reported were conducted, DDL S. 885 extends *in subjecta materia* the possibility of using delayed arrest (article 10 of legislative decree no. 419, 31 December 1991, converted with modifications into law no. 172, 18 February 1992). Article 10 provides for the use of under-cover officers (article 4, paragraphs 1, 2, 4, 5, 6 and 7 of the legislative decree no. 374, 18 October 2001, converted with modifications by law no. 438, 15 December 2001) also in regard to the criminal offences contained in book II, title XIII, chapter III, section I of the criminal code and by article 3 of law no. 75, 20 February 1958. See *supra* 10.3.2.

however, because there is a fine line between licit investigative activity and incitement to commit a crime (which is currently unlawful).

Other prosecutor's office do not use such techniques, refraining from doing so for various reasons:

- irrelevance to the type of investigation (prosecutor's offices of Genoa, Brescia, Palermo, Perugia, Tolmezzo): this, for example, is the case of investigations focused on a single member of the criminal group (a *passeur* or similar);
- *detrimental effect* (prosecutor's office of Brindisi and Crotone): this is the case, for example, when delayed arrest would leave free persons who might flee or go into hiding, even more so given their illegal status;
- difficult practicability and high risks for under-cover officers when operating in particularly tight-knit clans like Albanian ones (prosecutor's offices of Lecce, Turin and Milan).

13.1.6 The incidente probatorio

One of the most difficult aspects of cases of trafficking in persons and smuggling of migrants is the taking of evidence from the illegal immigrants themselves. The statements made when the latter are intercepted or during their subsequent questioning often furnish information useful for investigations, as well as important evidence on the criminal activity and the involvement of specific persons in the trafficking and smuggling. The problem is that once the illegal immigrants have made these statements, they tend to become impossible to trace, because they have been expelled from Italian territory or threatened by the traffickers, or simply because they have continued their migration without leaving information about their place of residence. If the statements made to the prosecutor or the judicial police are repeated before the court, they cannot be deemed as constituting valid evidence, given the principle of orality that characterises the trial in the Italian system. In other words, the evidence may be lost if the person who made the incriminating statement does not repeat it before the judge. There are exceptions to this rule, however, which will be analysed below (see § 13.2), but it is important to stress the problem now in order to explain why the majority of the prosecutor's offices most active in combating migrant smuggling have often used the *incidente probatorio*, which is a procedural device whereby probatory evidence can be taken during pre-trial investigations, that is to say, when the illegal migrant can still be traced.

The *incidente probatorio* is a proceeding which brings forward to the pre-trial investigation phase the taking of such evidence as cannot be postponed to the trial.³⁸³ In practice, therefore, a part of the trial is conducted earlier, although all the guarantees still apply (e.g. presence of a judge, the defence counsel for the suspect and the victims). According to article 392, paragraph 1, letters a and b of the criminal procedure code, the court can be requested to authorise an *incidente probatorio* for the purposes of:

³⁸³ Fortuna et al., *op. cit.*, pp. 677 ff.

- "taking evidence from a person when it is likely that it will not be possible to examine him/her during the trial because of infirmity or other serious impediment";
- "taking evidence from a person when, on concrete and specific grounds, it is likely that the person is being subjected to violence, menaces, or promises of money or other benefits intended to induce him/her to give false information or not to testify at all".

The offences relating to illegal immigrant smuggling fall within the above-mentioned set of circumstances justifying the use of the *incidente probatorio*. It is no coincidence that the prosecutors interviewed regarded it as the principal device with which to prevent the loss of evidence due to the future and likely impossibility of tracing witnesses, or to prevent retractions or intimidations. The procedure nevertheless requires great effort by the prosecutor's offices, which must permit 'discovery' (that is, disclosure of the evidence to the defence) and bring forward an important and difficult phase of the trial. Moreover, not always does it accelerate the trial.

The prosecutors reported further difficulties in using the *incidente probatorio*:

- to the requirement to notify all the parties to the proceeding (the domiciles of the suspects and witnesses are often unknown);
- the difficulty of keeping the victim available for the entire time necessary to execute the notifications;
- the cumbersome nature of the procedure, which is extremely time-consuming and requires a great deal of work, with the attendant risk of not complying with the time limits imposed by the law for the completion of investigations;
- the impossibility of using the procedure in relation to suspects not yet identified.

For these reasons, some of the prosecutor's offices said that it was not always feasible to use the *incidente probatorio*, and that they sometimes preferred to use other devices to ensure the availability of witnesses (article 18 C. T. Immigration) or based their prosecutions on other evidence (interceptions).

In view of the difficulties encountered in the use of this procedural device, some proposals are put forward in the Summary at the end of this section on investigations.

13.1.7 The difficulties encountered during investigations

The complex nature of judicial cases relating to criminal organisations engaged in people trafficking and migrant smuggling renders investigations particularly difficult. This concluding sub-section provides an overview of the various obstacles encountered by the prosecutors, with mention made when possible of the solutions found.

A) TERRITORIAL COMPETENCE

Cases of migrant smuggling, and in particular cases of trafficking for the purpose of exploitation, are characterised by the geographical mobility of the victims, exploiters and traffickers. As a consequence, linkages necessarily arise among proceedings brought by different prosecutor's offices.³⁸⁴ Article 16 of the criminal procedure code assigns territorial competence to the prosecutor's office investigating the most serious crime; however, there still remains the problem of determining the time that crime's first occurrence, should the residual criterion based on the time of commission be applied, if the crimes have the same level of seriousness. Matters are complicated even further by the case law that has developed over time³⁸⁵ and causes confusion and wastes time during complex investigations where the risk of exceeding the compulsory time limit is high. An attempt has been made to solve the problem by using the measures for coordinating prosecutor's offices provided by the Procedure Code, and through informal collaboration among investigative agencies. For a thorough examination of the forms taken by coordination among prosecutor's offices see sub-section 13.1.4.

B) IDENTIFICATION OF SUSPECTS

The correct identification of suspects is a generalised problem which is difficult to address because perpetrators use different identities during their criminal activity (the 'alias problem'), equip themselves with false documents, and mingle with the victims of the smuggling (this being the case of the so-called *scafisti* or speedboat smugglers). The transliteration of names sometimes gives rise to difficulties as well. But the main problems arise in relation to the heads of the criminal organisations, and they have negative repercussions on investigations, especially in regard to requesting and obtaining preventive measures against persons of uncertain identity.

In this regard, the prosecutors interviewed expressed differing opinions on the recent legislative changes concerning biometric fingerprinting. Some of them considered it a useful investigative device and thought that even more effective biometric methods should be introduced (like DNA testing): this was the case, for example, of the prosecutor's office of Milan. At other offices, the prosecutors did not believe that such innovations would lead to significant changes. Although the prosecutors of Milan regarded biometric evidence as useful, they thought that it was a minor solution in respect to the main problem consisting in the unreliability of the personal data of foreigners from certain countries. This problem, according to the prosecutor's office of Milan, could only be solved by overhauling the systems of registering births, deaths and marriages and documentary certification in the migrants' countries of origin.

³⁸⁴ On linkage among different proceedings and the various circumstances in which it takes place, see chapter 10.

³⁸⁵ For the different judicial interpretations of article 16 of the criminal procedure code see, for example, Criminal Court of Cassation, 21.8.1996, in *Riv. Ital. Dir. Proc. Pen.*, 1997, 638, commentary, and for the reverse interpretation, Criminal Court of Cassation, Section II, 18.4.1990, in *Arch. Nuova Proc. Pen.*, 1990, 606.

Some of the most active prosecutor's offices had sought a solution to the problem in identification by means of 'atypical' investigative devices, such as the above-mentioned databases collecting all information on cases of trafficking and smuggling (see § 13.1.5). This enabled them to trace traffickers' and exploiters' identities, establishing them on the basis of leads entered into the databases. Moreover, the different phases of the phenomenon had been reconstructed, and the connections among the various members of the criminal groups had been deduced.

C) STATEMENTS BY VICTIMS

Statements by victims are, as said, an important source of *notitia criminis*, an investigative device, and, at least potentially, a body of evidence. The prosecutors interviewed, however, reported that the use of such statements is difficult, in various respects.

A first difficulty is the lack of reliable interpreters, and it is exacerbated by the fact that the situation often requires the use of experts in the dialects of a specific geographical area. Yet it may happen that the interpreters from that particular geographical area know the suspect, or are even his/her kin. In some cases, threats against interpreters or attempts to corrupt them have been reported. The difficulties also concern interceptions, which require the availability of interpreters at sometimes very short notice. At some prosecutor's offices the problem had been partially remedied by the presence of specialised schools for interpreters (Perugia and Trieste), the use of reliable 'cultural collaborators' (Gorizia³⁸⁶), and the establishment of mechanisms to pay fees rapidly. But at most of the other prosecutor's offices the problem was not addressed and caused serious difficulties.

Whether or not statements are useful for investigations and for the subsequent phase of the proceeding also depends on the methods used by the police to take those statements. It was observed by interviewees that *imprecise statement taking and recording* could result in important information being lost if the witness was subsequently untraceable. For this reason, some prosecutor's offices had issued instructions to the judicial police so that information-taking methods could be harmonised (see § 13.1.3). This question connects with the wider issue of *securing the sources of testimonial evidence*, for which various mechanisms (*incidente probatorio*, article 18, T.U. Immigration) are available, as discussed below.

A final difficulty regarding statements by victims concerns their *reliability* and the problem of *reticence*. The prosecutors interviewed had observed two different attitudes among victims, and they warrant attention: there are victims who confirm the investigator's conjectures in order to obtain the benefits provided by law (e.g. application of article 18 C. T. Immigration), while other victims, for cultural reasons or because of threats, provide no useful information at all. Experience at the most active prosecutor's offices with this latter type of informant has led to the development of specific methods for information-gathering and questioning (see § 13.1.3).

³⁸⁶ A contractual arrangement between a Bologna association and the Ministry of Internal Affairs enabled the prosecutor's office of Gorizia to utilise 'cultural collaborators' as interpreters of some uncommon languages (such as Turkish/Kurdish).

D) COMPLIANCE WITH THE TIME LIMITS IMPOSED BY THE LAW FOR PRE-TRIAL INVESTIGATIONS

Compliance with the time limits imposed by the law for pre-trial investigations is one of the main problems confronting the prosecutor's offices interviewed. Most of them reported that they were unable to comply with the standard six months established by the criminal procedure code, unless they resorted to separation of proceedings (*stralci*) or other expedients. The lengthiness of the process was due to the need to use *incidente probatorio* procedures and to issue numerous notifications. Moreover, if international cooperation is required, the time taken by investigations increases even more. These considerations obviously concern cases involving criminal organisations, given that particular problems in complying with the time limits do not usually arise in isolated cases of trafficking or smuggling. The time taken by investigations also varies according to the investigative methods used: in the case of the prosecutor's office of Arezzo the six-month time limit was observed if the investigation had begun from reliable statements and interceptions had then been carried out; but at least twelve months were required when investigations were conducted the other way round. The suggestion put forward by the prosecutor's offices was to keep the different strands of the investigation separate (crimes committed by single persons and associative crimes), especially when it was necessary to resort to preventive detention.

SUMMARY (PROPOSALS *DE IURE CONDENDO*)

INVESTIGATIONS (PRE-TRIAL INVESTIGATIONS)

Territorial Competence:

1. *Centralisation of investigations, assigning competence for people trafficking for exploitation and migrant smuggling, at least in their associative forms, to the DDAs, because they can use more effective investigative devices, and also to prevent the dispersal of information useful for investigations and obstruction of the latter. This would enable coordination by the AND, together with its international contacts.*³⁸⁷
2. *Refining the definitions of the criminal offences of people trafficking for exploitation and migrant smuggling (crimes which are very fragmented and whose precise moment of commission is uncertain).*³⁸⁸

Identification and databases:

³⁸⁷ Article 6 of law 228/2003, which was enacted subsequently to the interviews with the prosecutors reported here, reflects this proposal by assigning competence for the crimes covered by articles 600 (Reduction to or maintenance in slavery or servitude), 601 (Trafficking in persons) and 602 (Purchase and disposal of slaves) of the criminal code to the ADDs.

³⁸⁸With reference to the trafficking in persons, and introduced subsequently to the interviews with prosecutors, this moves in the direction suggested by this proposal by assigning competence for the crimes regulated by articles 600 (Reduction to or maintenance in servitude), 601 (Trafficking in persons) and 602 (Purchase and disposal of slaves) of the criminal code to the ADDs See *supra* §§ 10.2.1 e 10.2.2.

3. *Creation of a well-structured nationwide database storing all information on names, places and routes.* The availability of a means of identification other than that usually used with Italian suspects, that is, provided with photograph and fingerprints, is important because the name may not be sufficient, given the widespread use of aliases.
4. *Creation at each prosecutor's office of a database constructed on uniform modules and protocols* and storing data on relationships with other subjects, domiciles identified, possible contracts with public utilities (water, electricity, gas, etc.), verified aliases, names and photographs of *scafisti* and taxi drivers, details of the vehicles used, the boatyards constructing boats used for smuggling, addresses and phone numbers taken from arrestees and illegal migrants, the numbers of the mobile phones seized, and the telephone numbers used to make outgoing and incoming calls (in particular, numbers repeatedly logged), and the information and statements given by illegal migrants on the organisation of their journeys and modes of payment. It would thus be possible to conduct cross-checks in the case of linked investigations and extrapolate common data serving as investigative input. These data would be extremely significant because they had already been verified during the pre-trial investigation phase, and would thus provide particularly important leads.
5. *Establishing, by express legal provision, an identity* (even if only conventional, but not for this reason less certain and stable) for the foreigner during the judicial proceeding, which should be linked to the photographic and physiometric evidence.

Investigative instruments:

6. *Reforming the law on migrant smuggling so that it more closely replicates the provisions of the C. T. Drugs* (D.lgs 309/1990). The investigative measures (articles 97 and 98), the attenuating circumstances for collaborators (article 73, paragraph 7) and the penalties therein set forth would allow closer control of the problem.³⁸⁹
7. *Recruitment of law enforcement officers belonging to various ethnicities, in order to enable the tailing of suspects, under-cover activities and the obtaining of information without arousing the suspicions of suspects.*
8. *Improving surveillance methods (e.g. more tailing of suspects by the judicial police) and increasing personnel.*

Incidente probatorio (suggested by the prosecutor's office of Lecce):

9. The following article 362-*bis* (*Information and identification by the foreign national in cases of urgency*) should be included after article 362 of the criminal procedure code: "In emergency cases that may occur after the rejection or expulsion of a foreign person who has illegally entered the country, should it be necessary to acquire information from that person or have him or her identify other persons or things, when it is likely that it will not be possible to

³⁸⁹ Article 8 of law 228/2003, introduced subsequently to the interviews with the prosecutors reported herein, moves in the direction suggested by this proposal by extending *in subiecta materia* the possibility to delay execution of orders for preventive detention, arrest, or police custody of the perpetrators of crimes or kidnappings. Article 10 of the same law regulates under-cover officers (article 4, paragraphs 1, 2, 4, 5, 6 and 7 of *decreto legge* no. 374 18 October 2001) in relation to the crimes considered in book II, title XIII, chapter III, section I of the criminal code and by article 3, law no. 75, 20 February 1958. See *supra* § 10.3.2.

trace the foreign person for his or her examination during the trial or the *incidente probatorio*, the information referred to in article 362 of the criminal procedure code shall be acquired by the public prosecutor during questioning in the presence of the defence of the parties. Likewise, the public prosecutor shall identify the persons or objects referred to in article 361 of the criminal procedure code. Article 360, section 1 and 2, and article 141-*bis* of the criminal procedure code are compatible and applicable”.

10. *The following clause should be added to article 400 of the criminal procedure code, after paragraph 1: “2. In emergency cases that may occur after the rejection or expulsion of a foreign person who has illegally entered the country, the Court, on request by the public prosecutor, shall set the day of the hearing for examination of the foreign person or for identification of persons or objects within forty-eight hours following the request and its notification. The decision of the Court shall be communicated without delay to the public prosecutor and to the defence, in which case articles 396, 397 and 398 section 1, 2 and 3 shall not be applied”.*

Other:

11. *Increase the computerisation of criminal proceedings from the pre-trial investigation phase onwards, enabling the transmission of judicial documents to the defendant via e-mail with electronic signature.*
12. *Conduct financial investigations and studies on remittances abroad in order to identify the account-holders and the homeland organisers of the trafficking and smuggling.*
13. *Create a network of interpreters by compiling a register (possibly nation-wide and managed by the Ministry of Justice or the Ministry of Internal Affairs) of those with proven reliability and language skills, who should not undertake similar activities in other trials, so that they may not be identified during hearings or by inclusion of their names in documents destined for the public domain.*
14. *Coordinate investigations by means of meetings among the prosecutor's offices for the exchange of information, given that it is always useful to learn of activities in other areas and to share experiences.*
15. *Create specialized units of prosecutors and judicial police.*
16. *Issue guidelines for the incidente probatorio with simplified terms and forms in specific relation to the questioning of illegal immigrants who are also victims.*
17. *Create a unit within the judicial police specialized in the investigation of cases of migrant smuggling similar to those already in place for drugs, and thereby improve patrolling by the police force.*
18. *Give more decision-making autonomy to the judicial police in their investigations conducted in coordination with the prosecutor, the purpose being to avoid the wasting of time.*
19. *Facilitate the interception of foreign telephone calls (for foreign phone controls).*
20. *Improve linkages among police forces, because the commission of crimes across various parts of the country requires joint action.*

21. Increase the duration of preventive detention in proceedings against criminal organisations involved in people trafficking and migrant smuggling.

13.2 JUDICIAL ACTIVITY (TRIAL AND ALTERNATIVE PROCEDURES)

In Italian law, the term 'trial' refers to the activities carried out following completion of the pre-trial investigations and the bringing of the proceeding by the prosecutor before the court. The judicial phase may assume the various forms envisaged by the criminal procedure code, according to whether the ordinary procedure or one of the special procedures regulated by the provisions contained in the book VI, articles 438 ff. is selected.

This section considers the difficulties and the best practices developed within the context of the ordinary procedure, and more specifically during the trial phase, given that the most serious judicial cases regarding people trafficking and migrant smuggling are usually decided through the ordinary procedure.

Some of the prosecutor's offices declared, however, that the majority of their cases in this sector were considered by alternative procedures, with use being made in particular of plea bargaining (article 444 ff. of the criminal procedure code) and summary trial. This usually happens in cases of migrant smuggling: that is, when exploitation or other associative crimes have not been committed. It should also be pointed that, at 'transit' prosecutor's offices like Trieste, Crotone, Gorizia and Tolmezzo, a quite high percentage of proceedings are closed before they come to trial.

13.2.1 The effect of the reform of article 195 of the criminal procedure code (de relato testimony by judicial police officers)

The prohibition against the use as indirect testimony of statements taken during pre-trial investigations (so-called *de relato* testimony) by the police and judicial police officers has been recently introduced by the law on the so-called 'fair trial' (*giusto processo*),³⁹⁰ which has reworded paragraph 4 of article 195 criminal procedure code so that it reads as follows: "Judicial police officers may not testify on the content of statements taken from witnesses under articles 351 and 357, paragraph 2, letter a) and b). In other cases the provisions of the previous paragraphs 1, 2 and 3 are applicable". In other words, the judicial police officers may not testify on the basis of summary information (article 351), voluntary statements (article 357 letter b), reports, private prosecutions (*querelle*) and verbal complaints (*istanze orali*) (article 357 letter a). In these cases, therefore, the only admissible evidence is the written record, i.e. the police 'verbals'.³⁹¹ In the past, the Constitutional Court (decision no. 24 of 31 January 1992) ruled the constitutional illegitimacy of this prohibition, but as a consequence of the reformed article 111 of the Constitution, it issued another decision (no. 32 of 26 February 2002), which reversed the ruling on the constitutional validity of the new article 195, paragraph 4 criminal procedure code, in that it was groundless, and therefore substantially

³⁹⁰ Article 4, law no. 63, 1 March 2001, published in the *Gazzetta Ufficiale* on 22/3/2001 no. 68.

³⁹¹ See F. Cordero, *Procedura penale*, Giuffrè, Milan, 2001, p. 669. The importance of the written record drawn up by the judicial police since introduction of the prohibition on indirect testimony taken by the judicial policemen and officers must be balanced against the difficulties of recovering verbals during trials. On this point see *infra* § 13.2.2.

admitted the validity of the prohibition of *de relato* testimonies made by the judicial police.

The legislative and judicial vicissitudes of par. 4 of article 195 criminal procedure code have directly affected proceedings on people trafficking and migrant smuggling, because of the above-mentioned problems in guaranteeing probatory evidence (see § 13.1.6). In some cases, statements by illegal migrants who then proved impossible to trace have been wasted, because those statements could not be repeated before the judge. This waste of information caused difficulties for those prosecutors that, relying of the procedural regulation previous to the 2001 reform, had not taken precautions and therefore had not used the *incidente probatorio* procedure in order to secure the evidence, or had not applied article 18 C.T. Immigration to compel witnesses to be available. This had weakened the prosecution's case, especially in proceedings based largely on victim statements: indeed, in some cases handled by the prosecutor's office of Perugia, traffickers charged with serious crimes such as reduction to servitude were acquitted.

To be noted in this regard is widespread criticism of the legislators, who profoundly modified the judicial procedure without including a transitional period, as had instead been done in the case of other procedural reforms (article 512 criminal procedure code).

The problem had not arisen:

- at the prosecutor's offices where, together with evidence based on victim statements, corroborating evidence and a sufficient number of interceptions were presented to the judge (Arezzo and Trieste);
- at the prosecutor's offices where, for the type of crime concerned (smuggling alone), the strategy adopted was to use procedures alternative to the trial (Tolmezzo and Turin); and
- at the prosecutor's offices where the presence of those reporting the crime was ensured by other means, such as article 18 of the consolidated text of the Law on Immigration and the *incidente probatorio* (Brindisi and Palermo).

13.2.2 Reading of the judicial police verbals (article 512 and 512-bis of the criminal procedure code)

The need to secure testimony during the trial or to preserve it using the *incidente probatorio* derives not only from the innovations made to article 195 of the criminal procedure code but also from the interpretation of two further provisions contained in the criminal procedure code: articles 512 and 512-bis. Reading these three norms together evinces not only that indirect testimony by the judicial police based on victim and informant statements is inadmissible but also that the related verbals cannot be admitted except in particular circumstances.³⁹² The judicial police's or

³⁹² Article 512 (Reading of documents due to the impossibility of repeating statements orally) – 1. The court, on request by the party, shall order the reading out of documents drafted by the judicial police, the prosecutor, the defence of the parties and the judge during the preliminary hearing when, due to unforeseeable facts or circumstances, the original statements cannot be repeated.

Article 512-bis (Reading of statements made by persons living abroad) – 1. The court, on request of the party, having considered the evidence, may order the reading of verbals of statements given by persons living abroad, who, even after an international rogatory request has been issued and the persons have been

prosecutor's verbals can only be read when exceptional circumstances make their repetition impossible (article 512 of the criminal procedure code). Article 512-*bis* of the criminal procedure code deals with the case of foreign residency and establishes a partial exception to the reading prohibition if the witness, though summonsed, has not appeared and the trial examination of him/her is entirely impossible.

The rationale behind the three provisions considered is the constitutional principle whereby, in a trial with participation by the parties concerned, the evidence must be brought forth by examination and hence before the judge. Nevertheless, it is clear that strict adherence to these norms creates serious problems in proceedings where victims and informants do not have fixed domiciles and cannot be found when they must testify before the court.

In the experience of almost all the prosecutor offices, application of the revised version of article 195 of the criminal procedure code and the narrow interpretation of article 512 of the criminal procedure code had vitiated the evidence collected and had consequently led to acquittals due to the impossibility of reproducing the content of the illegal migrants' statements.

The case law on article 512 of the criminal procedure code has taken up three main positions on the matter:

- a) *strict interpretation* of article 512. The impossibility of finding the illegal migrant is always foreseeable; therefore, the hearing of documentary evidence taken by the judicial police is not allowed (Ascoli Piceno, Arezzo, Crotone, Lecce, Milan, Perugia and Tolmezzo);
- b) *flexible interpretation* depending on the case. The reading of a statement is allowed only when it is wholly impossible for the witness to appear before the court (Brescia, Genoa and Rome);
- c) *broad interpretation*. When the victim cannot be traced, statements previously made to the prosecutor may be read out (Palermo).

Article 512 criminal procedure code has not been applied by the Court of Brindisi in proceedings brought for the crimes in question, because article 512-*bis*, criminal procedure code, is the provision applicable in cases of statements made by illegal migrants immediately upon apprehension.

Article 512-*bis* is considered a partial solution to the problem described above, and a 'parachute' option with which to save statements made by victims and key informants. If it is possible to obtain the addresses abroad of illegal migrants turned back at the frontier, they are summonsed by means of rogatory procedures. Once their summons has failed, the reading out of their statements is allowed.

There are, however, several practical difficulties against using this instrument. Firstly, it takes a long time to issue the summons abroad and this has a negative impact on trials where preventive detention has been applied. Moreover, it is

summonsed, have not appeared before the court, and only in the case of absolute impossibility of trial examination.

impossible to issue dozens of letters rogatory every month without paralysing the judicial system.

For this reason, at certain courts, and in particular that of Brindisi, the above-mentioned provision had been interpreted so that considered sufficient for the hearing of illegal migrants' depositions is *simple proof of the dispatch of the 'summons', even in the absence of notification that it has been served, on condition that the judicial police have provided complete identification (together with residence and/or domicile) of the illegal immigrants*. Moreover, Section II of the Brindisi court has recently deemed it possible to hear evidence regulated by article 512-*bis*, criminal procedure code, in the cases mentioned on the basis of the simple consideration that "the notorious uselessness, as verified in previous criminal proceedings, of a summons sent to Albania, considering the proven impossibility of executing effective notification, given that the Albanian state has shown no appropriate attention to letters rogatory (even should they only request summons)". The Court of Gorizia has likewise adopted a broad interpretation of the provision in some cases, allowing the reading out of police verbals when it has proved impossible to summons a witness living abroad.

Other courts have adopted a much stricter interpretation. That of Lecce, for example, requires proof that the summons has been served on the foreign citizen who has failed to appear before the court. This interpretation effectively rules out the use of statements, owing to the impossibility of serving notice on foreigners without fixed domiciles and unknown residences.

The same situation has arisen in Milan, where precise identification of the subject, so that notice can be served abroad, is considered to be essential. In this regard, the prosecutor's office stressed the importance of instructing law enforcement officers to prevent illegal migrants from always replying "no fixed address" when questioned as to their places of residence.

The difficulties in obtaining precise identification of the declarant are at the basis of the almost resigned attitude shown by some prosecutor's offices towards the instrument provided by article 512-*bis*. Attempts to serve summons on potential witnesses living abroad are considered "pointless", "an empty formality". For these reasons letters rogatory are not issued, so that possible evidence goes ungathered.

Regardless of the different interpretations given by courts to the above-mentioned provisions, it is nevertheless important to identify the predominant judicial approach adopted by the Court of Cassation on the matter, because this determines how testimonial evidence may be used. Currently, the tendency is to give strict interpretation to the provisions of article 512 and 512-*bis*, criminal procedure code: an approach that has been further strengthened by introduction at constitutional level of the 'adversarial principle' (that is, the principle according to which the evidence must be presented during the trial in the presence of all the parties). The Constitutional Court has stated that "for the purposes of the reading pursuant to article 512, criminal procedure code of verbals containing summary witness information, the situation must have seemed unlikely and occurred subsequently, and also that at the moment when the prosecutor took the statement it was not foreseeable with a degree of objective likelihood".³⁹³ As regards article

³⁹³ Criminal Court of Cassation, Section I, 28 September 1993, in *Cass. Pen.*, 1995, pp. 2943 ff.

512-*bis*, the requirements are even stricter: “the provision contained in article 512, criminal procedure code, [...] is an important exemption to the orality principle of the process and to the adversarial principle for the admission of evidence during the trial, with the consequence that it must be strictly applied by the court”³⁹⁴ (case where the court deemed inadmissible statements taken by the prosecutor from foreign citizens who failed to appear for the trial).

The foregoing discussion highlights the urgent need for changes to the system under which prosecutors currently conduct investigations and bring proceedings. In this respect, of particular importance are the best practices developed by the prosecutor's offices interviewed to overcome the obstacles against the efficacious management of proceedings and which are reported in the Summary at the end of this section.

13.2.3 Further difficulties

The two previous sub-sections have described the main aspects of the most serious problem that arises in proceedings brought against human traffickers and exploiters: the judicial validity of oral evidence. This section briefly discusses the further difficulties encountered by the prosecutors interviewed in bringing proceedings.

A) THE PROCEDURAL STATUS OF VICTIMS DURING THE TRIAL

Victims are sometimes forced to commit crimes (e.g. drug-pushing, furnishing false information to the authorities concerning identity). Consequently, their statements must be accompanied by further evidence if they are to be valid. It is likewise necessary when there is no clear distinction between the role of the victim and that of the exploiter, i.e. when the victims have the procedural status of co-suspects.

B) THE INCOMPATIBILITY BETWEEN THE ROLE OF JUDGE FOR THE PRE-TRIAL INVESTIGATION (GIP) AND THE JUDGE FOR THE PRELIMINARY HEARING (GUP)

The incompatibility derives from the complex nature of investigations, which gives rise to overlaps among cases under investigation, and it seems to be even more serious in small district courts (such as Gorizia). When the GIPs have issued orders for preventive detention, or have been undertaken *incidenti probatori*, they may be incompatible with the trial. These difficulties also slow procedures down, so that the time limits prescribed for preventive detention may be exceeded.

³⁹⁴ Criminal Court of Cassation, Section II, case no. 8565 of 5.7.1999 (rv. 213849), in *Gazz. Giuffrè*, 1999, 36, p. 60.

C) QUESTION OF THE 'STATUTORY WINDOW'

There is a risk in these trials that because the 'statutory window' between the prescribed minimum and maximum duration of the penalty is excessive, the court will apply the minimum, with the consequent possible granting of parole.

D) THE RELIABILITY OF WITNESSES–VICTIMS FROM NIGERIA

The difficulties that arise during investigations due to the status of statements by victims (see § 13.1.3) are also present during the subsequent phases of the process. Stressed in particular by the interviewees was the scant reliability of Nigerian witnesses during cross-examination (contradictions, lack of confirmation, reticence).

13.2.4 Duration

The duration of trials for trafficking and smuggling varies according to the presence or otherwise of certain factors (use of the *incidente probatorio* during pre-trial investigations, charges brought for associative crime, the procedure selected, etc.), but generally speaking they tend to be of medium-to-long duration.

On the other hand, at prosecutor's offices where more frequent use is made of special proceedings (summary trial and plea bargaining), the duration is much shorter, because the most complex part of the proceeding, that is, the trial, is not performed.

For the trials with detainees, the duration is determined by the time limits imposed for the preventive detention. In the case of trials with free defendants the duration is longer, given the workloads of both the prosecutor's office and the court.

The prosecutor's office of Milan distinguished between:

- defendants at large or untraceable defendants, where in the absence of particular urgency, trials are subject to various adjournments and practically never take place;
- defendants in preventive detention, in which case trials are concluded in a relatively short time because they are fewer in number.

Finally, some of the prosecutor's offices provided the following data:

- Brindisi: 16 months;
- Genoa: 2/3 years, with some rare exceptions, such as the case of Chinese defendants, where it conducted separate trials (*stralci*) and sentences were pronounced within one year and half;
- Rome: 6/9 months (with *incidenti probatori*);
- Tolmezzo: 3 months (crimes committed by individuals).

SUMMARY (DE IURE CONDENDO SUGGESTIONS)

PROCEDURAL ACTIVITY (TRIAL AND ALTERNATIVE PROCEDURES)

Best practices developed to overcome the problem of witness untraceability:

1. *Take the maximum care to gather, from the investigative phase onwards, all possible information with which to verify and confirm statements made by key informants.* The judicial police should be instructed to collect the largest possible amount of data with which to identify witnesses.
2. *Mount a prosecution based on various kinds of evidence, such as documents, interceptions, statements made by diverse persons, etc.*
3. *Make systematic use of the incidente probatorio whenever the testimony seems important.*
4. *Apply article 18 C.T. Immigration when it is necessary to guarantee the presence of a particularly important witness and, when the witness cannot be found, to demonstrate to the judge that the unavailability of the witness could not have been foreseen.*
5. *Cite interceptions and other evidence in order to persuade defendants to opt for 'alternative' procedures such as summary judgement or plea bargaining.*

Notifications:

6. *Improve the notification system by introducing a provision that makes it compulsory for passports to state the place of actual residence.*
7. *Computerize the criminal proceeding.*
8. *Devise methods to enhance the adversarial aspect of the process. For instance, improvement should be made to the notification system, affirming the principle that the defendant has the *right* to know that that a proceeding has been brought against him/her (through notification) but at the same time that s/he has the *obligation* to attend the proceeding (without it being necessary to serve further notices). Moreover, restrictions should be placed on the possibility to change defence counsel repeatedly (in order to avoid the issue of useless notifications), with the consequent introduction of a more rigorous system for requesting the annulment of summonses (the plea should be immediate).*

Further suggestions:

9. *Simplify the terms and conditions for the reading out of statements in order to disencumber trials.*
10. *Create a legislative instrument that compels the witness to be available on request of the court, without having to resort to witness protection programmes or article 18 C.T. Immigration.*
11. *Modify article 512-bis of the criminal procedure code in order to guarantee the hearing of documentary evidence gathered during pre-trial investigations under less strict conditions than those currently in force.*

12. *Transfer competence for the crimes set forth in articles 600, 601 and 602 of the criminal code from the Court of Assize to the Tribunale.* On the one hand, this would forestall the prejudice against victims, when they are women and prostitutes, sometimes still displayed by jurors; on the other hand, it would accelerate the proceeding.

13. *Improve the coordination of the laws on foreign nationals and on sexual exploitation.* Many of the criminal provisions are currently contained in administrative legal instruments, which complicates the system and impedes the work of the court (problems relative to the apparent simultaneous applicability of different provisions). Covered by the criminal provisions should be the specific case of sexual exploitation coupled with introduction into the country of the illegal migrant (by creating a new crime or by providing an aggravating circumstance for the basic crime).

13.3 INTERNATIONAL JUDICIAL COOPERATION BETWEEN THE COMPETENT ITALIAN AUTHORITIES AND THOSE OPERATING IN THE COUNTRIES OF ORIGIN AND/OR PROVENANCE OF THE MIGRANTS

International judicial cooperation is one of the most effective instruments with which to combat trafficking and smuggling. These crimes, in fact, are characterised by the marked transnationality of both the victims, who are moved from one country to another, and the criminal groups, which operate in different countries. Any effective response to these criminal phenomena must necessarily take account of this feature, with the consequent need for closer collaboration between the law enforcement agencies and authorities, judicial and otherwise, of the countries concerned.

In this regard, almost all the prosecutors interviewed stressed the inadequacy of the 'traditional' provisions for judicial collaboration set out in the criminal procedure code (title XI, articles 696 ff.), such as letters rogatory, extradition, recognition of foreign sentences. Emphasised instead was the usefulness of other means to achieve international cooperation, for the purpose of both investigations and the other phases of the criminal proceeding.³⁹⁵ Among these, the following were mentioned in particular:

- EUROPOL, i.e. the European Police Office, was established by an Act of the Council on 26 July 1995 (the so-called 'Europol Convention') in order to promote the cooperation and hence the efficiency of the police forces of the Member States, to facilitate investigations and the sharing of information, which is collected and collated by Europol in electronic form;
- INTERPOL, is an international agency that operates in 181 countries, providing technical assistance to police forces and promoting the various activities required to combat organised crime;

³⁹⁵ See chapters 7 and 8 for a thorough description of the instruments for judicial cooperation and a bibliography.

- EUROPEAN JUDICIAL NETWORK, i.e. a set of judicial 'contact points' among the Member States of the European Union established in 1998 to improve judicial cooperation in the criminal sector, and especially coordination during investigations;
- EUROJUST, a recently introduced agency (Decision of the European Union Council on 28 February 2002) consisting of a national member seconded by each Member State (prosecutor, judge or equivalent);
- 'joint investigation teams', i.e. groups composed of the competent authorities in two or more Member States which conduct criminal investigations into criminal phenomena involving more than one country;
- the so-called 'European arrest warrant' introduced by the framework decision of the Council adopted on 13 June 2002 and intended to replace the traditional extradition system.

The following sections consider the experience of the prosecutor's offices as regards cooperation with foreign authorities, letters rogatory, and international judicial and police cooperation, examining difficulties and operational practices, and suggesting ways to improve the effectiveness of suppression.

13.3.1 Cooperation with foreign authorities

Judicial cooperation is the result not only of the activity of the judicial authorities but also of diplomacy. The level of collaboration achieved varies from one country to another according to the political interests involved. The experiences of individual prosecutor's offices can be used to draw a distinction between 'closed' countries and 'cooperative' ones.

The former include:

- Nigeria: the prosecutor's offices of Genoa and Turin have had negative experiences with this country (in a case of corruption at the Italian Embassy in Lagos), although recently there have been declarations of willingness to cooperate on identification of those responsible for migrant departures from Nigeria;
- China: several prosecutor's offices had not even bothered to work through political and diplomatic channels with China, because the effort was entirely disproportionate to the usefulness of the evidence collected. The prosecutor's office of Milan reported considerable problems in obtaining information on traffickers for the purpose of their identification;
- Gambia and Senegal: it is often impossible to determine the authenticity of documents (some passports are still compiled by hand) and replies from the authorities are vague (e.g. claims that files have been destroyed by fire).

Among the countries that have promptly responded to requests for cooperation are:

- Germany;
- United States;
- Japan: the prosecutor's office of Milan has received fruitful cooperation from Japan on the documentary reconstruction of migrant smuggling routes;
- the European countries in general: in the specific case of investigations by the Perugia prosecutor's office, the Romanian, Ukrainian, Russian and Polish authorities have collaborated fully with the ROS personnel, which has in some cases been allowed to operate directly on foreign territory in order to identify key phone numbers, check and screen agencies suspected of involvement, conduct searches, and arrest suspects. Finally, thanks to the Hungarian and Ukrainian authorities it has been possible to extradite members of criminal organisations;
- Slovenia, especially with the prosecutor's offices of Gorizia and Trieste, though formally and quantitatively the collaboration is still unsatisfactory. Important exchanges of information have been made with the Slovenian frontier authorities. However, due to the lack of mutual exchange arrangements between law enforcement bodies, no joint investigations have been conducted because of the difficulty of setting up 'joint teams'.

Finally, there are some countries with which the prosecutors interviewed have had experiences both positive or negative:

- Albania: the prosecutor's office of Genoa reports useful collaboration with the Albanian authorities, which in the most urgent cases has provided assistance even on the basis of statements and interceptions in Italian. By contrast, the prosecutor's office of Milan was critical of responses by the Albanian governmental authorities, because they were based solely on statements by suspects. To be stressed is the assistance provided by Albania in allowing Italian prosecutors to enter its territory to take statements from trafficking victims who had returned to the country. Finally, according to the prosecutor's office of Turin there has been progress in relationships between the Italian and Albanian judicial authorities;
- Turkey: according to the prosecutor's office of Crotona there are no instruments for collaboration with this country to identify the organisers of migrant smuggling, nor of accomplices along the route. The prosecutor's office of Trieste instead reported recent successful collaboration with Turkey on cases of Kurdish migrant smuggling;
- Austria and Germany: while conducting investigations into a particularly complex case of people trafficking (the so-called 'Sunflower Operation'), the prosecutor's office of Perugia encountered difficulties in obtaining cooperation from these two countries, especially at the beginning of investigations, when it was necessary to check hotels which interceptions had indicated were supplying false documents and logistical support. In these cases the German and Austrian authorities required specific details (for example, the names of the women who had stayed at the hotels and various forms of documentation) which could not be provided. However, at a more advanced phase of the investigations, in regard to preventive measures and search orders, the two countries fully collaborated in execution of the measures. With reference to Austria, the prosecutor's office of Tolmezzo also reported difficulties during obtaining full cooperation in an investigation of Austrian taxi drivers suspected of being *passeurs*.

Aside from the different levels of assistance provided by foreign authorities during criminal proceedings brought against traffickers, the prosecutor's offices interviewed reported a number of *difficulties* which discouraged the use of judicial cooperation. In particular, at the prosecutor's offices of Ascoli Piceno, Arezzo and Palermo cooperation was little used due to the following practical obstacles against it:

- the need for specific competences and for time to dispatch judicial documents abroad (certificates, translations, copies true to the original);
- problems of linguistic comprehension;
- different legal systems;
- shortage of personnel (prosecutor's offices are already overloaded with work in Italy, so that individual prosecutors, especially from small offices, do not have time to go abroad);
- difficult socio-economic and institutional conditions in the countries of immigrant origin which impeded comprehension of the criminal phenomenon by the local authorities;
- high rate of corruption among foreign public officials;
- prohibition on the extradition of Albanian citizens from Albania (forbidden by the Albanian Constitution). Since 2001 the Albanian authorities have addressed this difficulty by bringing proceedings against their co-nationals on the basis of evidence gathered in Italy. The same consideration applies to sentences executed in Albania. This change has been facilitated by the mediation of the AND;
- the main problems in the joint judicial cooperation with the Slovenian authorities concern non-execution of the penalty (when it has been ordered in Italy, but the sentenced person is resident in Slovenia); extradition (often not even requested because it is usually not granted); the risk of double jeopardy; jurisdictional problems related to conduct constituting crime (in Italy the crime is "action intended to facilitate illegal immigration", in Slovenia it is the "trespassing of borders").

Finally, among the factors that have facilitated cooperation are:

- economic pressure (subsidies to states that cooperate);
- political pressures (future entry in the European Union by the Eastern European countries);
- privileged relations (for example, working at the general prosecutor's office of Genoa was a prosecutor from Brooklyn responsible for cooperation with the United States).

13.3.2 In particular: letters rogatory

The general view on letters rogatory was that the procedures were slow and too formal. This circumstance, coupled with the short time limits imposed on investigations and preventive detention, discouraged the use of the instrument, which was resorted to only when the circumstances of the case permitted it and there was a minimum guarantee of obtaining a positive result. Brief examination of the main experiences with letters rogatory reported by the prosecutor's offices

interviewed may yield a more precise idea of the difficulties encountered in their use.

Brescia: three letters rogatory requests had been made in the last five years. The time taken to execute them was rather long, due to the administrative work required of the country receiving the request. Only in one single criminal proceeding had it been possible to obtain the cooperation of the Chinese Popular Republic.

Genoa: the Albanian criminal procedure code does not allow the preventive seizure of goods belonging to criminals until their illicit origin has been proved (in Italy the reverse proceeding applies). Moreover, the criminal clans that exploit prostitution and engage in other criminal activities are often the 'armed wings' of political parties which may seek to impede international collaboration.

Milan: in regard to cooperation with the Balkan countries, it was noted that it had become easier to act in those territories since the war, although rogatory procedures were still slow.

Turin: rogatories had been requested and obtained from Albania and Romania in the form of document exchanges and permission to question witnesses. Although there had been no extraditions, it had been possible to identify and arrest a number of suspects.

Ascoli Piceno: it was preferred to lure the criminal organisations into Italy and then arrest their members, rather than have the suspects arrested abroad and then apply for their extradition.

Arezzo: rogatories had been requested only to verify the validity of identity documents, with mixed results.

Gorizia: informal cooperation was preferred with Slovenia.

Palermo: rogatories were hardly ever requested, because the procedure was too complicated with respect to its usefulness, and translation of the documents was a serious problem.

Finally, to be stressed is the specific case of Turkey, which has established a good cooperative relationship on letters rogatory with the prosecutor's office of Trieste. By contrast, the prosecutor's office of Lecce reported, in relation to a number of ongoing investigations, that two rogatories had been requested but the assistance initially forthcoming in 2002 was no longer given.

13.3.3 International judicial and police cooperation

A) INTERPOL

Use is frequently made of the international police, in that its action is deemed useful for investigations. However, according to the prosecutors, response times to requests for assistance were still too long in respect to the immediate information necessary in cases of people trafficking and migrant smuggling. According to the

prosecutors interviewed, simplification of the agency's bureaucratic requirements would help.

B) EUROJUST

Opinions on EUROJUST differed. According to some prosecutors, EUROJUST enabled them to obtain more rapid answers compared to the complex and formal rogatory procedures, which, before the creation of Eurojust, were the only means with which to obtain the information required. On the other hand, they also stressed the existence of difficulties due mainly to the fact that Eurojust was a fairly new institution (at the time of the proceedings considered by this report the temporary unit was still operating). In particular, the time required to obtain cooperation was the same as that required for the investigation. However, Eurojust may now be proving very useful, given that it has become fully operative since the interviews were conducted.

Finally, an example is now provided one of the most significant experiences of collaboration between the law enforcement agencies and judicial authorities of different countries, the context being an investigation conducted in Perugia on the trafficking of women for exploitation.

The international cooperation was obtained during the so-called 'Sunflower Operation' on a criminal organisation active in both Schengen countries (Germany and Austria) and extra-Schengen ones (Russia, Ukraine, Romanian, and Poland). The cooperation was initially requested in order to investigate the involvement of foreign travel agencies in the issue of Austrian, German, Spanish and French tourism visas to the criminals concerned. It was necessary to check phone numbers, agencies and hotels suspected of supplying false documents and logistical support, and then possibly proceed with searches and arrests.

The *Carabinieri* belonging to the ROS (special operative unit) contacted EUROPOL, which contributed crucially to the success of the operation by accelerating the rogatory procedures. Besides the activity of EUROPOL, one of the main reasons for the success of the international cooperative effort, especially with Russia, was the work of the National Anti-Mafia Division.

The experience of the Perugia prosecutor's office can be used to highlight at least two recommendable best practices for international cooperation:

- the key role played by EUROPOL, which accelerated the rogatory procedures;
- the contribution of the National Anti-Mafia Division, which enabled cooperation by the Russian authorities to be obtained.

SUMMARY (DE IURE CONDENDO SUGGESTIONS)

INTERNATIONAL JUDICIAL COOPERATION

In general:

1. *Simplify rogatory procedures* (excessive formalities impede international cooperation) while guaranteeing the defendant's fundamental rights (right to a defence).

Cooperation at European level:

2. *Strengthen the role of EUROPOL/EUROJUST*. EUROJUST should become the main point of reference for investigations, which should be organized according to the country of provenance of immigrants.

3. *Increase European collaboration also by using the recently-introduced instrument of the European arrest warrant*.

4. *Create a European judicial space in order to obtain direct cooperation from foreign authorities*.

Cooperation between the police forces and prosecutors of the different countries:

5. *Mobilize the diplomatic corps to facilitate direct contact between foreign and Italian prosecutors and police forces*.

6. *Adopt and foster a culture of joint investigation by judicial police forces (mixed investigative teams)*.

7. *Encourage closer collaboration between the judicial police and INTERPOL*.

8. *Stimulate foreign police forces so that international cooperation is effective*.

9. *Make a specialized international police force available to prosecutor's offices*.

Information exchange:

10. *Facilitate the exchange of information and data by means of an international database flanking one or several expanded national databases (ADD)*.

Liaison prosecutors:

11. *Through the proper international and diplomatic channels, create one or more contact points (i.e. liaison prosecutors) in the countries affected by the criminal phenomenon to provide effective and timely 'judicial assistance'*. This model has proved very useful in the EU countries and should be exported.

Cooperation with the authorities in European and non European countries:

12. *Harmonize the substantial and procedural law of the countries involved*. On the one hand it is important that the same investigative and procedural instruments be used in different countries; on the other, more closely harmonised criminal law (i.e. legal definition of criminal conspiracy) would simplify international cooperation.

13. *Ratify the Palermo Convention and press for the conclusion (i.e. Italy-Turkey) or the improvement (i.e. Italy-Slovenia) of bilateral cooperation agreements*.

14. *Stipulate protocols of understanding with the countries involved, as regards both investigation and the trial, in order to facilitate not only the investigative phase but also that of the pre-trial gathering of evidence usable during the trial*.

15. *Disseminate knowledge of international conventions*.

13.4 RELATIONSHIPS WITH NON-GOVERNMENTAL ORGANISATIONS FOR APPLICATION OF THE PROVISIONS OF ARTICLE 18 OF THE CONSOLIDATED TEXT OF THE LAW ON IMMIGRATION³⁹⁶

Among the 'humanitarian provisions' set out in chapter III of the C.T. on Immigration (D.lgs 25 July 1998, no. 286), the 'stay permit for social protection' (article 18) is an instrument of considerable importance for the prosecutor's offices concerned with people trafficking for exploitation and migrant smuggling. The provision states that in particular circumstances (situations characterised by violence or severe exploitation of the victim and concrete danger to his/her personal safety), the foreign national may receive a special six-month stay permit (renewable for a further 12 months or more). The purpose of this permit is to remove the victim "from the violence and influence exercised by the criminal organisation and have him/her participate in a assistance and re-socialisation programme" (article 18, par. 1). This measure therefore fulfils two important functions in the context of people trafficking and smuggling:

- It facilitates denunciations and in general statements by victims, in that they feel more closely protected against their exploiters;
- It enables the 'stabilisation' on national territory of potential witnesses, addressing the problems related to securing evidence admissible at trial, as described above (see § 13.3).

The difference between the Italian regulations on the stay permit for social protection and similar instruments in Europe is its provision of a double – judicial and social – escape route for the victim. Application may be submitted to the authority competent for issue of the permit (*questore*) when the police have obtained reports or statements from victims during police operations and criminal proceedings (judicial path), or following intervention by the social services (social path).

Although the regulations do not define the stay permit for social protection as a 'reward' made for collaboration with the judicial authorities,³⁹⁷ in some cases, owing precisely to the existence of the social protection route for the victims of trafficking, application of article 18 C.T. Immigration has led to important results in relation to investigations and the taking of evidence, which will be examined in this section.

13.4.1 Frequency

Article 18 C.T. on Immigration was most frequently used at prosecutor's offices dealing principally with cases of people trafficking for the purpose of exploitation, rather than with mere smuggling. This was the consequence of the wording of the provision, which states that the stay permit is granted in cases of "violence or severe exploitation" of the victim.

³⁹⁶ See chapter 10 for discussion of article 18 C.T. Immigration.

³⁹⁷ In order to obtain a stay permit for social protection, collaboration with the judicial authorities within the context of a criminal proceeding is not required. This measure can be applied when there is violence, exploitation and danger, also when the social path has been activated by the local social services.

Accordingly, the prosecutor's offices of Trieste, Tolmezzo, Gorizia, Brindisi, and Crotona, where the entry and the mere transit of trafficked persons was most frequent, had never resorted to the instrument of the stay permit. At Brindisi, in particular, the procedure had been activated by officers of the judicial police only for crimes in some way related to trafficking in persons for the purpose of exploitation.

By contrast, it had been most frequently used at the prosecutor's offices of Perugia, Genoa, Turin, Milan and Ascoli Piceno, in whose areas cases of exploitation predominated, especially in regard to female prostitution.

The prosecutor's office of Lecce was an exception to the rule in that, although in its area the landing of migrants was more frequent than their exploitation, the stay permit for social protection was used whenever it could be assumed that the intention was to exploit the trafficked persons. From the quantitative point of view, in the first two years of application of the provision, i.e. from March 2000 to April 2002, 222 applications for stay permits for social protection were made in the province of Lecce (about 15% of the national figure of 1500).

At the remaining prosecutor's offices, more limited use was made of the stay permit provided by article 18 C.T. on Immigration for reasons other than the type of crimes investigated (trafficking and smuggling). At Brescia, for example, difficulties arose in convincing the victims of the traffickers to cooperate, because their fear of reprisals by the criminal groups could not be overcome even by offering the form of protection discussed here.

13.4.2 Usefulness

Opinions on the residence permit for social protection were generally positive, especially in judicial cases where the intimidation of witnesses was more likely. It was regarded as useful for both *investigative* purposes, because the protection encouraged the trafficking victims to report crimes and to testify, and for *trial* purposes, because the prosecutors could rely on the presence in court of the victim-witness, thereby overcoming the difficulties of admissible evidence (prohibition of *de relato* testimony by the judicial police and prosecutor).

As mentioned above, the existence of two different paths (social and judicial) had facilitated achievement of these two goals. In the experience of the prosecutor's offices of Lecce and Genoa, this had happened because very often the social path turned into judicial collaboration. The initial activation of the social path created a trust relationship between the victims and the NGOs that, with the passage of time, became trust in the Italian institutions, and also an incentive to contact the judicial authorities. At the prosecutor's office of Perugia, this incentive led to the disclosure of the names, telephone numbers and addresses of 'travel agencies' involved in people trafficking. One may therefore conclude that the double escape route provided by the law, besides representing an advanced form of protection of victims' right, is also an efficient instrument of judicial action.

Other prosecutor's offices (Turin, Genoa) emphasised the positive procedural side-effects. The 'stabilisation' of the victim on national territory achieved through work

with the NGOs and the protection provided by them, had on several enabled the prosecutor's offices to have cooperative witnesses available during trials.

13.4.3 Application: risks and difficulties

The risk most frequently reported in relation to the use of article 18 C.T, Immigration was its possible *exploitation* by illegal migrants to obtain benefits such as regularisation of their status and access to welfare benefits. At the prosecutor's office of Turin, this phenomenon had occurred especially in cases concerning witnesses from Africa, who often reported facts that had happened a long time previously, and with no current criminal relevance, merely in order to obtain benefits. The prosecutor's office of Ascoli Piceno also reported cases of exploitative use of the provision in order to obtain a valid stay permit.

However, there were some prosecutor's offices which did not report any cases of misuse, although they noted the possibility that the defence might *object to the testimony of the victims during the trial* on the grounds that the testimonies had been given in order to obtain benefits.

According to the prosecutors interviewed, both the risks highlighted (abuse and possible procedural failures) could be averted if attention was paid to two aspects:

- the seriousness of action plans and of the associations concerned (they must be legally recognised and offer guarantees);
- careful evaluation of the cases where the judicial path seems advisable (when the crime has been reported by the victims and it can be confirmed).

However, it was emphasised as regards the first of the above aspects that the law does not give the prosecutor's offices authorisation to verify the protection programmes set up by NGOs, only the power to propose withdrawal of a stay permit pursuant to article 18, par. 4. The facilities furnishing social support were alone responsible for their programmes.

Finally, the following further difficulties in application of article 18 were reported.

The prosecutor's office of Perugia pointed out that, although there had been no problems with the issue of stay permits for social protection, the requirements for it to be granted (six-month re-socialisation programme and then application to the Questura (Police Headquarters) did not meet the exigencies of women concerned, who felt threatened in the meantime. Moreover, some social programmes seemed excessively rigid and inappropriate to the needs of the victims.

The prosecutor's office of Genoa emphasised the failure of the provision to provide protection for victims' relatives in their country of origin. To remedy this shortcoming, in a case relating to Albanian organised crime, the relatives of the victims had been brought to Italy before the victims statements were made public.

From a more practical point of view, the prosecutor's office of Milan had encountered logistical problems, and specifically the impossibility of finding accommodation at communities for males belonging to certain ethnic groups (especially Chinese). The shortage of facilities for male illegal migrants was generally emphasised.

13.4.4 Relationships between prosecutor's offices and NGOs

The main factor enabling effective use to be made of article 18 was the good relationship that in almost always cases existed between the prosecutor's offices interviewed and the organisations (private or public) hosting illegal migrants.

In particular, at Lecce a useful exchange process had been put in place among reception centres, the *Questura* and the prosecutor's office. The trust placed in the associations led to cooperation by the trafficking victims, who, as said, often decided to denounce their exploiters when they had taken the social path. The prosecutor's office of Perugia considered relations with the NGOs to be "excellent" and thought that cooperation was extremely useful, especially during the initial reception of victims.

The professionalism of the NGOs was at the basis of a further function that they performed for the prosecutor's offices: screening applications for admission to the protection programme, so that the abuses could be reduced.

SUMMARY (PROPOSALS *DE IURE CONDENDO*)

RELATIONSHIPS WITH THE NGOS FOR APPLICATION OF THE PROVISIONS OF ARTICLE 18 C.T. IMMIGRATION

1. *Increase the efficiency of victim support facilities.*
2. *Protect victims' relatives in the country of origin in cases involving the most violent criminal organisations.*
3. *Create joint action programmes between public structures and private associations and foster collaboration with the most serious immigrant reception centres.*
4. *Issue stay permits for social protection on the basis of statements made to the prosecutor's office only if the collaboration is genuine and useful for the investigation, not when they are only intended to obtain privileged treatment.*
5. *Revise article 18 of the C.T. on Immigration so that it is more clearly applicable also to cases of the simple smuggling of migrants, and not only to those of trafficking in persons for exploitation.*
6. *Increase the funding for non-governmental organisations and voluntary associations so that they can improve their facilities.*
7. *Increase the functions and provisions of the centralized management structure provided for by article 18 of the C.T. on Immigration.*
8. *Give greater powers of intervention and control to the prosecutor's offices and establish a procedure similar to the state's witness system to guarantee the safety of victims.*
9. *Increase the receptive capacities of communities and the seriousness of their programmes in order to furnish reliable witnesses.*

14.

CONCLUSIONS

This research study on the activity of Italian prosecutor's offices in regard to people trafficking for exploitation and migrant smuggling of migrants has pursued the following objectives:

- map the processes, examining the types of crimes charged and their quantity, and analysing the characteristics and distribution of their perpetrators and victims (chapter 11);
- propose an estimate of the real number of the victims of trafficking and smuggling between June 1996 and June 2001 in Italy (chapter 11);
- understand, in quantitative terms and by surveying differences and similarities among the different areas of the country, the criminal activities examined and the individual characteristics of criminals and victims (chapter 12);
- describe the working methods of the prosecutor's offices, highlighting their problems and best practices, and evaluating their relationship with organisations providing social assistance to victims (chapter 13).

A detailed picture of the situation and of the endeavour to combat these criminal phenomena has thus emerged for the first time in Italy. This, it is hoped, will be an important contribution to knowledge on the subject: a contribution, however, that is not conceived as an end in itself, for as already stated in other parts of this report, the purpose of the research was "to know in order to act or to improve action".

The monitoring conducted – with the assistance of the prosecutors interviewed – made it possible to highlight feasible actions for crime prevention and victim assistance. This section collects together the proposals *de iure condendo* arising from the analysis conducted in the various chapters, organizing them in accordance with the four objectives of the research:

- a) improve the judicial response to trafficking and smuggling;
- b) improve international cooperation by police and judicial authorities;
- c) improve prevention of the crimes in question;
- d) improve programmes for the social protection of victims.

What can be done to **improve the judicial response**? Numerous proposals have been put forward, and it is now time for the legislators to define priorities and draw up a schedule for realising some of them; while it will be task of the judicial offices to implement those practices which do not require a change in the legislation. The feasible actions in this sector comprise:

For the investigation phase:

Territorial competence:

- Centralize investigations, bringing people trafficking in persons for exploitation and migrant smuggling within the competence of the ADD, at least when such crimes are organised;
- Improve the legal definition of the crimes of people trafficking for exploitation and migrant smuggling (crimes which are highly ramified and whose moment of actual commission is not certain);

Identification and databases:

- Create a well-structured nationwide database which stores all information relative to names, places, and routes;
- Create a database at each prosecutor's office on the basis of common models and protocols, in particular as regards relations with other persons, domiciles identified, contracts with public utilities (water, gas, etc.), known aliases, names and photographs of the speedboat smugglers (*scafisti*) and taxi drivers detained, data on vehicles seized and boatyards used, addresses and phone numbers found on detainees and victims, mobile phone numbers, as well as data on incoming and outgoing calls from those numbers;
- Establish, by express legal provision, an identity (even if only conventional, but not for this reason less certain and stable) for the foreigner during the judicial phase, which should be linked to photographic and physiometric data.

Investigative instruments:

- Reform the legislation on migrant smuggling so that it more closely resembles the consolidated text of the Law on Drugs (legislative decree 309/1990). The latter's provisions on investigative instruments (articles 97 and 98), extenuating circumstances for collaborators (article 73, paragraph 7), and penalties would enable closer control to be achieved;
- Recruit police officers of various ethnic origins so that they can tail suspects, infiltrate crime organisations and acquire information without arousing suspicion;
- Improve surveillance methods (for example, increase tailing by the judicial police force) and allocate greater human resources for the purpose.

Incidente probatorio (proposal by the Prosecutor's Office of Lecce):

- Supplement article 362 of the criminal procedure code with the following article 362-*bis* (Information and identification by a foreign national in an emergency) "In emergency cases that may occur after the rejection or expulsion of a foreign person who has illegally entered the country, should it be necessary to acquire information from that person or have him or her identify other persons or things, when it is likely that it will not be possible to trace the foreign person for his or her examination during the trial or the *incidente probatorio*, the information referred to in article 362 of the criminal procedure code shall be acquired by the public prosecutor during questioning in the presence of the defence of the parties. Likewise, the public prosecutor shall identify the persons or objects referred to in article 361 of the criminal procedure code. Article 360, section 1 and 2, and article 141-*bis* of the criminal procedure code are compatible and applicable";
- Add the following clause to article 400 of the criminal procedure code, after the first paragraph: "2. In emergency cases that may occur after the rejection or expulsion of a foreign person who has illegally entered the country, the Court, on request by the public prosecutor, shall set the day of the hearing for examination of the foreign person or for identification of persons or objects

within forty-eight hours following the request and its notification. The decision of the Court shall be communicated without delay to the public prosecutor and to the defence, in which case articles 396, 397 and 398 section 1, 2 and 3 shall not be applied”;

Other:

- Increase the computerisation of criminal proceedings from the pre-trial investigation onwards, enabling the transmission of judicial documents to the defendant via e-mail with electronic signature;
- Conduct financial investigations and studies on remittances abroad, in order to identify the account-holders and the homeland organisers of trafficking and smuggling;
- Create a network of interpreters by compiling a register (possibly nation-wide and managed by the Ministry of Justice or the Ministry of Internal Affairs) of those with proven reliability and language skills, who should not undertake similar activities in other trials, so that they may not be identified during hearings or by inclusion of their names in documents destined for the public domain;
- Coordinate investigations, by means of meetings among the prosecutor’s offices for the exchange of information, given that it is always useful to learn of activities carried out in other areas and to share experiences;
- Create specialized units of prosecutors and judicial police;
- Issue guidelines for the *incidente probatorio* with simplified terms and forms in specific relation to the questioning of illegal immigrants who are also victims;
- Create a unit within the judicial police specialized in the investigation of cases of migrant smuggling similar to those already in place for drugs, and thereby improve patrolling by the police force;
- Give more decision-making autonomy to the judicial police in their investigations conducted in coordination with the prosecutor, the purpose being to avoid the wasting of time;
- Facilitate the interception of foreign telephone calls (for foreign phone controls);
- Improve linkages among police forces, because the commission of crimes across various parts of the country requires joint action;
- Increase the duration of preventive detention in proceedings against criminal organisations involved in people trafficking and migrant smuggling;

For the trial phase:

Best practices to ensure witness availability:

- Take the maximum care to gather, from the investigative phase onwards, all possible information with which to verify and confirm statements made by key informants. The judicial police should be instructed to collect the largest possible amount of data with which to identify witnesses;
- Mount prosecutions based on various kinds of evidence, such as documents, interceptions, statements made by diverse persons, etc.;
- Make systematic use of the *incidente probatorio* whenever the testimony seems important;
- Apply article 18 C.T. Immigration when it is necessary to guarantee the presence of a particularly important witness and, when the witness cannot be found, to demonstrate to the judge that the unavailability of the witness could not have been foreseen;

- Cite interceptions and other evidence in order to persuade defendants to opt for 'alternative' procedures such as summary judgement or plea bargaining;

Notifications:

- Improve the notification system by introducing a provision that makes it compulsory for passports to state the place of actual residence;
- Computerize the criminal proceeding;
- Devise methods to enhance the adversarial aspect of the process. For instance, improvement should be made to the notification system, affirming the principle that the defendant has the *right* to know that a proceeding has been brought against him/her (through notification) but at the same time that s/he has the *obligation* to attend the proceeding (without it being necessary to serve further notices). Moreover, restrictions should be placed on the possibility to change defence counsel repeatedly (in order to avoid the issue of useless notifications), with the consequent introduction of a more rigorous system for requesting the annulment of summonses (the plea should be immediate);

Further recommendations:

- Simplify the terms and conditions for the reading out in court of statements, in order to disencumber trials;
- Create a legislative instrument that compels the witness to be available on request of the court, without having to resort to witness protection programmes or article 18 C.T. Immigration;
- Modify article 512-*bis* of the criminal procedure code in order to guarantee the hearing of documentary evidence gathered during pre-trial investigations under less strict conditions than those currently in force;
- Transfer competence for the crimes set forth in articles 600, 601 and 602 of the criminal code from the Court of Assize to the *Tribunale*. On the one hand, this would forestall the prejudice against victims, when they are women and prostitutes, sometimes still displayed by jurors; on the other hand, it would accelerate the proceeding;
- Improve the coordination of the laws on foreign nationals and on sexual exploitation. Many of the criminal provisions are currently contained in administrative legal instruments, which complicates the system and impedes the work of the court (problems relative to the apparent simultaneous applicability of different provisions). Covered by the criminal provisions should be the specific case of sexual exploitation coupled with introduction into the country of the illegal immigrant (by creating a new crime or by providing an aggravating circumstance for the basic crime);

Various measures have been suggested to **improve the efficiency of international cooperation by police and judicial authorities:**

In general:

- Simplify rogatory procedures (excessive formalities impede international cooperation) while guaranteeing the defendant's fundamental rights (right to a defence);

Cooperation at European level:

- Strengthen the role of EUROPOL/EUROJUST. In particular, EUROJUST should become the main point of reference for investigations, which should be organized according to the country of provenance of immigrants;

- Increase European collaboration also by using the recently-introduced instrument of the European arrest warrant;
- Create a European judicial space in order to obtain direct cooperation from foreign authorities;

Cooperation between the police forces and prosecutors of the different countries:

- Mobilize the diplomatic corps to facilitate direct contact between foreign and Italian prosecutors and police forces;
- Adopt and foster a culture of joint investigation by judicial police forces (mixed investigative teams);
- Encourage closer collaboration between the judicial police and INTERPOL;
- Stimulate foreign police forces so that international cooperation is effective;
- Make a specialized international police force available to prosecutor's offices.

Information exchange:

- Facilitate the exchange of information and data by means of an international database flanking one or more expanded national databases (ADD).

Liaison judges/prosecutors:

- Through the competent international and diplomatic authorities, create one or more contact points (so-called liaison judges/prosecutors) to provide effective and immediate 'judicial assistance' in the countries affected by the criminal phenomenon.

Cooperation with the authorities in European and non European countries:

- Harmonize the substantial and procedural law of the countries involved. On the one hand it is important that the same investigative and procedural instruments be used in different countries; on the other, more uniform criminal law (i.e. legal definition of criminal conspiracy) would simplify international cooperation;
- Ratify the Palermo Convention and press for the conclusion (i.e. Italy-Turkey) or the improvement (i.e. Italy-Slovenia) of bilateral cooperation agreements;
- Stipulate protocols of understanding with the countries involved as regards both investigation and trial, in order to facilitate not only the investigative phase but also the pre-trial gathering of admissible evidence;
- Disseminate knowledge of international conventions;

Strategies to **prevent trafficking and smuggling** must reduce opportunities for organised crime and protect potential victims. The following measures have been suggested:

- Achieve closer control of the territory and borders by deploying more personnel and means;
- Improve the planning of regular flows of migration and increase the maximum number of legal immigrants allowed into the country. The balanced planning of inflows implies that entry into the country should be allowed only to immigrants with concrete prospects of employment. However, the issuing of short-term stay permits for job search purposes has been suggested;
- Improve social and economic conditions in the victims' countries of origin by means of well-designed policies for economic support and international cooperation *in loco*. Closer bilateral cooperation should be developed, both for political purposes and to foster socio-economic development;

- Reach agreements with the countries of origin in order to regulate the inflow of migrants, which should match demand in the regular labour market. This solution was suggested by some prosecutors as the only truly feasible way to combat trafficking and smuggling;
- Use Italian embassies abroad to provide potential immigrants with adequate and detailed information on lawful forms of immigration;
- Computerise the relevant documentation and improve the reliability of personal data in the countries of origin, with the possible granting of financial subsidies and technical assistance to those countries;
- Review the procedures for reporting losses of documents in order to prevent abuses of administered systems committed with false documents;
- Careful selection of the frontier police force and immigration office staff, also providing specific training, applying strict criteria for personnel selection, and deploying the best agents in key positions. This measure would make law enforcement less vulnerable to infiltration by organised crime smugglers;
- Devise strategies to combat bribery in the countries of transit, origin and destination. The evidence has shown that corruption facilitates all the phases of the smuggling, with the consequent need for anticorruption policies focused on the diverse characteristics and needs of countries;
- Pay closer attention to the procedures for regularising the position of illegal immigrants. The prosecutor's office of Milan stressed that regularisation may raise levels of deviance associated with immigration (with an increase, for example, in crimes against the public administration committed during the periods when curative statutes are applied). Regularisation acts as an inducement for those who do not fulfil the criteria to take advantage of 'easy' occasions to acquire legal status; and it is an opportunity for criminals active in the business of illegal immigration.
- Improve the integration of migrants, in order to protect their rights and reduce their exclusion from society, thereby rendering criminal groups less able to abuse co-nationals, or reducing the likelihood that immigrants will be involved in criminal activities;
- Improve the controls on agencies involved in international money transfers, the frequent use of which by traffickers requires more attention to prevent their abuse;
- (with particular reference to the Turkish situation) International pressure on the Turkish political authorities to obtain closer internal and coastal control, and especially more correct management of the 'Kurdish issue';
- Acquire deeper knowledge of the organisational methods used for smuggling, in that this would yield a more focused and effective response.

Other specific measures have been proposed in regard to the trafficking in persons for the purpose of exploitation, in particular:

- Interventions to regulate prostitution. According to some prosecutors, the lack of a regulatory framework for the sex market in Italy, in contrast to other countries, aggravated the illegal and violent exploitation of prostitutes. In this respect, it was suggested that prostitution should be legalised by facilitating the introduction of so-called *case chiuse* or legal brothels so that closer control can be exerted on the phenomenon, from the point of view of both security and hygiene-health; or alternatively: control over prostitution through stricter administrative measures applied to street prostitution intended to divert it to venues that are easier to police;

- Provide social support programmes for victims which single out critical situations and prevent further exploitation. Suggested in particular has been the strengthening, in terms of both finance and means, of the protection measures already provided by article 18 of the C.T. Immigration Law;
- Stricter controls by the Italian labour market authorities. This entails verifying whether a work permit has been issued for a genuine job and not a false contract. This also applies to seasonal labour. In this way any episodes of exploitation could be detected;
- Better monitoring of property rentals. It has been noted, mainly by the prosecutor's offices most closely concerned with the problem of apartment prostitution, that the monitoring of property rentals is an effective deterrent against it. Most of the rental contracts signed by prostitution victims appear to be regularly registered.

In order to offer better assistance to victims and greater guarantees of their rights, the efficiency of **actions for the social protection of victims** should be improved. The following actions in particular have been recommended:

- Increase the efficiency of victim support structures;
- Protect the relatives of victims still in the country of origin, especially in cases which involve the most violent criminal organisations;
- Foster joint action between public structures and private associations, and promote collaboration with the most efficient facilities accommodating immigrants;
- Grant stay permits for social protection on the basis of the reports given to the prosecutor's office by the individual only if the collaboration is genuine and useful for the investigation, not when its sole purpose is to obtain privileged treatment;
- Revise article 18 of the consolidated text of the Law on Immigration so that it is more clearly applicable also to cases of simple migrant smuggling, not just to ones of people trafficking for exploitation;
- Increase the funding for non-governmental organisations and voluntary associations so that they can expand their facilities;
- Increase the functions and resources of the centralized management structure provided for by article 18 of the consolidated text of the Law on Immigration;
- Give prosecutor's offices greater powers of intervention and control, and introduce a procedure similar to that used for state's witnesses, to ensure the safety of victims;
- Increase the capacity of reception centres and the seriousness of their programmes.

A final consideration is in order. Law 288/2003 (*Measures against people trafficking*), which was enacted subsequently to the period when the interviews were conducted with the prosecutors, comprises many of the suggestions put forward in this report. It is to be hoped that, in the future, the competent authorities will take consideration of at least some of the other proposals made. This would give rise to even more effective legislation which more closely meets the needs of the judicial practitioners at the forefront of the fight against people trafficking and migrant smuggling.

To conclude, a monitoring process such as the one conducted for this research project is obviously useful. Indeed, the European Union has requested its Member States to undertake actions of this kind, and Italy has responded in a manner that may serve as a model for its European partners.

One could also consider the feasibility of establishing this judicial monitoring system on a permanent basis. In particular, an authority could be created to gather data on trafficking and smuggling, constantly study the phenomena, and maintain relations with similar authorities in other countries and with the institutional and private parties involved (including NGOs). Examples of *national rapporteurs* of this kind exist in other countries of the Union (see the case of The Netherlands³⁹⁸). This institution could be linked to a judicial monitoring programme like the one undertaken for this research project. The result would be useful quantitative and qualitative data, enabling the design of effective strategies of substantial and procedural criminal law for prevention and victim assistance, and creating synergies among the actors involved. Although trafficking and smuggling would not be eliminated, they would be restricted as far as is possible, while the freedom and the rights of individuals, whatever their nationality, would be guaranteed.

³⁹⁸ In this regard see Dutch National Rapporteur, *Trafficking in Human Beings. First Report of the Dutch National Rapporteur*, Bureau NRM, The Hague, 2002.

ANNEX A

SURVEY ON CASES OF PEOPLE TRAFFICKING FOR THE PURPOSE OF EXPLOITATION OF FOREIGNERS AND OF MIGRANT SMUGGLING

Survey on cases of people trafficking for the purpose of exploitation of foreigners
and of the phenomenon of migrant smuggling

(Please note that this 6–page form must be completed for each case¹)

Reference period: June 1996 – June 2001

Prosecutor's Office for the Court of : _____

During the reference period, has this Office dealt with crimes relating to **trafficking
in foreign persons for exploitation** (sexual, labour, slavery)?

YES NO

or with migrant smuggling²?

YES NO

If so, please give the following data:

¹ In order to facilitate the processing of the data, please complete the form electronically, using Microsoft WinWord

The parts to be complete are modular fields; to move from one field to another use the tab key.

To insert data in the relevant space, position the pointer on the field selected and type the text; to select fields of 'control box' type (e.g. Mod. 21), click on them with the mouse; dates must be written in gg/mm/aaaa format.

² For definitions see the provisions of the Protocols supplementing the United Nations Convention against Transnational Organised Crime, as quoted below:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident; control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Because currently the law does enable distinction between the two phenomena by indicating the title of the crime, due to the coverage of both crimes by article 12 paragraph 3 of the T.U. on Immigration, please clarify which of the two crimes was the subject of the proceeding.

Data related to the case:

Case number: _____

Mod. 21 _____

Mod. 44 _____

Date of registration of the Phase of the case:

- pre-trial investigation - sentence

Data related to the crime(s) for which proceedings were brought:

Title(s) of the crime:

- Article 3, law 20.2.1958, n. 75	<input type="checkbox"/>
- Abetment of illegal immigration (article 12, <i>d.lgs.</i> 26.7.98, n. 286) (<i>ex</i> article 10, law 6.3.98, n. 40)	<input type="checkbox"/>
- Criminal conspiracy (article 416 criminal code)	<input type="checkbox"/>
- Mafia-type association (article 416- <i>bis</i> criminal code)	<input type="checkbox"/>
- murder (article 575 criminal code)	<input type="checkbox"/>
- reduction to servitude (article 600 criminal code)	<input type="checkbox"/>
- trafficking and slave trading (article 601, c. 1, criminal code)	<input type="checkbox"/>
- trafficking in minors (article 601, c. 2, criminal code)	<input type="checkbox"/>
- abduction (article 605 criminal code)	<input type="checkbox"/>
- sexual assault (article 609- <i>bis</i> criminal code)	<input type="checkbox"/>
- kidnapping for ransom (article 630 criminal code)	<input type="checkbox"/>
- other crimes	<input type="checkbox"/>

Quantity and nationality of the persons investigated/prosecuted /sentenced:

Country	nr.	Sex	
		M	F
Albania		-	-

Bulgaria	nr.	-	-
China	nr.	-	-
Colombia	nr.	-	-
Croatia	nr.	-	-
Czech Republic	nr.	-	-
France	nr.	-	-
Germany	nr.	-	-
Hungary	nr.	-	-
India	nr.	-	-
Italia	nr.	-	-
Lithuania	nr.	-	-
Macedonia	nr.	-	-
Morocco	nr.	-	-
Moldavia	nr.	-	-
Nigeria	nr.	-	-
Pakistan	nr.	-	-
Philippines	nr.	-	-
Poland	nr.	-	-
Romania	nr.	-	-
Russia	nr.	-	-
Santo Domingo	nr.	-	-
Serbia	nr.	-	-
Slovakia	nr.	-	-
Slovenia	nr.	-	-
Sri Lanka	nr.	-	-
Turkey	nr.	-	-
Ukraine	nr.	-	-
United Kingdom	nr.	-	-
Yugoslavian Federation	nr.	-	-
Other	nr.	-	-

Quantity and nationality of the victims:

Country	nr.	Sex		of which minors	Sex		
		M	F		M	F	
Albania	nr.	-	-		nr.	-	-
Bosnia	nr.	-	-		nr.	-	-
Bulgaria	nr.	-	-		nr.	-	-
China	nr.	-	-		nr.	-	-
Colombia	nr.	-	-		nr.	-	-
Croatia	nr.	-	-		nr.	-	-
Czech Republic	nr.	-	-		nr.	-	-
France	nr.	-	-		nr.	-	-
Germany	nr.	-	-		nr.	-	-
Hungary	nr.	-	-		nr.	-	-
India	nr.	-	-		nr.	-	-
Lithuania	nr.	-	-		nr.	-	-
Macedonia	nr.	-	-		nr.	-	-
Morocco	nr.	-	-		nr.	-	-
Moldavia	nr.	-	-		nr.	-	-
Nigeria	nr.	-	-		nr.	-	-
Pakistan	nr.	-	-		nr.	-	-
Philippines	nr.	-	-		nr.	-	-
Poland	nr.	-	-		nr.	-	-
Romania	nr.	-	-		nr.	-	-
Russia	nr.	-	-		nr.	-	-
Santo Domingo	nr.	-	-		nr.	-	-
Serbia	nr.	-	-		nr.	-	-
Slovakia	nr.	-	-		nr.	-	-
Slovenia	nr.	-	-		nr.	-	-
Sri Lanka	nr.	-	-		nr.	-	-

Turkey	nr.	-	-	nr.	-	-
Ukraine	nr.	-	-	nr.	-	-
United Kingdom	nr.	-	-	nr.	-	-
Yugoslavian Fed..	nr.	-	-	nr.	-	-
Other	nr.	-	-	nr.	-	-

Notifications by the judicial police or other documents for the pre-trial investigations:

Office: _____ Date: _____ Number: _____

Document: _____

Preventive measures:

Date of request 1: _____

Number of persons for whom request 1 was made: _____

Date of order 1: _____

Number of persons for whom order 1 was issued: _____

Date of order 2: _____

Number of persons for whom request 2 was made: _____

Date of order 2: _____

Number of persons for whom order 2 was made: _____

Date of order 3: _____

Number of persons for whom request 3 was made: _____

Date of order 3: _____

Number of persons for whom order 3 was made: _____

Convictions (even if not definitive):

Has a conviction been obtained for this case?

YES

NO

If possible, please give details of the sentence:

Problems in the identification of foreign nationals:

- lack of identification documents

- lack of cooperation by foreign countries

If so, please state the country

ANNEX B

OUTLINE FOR INTERVIEWS WITH THE PROSECUTOR'S OFFICES MOST ACTIVE IN COMBATING PEOPLE TRAFFICKING FOR THE PURPOSE OF EXPLOITATION AND MIGRANT SMUGGLING

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 - 1.2 The smugglers*
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- 2 Information on people trafficking for the purpose of exploitation
 - 2.1 Trafficking for the purpose of exploitation (the phenomenon)*
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SECOND PART – JUDICIAL ACTIVITY

- 1 Investigative activity (pre-trial investigation phase)
- 2 Trial activity
- 3 Judicial cooperation between the Italian competent authorities and those in the immigrants' countries of origin
- 4 Relationships with the NGOs for the application of the provisions set forth in article 18 T.U. on Immigration

This outline will be administered by the Transcrime interviewers to one or more prosecutors at the prosecutor's offices chosen amongst those most active in combating people trafficking for exploitation and migrant smuggling.¹ At each prosecutor's office, the prosecutors to be interviewed will be selected on the advice of the head of the prosecutor's office from those with most experience in the subject of this research. Their role will be that of key informants able to provide useful insights into the activities over the last five years at the prosecutor's office to which they belong.

FIRST PART – THE PHENOMENON AND ITS PREVENTION

1 Information on migrant smuggling

1. Approximately how many and what, in the last five years at your Prosecutor's Office, have been the main cases of migrant smuggling on which you or other prosecutors in your office have worked and which you know about?

For each of the cases just mentioned, please answer the following questions on the characteristics of the phenomenon, its perpetrators, and its evolution in the last five years.

¹ The interviewer should take account of the following terminological definitions.

The term "trafficking in persons for the purpose of exploitation" ("trafficking in human beings"), in the context of this research, is as defined by article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". By the term "trafficking in persons for the purpose of sexual exploitation" it is referred to "the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and the exchange of control over him or her is punishable, where the purpose is to exploit him or her in prostitution or in pornographic performances or in production of pornographic material, and: (a) use is made of coercion, force or threats, including abduction, or (b) use is made of deceit or fraud, or (c) there is a misuse of authority, influence or pressure, or there is another form of abuse" (as defined by article 2 EU Commission Proposal for a Council Framework Decision on combating trafficking in human beings, document 2001/0024 (CNS)).

The term "smuggling of migrants" is, as defined by article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of a person into a State Party of which the person is not a national or a permanent resident".

By the term "ongoing legal proceedings" is meant those related to the trafficking in persons for the purpose of exploitation and/or the smuggling of migrants under investigation or brought to trial, or adjudicated with a conviction, during the last five years.

By the term "most active prosecutor office" is meant the 15–20 prosecutor's offices that have brought the largest number of proceedings.

By the term "best practices" is meant activity by the prosecutor's offices that seem to have had positive effects on suppressing the offences and/or protecting victims.

1.1 Smuggling of migrants (the phenomenon)

2. How does the smuggling of migrants occur? Could you describe in detail the operational methods for each phase (i.e. recruitment, transport, arrival at destination)?

In particular,

for the recruitment phase:

- How have the migrants been contacted (i.e. are there structures similar to “travel agencies” in the country of origin)? How are they selected (i.e. financial means, sex, age)?
- [...]

for the transport phase:

- What routes are used to smuggle migrants?
- What cities are involved?
- What geographical weak links are used and why?
- What transport methods are used?
- Do criminals use persons who facilitate the smuggling operation by providing food, accommodation, transport (i.e. hoteliers, taxi drivers, private individuals)?
- Are police officials being corrupted?
- Are forged documents used?
- [...]

for the phase of entry in the country of destination:

- Where is the entry point?
- What methods are used to enter Italian territory (illegal or otherwise)?
- Are forged documents or false permits used?
- Are police officials being corrupted?
- [...]

3. How long does the process of smuggling and each of its phases last?

To sum up all investigations. What are the trends of the activity of smuggling of migrants which, according to you, should be highlighted to give more precise understanding of the phenomenon?

1.2 The smugglers

4. Are the phenomena you mentioned above managed by criminal organizations?
5. Which criminal organisations, national or international, are involved in the various phases or the whole process of smuggling? Does one single criminal organization control the whole process of smuggling or are there connections between different criminal groups in managing the various phases?
6. What are the characteristics of these criminal groups (ethnic groups, flexible, hierarchical, etc.)?
7. How are roles allocated within the criminal group or among the criminal groups?
8. Are methods used by criminal groups to avoid patrolling and interceptions by the police forces, or to avoid the justice system? In other words, what strategies do these criminals use to reduce the risk of being traced, arrested, and convicted and of having their belongings confiscated?
9. What is the profit for the criminal groups involved?
10. Do these criminal groups manage other illegal activities besides the smuggling of migrants?

To sum up all investigations. What are the main characteristics or trends of the criminal groups involved in smuggling of migrants which, according to you, should be highlighted to provide more precise understanding of the phenomenon?

1.3 The smuggled (migrants)

11. What are the characteristic of the migrants involved, besides sex and age (origin (rural or urban), education level, type of connection with the smugglers)?
12. According to you, what are the objective and subjective factors that induce these migrants to resort to smugglers?

13. How much do the migrants have to pay to be smuggled? To whom do they pay the price of the illegal service and/or who are their creditors (members of a criminal organization, third parties, others)? Do they pay at destination? Do they pay at departure?
14. Is there an estimate, at your prosecutor's office, of how many people are smuggled into Italy or into a specific Italian region? How has this estimate been made?

To sum up from all investigations. Which are the main characteristics of the smugglers which, according to You, are worthy of being highlighted for a more precise understanding of the phenomenon?

1.4 Prevention of smuggling of migrants

15. Based on your experience, in order to prevent the smuggling of migrants, what measures would you suggest to reduce the opportunities that facilitate the illicit activities of organized crime, and to make the victims less vulnerable?

2 Information on trafficking in persons for exploitation

16. Approximately how many and which, in the last five years at your Prosecutor's Office, have been the main cases of trafficking in persons for exploitation on which you or other prosecutors in your office have worked and you know about?

For each of the cases just mentioned, please answer to the following questions on the characteristics of the phenomenon, the perpetrators, and its evolution in the last five years.

2.1 Trafficking for exploitation (the phenomenon)

17. How does the trafficking for exploitation occur? Could you describe in details the operational methods for each phase (i.e. recruiting, transport, arrival at destination)?

In particular,

for the recruiting phase of:

- How have the migrants been contacted (i.e. are there structures similar to “travel agencies” in the country of origin?)? How are they selected (i.e. financial means, sex, age)?
- [...]

for the transport phase:

- What routes are used to smuggle migrants?
- What cities are involved?
- What geographical weak links are used and why?
- What transport methods are used?
- Do criminals use persons who facilitate the smuggling operation by providing food, accommodation, transport means (i.e. hoteliers, taxi drivers, private individuals)?
- Are police officials being corrupted?
- Are forged documents used?
- [...]

for the phase of entry in the country of destination:

- Where is the entry point?
- What are the methods used to enter Italian territory (illegal or otherwise)?
- Are forged documents or false permits used?
- Are police officials being corrupted?
- [...]

For the exploitation phase:

- Which kind of exploitation do the victims suffer (prostitution, black work, begging, etc.)?
- How are they exploited?
- What are the exploitation methods?
- Are there contacts with legal entrepreneurs?
- [...]

18. How long does the process of smuggling and each of its phases last?

To sum up all investigations. What are the trends of the activity of trafficking for exploitation which, according to you, should be highlighted to provide more precise understanding of the phenomenon?

2.2 The perpetrators of trafficking for exploitation

19. Are the phenomena you mentioned above managed by criminal organizations?

20. Which criminal organisations, national or international, are involved in the various phases or the whole process of trafficking for exploitation? Does one single criminal organization control the whole process of trafficking for exploitation or are there connections between different criminal groups to manage the different phases?

21. What are the characteristics of these criminal groups (ethnic groups, flexible, hierarchical, etc.)?

22. How are roles allocated within the criminal group or among the criminal groups?

23. Are there methods used by criminal groups to avoid surveillance and interception by the police forces, or to avoid the justice system? In other words, what strategies do these criminals use to reduce the risk of being traced, arrested, and convicted and of having their belongings confiscated?

24. What is the profit for the criminal groups involved?

25. Do these criminal groups manage other illegal activities besides the trafficking for exploitation?

To sum up all investigations. What are the main characteristics or trends of the criminal groups involved in trafficking for exploitation which, according to you, should be highlighted to provide more precise understanding of the phenomenon?

2.3 The victims of trafficking for exploitation

26. What are the characteristic of the victims involved, besides sex and age (origin (rural or urban), education level, type of connection with the traffickers)?

27. According to you, what are the objective and subjective factors that induce these victims to resort to traffickers?
28. How much do the victims have to pay to be smuggled? To whom do they pay the price of the illegal service and/or who are their creditors (members of a criminal organization, third parties, others)? Do they pay at destination? Do they pay at departure?
29. Is there an estimate, at your prosecutor's office, of how many people are trafficked into Italy or into a specific Italian region? How has this estimate been made?

To sum up all investigations. What are the main characteristics of the victims of trafficking which, according to you, should be highlighted to provide more precise understanding of the phenomenon?

2.4 Prevention of trafficking in persons for exploitation

30. Based on Your experience, in order to prevent the trafficking for exploitation, what measures would you suggest to reduce the opportunities that facilitate the illicit activities of organized crime and to make the potential smuggled less vulnerable?

SECOND PART - JUDICIAL ACTIVITY

You are now asked to answer the following questions on the basis of the investigations which you know about into trafficking of persons for exploitation and/or smuggling of migrants carried out by your prosecutor's office in the last five years. The aim of these questions is to highlight the best practices used in the various phases of the judicial activity, i.e. those practical activities which appear to have a positive influence on suppressing people trafficking and migrant smuggling.

1 Investigation (of pre-trial investigation phase)

31. What investigation methods, among the 'typical' ones, have been used for investigations (i.e. telephone interceptions, detention, personal restriction

measures, tailing, infiltration, seizure, state's witnesses, reports from victims / illegal migrants, surveillance)?

- Which ones have been the most effective and why?
- Would you suggest their systematic use to other prosecutor offices and, if so, why?

32. Has any atypical and/or innovative investigation method been used (i.e. centralization of crime notifications in files specific to crimes related to the smuggling of human beings; creation of a database with information – names, routes, phone numbers – related to investigations into the smuggling of human beings; specific teams at the prosecutor's office devoted to investigations into the smuggling of human beings)? If so, which ones?

- How do they operate? Which have been most effective and why, according to you?
- According to you, should they be used by other prosecutor's offices and what are your thoughts on their practical applicability at other prosecutor's offices?

33. Have the instruments listed in the T.U. 309/90, articles 97 and 98, or similar investigative instruments (under-cover officers, delay or omission of detention or seizure orders) ever been used?

- If so, which have been the most effective, and how, according to you?
- If not, do you think they would be useful at your prosecutor's office, and why?

34. How is information acquired useful for the investigation and for the trial (in particular information from the investigated person, the potential victim, people involved in related trials and, in general, informed people)? How often is the *incidente probatorio* (article 392 criminal procedure code) used on these occasions?

35. What were the main difficulties encountered during investigations (in particular: identification, *incidente probatorio*, territorial competence, immediate collection of statements, detention and restrictive measures...)?

- How do you suggest these difficulties should be overcome?

36. What was the average duration of a pre-trial investigation?

To sum up. Regarding the investigation phase, which practice would you suggest for use at prosecutor's offices or, in a *de iure condendo* perspective, what reform of the law would you recommend for better control over the problem?

2 Procedural activity

37. What was the effect, also on investigations, of the recent provision in article 195 of the criminal procedure code (indirect testimony), which reintroduced the prohibition on judicial police officers testifying *de relato*?
38. How is the instrument of the reading out of documents due to impossible repetition (article 512 of the criminal procedure code) used in relation to statements gathered immediately after apprehension from illegal immigrants?
39. What are the difficulties in interpreting the norms on reading statements given by people domiciled abroad (article 512-*bis* of the criminal procedure code) in relation to those taken immediately after apprehension from illegal immigrants?
40. What other difficulties have arisen during trials?
 - How would you suggest these difficulties should be overcome?
41. What is the average duration of a procedural activity?
42. In the case of positive outcomes, what have been the main reasons, according to you?

To sum up. Regarding procedural activity, which practice would you suggest should be used at prosecutor's offices or, in a *de iure condendo* perspective, what reform of the norms would you recommend for better control over the problem?

3 Judicial cooperation between the Italian competent authorities and those of the countries of origin of migrants

43. Has cooperation with foreign authorities been necessary during trials? If so, what kind?
44. What kind of international rogatory procedures have been used?

45. What kind of international letters rogatory have been issued? How many have been obtained? What is the average time for the request to be accepted?
46. How often has cooperation been useful in a trial?
47. If, according to you, the cooperation has been particularly useful, what are the main reasons?
48. In the case of unsatisfactory cooperation what are the main reasons, according to you?
49. What suggestions would you make to improve international cooperation on these matters?

To sum up. Regarding the judicial cooperation, what practice would you suggest should be used at prosecutor's offices or, in a *de iure condendo* perspective, what reform of the norms would you recommend for better control over the problem?

4 Relationships with NGOs for application of the provisions set forth by article 18 of the T.U. on Immigration

50. How often has article 18 of the *Testo Unico* on Immigration, l. 286/98, which facilitates collaboration with investigations by the victims of smuggling been used?
51. In which part of the pre-trial investigation were victims able to join a protection programme (article 18) or put in contact with social workers?
52. Has the collaboration of the victims (*ex* article 18, l. 286/98) been useful in trials, according to you?
53. What programme did the smuggling victim(s) use?
54. How can the outcome of a protection programme be measured?

55. If it can be considered positive, what do you think is the reason?

56. How good do you think is the relationship between prosecutor's offices and NGOs in the application of the norm in article 18 of the *Testo Unico* on Immigration? How could it be improved? To what extent do the NGOs facilitate cooperation with investigations by the victims of smuggling?

To sum up. Which practice would you suggest should be used at prosecutor's offices or, in a *de iure condendo* perspective, what reform of the norms would you recommend to improve the relationship with NGOs in application of the norm in article 18 of the *Testo Unico* on Immigration?

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