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Comparison of immigration laws and remedies for victims of human  
trafficking in Poland and Italy

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## Abstract

For decades, Europe has been affected by sex and labour trafficking. Still, the international community has not implemented adequate and sufficient laws and policies that would decrease the number of victims and finally combat human trafficking. There are large areas of impunity where the justice system does not work correctly in relation to human trafficking, and where exploiters operate with a high degree of impunity, which increases their chances of successful trafficking. This research provides an analysis of immigration laws, remedies, and procedures for human trafficking victims adopted by Poland and Italy. Even though there is an enormous diversity in trafficking trends across Europe based on historical, cultural, and geographical differences of each country, the immigrant victims of human trafficking in each region struggle with similar rights violations. Long-lasting negative attitudes towards migrants and the incompetence of law enforcement officials in conducting investigations contribute to impunity and violations of migrants' human rights.

**Table of Contents**

**INTRODUCTION.....4**

    HUMAN TRAFFICKING IN EUROPE..... 4

    THE CASES OF POLAND AND ITALY..... 7

**METHODOLOGY..... 12**

**CHAPTER 1: PROFILES OF VICTIMS AND TRAFFICKERS IN POLAND AND ITALY ..... 14**

    POLAND - EXPLOITERS’ PROFILE AND TACTICS ..... 14

    POLAND - THE VICTIMS’ PROFILE: ..... 17

    ITALY- EXPLOITERS’ PROFILE AND TACTICS: ..... 19

    ITALY - THE VICTIMS’ PROFILE:..... 21

**CHAPTER 2: COMPARISON OF THE LAWS AND REMEDIES FOR HUMAN TRAFFICKING VICTIMS IN POLAND AND ITALY. .... 23**

    THE INTERNATIONAL LAW ..... 23

    POLISH LAW: ..... 28

    ITALIAN LAW ..... 31

**IDENTIFICATION OF TRAFFICKED VICTIMS ..... 36**

    IDENTIFICATION IN POLAND ..... 37

    IDENTIFICATION IN ITALY ..... 41

**REFLECTION AND POST REFLECTION PERIOD ..... 45**

    REFLECTION AND POST-REFLECTION PERIOD IN POLAND..... 48

    REFLECTION AND POST-REFLECTION PERIOD IN ITALY ..... 53

**CONCLUSION ..... 60**

**BIBLIOGRAPHY:..... 64**

# Introduction

## **Human trafficking in Europe**

The world is waking up to modern slavery. As Malarek explained, the horrendous acts committed against victims of human trafficking are “the senseless disregard for human dignity”.<sup>1</sup> The underground economy is flourishing and thriving while authorities are unable to address the problem with adequate policies and laws; instead too often they passively allow criminal organizations to exploit young women and men across and within their borders. Half of the victims of human trafficking are women and 23% young girls.<sup>2</sup> The Office of the High Commissioner to Human Rights (OHCHR) estimated that 25 million people were subjected to human trafficking in 2016, among which 45% were exposed to sexual exploitation and 38% to forced labor.<sup>3</sup> There are also regional differences: in West Africa large numbers of identified victims are children; in Asia the numbers are equally spread between men and women; in Central America and Caribbean girls are more frequently targeted, while in some European countries there was a greater detection of men than women in 2016<sup>4</sup>.

There has been an increase in victim identification in Europe. There were 30,146 victims registered in 28 European countries over a recent three years period<sup>5</sup>. Nearly half of them were the residents of European countries and the remaining 56% were non-EU citizens. Today the awareness of the issue and data collection have improved significantly, as in comparison to 2016, when only 26 countries had specialized institutions addressing human trafficking. By

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<sup>1</sup> Victor, Malarek. *The Natashas: Inside the New Global Sex Trade*. (New York: distributed by Time Warner Book Group, 2004), 6.

<sup>2</sup> UNODC, “Annual Report, Covering Activities during 2018”.  
[https://www.unodc.org/documents/AnnualReport/Annual-Report\\_2018.pdf](https://www.unodc.org/documents/AnnualReport/Annual-Report_2018.pdf), 7

<sup>3</sup> OHCHR | Human Rights and Trafficking in Persons.”:  
<https://www.ohchr.org/EN/Issues/Trafficking/TiP/Pages/Index.aspx>.

<sup>4</sup> UNODC, “Annual Report”, 2018, 51.

<sup>5</sup> Eurostat. “Statistical working papers on Trafficking in Human Beings”, 2015, 13.

2018 up to 65 countries had developed such units<sup>6</sup>. Even though the numbers of identified victims have improved, they do not often reflect the real scope of the problem. The increase of identified cases may indicate either improved capacities of identification or an increase of trafficking in general.<sup>7</sup> Sexual exploitation is the most detected form of human trafficking. The second largest detected form of human trafficking is forced labor<sup>8</sup>. Even though the statistics indicates that sexual exploitation remains the most widespread form of trafficking, it can be argued that lower numbers of victims of forced labor are detected due to the fact that identification of labor trafficking is more difficult<sup>9</sup>.

While human trafficking is most commonly associated with the global South and East, it is also highly prevalent in Europe with both cross-border and domestic manifestations. Even though 80% of detected victims of human trafficking were women, in some parts of the Europe men constitute a more significant percentage of victims, such as in the United Kingdom, which can be strongly correlated to its economy and high flow of migrant workers<sup>10</sup>. In Europe, 66% of identified trafficking victims are victims of sexual exploitation, 27% of labor trafficking, and 7% of other forms of trafficking<sup>11</sup>. Even though women are still more vulnerable to trafficking than men, the statistics indicate that 71% of victims of labor trafficking are men<sup>12</sup>.

There is an enormous diversity among people trafficked from all over the world into Europe. The highest flow of victims of trafficking to Western Europe comes from Southern-Eastern and Central Europe<sup>13</sup>. Significant numbers of victims in Europe are from Lithuania, Romania, and

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<sup>6</sup> UNODC, “Annual Report”, 2018, 51.

<sup>7</sup> Ibid: 8.

<sup>8</sup> Ibid: 10.

<sup>9</sup> Ibid: 10.

<sup>10</sup> UNODC, “Annual Report”, 2018, 51. and Barbara, Namysłowska-Gabrysiak, *Handel ludźmi w celu wykorzystywania seksualnego: Zagadnienia karnoprawne i kryminologiczne.* (Warsaw: C.H.Beck, 2018), xi.

<sup>11</sup> UNODC, “Annual Report”, 2018, 51.

<sup>12</sup> Barbara, Namysłowska-Gabrysiak, *Handel ludźmi w celu wykorzystywania seksualnego*, xii.

<sup>13</sup> UNODC, “Annual Report”, 2018, 53.

Latvia<sup>14</sup>. More than 16% of victims are coming from West Africa, and 10% of victims are coming from South–East Asia, the Philippines, Thailand, China, and Vietnam<sup>15</sup>. Less than 5% come from Bangladesh, India, Pakistan and Sri Lanka<sup>16</sup>.

The trends of human trafficking in Europe differ in regard to the region. In 2015 the first data on human trafficking produced by Eurostat revealed that from 2010 to 2012, in 28 countries in Europe, 30,146 victims were subjected to sex and/or labor trafficking<sup>17</sup>. Regardless of this vast numbers of victims, according to Eurostat’s statistics there were only 8,805 prosecutions for trafficking between 2011 and 2012 and only 3,855 convictions were reported<sup>18</sup>. Clearly the low number of convictions does not mean that trafficking is not happening in the European region. There are still enormous areas of impunity where the justice system does not work correctly in relation to human trafficking, and where exploiters operate with a high degree of impunity, which increases their chances of successful trafficking<sup>19</sup>. The data suggests that most traffickers are male since more than twice as many men were prosecuted for human trafficking than women<sup>20</sup>. From the 310 cases of sex trafficking reported and resulted in convictions in eight countries, 76% involved male exploiters<sup>21</sup>. Interestingly, 59% of convicted traffickers in 2016 were immigrants, with most coming from Southern and Eastern Europe<sup>22</sup>. Even though the prosecutions and convictions have risen in Europe from 74% to 81% in recent years, the general trends are not promising, as human trafficking is the fastest-growing and the second largest

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<sup>14</sup> Ibid: 53.

<sup>15</sup> Ibid: 53.

<sup>16</sup> Ibid: 53.

<sup>17</sup> Barbara, Namysłowska-Gabrysiak, *Handel ludźmi w celu wykorzystywania seksualnego*, xi.

<sup>18</sup> Eurostat. “Statistical working papers on Trafficking in Human Beings”, 2015, 13.

<sup>19</sup> UNODC, “Annual Report”, 2018, 8.

<sup>20</sup> Ibid: 52

<sup>21</sup> Ibid: 52

<sup>22</sup> Ibid: 52

criminal industry in the world<sup>23</sup>. Because of the illegal and hidden nature of human trafficking, the data does not represent reliably the number of affected victims<sup>24</sup>

### **The Cases of Poland and Italy**

At the beginning of the 1990s, human trafficking became growing problem in Poland. With the free movement of people after the breakup of the Soviet Union (Perestroika), followed by Poland joining the European Union (EU) and the Schengen Zone criminal networks seized the opportunity to reap enormous profits by committing crimes on an international scale<sup>25</sup><sup>26</sup>. The elimination of passport control that followed Poland's entrance into the EU led to greatly increased border mobility and soon an increased flow of illegal migrants from non-EU countries, who desired to reach Western countries<sup>27</sup>. The free visa entry encouraged people from other post-Soviet-bloc countries, such as Romania and Bulgaria, to migrate for a short period of time without authorization, most commonly for the purpose of working in the informal sector of the economy<sup>28</sup>. Thus, with the low awareness of the negative outcomes of increased mobility by authorities and inadequate laws and policies, Polish criminal networks flourished and spread across the borders, cooperating with organized crime groups in Italy, Russia, and Germany<sup>29</sup>. At first the focus of these criminal enterprises was mainly on smuggling drugs and

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<sup>23</sup> Ibid: 52.

<sup>24</sup> Barbara, Namysłowska-Gabrysiak. *Handel ludźmi w celu wykorzystywania seksualnego*, xiI.

<sup>25</sup> Schengen Zone – was created in 1995 and it is an area of 26 European countries that opened their internal borders, for the free movement of people, in the agreement of strengthening police cooperation and common judicial system, as well as controlling external borders and fighting together with criminality.

<sup>26</sup> Monika, Szulecka. "The Rights to Be exploited". *Human Rights and Migration: Trafficking for Forced Labour*. Global Ethics Series. Houndmills, Basingstoke, (Hampshire ; New York: Palgrave Macmillan, 2012), 161.

<sup>27</sup> Monika, Szulecka. "The Rights to Be exploited", 161.

<sup>28</sup> Monika, Szulecka. "The Rights to Be exploited", 161, and Dariusz Stola. „Mechanizmy i Uwarunkowania Migracji Zarobkowych Do Polski” (August, 1997), 6.

<sup>29</sup> Marcin, Wiśniewski. "The Phenomenon of Trafficking in Human Beings: The Case of Poland". *Human Trafficking in Europe: Character, Causes and Consequences*. (New York: Palgrave Macmillan, 2010), 60

stolen goods; however, soon they began to focus on the immense profits to be made in the sex industry<sup>30</sup>.

Gradually Poland had started to become not only the country of trafficking victims' origin but also a transit country as well a country of destination for victims coming from countries of the East, such as the Lithuania, Belarus, Ukraine, Romania, Moldova, and Bulgaria<sup>31</sup>. The data provided on the actual number of human trafficking victims in Poland is very scarce. The European Institution for Crime Control and Prevention estimated that in Poland there were 15,000 people affected by human trafficking annually, whereas, the National Public Prosecutor's data shows that 3,170 victims were identified in Poland between 1995 and 2008<sup>32</sup>. The disparity in data could be caused by the inadequate identification of victims, as well as the low number of identified cases of forced labor. The ineffective system of monitoring trafficking for forced labor in Poland led to many unidentified cases. Governmental officials only recently have started to realize that many Polish people were being trafficked mainly in the United Kingdom, Germany, and France<sup>33</sup>.

Trafficking for forced labor in Poland, began to grow massively in recent years. For the last two decades the economy in Poland has flourished, as the standard of living improved and the agricultural industry began to grow because of EU donations. While these were positive developments for the Polish people, there was a highly negative unintended consequence: migrant workers started to be severely exploited in diners and markets. For a long period of time they were associated with informal economy rather than human trafficking, but slowly, with the increasing number of unregistered migrants, law enforcement officials began to

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<sup>30</sup> Ibid, 60.

<sup>31</sup> Ibid: 61.

<sup>32</sup> Ibid: 61.

<sup>33</sup> Ibid: 68.



acknowledge the emerging scope of the problem of human trafficking within Poland's borders<sup>34</sup>. Forced labor is even harder to identify than sex trafficking, as the exploitation takes place in factories, restaurants, and in farms, sites in which there are many legal workers. The nature of such places is not associated by the general public or the authorities with human trafficking unlike brothels and streets, where women are trafficked into prostitution. Moreover, forced labor often takes place in remote environments in the countryside, far away from any official control. The Polish authorities' insufficient identification of labor trafficking too often leads to the wrongful prosecutions of trafficked victims as illegal workers<sup>35</sup>.

Like Poland, Italy has a massive problem with human trafficking; however, in Italy it is much more prevalent than in other parts of Europe. Since the 1980s, sex trafficking in Italy has dramatically increased, carried out by numerous criminal groups<sup>36</sup>. The emergence of foreign organized crime groups in Italy, and growing specialization of Italian authorities in combating foreign organized crime, resulted in stronger penalties against human traffickers in that country<sup>37</sup>. Unlike Poland, which is in Central Europe and has a relatively small coast, Italy is a peninsula surrounded by water on three sides. Moreover, Italy is one of the closest Western European countries to the less economically developed Eastern European countries<sup>38</sup>. Because of its geography, Italy is much more vulnerable to international human trafficking criminal groups than Poland.

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<sup>34</sup> Monika, Szulecka. "The Rights to Be exploited", 162.

<sup>35</sup> Helga Konrad, "Trafficking in Human Beings: A Comparative Account of Legal Provisions in Belgium, Italy, the Netherlands, Sweden and the United States" in van der Anker and Doornik, eds., *Trafficking and Women's Rights*, 120.

<sup>36</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need". *Human Trafficking and Exploitation: Lessons from Europe*. (London ; New York: Routledge, Taylor & Francis Group, 2018), 221.

<sup>37</sup> Ibid: 221.

<sup>38</sup> Siddharth, Kara. *Sex Trafficking: Inside the Business of Modern Slavery*. (New York: Columbia University Press, c2009), 88.

Victims of sex and labor trafficking come to Italy from all parts of the world – Nigeria, Morocco, Albania, Moldova, Romania, Russia, Bulgaria, Ukraine, Belarus, China, Brazil, Egypt, India, Ecuador and many more<sup>39</sup>. The statistics reveal that Nigerians are the immigrant population most frequently trafficked to Italy<sup>40</sup>. Illegal immigration constitutes a more significant part of migration in Italy than in Poland<sup>41</sup>. In part that is because Italy has a much more sizable population of migrants than Poland does, and Italy has a much larger group of undocumented immigrants within its borders than Poland. Data reveals that in 2011 there were 4,027,627 foreigners in Italy, of which 53% were women, and 62% of all migrant populations could be found in northern parts of the country<sup>42</sup>. Reports show that there were 600,000 illegal migrants placed in Italian detention centers between 2000 and 2004<sup>43</sup>. Whereas in Poland, 266,218 legal migrants with valid documents were identified in 2011, and 20,000 were detained for illegal stay<sup>44</sup>. Such a dramatic difference in numbers is the result of migrants' preference of Italy over Poland due to its accessibility as well as the belief of many migrants that Italy is more economically developed than Poland. Over the past two years 170,000 people arrived in Italy, of whom half were trafficked.<sup>45</sup> Each year thousands of migrants from Eastern Europe come to Italy in hope of a better labor market<sup>46</sup>.

However, recent Italian economic realities, with stagnant labor market and increasing numbers of unemployed youth, have resulted in even higher rates of human trafficking<sup>47</sup>. The

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<sup>39</sup> Gabriel, Feyisetan. *Human Trafficking*. (Ibadan, Nigeria: University Press PLC, 2015), 114.

<sup>40</sup> Ibid: 88.

<sup>41</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need" , 224.

<sup>42</sup> Ibid: 223.

<sup>43</sup> Ibid: 224.

<sup>44</sup> Dominik, Rozkrut. "Migration Statistics in Poland." Informal DGs, (Luxembourg, February 8, 2018), 15. [http://www.instat.gov.al/media/3875/konf\\_migracioni\\_statstics-poloni.pdf](http://www.instat.gov.al/media/3875/konf_migracioni_statstics-poloni.pdf).

<sup>45</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need" ,224.

<sup>46</sup> Angelo, Scotto. "From Emigration to Asylum Destination, Italy Navigates Shifting Migration Tides." (migrationpolicy.org, August 22, 2017). <https://www.migrationpolicy.org/article/emigration-asylum-destination-italy-navigates-shifting-migration-tides>.

<sup>47</sup>Ibid.

consequences of Italy's economic crisis and increased unemployment have likely contributed to the higher involvement of migrants in criminal activities<sup>48</sup>. Increasingly, human trafficking has become a significant source of profit, together with drugs and arms smuggling<sup>49</sup>. The Italian trafficking phenomenon follows the worldwide trend where men are generally forced into labor, mostly in agriculture and construction companies, whereas women are subjected to sexual exploitation<sup>50</sup>. Moreover, immigrants working in the bigger cities as waitress or housekeepers are also susceptible to forced labor<sup>51</sup>. Italy is not only a country of destination but also a transit one through which many trafficking victims are transported to other European countries<sup>52</sup>.

This research compares and analyses human trafficking in Poland and Italy with a focus on the immigration laws, remedies, and procedures for human trafficking victims adopted by these two European countries with significant historical, cultural, and geographical differences. The comparison of their two legal systems will serve as a broader representation of Europe's response to the trafficking phenomenon. Italy and Poland, both influenced by the fall of Soviet Union, both members of the EU, both with a long historic and social relationship with Catholicism, have important factors of similarity. However, as discussed above Poland and Italy's geographical and economic factors strongly vary, making their anti-trafficking strategies significantly different. Firstly, this thesis focuses on the context of these two countries and their legal systems to explore the victims' journeys and contact with law enforcement agencies and social services, from identification, and referral to the services, to the post-reflection period phase. Through an in-depth analysis of every step in the victim's life after identification, this thesis aims to establish how policies and laws are, in fact, implemented in relation to victims

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<sup>48</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need", 223.

<sup>49</sup> Ibid: 224.

<sup>50</sup> Gabriel, Feyisetan. *Human Trafficking*. (Ibadan, Nigeria: University Press PLC, 2015), 114.

<sup>51</sup> Ibid: 115.

<sup>52</sup> Siddharth, Kara. *Sex Trafficking: Inside the Business of Modern Slavery*. 89.

of human trafficking in Europe. This thesis also argues that long-lasting negative attitudes towards migrants and the incompetence of law enforcement officials in conducting investigations contributes to impunity and violations of migrants' human rights. For the purpose of the thesis, "victim" is used as an equivalent of "survivor" of human trafficking.

## Methodology

There are two predominant trends across Europe in terms of immigration laws and remedies for victims of human trafficking. Some states accept visitors to their countries and provide them with sufficient assistance; others provide victims with short-term residence permits and extensive requirements to obtain them. In all countries victim usually needs to cooperate with local officials to help criminalize traffickers in order to obtain immigration protection and relief. Based on the data, one of the leading countries in providing the most successful social services is Italy. In stark contrast, due to limited funding, lack of awareness of the problem, and lack of political skills, many countries from Central Europe, such as Poland, do not provide adequate support for the victim, especially in relation to immigration assistance. Nevertheless, even the most successful practices in these two countries do not meet international standards.

The thesis addresses the following question: to what extent do the immigration laws and remedies in Poland and Italy protect the safety and human rights of human trafficking victims? The comparative analysis of Poland and Italy examines the two immigration legal systems. Through an in-depth analysis and comparison of these two European countries, this thesis reveals the problems in immigration law and policy when it comes to the protection of human trafficking victims. The primary purpose of this thesis is to identify the legal framework for immigration remedies for victims and provide an investigation into the extent to which these

laws protect them. The immigration remedies have received little scholarly attention, even though they are extremely significant for the victims' protection. Moreover, comparative research is rarely conducted between Western and Eastern European countries. While the business of human trafficking is flourishing in Europe, lack of identification of victims is silencing their voices and contributing to their suffering. This comparative analysis will hopefully provide fruitful results, which further will lead to policy recommendations for European countries.

The multi-site fieldwork for this thesis was conducted in Poland and Italy. The qualitative research was composed of 19 semi-structured interviews that were collected from social workers, governmental officials, and lawyers. Such a method of collecting data allowed for covering the main themes while at the same time giving flexibility to participants' responses uncovering significant detail. The non-participant observation was done in non-governmental organizations' (NGOs) offices. Even though extensive data was gathered; there are still limitations that may be overcome in further research. Just a few months of fieldwork was not sufficient to gather all of the relevant data, mostly due to the limited sample size. A full year of research would have probably overcome the limitations with a variety of data. The interviews concentrated solely on officials and NGOs were meaningful; however, to obtain a full picture of the problem, victims' voices should be incorporated into the research. Due to the sensitive topic and trauma-related issues, interviewing victims of trafficking was ethically inadvisable.

Moreover, language issues were problematic when interviewing in Italy, as participants had problems expressing their thoughts in English, and there were insufficient resources for interpretation from Italian to English. Furthermore, extended non-participant observation would be fruitful to the research, as the dynamics within the NGOs' offices as well as between

social services staff and victims, could potentially provide highly relevant information about the identification procedures as well as attitudes and approaches of social service workers towards victims. However, the most significant limitation, which appears in all human trafficking research is an analysis of the data. The specific characteristics of human trafficking – the underground nature of the criminal enterprise, the rare identification of the victims, and the lack of full testimonies – impedes access to reliable data.

## Chapter 1: Profiles of victims and traffickers in Poland and Italy

### **Poland - Exploiters' profile and tactics**

Polish law enforcement officials between 2001 and 2008 prosecuted 502 traffickers<sup>53</sup>. Men constituted 80% of all of these alleged criminals<sup>54</sup>. Collected data was similar to the statistics gathered by Eurostat, demonstrating that in 2010, there were 70% male exploiters; in 2011 72%; and in 2012 73%<sup>55</sup>. The criminal records indicate that in regards to sex trafficking, the exploiter is often male, and the victim female<sup>56</sup>. Moreover, female exploiters were often part of organized networks working as recruiters, rarely operating on their own<sup>57</sup>. Such characteristic of their criminal activity was possibly influenced by the assumption that women can easier develop the close contact with female victims. The recruiter is developing trust and later persuades the victim to, for instance, leave the country and work abroad<sup>58</sup>. Research indicates

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<sup>53</sup> Marcin, Wiśniewski. "The Phenomenon of Trafficking in Human Beings", 73.

<sup>54</sup> Barbara Namysłowska, handel ludźmi w celu wykorzystywania seksualnego, 338.

<sup>55</sup> Eurostat. „Global Report on Trafficking in Persons 2018”, 160.

<sup>56</sup> Barbara, Namysłowska-Gabrysiak, Handel ludźmi w celu wykorzystywania seksualnego, 338.

<sup>57</sup> Ibid: 339.

<sup>58</sup> Ibid: 339.

that of women involved in criminal trafficking organizations were at one time victims themselves<sup>59</sup>. The average age of the exploiter was between 20 and 40 years old<sup>60</sup>.

The vast majority of traffickers, almost 81% were from Poland, and 19% were foreigners from Bulgaria, Ukraine, Germany, Turkey, Vietnam, Sweden, and Romania<sup>61</sup>. The high numbers of traffickers of Polish citizenship may be a factor in the low number of victims who are willing to provide testimonies, as many of them would be afraid of traffickers tracking them down in the country where they were trafficked and seek protection. Interestingly, from the statistics, it is evident that only 3% of the traffickers had higher education, whereas 40% had minimal schooling<sup>62</sup>. In a study of 87 sex traffickers, 78 committed the crime of human trafficking solely due to its financial benefits<sup>63</sup>. Even though traffickers usually do not work alone, only 15% were a part of organized criminal groups possibly because working in small groups bring more profits without a clear association with the organized crime group<sup>64</sup>. Commonly, traffickers recruit women from Eastern Europe, as well as from Poland, with the promise of work in legal business such as waitressing, bartending, babysitting, housekeeping, and so on, exploiting their vulnerable economic situation<sup>65</sup>. Later, they transport their victims to private clients, night clubs, or brothels in Poland and then coerce them into prostitution<sup>66</sup>. Traffickers use physical and sexual violence, threats, confiscation of documents, and curtailment of their victims' freedom<sup>67</sup>.

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<sup>59</sup> Ibid: 172.

<sup>60</sup> Ibid: 339.

<sup>61</sup> Marcin, Wiśniewski. "The Phenomenon of Trafficking in Human Beings: The Case of Poland", 73.

<sup>62</sup> Ibid, 342.

<sup>63</sup> Barbara Namysłowska, „handel ludzmi w celu wykorzystywania seksualnego”, 344.

<sup>64</sup> Ibid: 344.

<sup>65</sup> Marcin, Wiśniewski. "The Phenomenon of Trafficking in Human Beings", 73.

<sup>66</sup> Barbara Namysłowska, „handel ludzmi w celu wykorzystywania seksualnego”, 346.

<sup>67</sup> Marcin, Wiśniewski. "The Phenomenon of Trafficking in Human Beings", 73.

There are numerous cases in which exploiters from other countries work with Polish criminals to recruit young women and transport them to Poland<sup>68</sup>. Another method used by traffickers to recruit and trap victims is often to help victims with transportation to another country, accommodations and once there, assistance with obtaining documents<sup>69</sup>. The provision of such services leads to unpayable debt, which forces the victim enter into prostitution in order to pay off their debt to their exploiters. This method, called “debt bondage” gives traffickers enormous psychological power over the victim and causes him or her to have acute dependency on the exploiter<sup>70</sup>.

In cases of forced labor, traffickers often use labor agencies to advertise jobs in agriculture, construction, or the housekeeping business<sup>71</sup>. There are several cases of citizens of Ukraine who were promised work as housekeepers and instead were forced to beg on Polish streets never obtaining any payment<sup>72</sup>. At the moment victims arrive, exploiters confiscate their documents, lower or eliminate their wages, and dramatically increase their workload<sup>73</sup>. In general, traffickers use tactics of deception and threats not only to the victims but also their family members to trick economically vulnerable people into situations of labor trafficking.

The main trafficking routes in Poland are either crossing the Polish-German border or the Ukraine–Polish border. The bigger cities located near the border with Germany, such as Szczecin, Gdańsk, and Poznań attract criminal networks that smuggle young Polish girls into Germany, the Netherlands and Belgium<sup>74</sup>. On the other side of the country, cities such as

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<sup>68</sup> Barbara Namysłowska, „handel ludzmi w celu wykorzystywania seksualnego”, 347.

<sup>69</sup> Marcin, Wiśniewski. “The Phenomenon of Trafficking in Human Beings”, 73.

<sup>70</sup> Barbara Namysłowska, handel ludzmi w celu wykorzystywania seksualnego, 347.

<sup>71</sup> Zbigniew, Lasocik. “Handel Ludźmi do pracy Przymusowej w Polsce” (Warszawa, 2010), 29.

<sup>72</sup> Ibid: 29.

<sup>73</sup> Ibid: 29.

<sup>74</sup> Marcin, Wiśniewski. “The Phenomenon of Trafficking in Human Beings”, 73.



Białystok, Lublin, and Rzeszów became receiving places for trafficked victims<sup>75</sup>. The statistics reveal that forced labor mainly occurs in the Polish cities of Podlaskim, Lubelskiem, and Mazowieckiem voivodeships<sup>76</sup>. Forced labor in Poland occurs mostly in eastern and central agricultural businesses<sup>77</sup>. Such a pattern follows the common trend that people from the eastern part of Europe are rendered more vulnerable to trafficking due to economic reasons and are trafficked usually to Western Europe.

### **Poland - The victims' profile:**

Eurostat data reveals that Poland increased the number of identified trafficking victims from 173 in 2015 to 197 in 2016 to 370 in 2017, a fairly dramatic increase in a three-period<sup>78</sup>. 61% of human trafficking victims were of age 21 and younger<sup>79</sup>. In regards to forced labor, the data shows that men constituted the larger percentage of victims and were usually between 20 and 50 years of age<sup>80</sup>. The Ministry of the Interior estimated that 20% of the victims of sex and labor trafficking were foreigners<sup>81</sup>. Interestingly, the majority of identified victims were Polish citizens, which indicates that Poland has a significant problem with internal or domestic trafficking. The victims of sex and labor trafficking were trafficked into Poland mainly from the Ukraine as well as from Belarus, Turkey, Bulgaria, Romania, Sri Lanka, Mongolia, Kenya, Senegal, and Vietnam<sup>82</sup>.

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<sup>75</sup> Ibid: 68.

<sup>76</sup> Ibid: 69.

<sup>77</sup> Ibid: 69.

<sup>78</sup> Eurostat, Data Collection on Trafficking in Human Beings in The EU, 2018, 38.

<sup>79</sup> Barbara Namysłowska, „Handel Ludźmi w celu wykorzystywania seksualnego”, 353.

<sup>80</sup> Zbigniew, Lasocik. “Handel Ludźmi do pracy Przymusowej w Polsce”, 27.

<sup>81</sup> Marcin, Wiśniewski. “The Phenomenon of Trafficking in Human Beings”, 67.

<sup>82</sup> Marcin, Wiśniewski, The Phenomenon of Trafficking in Human Beings”, 67. And Barbara Namysłowska, „Handel ludźmi w celu wykorzystywania seksualnego”, 353.

Most commonly, victims of forced labor in Poland are from the Ukraine, China, Bangladesh, the Philippines, Vietnam, and Thailand<sup>83</sup>. Usually, victims have only graduated from primary or middle school and come from small villages and cities<sup>84</sup>. Lack of education is often one of the factors leading to a vulnerable financial situation, which incentivizes victims to travel abroad for the promise of a better salary. Moreover, many victims do not have knowledge of trafficking in human beings, which increases their susceptibility to their traffickers' wiles. Researcher Stana Buchowska reveals indicators of female vulnerability to human trafficking. Mainly, this scholar focuses on the economic factors of poverty and unemployment, especially the feminization of poverty; meaning that the fact that women have a reduced chance of obtaining a high-income job, and orientation of the economy towards men<sup>85</sup>. Furthermore, the fact that migrants are often exploited in cheap and unprotected labor increases their vulnerability to human trafficking<sup>86</sup>.

Many trafficking examples supports this theory. One of them is the case of a young Bulgarian woman who was living with her mother and ten siblings, very much struggling economically<sup>87</sup>. She was falsely informed that she would be working in the sewing industry but was beaten and forced to work in a night club in prostitution<sup>88</sup>. In a study of 177 trafficked women, 53 were recruited due to their economically vulnerable situation<sup>89</sup>. The rest of the women were not qualified by law enforcement as having a vulnerable situation and were treated as not eligible for immigration remedies. It can be caused by the fact that often law enforcement officials focus solely on the information about traffickers rather than the victims and fail to identify the

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<sup>83</sup> Zbigniew, Lasocik. "Handel Ludźmi do pracy Przymusowej w Polsce", 27.

<sup>84</sup> Marcin, Wiśniewski, *The Phenomenon of Trafficking in Human Beings*", 71.

<sup>85</sup> Stana, Buchowska. „Czynniki sprzyjające handlowi ludźmi”. *Handel ludźmi. Zapobieganie i ściganie*, pod (Warszawa 2006). 334.

<sup>86</sup> *Ibid*: 334.

<sup>87</sup> Barbara Namysłowska, „Handel ludźmi w celu wykorzystywania seksualnego”, 346.

<sup>88</sup> *Ibid*: 346.

<sup>89</sup> *Ibid*: 356.

victims' economically vulnerable situation<sup>90</sup>. Furthermore, vast majority of traffickers are unknown to their victims<sup>91</sup>. Regardless of whether traffickers have any close relationship with the victims, they create an extended network after trafficking a person to keep control over victims<sup>92</sup>. In the vast majority of trafficking cases, the dependency of a victim over a trafficker is a crucial factor in understanding the trafficking phenomenon.

### **Italy - Exploiters' profile and tactics:**

The geographical characteristics of Italy make it one of the leading destinations of human trafficking in Europe. Numerous victims are smuggled by land, through the Italian–Austrian side as the border is entirely open. The absence of checkpoints is an excellent opportunity for traffickers to smuggle victims across Italy. The Italian–French border is a frequent trafficking entry point as well. Young women, mainly from Nigeria, are trafficked through the Mediterranean Sea to France and later to Rome or Turin<sup>93</sup>. The other means of entry to Italy is through the Apulian Coast, where exploiters smuggle victims from the Middle East and South Asia often by boats from Greece, Albania, and Turkey<sup>94</sup>. The Sicilian Coast is preferred by smugglers of trafficked people from North Africa<sup>95</sup>.

There are numerous organized criminal groups working in the slave trading industry in Italy<sup>96</sup>. The social worker from the Association On the Road Onlus, Stefanie Massucci explains that traffickers' use different tactics when it comes to sex trafficking and forced labor<sup>97</sup>. In the case

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<sup>90</sup> Ibid: 357.

<sup>91</sup> Ibid: 358.

<sup>92</sup> Marcin, Wiśniewski, *The Phenomenon of Trafficking in Human Beings*, 75.

<sup>93</sup> Ibid: 88.

<sup>94</sup> Ibid: 88.

<sup>95</sup> Ibid: 88.

<sup>96</sup> Ibid: 92.

<sup>97</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

of forced labor, most of the exploiters are Italian citizens; however, criminals who traffic victims for sexual exploitation are usually immigrants from the same region as the victim<sup>98</sup>. Unlike in Poland, where trafficking is largely committed by Polish individual actors working in a small group.

Italian international crime groups come from all over the world; Albania, Romania, Russia, Nigeria, and China<sup>99</sup>. Each group is organized on three levels. First, group networks working in coordination with corrupt law enforcement officials and politicians easily traffic victims over the borders<sup>100</sup>. At the second level groups provide fake documents, transportation, and facilities<sup>101</sup>. At the third level, taxi drivers or other men transport victims to the final destination<sup>102</sup>. Each criminal group has its own territory and separate business it deals in. In contrast with Poland, where the trafficking business is not yet very developed and often the traffickers are not part of the organized criminal networks but work on their own, in Italy there are crime groups that control each step of the victim's journey. Most of the victims are transported to Southern Italy, where the profits reaped by the criminal groups are estimated at more than one hundred billion dollars<sup>103</sup>. Chinese criminal groups are mostly known for trafficking for forced labor in sweatshops<sup>104</sup>. Romanian criminal groups specialize in prostitution and pornography<sup>105</sup>. Nigerian criminal groups control the sex trafficking business principally in southern and northern Italy, using culturally specific methods such as threats of ritual murders and fear-inducing rituals called *ayelala*<sup>106</sup>.

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<sup>98</sup>Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 14, 2019.

<sup>99</sup> Siddharth, Kara. *Sex Trafficking: Inside the Business of Modern Slavery*, 92.

<sup>100</sup> Ibid: 92.

<sup>101</sup> Ibid: 92.

<sup>102</sup> Ibid: 92.

<sup>103</sup> Ibid: 93.

<sup>104</sup> Ibid: 93.

<sup>105</sup> Ibid: 93.

<sup>106</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need", 221.

### **Italy - The victims' profile:**

Statistics reveal that in Italy in 2014 there were 648 identified victims of trafficking, in 2015, 781 and in 2016, 879<sup>107</sup>. As discussed, the numbers are dramatically higher than in Poland, most likely due to Italy's geographical location, which is much easier to reach by land or sea. Usually, victims are transported to Italy from Romania, the Ukraine, Albania, the Philippines, India, Peru, and Sri Lanka<sup>108</sup>. Whereas, the highest exploited group in Poland are people from the Ukraine, in Italy most of the victims are Nigerians who are trafficked for sexual exploitation by land, sea or air<sup>109</sup>. To recruit, the profile of victims is strongly influenced by geographical location and the proximity of the better developed country.

Nigeria is one of the poorest countries in the world and young people there are highly incentivized to seek opportunities abroad; therefore, trafficking young people for exploitation to Europe is a fruitful business<sup>110</sup>. 80% of Nigerian women and girls coming to Italy are from the Edo region. The control that traffickers have over the victims from the Edo community is exceptionally acute and carried out by devious, culturally specific tactics<sup>111</sup>. Traffickers promise women a better life in Europe, however before being transported to Italy, they must first undergo an oath ceremony called 'juju'<sup>112</sup>. The oath-taking is part of the recruitment process and creates bondage between the traffickers and the victims until the victims will not pay their debt to the traffickers<sup>113</sup>. Such ritual starts with the victims providing personal clothing, pubic hair, nails, and menstrual blood to the trafficker<sup>114</sup>. The victims need to promise they will not send money back home and will be loyal to the protector by not reporting anything

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<sup>107</sup> Eurostat. „Global Report on Trafficking in Persons 2018”. 2018, 163.

<sup>108</sup> Global Slavery Index. “Italy”. 2018. <https://www.globalslaveryindex.org/2018/findings/country-studies/italy/>.

<sup>109</sup> Siddharth, Kara. *Sex Trafficking: Inside the Business of Modern Slavery*, 88.

<sup>110</sup> Ibid: 90.

<sup>111</sup> Ibid: 89.

<sup>112</sup> Rosanna, Paradiso. “Trafficking in human beings: the present, the past and the victims' need” ,221.

<sup>113</sup> Ibid: 221.

<sup>114</sup> Siddharth, Kara. *Sex Trafficking: Inside the Business of Modern Slavery*, 90.

to the police<sup>115</sup>. Breaking the agreement results in sickness, misfortune or death for the victim and her family brought by the ‘gods’<sup>116</sup>. This control mechanism used by traffickers not only develops in the victims the fear of lack of obedience towards their traffickers but also it makes them endure the suffering alone in silence<sup>117</sup>.

The tactics used by the Nigerian criminal groups are extremely powerful as they deploy rituals that are deeply imbedded in their victims’ culture. In comparison to other women exploited in prostitution, Nigerian sex trafficking victims do not need “protectors” to be prevented from running away; they are strongly committed to pay off their “debt”<sup>118</sup>. Often these victims are trafficked to Italy, they are sold at the auction to the Madams, poorly educated women, between 20–30 years old, who wanted to escape poverty by involving themselves in the trafficking business<sup>119</sup>. Many of these Madams were previously trafficked, aged out, and began to work in criminal groups. In exchange for food and accommodation, the victims need to perform sexual services to clients to pay off the debt to Madam, which is estimated from 30,000 to 70,000 euros<sup>120</sup>. This kind of trafficking takes place on highways and city streets (victims after have to pay rent to the patrons of the street they occupy as they solicit costumers), in massage studios, and also in private apartments, where trafficking is much harder to detect by the police<sup>121</sup>. Even when, the victims are identified, the oaths they swear to are so powerful that it is impossible for law enforcement to obtain any information about traffickers from the Nigerian victims<sup>122</sup>.

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<sup>115</sup> Rosanna, Paradiso. “Trafficking in human beings: the present, the past and the victims’ need”, 222.

<sup>116</sup> May, Ikeora, “The Role of African Traditional Religion and ‘Juju’ in Human Trafficking: Implications for Anti-Trafficking.” *Journal of International Women’s Studies* 17, no. 1 (January 1, 2016): 7.

<sup>117</sup> Ibid: 7.

<sup>118</sup> Ibid: 90.

<sup>119</sup> Rosanna, Paradiso. “Trafficking in human beings: the present, the past and the victims’ need” ,221.

<sup>120</sup> Ibid: 222.

<sup>121</sup> Siddharth, Kara. *Sex Trafficking: Inside the Business of Modern Slavery*, 95.

<sup>122</sup> Ibid: 91.

Forced labor predominately affects Eastern Europeans, who are trafficked to Italy to work on construction sites, in agriculture, in textile production, in sweatshops, in domestic work, or in begging on the streets<sup>123</sup>. The data from 2016 revealed that migrant workers endure abusive practices ranging from inadequate working conditions, violations of contracts, confiscation of documents, and isolation from family and others<sup>124</sup>. The victims of labor trafficking are exposed to fear, fraud, and coercion. The violations of human rights in forced labor are quite similar in Poland, indicating the uniform specificity and character of the forced labor market. The victims are exposed to long work shifts, no breaks, no medical treatment, and sometimes they are subjected to physical and sexual abuses<sup>125</sup>. Trafficked migrants' labor is being exploited mostly in the southern parts of Italy, which specializes in agriculture<sup>126</sup>. In the Prato region, 80% of factories hire large proportion of undocumented workers<sup>127</sup>. Because of the illegal nature of the business, employers can easily exploit workers who live in fear of losing their job and being deported.

## Chapter 2: Comparison of the laws and remedies for human trafficking victims in Poland and Italy

### **The International Law**

The Universal Declaration of Human Rights states that every human being has the right to “life, liberty, security of person, recognition everywhere as a person before the law, equal protection against any discrimination, and an effective remedy”<sup>128</sup>. Furthermore, the Declaration points out that “no one shall be held in slavery or servitude, be subjected to torture or to cruel, inhuman

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<sup>123</sup> Global Slavery Index. “Italy”. 2018. <https://www.globalslaveryindex.org/2018/findings/country-studies/italy/>.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Universal Declaration of Human Rights | United Nations, 1948. Article 2, 3, 6, 7, 8.

or degrading treatment or punishment, to arbitrary arrest, detention or exile”<sup>129</sup>. Such statements are critical while approaching the issue of human trafficking, which constitute a violation of each of the rights that human possess.

In 19<sup>th</sup> century regulations of prostitution strongly violated women’s rights for instance by forcing women in prostitution to invasive medical examination<sup>130</sup>. The international Abolitionist Federation fought against such regulation of prostitution, and all forms of the sexual exploitation, and trafficking in women<sup>131</sup>. Their efforts led to the creation of the first international document urging governments to combat sex trafficking, the International Agreement for the Suppression of the White Slave Traffic of 1904 promulgated by the League of Nations<sup>132</sup>. The campaign associated ‘white slavery’ with the institution of prostitution and was highly motivated by the widespread traffic of impoverished Eastern European Jewish girls and women into sexual slavery in the Americas<sup>133</sup>. Another valuable treaty drafted and implemented was the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, which also required governments to actively suppress sex trafficking<sup>134</sup>. A decade and half later the United Nations, drafted the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which set internal standards to prevent the legalization of prostitution and to punish traffickers and pimps<sup>135</sup>. Ratified by 82 countries, this treaty is still in effect. These agreements paved the way to the drafting and enactment of the ground-breaking 1979 International Convention on the

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<sup>129</sup> Universal Declaration of Human Rights | United Nations, Article 4, 5, 9.

<sup>130</sup> Interview with Dorchen A. Leidholdt, the Director of the Center for Battered Women’s Legal Services at the Sanctuary for Families in New York, November 19, 2019.

<sup>131</sup> Ibid.

<sup>132</sup> Jill, Laurie Goodman, Dorchen A, Leidholdt. “Lawyer’s Manual on Human Trafficking: Pursuing Justice for Victims”, 64.

<sup>133</sup> Ibid: 64.

<sup>134</sup> Interview with Dorchen A. Leidholdt, the Director of the Center for Battered Women’s Legal Services at the Sanctuary for Families in New York, November 19, 2019.

<sup>135</sup> Jill Laurie Goodman, “Lawyer’s Manual on Human Trafficking : Pursuing Justice for Victims”, 64.



Elimination of all Forms of Discrimination Against Women (CEDAW), which serves as an instrument to protect women's rights and prevent gender-based discrimination<sup>136</sup>. CEDAW's Article 6 requires ratifying governments to prevent and suppress all forms of trafficking in women and sexual exploitation as practices of gender discrimination<sup>137</sup>.

The most recent international instrument, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), was developed by the United Nations Commission on Drugs and Crime in 2000<sup>138</sup>. Solely focusing on human trafficking, The Protocol was a direct response by the United Nations and States Parties to address the growing international traffic in human being that followed the dissolution of Soviet Union. The primary aim of the Palermo Protocol is to encourage cooperation between countries and the implementation on laws that effectively combat of trafficking in persons on a transnational level<sup>139</sup>. The Protocol emphasizes that the most vulnerable for trafficking are women and children and urges State Parties to address the demand side of the trafficking issue<sup>140</sup>. To date, 133 states have signed and ratified the Protocol<sup>141</sup>. Poland signed the Palermo Protocol on the 12<sup>th</sup> of December 2000, and ratified it on the 12<sup>th</sup> of November 2001<sup>142</sup>, whereas, Italy signed Palermo protocol on the 12<sup>th</sup> of December 2000, but did not ratify it until 2<sup>nd</sup> of August 2006<sup>143</sup>. As evident, there is a significant time difference in the implementation of the Convention by the two countries.

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<sup>136</sup> Jill, Laurie ,Goodman, "Lawyer's Manual on Human Trafficking : Pursuing Justice for Victims", 64.

<sup>137</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (New York, December 18, 1979), Article 6: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

<sup>138</sup> Anne, Gallagher, and Joy Ngozi Ezeilo. "The UN Special Rapporteur on Trafficking: A Turbulent Decade in Review." *Human Rights Quarterly* 37, no. 4 (2015), 915.

<sup>139</sup> Jill, Laurie Goodman. *Lawyer's Manual on Human Trafficking*. 65.

<sup>140</sup> Anne, Gallagher, "The UN Special Rapporteur on Trafficking: A Turbulent Decade in Review.", 915.

<sup>141</sup> Jill, Laurie, Goodman. "Lawyer's Manual on Human Trafficking", 64.

<sup>142</sup> United Nations Treaty Collection: Against Transnational Organized Crime. (New York, November 15, 2000). [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en).

<sup>143</sup> Ibid.

One of the most important achievements of the Palermo Protocol was the establishment of a unifying definition of human trafficking. The Protocol defines human trafficking as “the recruitment, transportation, transfer, harboring 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. Under the Protocol, exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”<sup>144</sup>. While some drafters of the Protocol advocated for a definition that limited its application to situations of forced prostitution, the final version recognizes a wide array of means, as the language “abuse of power or of a position of vulnerability” makes clear positions<sup>145</sup>. Such a definition protects the right of people who were trafficked by exploiters who used more subtle tactics such as false promises, debt bondage, and even seduction for victims in vulnerable positions.<sup>146</sup> Moreover, the victims’ consent no longer provide a defense for accused traffickers who used any of the prohibited tactics, or means<sup>147</sup>. These provisions strongly increase the liability of offenders for the crimes they committed towards victims.

Another important international initiative in combating trafficking was the Convention on Action against Trafficking in Human Beings, developed by the Council of Europe in 2005. Providing extended standards for the victims’ protection, the Convention was ratified by 47

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<sup>144</sup> OHCHR, Protocol to Prevent, Suppress and Punish Trafficking in Persons. (November 15, 2000). <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

<sup>145</sup> OHCHR, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 3.

<sup>146</sup> Interview with Dorchen A. Leidholdt, the Director of the Center for Battered Women’s Legal Services at the Sanctuary for Families in New York, November 19, 2019.

<sup>147</sup> Ibid.

States<sup>148</sup>. Poland signed the Convention on the 16<sup>th</sup> of May 2005 and ratified it on the 17<sup>th</sup> of October 2008<sup>149</sup>. By contrast, Italy signed it on the 8<sup>th</sup> of June 2005 and ratified it only on the 29<sup>th</sup> of October 2010<sup>150</sup>. The Council of Europe contributed to the reformulation of laws and policies in European countries. Even though in each country, the phenomenon of trafficking differs significantly, there are some similarities between European countries that distinguish them from other parts of the world.

The Convention provides means to identify and protect trafficking victims, to provide victims with the right to recovery, legal assistance, temporary residence permit, and reflection period of at least 30 days<sup>151</sup>. In addition, it provides that governments should not penalize victims for unlawful activities that he/she was coerced into as a result of the trafficking<sup>152</sup>. The definition section of the Council of Europe Convention mirrors that of the Palermo Protocol<sup>153</sup>. The aim of these both treaties was to provide a harmonized definition of human trafficking, that could easily be implemented on the national basis<sup>154</sup>. Regardless of efforts taken by the European states, human trafficking is still a growing phenomenon. Trafficked victims face enormous challenges in obtaining protection measures from the states.

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<sup>148</sup> European Commission. "Council of Europe Convention on Action against Trafficking in Human Beings." Together Against Trafficking in Human Beings - European Commission, (June 15, 2012). [https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-council-europe/council-europe-convention-action\\_en](https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-council-europe/council-europe-convention-action_en).

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> OHCHR, Human Rights and Trafficking in Persons: <https://www.ohchr.org/EN/Issues/Trafficking/TiP/Pages/Index.aspx>. 10-17.

<sup>152</sup> Ibid: 18.

<sup>153</sup> Council of Europe, "Council of Europe Convention on Action against Trafficking in Human Beings". Definition: "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs".

<sup>154</sup> Barbara, Namysłowska - Gabrysiak. „Handel ludźmi w celu wykorzystywania seksualnego”, 149.

### **Polish Law:**

Polish law prohibits all forms of human trafficking, as specified in its Penal Code. Article 115(22) of the Polish Penal Code introduced in 2010 defines trafficking as “recruiting, transporting, delivering, handing over, keeping or accepting a person with the use of: violence or unlawful threat, abduction, deception, misleading or taking advantage of a misconception or inability to properly comprehend the action taken, abusing a relationship of dependence, exploiting a critical situation, or state of helplessness, granting or accepting material or personal benefit or its promise to a person taking care of or supervising another person – for the purpose of exploiting such a person, even with his/her consent, especially for prostitution, pornography or other forms of sexual abuse, for work or services of a forced nature, for begging, for slavery and for other forms of abuse which is degrading for a human being or in order to obtain cells, tissues or organs in violation of the provisions of the Act. If the behaviour of a perpetrator involves a minor, it constitutes trafficking in human beings, irrespective of whether the methods or means listed in paragraphs 1 to 6 were used or not.”<sup>155</sup>. While its language is not identical, the detailed and comprehensive definition of trafficking in the Polish Penal Code is very similar to that of the Palermo Protocol. In some respects – the Polish Penal Code definition specifically addressed pornography and begging, for example – it is both more specific and more inclusive.

Another important article in the Polish Penal Code is the Article 189(a), providing the penalty of imprisonment from three months to five years for the offence of human trafficking for a week or less<sup>156</sup>. If the deprivation of liberty lasts longer than seven days then the perpetrator should be imprisoned from minimum of one year to ten years<sup>157</sup>. If the offence included special

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<sup>155</sup> Ibid: 149.

<sup>156</sup> Ministry of Foreign Affairs: Report for 2018, 11.

<sup>157</sup> Ibid: 11.

torment then the penalty should exceed three years<sup>158</sup>. Furthermore, Article 203 of the Penal Code states that whoever uses violence, threats, deception or relationship of a dependency or a critical situation to induce another person to engage in prostitution should be imprisoned from one year up to ten years<sup>159</sup>. Similarly, Article 204 applies to anyone who derives profits from a person engaged in prostitution is penalized up to three years in prison<sup>160</sup>. Article 191(a) refers to forced sexual activity and dissemination of the image of nudity of another person, with the penalty from three months up to five years of imprisonment<sup>161</sup>. In the Act of 15 June 2012 in Article 10 it is stated that the person who employs foreigners illegally and exploits them is subjected to three years of imprisonment<sup>162</sup>. Even though, the laws seem to be comprehensive, including all the international requirements, the penalty for the committed crimes towards victims is relatively mild. The sentence of three years may not be commensurate with the severity of a crime involving.

Addressing the special situation of immigrants, Article 170 of the Act of 12 December 2013 states that the foreigner, presumed to be a victim of human trafficking within the meaning of Article 115 of criminal code, needs to obtain a certificate confirming this presumption<sup>163</sup>. Such procedure allows the foreigner to stay in the country for three months and longer in order to apply for a temporary residence permit, as stated in the Article 176<sup>164</sup>. The foreigner is eligible for the permanent residence permit if she or he starts cooperation with the authority competent

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<sup>158</sup> United Nations Treaty Collection: Against Transnational Organized Crime. (New York, November 15, 2000). [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en).

<sup>159</sup> Ministry of Foreign Affairs: Report for 2018, 11.

<sup>160</sup> Barbara, Namysłowska - Gabrysiak. „Handel ludźmi w celu wykorzystywania seksualnego”, 150.

<sup>161</sup> Ministry of Foreign Affairs: Report for 2018, 11.

<sup>162</sup> Ministry of Foreign Affairs: Report for 2018, 9.

<sup>163</sup> Ministry of Foreign Affairs: Report for 2018, 17, and Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

<sup>164</sup> Ministry of Foreign Affairs: Report for 2018, 17, and Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

to investigate the trafficking case, such as border guards, police enforcement or prosecutors<sup>165</sup>. In addition, the victim is requested to break off contacts with persons suspected of committing a crime<sup>166</sup>. Such conditions may eliminate the chances for a residence permit to migrant victims who are traumatized and do not wish to testify against their traffickers.

Article 195(5) of the Act on foreigners states the requirement for the foreign victim of human trafficking to obtain the residence permit. The victim must stay in the territory of Poland immediately before submitting the application for permanent residence permit for a period of not less than one year on the basis of a temporary residence permit for victims of trafficking in human beings, and the victim must cooperate with law enforcement authorities in the criminal proceedings and have reasonable concerns about returning to his or her country of origin<sup>167</sup>. In accordance with the Act on social assistance, the state is obligated to meet the basic needs of foreigners<sup>168</sup>. Based on Article 5(a) of the Act, the foreign victim of trafficking has the right to social assistance, such as shelter, food, clothing, and a momentary stipend based on the article 170 and/or 176<sup>169</sup>.

Labour law in Poland has been received a lot of criticism, as many social workers claim that it increases illegal immigration and thus trafficking<sup>170</sup>. An immigrant is strongly attached by law to the employer. When an immigrant works in Poland and wants to change a job, the process of applying for a work permit starts all over again, which can take approximately three months

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<sup>165</sup> Ministry of Foreign Affairs: Report for 2018, 17, and Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

<sup>166</sup> Ministry of Foreign Affairs: Report for 2018, 17.

<sup>167</sup> Polish Penal Code: article 195(5).

<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>

<sup>168</sup> Ministry of Foreign Affairs: Report for 2018, 9.

<sup>169</sup> Polish Penal Code: article 170 and/or 176.

<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>

<sup>170</sup> Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

up to six months in some cases<sup>171</sup>. The immigrant needs to provide a request from his or her future employer to obtain such a permit<sup>172</sup>. The procedure not only prevents immigrants to quit exploitative work, that possibly has signs of forced labour, but also it increases the pressure for an immigrant to become involved in the illegal economy while waiting for the permit<sup>173</sup>. Such a situation aggravates the likelihood of trafficking for forced labour or sexual exploitation. Victims of human trafficking obtain certificates that permit them to work in Poland, therefore, there is no need for the work application. Nevertheless, it is widely known that for trafficking victims it is extremely hard to find a job.

### **Italian law**

Italian law prohibits all forms of human trafficking. There was a significant change in the law in 2003 which, no longer prosecuted cases of trafficking as slavery offences<sup>174</sup>. Article 600 of the Criminal Code states that “placing or holding a person in conditions of slavery; holding another person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging or exploitation in any other way, shall be punished with imprisonment from eight to twenty years”<sup>175</sup>. Article 601 refers directly to human trafficking, indicating that whoever committed the crimes Article 600 with the abuse of power, threats, taking advantage of inferiority, or promising money shall be imprisoned from eight to twenty years<sup>176</sup>. Even though, the punishment is much severe than in Poland, in reality

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<sup>171</sup> Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

<sup>172</sup> Migrant, info.pl. “Work Permit - Migrant EN.”. Website: [http://www.migrant.info.pl/Work\\_permit.html](http://www.migrant.info.pl/Work_permit.html).

<sup>173</sup> Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

<sup>174</sup> European Commission. “Italy - 2. INSTITUTIONAL AND LEGAL FRAMEWORK.” 2013. [https://ec.europa.eu/anti-trafficking/member-states/italy-2-institutional-and-legal-framework\\_en](https://ec.europa.eu/anti-trafficking/member-states/italy-2-institutional-and-legal-framework_en).

<sup>175</sup> Isabela, Orfano. “The Italian System of Assistance and Integration of victim of trafficking in human beings”. (Associazione On the Road), 11. [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the\\_italian\\_system\\_of\\_assistance\\_and\\_integration\\_of\\_victims\\_of\\_trafficking\\_in\\_human\\_beings\\_en\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_italian_system_of_assistance_and_integration_of_victims_of_trafficking_in_human_beings_en_1.pdf).

<sup>176</sup> Ibid: 11.

there are numerous of cases where traffickers are imprisoned for ten years but due to the positive behaviour they are released after five years<sup>177</sup>. The relatively light punishment of abusers in both countries encourages traffickers to commit crimes.

Article 601 was an attempt to provide a definition closer to the Palermo Protocol and the European Convention<sup>178</sup>. The Group of Experts on Action Against Trafficking in Human Beings (GRETA) designated by the Council of Europe to monitor implementation of the Convention on Action against Trafficking in Human Beings, indicates that the irrelevance of the victim's consent should be clearly stated, which would significantly improve victim's protection<sup>179</sup>. Article 3 of Law No. 75/1958 implies that prostitution is not criminalized in Italy; however, brothel keeping, habitual tolerance of prostitution, recruitment into prostitution, and procuring are criminal offences<sup>180</sup>. Article 3 No. 6 of the law specifically refers to trafficking in human beings for prostitution<sup>181</sup>. Law No. 228 of 2003 recognizes the Palermo Protocol's definition of human trafficking<sup>182</sup>. This unifies the standards of victims' identification for Italian law enforcement officials.

Article 13, Law No. 228 of the National Law against Trafficking in Human Begins provides short-term legislative procedures for a three-month period of assistance to trafficked victims<sup>183</sup>. It articulates the importance of short-term help provided to the victims regardless of their

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<sup>177</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

<sup>178</sup> GRETA, "Report concerning the implementation of the Council of Europe Convention on Action against trafficking in Human Beings by Italy", (January 25, 2018), 57.

<sup>179</sup> Maria, Cucchiara. "The Italian Framework against Labour Exploitation: A legal assessment, specifically targeting undocumented migrants". Associazione per gli Studi Giuridici sull' Immigrazione, 2018, 3. [https://www.business-humanrights.org/sites/default/files/documents/ASGI\\_HRIC\\_BHRRRC\\_May2017\\_REV%2019.7.pdf](https://www.business-humanrights.org/sites/default/files/documents/ASGI_HRIC_BHRRRC_May2017_REV%2019.7.pdf).

<sup>180</sup> On The Road Onlus, "Article 18 Protection of Victims" Released 2002, 76.

<sup>181</sup> Ibid: 76.

<sup>182</sup> Maria, Cucchiara. "The Italian Framework against Labour Exploitation", 3.

<sup>183</sup> GRETA, "Report", 75.



cooperation with law enforcement, which can be extended to a six-month period<sup>184</sup>. In Italy, there is no strictly defined reflection period. The system is strongly inclusive and comprehensive, as the victim after being recognized as a trafficking victim is automatically placed in the protection program<sup>185</sup>. Article 13 provides acknowledgment of the victim's right to protection by the program<sup>186</sup>. In other European countries, to obtain benefits during the reflection period the victim must provide testimony and otherwise cooperate with law enforcement; under the Italian law, the victim must be provided with services regardless of his or her willingness to testify<sup>187</sup>. Nevertheless, the GRETA experts urge for the use of specific naming of the reflection period in the Italian system to align with the European standards<sup>188</sup>. Although the provision of the protection services is extremely developed in Italian law, activists argue the implementation of such law is problematic and often law enforcement officials do not treat victims accordingly<sup>189</sup>.

One of the most relevant articles of Italian law in regards to immigrant victims of human trafficking is Article 18 of the Legislative Decree, No. 286, of Italian immigration law of 1998, which aims to combat crimes against migrants. Under Article 18, the migrant victim is eligible for a specific residence permit for reasons of social protection by public prosecutors to allow the foreigner to escape the violence of the organized criminal group and to participate in an assistance and integration social program<sup>190</sup>. The permit has a duration of six months and can

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<sup>184</sup> Ibid: 48.

<sup>185</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019.

<sup>186</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019..

<sup>187</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019.

<sup>188</sup> GRETA, "Report", 71.

<sup>189</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019.

<sup>190</sup> Italian Immigration Law: article 18(1). <https://reliefweb.int/sites/reliefweb.int/files/resources/GDP-Immigration-Detention-Report-2018.pdf>

be extended for a year or more, and it is not conditioned on the victim reporting the exploiters<sup>191</sup>. These are revoked if the social protection program is not completed, and the conduct of the victim is incompatible with the purpose of the program, which can be reported by social services and public prosecutors.<sup>192</sup> The article refers specifically to the crimes described in Article 3 of the law of 1958, Article 380 of the Criminal Code, Articles 600 and 601 or in the course of social services' interventions where the situation of violence and exploitation threatens the foreigners' safety<sup>193</sup>. Under this article, the victim is provided with shelter, food, medical assistance, and social integration assistance<sup>194</sup>. The residence permit allows access to educational services and employment lists<sup>195</sup>. It can be extended if the person is willing to stay in Italy for the purpose of work or study<sup>196</sup>.

There are two possible pathways for obtaining the permit; the "judicial path", when the crime is reported to law enforcement, which implies further cooperation with the police, or the "social path" when social services workers assist the victim who is in immediate danger<sup>197</sup>. The second path does not require cooperation with law enforcement<sup>198</sup>. However, the victim is still obliged to provide a lengthy statement describing the crime to law enforcement officials through social services<sup>199</sup>. There is thus a strong pressure on migrant victims to provide testimony either through direct contact with police or through social workers.

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<sup>191</sup> Italian Immigration law, article 18(4) and Maria, Cucchiara. "The Italian Framework against Labour Exploitation", 2.

<sup>192</sup> Italian Immigration law, article 18(4).

<sup>193</sup> Italian Immigration law, article 18(3).

<sup>194</sup> Italian Immigration law, article 18(3).

<sup>195</sup> Italian Immigration law, article 18(5).

<sup>196</sup> Italian Immigration law, article 18(5).

<sup>197</sup> Maria, Cucchiara. "The Italian Framework against Labour Exploitation", 2.

<sup>198</sup> Ibid: 3.

<sup>199</sup> Ibid: 3.

Furthermore, there has been criticism about the lack of a definition of forced labour in Italian law<sup>200</sup>. Some of the criminal offenses found in the Criminal Code apply to cases of forced labour. Article 603 states that recruiting a worker under exploitative conditions, taking advantage of him or her, lowering wages, increasing working hours, violating labour regulations, violating safety should be punished from one to eight years of imprisonment<sup>201</sup>. Article 22(12) from Legislative Decree No. 286/1998 states that the employment of third-country nationals without a residence permit is punished from six months to three years of imprisonment<sup>202</sup>. Furthermore, Article 12 from Legislative Decree No. 286/1998 prohibits obtaining an unfair profit from illegal migrant and exploiting workers, which can be punished up to four years in prison<sup>203</sup>.

Even though GRETA experts point out the positive developments in Italian law, they also notice numerous challenges. Similarly, as in Poland, data collection is poorly organized and should be maintained more efficiently to improve the examination of anti-trafficking policies<sup>204</sup>. Moreover, awareness campaigns for migrants should be developed to ensure that migrants are aware of the danger of illegal labour and avoid human trafficking<sup>205</sup>. However, most importantly, Italian law should include a clear definition of trafficking to help identify victims and unify the criteria<sup>206</sup>. Lack of national guidelines for identification is concerning as it prevents law enforcement officials from detecting victims and providing appropriate help.

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<sup>200</sup> European Commission. “Italy - 2. Institutional and legal framework”, 2018.

<sup>201</sup> Maria, Cucchiara. “The Italian Framework against Labour Exploitation”, 3.

<sup>202</sup> Ibid: 6.

<sup>203</sup> Ibid: 6.

<sup>204</sup> GRETA, “Report”, 20.

<sup>205</sup> Ibid: 22.

<sup>206</sup> Ibid: 5.

## Chapter 3: Identification of Trafficked Victims

The process of identifying trafficked victims is crucial in combating human trafficking and assuring that victims obtain help and support. Each country in its own way, pursues this important goal taking into consideration the specific nature of the crime in which victims were exploited, separated from the world, threatened, tortured, and ultimately in most cases, unwilling to testify to law enforcement officials to avoid recollection of traumatic events. Current global statistics indicate that under one percent of trafficking victims are identified, a truly dismaying state of affairs<sup>207</sup>. Moreover, many victims are afraid of deportation and criminalization, which also reduces their chances of identification. Therefore, it is of the highest importance for the police and border security to be adequately trained and be familiar with the exact definition and dynamics of trafficking resources for victims, training about how to avoid retraumatizing victims that is endemic to human trafficking, responses, the gender discrimination, the socio-cultural and socio-economic situation of the victims' countries<sup>208</sup>. Even though the Palermo Protocol does not specifically address victims' identification as it mainly focuses on criminalization of traffickers, the European Convention explicitly articulates the victims' right to be identified and assisted with specific services that will allow for better recovery<sup>209</sup>. The key aspect in the effective identification of trafficked victims is implementation of legal regulations that prioritize identification processes within national system.

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<sup>207</sup> Interview with Tatiana Kotlyarenko, Antitrafficking Advisor for the Organization for Cooperation in Europe (OSCE), August 19, 2019.

<sup>208</sup> Barbara, Namysłowska-Gabrysiak, „Handel ludźmi w celu wykorzystywania seksualnego”, 178

<sup>209</sup> European Commission. “Council of Europe Convention on Action against Trafficking in Human Beings”, 2002.

## **Identification in Poland**

In Poland victim's identification processes are carried out by law enforcement officials and by the National Consulting and Intervention Centre for Victims of Trafficking (KCIK). Victims are legally identified by police, border security, or prosecutors by using the specific algorithm that assists in the recognition of the trafficked victim<sup>210</sup>. This algorithm was first implemented in 2018, through the initiative of the National Action Plan<sup>211</sup>. The purpose of the algorithm is to unify the common standards of identification used by law enforcement officials and to provide victims with the rights to which they are entitled<sup>212</sup>. Besides victim's identification processes, KCIK is also responsible for training of law enforcement. The focus on training of border security brought the most successful results in victims' identification, as of all law agencies, border security is most effective in the identification of victims<sup>213</sup>.

KCIK is operated by the most prominent anti-trafficking organization in Poland, La Strada. KCIK specialises in identification, intervention, counselling, consulting with law enforcement and other organization officials on all of the cases of trafficking referred to it, and providing shelter and food for victims<sup>214</sup>. La Strada trains the police, border guards, prosecutors, judges, social workers and tries to provide in-depth knowledge on trafficking, as their expertise in anti-trafficking work has been acquired for two decades<sup>215</sup>. Nevertheless, there is a constant turnover in the police office, thus there are many police officers who have never been trained and are not equipped to respond properly to these complex, sensitive cases<sup>216</sup>. The law enforcement

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<sup>210</sup> Barbara, Namysłowska-Gabrysiak, „Handel ludźmi w celu wykorzystywania seksualnego”, 184.

<sup>211</sup> Ibid: 184.

<sup>212</sup> Ibid: 184.

<sup>213</sup> Ibid: 186.

<sup>214</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, August 19, 2019.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

officials are required to contact KCIK with every case of trafficking happening within the borders of Poland<sup>217</sup>.

As it was mentioned by Marta Gorczyńska, a lawyer from Helsinki Organization, “There is a problem with procedural laziness in Poland. Often, it is easier to qualify the case under a different law than the one about trafficking, as the investigation for trafficking is much more time consuming”<sup>218</sup>. Seeking out evidence, taking testimonies, and conducting a robust investigation by the police often do not take place. Instead, the case is resolved under articles that do not obligate law enforcement officials to conduct an extensive investigation. Such ignorance and lack of action violates international law. When the victim is safe and there are no risks to life, too often law enforcement fails to collect evidence. Moreover, as pointed out by Marta Gorczyńska, there were numerous incidents in which an NGO identified the victim, but authority officials failed to take appropriate action<sup>219</sup>. In such cases, the victim is most likely deported if she/he is a non-EU citizen or does not have a permit to stay in the country. Even though victims are not obligated to provide testimony, official policy and practice too often contradict this international standard: the alleged trafficking victim is required to cooperate with the police to obtain a residence permit, as stated in article 195(5) of the Act on foreigners<sup>220</sup>.

There are several ways in which victims can be identified. Victims either contact NGOs and law enforcement officials by themselves, or they are found by police or border security through internal investigations or anonymous calls. Every identified victim is provided with a certificate that establishes for official purposes that he or she is a victim. With such a document, the victim

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<sup>217</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, November 1, 2019.

<sup>218</sup> Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

<sup>219</sup> Ibid.

<sup>220</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, August 19, 2019.

has a right to three months of a reflection period, as stated in the EU Convention, which can be extended up to six months or more<sup>221</sup>. The victim should not be pressured to testify after identification; however, in Poland, immediately after identification victims are pressured to provide testimony. As pointed out by Joanna Garnier, Vice President of La Strada, law enforcement officials are aware that recollections are most likely to be accurate shortly after the incident<sup>222</sup>. Pressuring reluctant victims to testify is not compatible with international standards. This method does not take into consideration the psychological trauma trafficking victims routinely sustain. As explained by Joanna Garnier, when the victims are in the poor mental or physical condition, the officials are sending them immediately to the La Strada office, where the victim can be provided with sufficient help<sup>223</sup>. In the case of victims coming from EU countries, their dependency on social workers and officials is relatively low as they already possess permits to stay in Poland<sup>224</sup>. However, victims from non-EU countries, during the reflection period, are strongly encouraged to provide testimonies; if not, they need to leave the country as they have no legal documents to remain. The lack of choice forces victims to cooperate with law enforcement officials regardless of their mental and physical state.

La Strada reported a recent situation, which involved Thai people who were exploited for labor at the farm in Poland, where they were subjected to coercion, threats, and long hours of work<sup>225</sup>. Despite the inhuman conditions, officials reported the victims for illegal overstay and unauthorised work permits, which led to their deportation<sup>226</sup>. As pointed out by Marta Gorczyńska, a lawyer from the Helsinki Organisation, in cases of forced labour, the official from the National Labour Office often does not investigate the working place properly. The

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<sup>221</sup> Ibid.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

person who is sent to check reported violations at the workplace is either announced in advance, which enables the employer to conceal evidence or often finds violations committed by employees who do not possess a working visa and remain in the country illegally<sup>227</sup>. The officials strongly concentrate on violations committed by migrant workers; their negative attitude towards migrants leads to their inadequate investigation of the conditions under which employees work.

The indifference of law enforcement officials is not exceptional. Increasingly negative attitudes towards immigrants in a European context will likely have ramifications on the identification and treatment of victims. With the growing numbers of immigrants entering Europe from Africa and Asia, there appears to be increasing discrimination against and negative perception of foreigners. One indicator of this disturbing development is the fact that social media social media platform is bombarded with negative comments under posts about violations of migrant workers' rights<sup>228</sup>. Exacerbating the problem, the Polish government conveys negative messages towards migrants and their increasing numbers in Poland. Undoubtedly, the governmental and public prejudice and resentment towards migrants contribute to the problems in Poland with procedural treatment and identification of victims of human trafficking.

Unfortunately, even social workers discriminate against migrant victims and question their credibility. For instance, in 2019, several African women reported themselves to an NGO in Warsaw, reporting that they had been subjected to forced labour and asking for help. After a conversation with a social worker at an NGO, the women were deemed not qualified as victims

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<sup>227</sup> Interview with Marta Gorczyńska, Lawyer at Helsinki Foundation for Human Rights, September 28, 2019.

<sup>228</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, August 19, 2019.



of trafficking. Nevertheless, the NGO decided to send the women to border security, where after further investigation they were confirmed as victims of human trafficking<sup>229</sup>.

### **Identification in Italy**

The Italian system places strong emphasis on the cooperation among NGOs, police and other intuitions<sup>230</sup>. In Italy, the identification process seems to work more effectively than in Poland, as NGOs are given authority to officially identify the victims. NGOs are usually more effective than law enforcement in developing the relationships with victims, which further helps obtaining reliable testimonies<sup>231</sup>. Under Article 18 of the Italian Immigration Law, the process of recognition is carried out by NGOs together with the police<sup>232</sup>. Victims of sex trafficking and forced labour often seek help from regional NGOs or are identified by social workers<sup>233</sup>. Others are identified by police officials and later sent to NGOs specialising in human trafficking<sup>234</sup>. As Italy struggles most significantly with sex trafficking, victims are frequently found on the street either by police or social workers<sup>235</sup>. In cases of forced labour, the information is usually passed to the police by someone who noticed labour violations<sup>236</sup>.

The identification criteria are based on the Palermo Protocol definition; however, each region in Italy has its own practices, and there is no one official algorithm, as in Poland. Training in the criteria necessary for identification seems inadequate as many social workers claim that

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<sup>229</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, August 19, 2019.

<sup>230</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need", 224.

<sup>231</sup> Ibid: 224.

<sup>232</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019.

<sup>233</sup> Interview with Ulrich Stege, Lawyer and Clinical Program Director at International University College of Turin, September 14, 2019.

<sup>234</sup> Interview with Ulrich Stege, Lawyer and Clinical Program Director at International University College of Turin, September 14, 2019.

<sup>235</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019.

<sup>236</sup> Ibid.

trafficking requires movement from one place to another, a blatant misconception that results in the failure to identify victims of internal trafficking<sup>237</sup>. Such misunderstanding causes severe harm to victims, who are denied protection and resources they urgently need. For instance, many Nigerian victims, whose freedom is restrained by *juju* oath not by any physical control from the trafficker, are not recognized as trafficking victims<sup>238</sup>.

The main difference between the Polish and Italian systems in relation to victim identification is the ability of Italian NGOs to collect official information from the victim and report it to the police. The cooperation between these entities is vital in validating the story of the victims. In Poland, the NGOs cannot collect testimony that will be considered valid for the law enforcement officials; reports need to be made by police. In Italy, the NGOs can decide whether the victim needs their assistance and provide the crucial help of obtaining the victim's account. For European citizens, there is no need for further documents as they can legally stay in the country; however, for the non-EU citizens, the reports need to be given to the police to verify their story and provide a victim with a residence permit.<sup>239</sup> The prosecution only begins once the files are given to the police<sup>240</sup>.

There are many victims without documents who needs to be reported to the police in order to obtain documents verifying their status of victim. In these cases, the validity of the story is fundamental. Many social workers contend that police are overly suspicious, convinced that many migrants have been trained by their traffickers to provide false testimony to obtain refugee status or the residence permit<sup>241</sup>. In Italy, as in Poland, attitudes towards migrants from

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<sup>237</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

<sup>240</sup> Ibid.

<sup>241</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need", 225.

Africa and Asia have become increasingly negative. Growing discrimination influences the lack of responsiveness and hostility towards migrant victims. Such negativity has likely resulted in increased pressure on victims to provide detailed testimony and unduly verdicts. Most of the victims, mainly from Nigeria, are too terrified or traumatized to report their traffickers. They can describe circumstances, the place they were kept in, but when it comes to identifying their traffickers they are afraid to do so<sup>242</sup>. In most of the cases, victims are rather pressured to provide testimony and contribute to prosecuting the trafficker, which in many instances can be traumatic and harmful to the victim<sup>243</sup>. If the victims are not willing to cooperate, even though the protection and services are given to them, after few months, they are excluded from the program, which means they no longer possess a permit to stay in Italy. Nevertheless, they can apply for a license to work as a regular immigrant.

If the victims do not have documents verifying their identity, it is almost impossible for them to not cooperate with law enforcement officials<sup>244</sup>. Only after providing some testimony is the victim granted a residence permit for 18 months, which allows him or her to work in Italy<sup>245</sup>. Moreover, the permit to stay is only given to those victims who want to participate in the protection projects managed by NGOs<sup>246</sup>. However, in practice, the protection projects are designed to prepare the victim for testimony, so even the EU citizen will need to testify, or the victim will not obtain further help if she/he is not in immediate danger<sup>247</sup>. As in the case of a 23-years-old Nigerian girl, who was rescued on the street by the police after being brutally beaten by her trafficker for not giving back the money she had collected while exploited in

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<sup>242</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

<sup>243</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

prostitution<sup>248</sup>. She was afraid to provide testimony, nevertheless, because of the extreme danger the woman was in, the police called an NGO, which provided her with services<sup>249</sup>. The time of the reflection period was not stated by the police, nonetheless the NGO strongly pressured her to provide testimony perhaps because they were concerned that the traffickers would continue to prey on vulnerable young women.<sup>250</sup>

There are two pathways in Italy to be able to be identified as a victim; first the “judicial path”, which involves providing testimony to the police and later obtaining the residence permit; the other is the “humanitarian/social path”. The social path does not require the victim to provide testimony; however, in practice, the proceedings related to social path are much harder to navigate<sup>251</sup>. However, as interviewers explain, if the person does not have documents obtaining the authorisation from officials for the protection of the “social path” is extremely rare<sup>252</sup>. Both of these paths result in the authorities issuing six months of residence permit, which can be further extended<sup>253</sup>.

In Italy as in Poland, the decision as to whether the victim obtains the authorization and permit to stay depends on the subjective judgment of police, magistrates, or prosecutors. A number of factors, such as the area where police are located and how familiar the officers are with trafficking play an outsized role in whether victims are accorded protection<sup>254</sup>. In Italy, the protection can be given to every victim with documents. However, in relation to migrants

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<sup>248</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 18, 2019.

<sup>249</sup> Ibid.

<sup>250</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

<sup>251</sup> Ibid.

<sup>252</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

<sup>253</sup> European Commission. “Italy - 3. Implementation of anti-trafficking policy”, 2013.

<sup>254</sup> Ibid.

without passports, the provision of such protection relies primarily on their willingness to cooperate with law enforcement. The fact that NGOs have the authority to identify victims and report their exploitation to the police gives victims a longer time to use the services provided by the protection projects.<sup>255</sup> Even if police after investigation refuse to include a person into the protection system, the victim still has been given some support. The cooperation between NGOs and police is essential in both countries, and such a relationship relies on a massive amount of trust, as this is how NGOs convince police to allow the victim to remain in the country and consequently help them to recover from the traumas they have suffered. In Poland, such procedures are less standardized than in Italy. However, the concept is similar.

## Chapter 4: Reflection and post reflection period

Once victims are recognized and placed into the rescue facilities, the fight against human trafficking is not over<sup>256</sup>. Human trafficking is associated with high levels of physical and mental violence<sup>257</sup>. Most of the victims struggle with post-trafficking trauma and other mental and physical health problems<sup>258</sup>. Therefore, the reflection period, referral to services, and quality of these services are crucial for the full recovery and restoration of the victim. These services should be provided carefully and, in a trauma-sensitive manner<sup>259</sup>. Considering the magnitude of the problem, there are inadequate resources for helping victims in their recovery

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<sup>255</sup> Ibid.

<sup>256</sup> Becca, Johnson. "Aftercare for Survivors of Human Trafficking." *Social Work and Christianity* 39, no. 4 (December 1, 2012), 370.

<sup>257</sup> Stacey, Hemmings, "Responding to the Health Needs of Survivors of Human Trafficking: A Systematic Review." *BMC Health Services Research* 16, no. 1 (July 29, 2016), 2.

<sup>258</sup> Ibid: 2.

<sup>259</sup> Becca, Johnson. "Aftercare for Survivors of Human Trafficking." 371.

in both Poland and Italy<sup>260</sup>. Social workers are often the only health care professionals that victims have contact with when being identified and referred to services<sup>261</sup>. Their unique role is of extreme importance as appropriate support may protect victims from enduring further trafficking and help them to move on with their lives. Without appropriate help, victims will feel unsafe, violated, rejected, and helpless<sup>262</sup>. Professional services carried out by a highly trained social services provide with a sensitive and knowledgeable approach, may slowly allow the victim to reintegrate into the society<sup>263</sup>.

The first step in addressing this need is placing the victim in a shelter<sup>264</sup>. Once the victim is placed in a shelter, other emergency needs should be provided, such as clothing and food<sup>265</sup>. Human trafficking victims are beaten, tortured, and exposed to inhumane treatment by their traffickers. Victims need to obtain health screening for tuberculosis and sexually transmitted diseases as well as medical treatment for physical injuries. Mental health counselling is of equal importance as medical care. The vast majority of victims suffer from post-traumatic stress disorder (PTSD) and depression<sup>266</sup>. Traumatic experiences are most commonly due to rape, torture, degrading treatment, humiliation, threats, and isolation<sup>267</sup>. Many victims are traumatically bonded to their exploiters. Thus, emotional assistance is crucial to recovery from trauma and hope towards the future<sup>268</sup>.

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<sup>260</sup> Stacey, Hemmings, "Responding to the Health Needs of Survivors of Human Trafficking", 1.

<sup>261</sup> Ernewein, Charrita, "Human Sex Trafficking: Recognition, Treatment, and Referral of Pediatric Victims." *The Journal for Nurse Practitioners* 11, no. 8 (September 1, 2015), 797.

<sup>262</sup> Becca, Johnson. "Aftercare for Survivors of Human Trafficking." 371.

<sup>263</sup> Cristina, Solis. "Addressing the Needs of Overlooked Victims", 1.

<sup>264</sup> Cristina, Solis. "Addressing the Needs of Overlooked Victims: Providing Child Support for Children of Human Trafficking Victims." *Thomas M. Cooley Law Review* 32, no. 1 (January 1, 2015), 1.

<sup>265</sup> *Ibid*: 1.

<sup>266</sup> *Ibid*: 2.

<sup>267</sup> Becca, Johnson. "Aftercare for Survivors of Human Trafficking.", 374.

<sup>268</sup> Becca, Johnson. "Aftercare for Survivors of Human Trafficking.", 371.

The short/long-term services available to the victim should include legal assistance to help in understanding their legal rights and legal procedures, advocacy in filling out the required applications and attending legal meetings, job training, transportation and economic assistance<sup>269</sup>. The procedures are significantly more complicated for international victims than domestic ones due to immigration status<sup>270</sup>. Domestic victims of trafficking do not need permit to stay or work, as well as victims from European Union, therefore, international victims need more assistance. Moreover, life skills training such as helping a victim to use public transportation, and operate basic household should be provided <sup>271</sup>. It is often forgotten that victims went through a period of unbelievable fear, left in isolation without any factors of a healthy life; therefore, the basic activities need to be reminded or learned from the beginning.

That there is a stronger need for international victims to quickly obtain employment as they often send money back to support their families and they are often ineligible for economic assistance provided to European victims<sup>272</sup>. Often, social workers assist victims in acquiring identification documents for them to proceed with job applications<sup>273</sup>. The spectrum of problems victims need to cope with after being rescued are diverse, as each case of human trafficking is different. However, regardless of the victim's specific situation, social workers emphasize that what matters most is the duration of the services provided<sup>274</sup>. The main focus should be placed on long-term recovery through trauma-informed, culturally specific care.<sup>275</sup>. Nevertheless, even when victims are eligible for the services, their availability is sharply limited due to inadequate governmental funding. The most challenging barriers in providing services

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<sup>269</sup>Cristina, Solis. "Addressing the Needs of Overlooked Victims", 1.

<sup>270</sup> Ibid: 3.

<sup>271</sup> Ibid: 2.

<sup>272</sup> Ibid: 3.

<sup>273</sup> Ibid: 3.

<sup>274</sup> Ibid: 3.

<sup>275</sup> Stacey, Hemmings, "Responding to the Health Needs of Survivors of Human Trafficking", 6.

to trafficking victims are fundamental and too often insurmountable: availability, length of services, and access.

### **Reflection and Post-Reflection period in Poland:**

In 2003, the Polish government implemented a National Action Project for Combating and Preventing Trafficking in Human Beings. Its main goals were the implementation of the international law – the Palermo Protocol and the Council of Europe Convention – into Polish law and policy and monitorization of the progress<sup>276</sup>. NGOs played a major part in the project, as governmental officials from that moment onwards were obligated to cooperate with social workers<sup>277</sup>. Not only is such cooperation visible during the identification processes, when social workers can be present when victims provide their testimony, but also in the application for visas, when social workers actively communicate with the police.

In Poland identified victims of trafficking are legally provided with a reflection period, which can be defined as a time given to a victim for recovery and consideration about whether the victim wants to cooperate with law enforcement officials<sup>278</sup>. The legal stay of three months is given to the victim along with the requirement to stay in close contact with anti-trafficking NGOs and participate in the services they offer as well as to terminate any contact with traffickers. If the victim violates the requirements, then the temporary permit to stay is withdrawn<sup>279</sup>. Even though legally the permit is given to a person for three months, in practice

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<sup>276</sup> Marcin, Wiśniewski. “The Phenomenon of Trafficking in Human Beings: The Case of Poland”, 74.

<sup>277</sup> Marcin, Wiśniewski. “The Phenomenon of Trafficking in Human Beings: The Case of Poland”. *Human Trafficking in Europe: Character, Causes and Consequences*. New York: Palgrave Macmillan, 2010, 74.

<sup>278</sup> Barbara, Namysłowska - Gabrysiak. *Handel ludźmi w celu wykorzystywania seksualnego*, 190.

<sup>279</sup> *Ibid*: 191.



the time is not strictly followed. Victims are supported by NGOs for up to one year<sup>280</sup>. Those who are assisted by social workers for the longest periods of time are Polish citizens; the victims who tend to quickly leave the program are immigrant victims<sup>281</sup>. Very likely, this is because immigrant victims are often too frightened and traumatized to cooperate with the police, especially given the fact that their traffickers are likely Polish. As a result, they are unable to obtain a permit to work, and have no other choice than to return to their country of origin. The cooperation requirement thus deprives victims of access to social services and the ability to continue their recovery.

In every human trafficking case in Poland, the identification process follows the provision of a certificate confirming the trafficking status of the victim. With such documentation, the victim has the right to social services provided by the KCIK. As explained above, in Poland, this role is assigned to La Strada<sup>282</sup>. La Strada obtains yearly funding from the government to provide victims with adequate services. Immediately after identification, the victim is provided with shelter, clothing, and food. La Strada offers two shelters, one for male victims and the other one for female victims and their children. Together, their shelters can accommodate only 15 victims, a very small number in light of the fact that safe housing is the principal need for trafficking victims, especially for those trafficked from other countries<sup>283</sup>. As a result, victims are often located in other accommodations around Poland, which are managed by other NGOs, including Catholic service providers. While finding emergency shelter for women is relatively easy, for man is require more effort. Interestingly, in recent years the NGOs report higher numbers of male victims over female ones in Poland.

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<sup>280</sup> Interview with Joanna Sosnowska, National Coordinator in the Department for European Migration Network and Prevention of Trafficking in Human Beings, September 19, 2019.

<sup>281</sup> Ibid.

<sup>282</sup> La Strada, website: <https://www.strada.org.pl>.

<sup>283</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, November 1, 2019.

The location of shelters must be strictly confidential as the trafficking is carried out by dangerous organized criminal groups that can easily find victims and threaten their lives. There have been several incidents when such the location of shelters was revealed, and traffickers came immediately to track down their victims<sup>284</sup>.

La Strada is responsible as well for providing medical and psychological support to victims. Medical treatment is provided in public hospitals, whereas psychological counselling is mainly provided by social workers with psychological expertise<sup>285</sup>. Another valuable role of the organization is to assist victims with legal proceedings and applications. Legal advices and representation are provided by one of the lawyers in La Strada. Because of the limited number of social workers and lawyers in the organization, La Strada cooperates with other NGOs in Poland, which correspondingly provide services for human trafficking victims. For instance, the Helsinki Foundation for Human Rights offers legal services, mostly for forced labour victims. The cooperation between NGOs around Poland is vital and extremely helpful in providing the necessary services for the victim. Nevertheless, due to limited government funding, services for trafficking victims are grossly inadequate and many victims do not receive the holistic care they need for the duration of the time they require it.

La Strada, through strong partnerships with law enforcement officials, can sometimes accelerate the process of obtaining work or residence permits. As, Joanna Garnier, a Vice President of La Strada explains, “The acceptance of the application depends on which desk it lands on”<sup>286</sup>. The successful and fast processing of visa applications rely in high proportion on the willingness of the relevant officials to help and support the victim. “Some of the law

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<sup>284</sup> Ibid.

<sup>285</sup> Ibid.

<sup>286</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, August 19, 2019.

enforcement officials are willing to cooperate and provide a victim with documents, however, in some cases officials are hindering the whole process by asking for numerous of documents”<sup>287</sup>. Throughout the reflection period in each case, La Strada’s social workers work diligently to persuade government officials to provide documentations that their clients urgently need in order to regularise their status. Often many victims of trafficking are either from Europe and can legally stay in the country or possess a legal work permit. In such cases, the victims have little incentive to cooperate with government prosecutors or to obtain assistance from social workers.

In one recent and unusual case of trafficking in Poland, which occurred in 2019 the police identified 50 Filipinos working in sawmills around Poland. They had been threatened, isolated from the outside world, and subjected to poor living conditions. Their passports were confiscated just after their arrival to Poland, and the conditions they agreed to before arrival were not met. Before arrival the men had to pay several thousand dollars as well on arrival. Every time they asked for their passports, they were forced to pay their employers<sup>288</sup>. Even though not all of the fifty men were identified as trafficking victims, all were provided with shelter and food. La Strada was actively involved in the identification and collection of the victims’ testimony, as this case was massive by Polish trafficking standards. The situation was resolved quite competently, as the new employer who took over the business from the traffickers, applied for visas for the workers and provided them with new jobs and applications<sup>289</sup>. Nevertheless, a few victims were waiting for their visas for eight months, which seems utterly unfair considering their vulnerable situation<sup>290</sup>. This case illustrates how the government, law enforcement officials partnering with NGOs can proceed with human

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<sup>287</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, November 1, 2019.

<sup>288</sup> Interview with Joanna Garnier, Vice President of La Strada Foundation, August 19, 2019.

<sup>289</sup> Ibid.

<sup>290</sup> Ibid.

trafficking cases. Strongly motivated by publicity of this particular case, the police and prosecutors resolved the situation surprisingly quickly.

As Joanna Sosnowska, the official from the governmental agency of the Ministry of the Interior and Administration acknowledges, the application process for work visas seems relatively easy under the Polish law, however, in practice it is quite difficult<sup>291</sup>. Victims often wait several months to be legally identified by judges and prosecutors as victims of trafficking and not simply as alleged victims, the former a requirement for the visa. During such process, victims cannot legally work in Poland and need to apply for a work visa, which is time-consuming<sup>292</sup>. During several months of waiting for their visa to be processed, victims can become involved in illegal activities in order to survive economically. This can lead to re-trafficking or detention by the police following arrest and deportation.

Migrant victims are often dedicated to a swift recovery and search for jobs, as their primary purpose of coming to Poland was to earn money and often they need to support the families they left behind in their home countries. Since the primary purpose of immigrants in Poland is usually economical, many victims do not want to cooperate with the police as the process is time consuming and victims fear retaliation from their exploiters in Poland. Instead, they want to find a job as quickly as possible, or immigrate to Germany, where the economic conditions are more favourable. Because many victims are afraid of testifying against their traffickers, they cannot obtain residence permits due to lack of cooperation, and often they must return home. These procedural difficulties exacerbate victims' trauma and place them in an extremely challenging position.

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<sup>291</sup> Interview with Joanna Sosnowska, National Coordinator in the Department for European Migration Network and Prevention of Trafficking in Human Beings, September 19, 2019.

<sup>292</sup> Interview with Joanna Sosnowska, National Coordinator in the Department for European Migration Network and Prevention of Trafficking in Human Beings, September 19, 2019.

The National Action Plan introduced by the Polish government was a massive step towards combating trafficking and providing standardized recovery procedures for victims of human trafficking. However, the existence of La Strada, essential to the effective implementation of these laws and policies, is quite insecure, as its funds are strongly dependent on the government and the funds provided are inadequate. La Strada is the only NGO funded by the government dedicated to supporting victims of trafficking<sup>293</sup>. Its precarious funding base is, as the organization needs to apply annually to obtain governmental support, and the future of the organization is therefore uncertain<sup>294</sup>. If the government decides on not supporting the anti-trafficking NGOs anymore, victims of trafficking in Poland are in danger of not obtaining any help at all. The strategy of funding and the approach taken by the government shows a problematic attitude towards victims' recovery and suggests that it is not a priority. Victims deserve to have a stable system in which the assistance they so desperately need is assured.

### **Reflection and post-reflection period in Italy**

Italy struggles massively with the crime of human trafficking, and in comparison to Poland has more developed and extended help for trafficked victims. There are numerous of raising awareness and victim assistance initiatives such as the anti-trafficking helpline founded in 2000, the “trafficking deletes people, can you delete trafficking” campaign and many more.<sup>295</sup>. Besides national campaigns, Italy provides victims with a three-months period of recovery, which later can be renewed for six months<sup>296</sup>. Victims are assigned as well an eighteen-month protection projects to support their recovery. If victims wish to stay in Italy, then they can apply

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<sup>293</sup> Marcin, Wiśniewski. “The Phenomenon of Trafficking in Human Beings”, 78.

<sup>294</sup> Ibid: 8.

<sup>295</sup> European Commission. “Italy - 3. Implementation of anti-trafficking policy.” Together Against Trafficking in Human Beings - European Commission, July 15, 2013.

<sup>296</sup> Ibid.

for a one-year residence permit that can be transformed into a work permit<sup>297</sup>. The application for work permits takes appropriately two to three months to be processed<sup>298</sup>. However, as in Poland, some of the application processes take a longer time than others.

Each region in Italy has NGOs assigned to provide help for identified victims of trafficking. There are many anti-trafficking organizations in Italy; however, one of the most successful NGOs operating there is IROKO Association and On the Road Onlus. IROKO was founded in Turin in 1998 and works to combat all forms of trafficking<sup>299</sup>. Founded by Esohe Aghatise a Nigerian-Italian lawyer and national anti-trafficking leader, its primary mission is to provide comprehensive services (shelter, counselling, legal services, and economic empowerment) for immigrant trafficking victims, especially those trafficked by Nigerian organized crime groups<sup>300</sup>. Initially, the organization exclusively helped Nigerian women exploited in the Italian sex trade; however, it later expanded its activities to assisting all victims of trafficking<sup>301</sup>. On the Road Onlus, founded in 1994, focuses on protecting the human and civil rights of victims through social inclusion and empowerment<sup>302</sup>. Its main mission is to raise awareness about human rights through their mobile units that come in contact with potential victims<sup>303</sup>. In addition, it provides protection, food, shelter, health care and psychological support, education and Italian language learning programmes, and counselling<sup>304</sup>. It is based in regions of Marche, Abruzzo, and Molise<sup>305</sup>. Even though, the missions of these two NGOs are slightly different, the services they provide encompass all the international requirements for victims' needs.

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<sup>297</sup> Ibid.

<sup>298</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

<sup>299</sup> Association IROKO Onlus website: <http://www.associazioneiroko.org>.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid.

<sup>302</sup> On The Road Cooperativa Sociale. "Who We Are." Website: <https://www.ontheroad.coop/en/who-we-are/>.

<sup>303</sup> Ibid.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid.

IROKO provides two shelters that can host up to five people each<sup>306</sup>. Even though there are no in-house psychologists or counsellors, there is a qualified counsellor who works locally, available to the clients on a voluntary basis<sup>307</sup>. On the Road Onlus works in partnership with a local group of psychologists in a similar way<sup>308</sup>. IROKO also has two linguistic and cultural mediators who are themselves Nigerian and specialize in supporting the women with and accompanying them to various services<sup>309</sup>. The victims have to participate in the protection project to be qualified as a victim of trafficking<sup>310</sup>. Resignation from a program is equivalent to breaking off the requirements for the status of trafficking victims. Such rules apply in Poland as well. European countries try to provide all of these services to satisfy the international requirements and need to ensure that victims are participating in the recovery projects. In Poland, the accessibility to the services is difficult, whereas in Italy, the scope of the recovery and availability of services is greater, and victims can access them more frequently. However, in Italy the number of victims is incomparably higher than in Poland. Therefore, one can argue that victims' access to services is similar in Poland and Italy.

Poland and Italy differ significantly in terms of providing compensation to trafficked victims. Due to the attractive image of Italy as a wealthy and western country, victims of trafficking usually prefer to stay in there and recover, hoping later to find a job and settle in Italy permanently. By contrast, immigrants usually perceive Poland more as a transit country or a temporary location to earn money but not stay permanently. Many trafficked victims in Poland desire to leave recovery programs quickly to either search for a job or travel to Germany or

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<sup>306</sup> Interview with Ruby Till, Coordinator at IROKO Association, August 28, 2019.

<sup>307</sup> Ibid.

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

other western countries, where the job market is more substantial. Even though Poland has become a country of destination to many immigrants who wish to obtain permanent residency, this phenomenon is growing only recently. Possibly, the limited numbers of services in Poland are not considered worthy of a stay, and victims want to earn money and return to their families. Also, Poland unlike Italy is very homogeneous socially and ethically and may not be perceived as a welcoming environment, unlike Italy which is far more diverse.

There are an exceptionally large number of cases of trafficking in Italy yearly. Most involve Nigerian women who are controlled by traffickers by the '*juju*' oath. In most cases, as described above, victims are not willing to testify against traffickers as they are terrified of breaking the oath and consequences that may follow<sup>311</sup>. Even if the victim agrees to testify, the lawsuit usually lasts for three or more years, and the danger of being found by the trafficker and abused again is massive<sup>312</sup>. The criminal procedures in Poland are retraumatizing and threatening because often, the traffickers are Polish citizens. Even though in Italy, traffickers are usually of the same citizenship as their victims, the process is similarly very frustrating for a victim. Most of the victims want to forget about the traumatic experience and not be forced to confront it again and again in order to satisfy law enforcement requirements. However, if their traffickers are not apprehended they will continue to prey on vulnerable women and girls – something the NGOs understand only too well.

There are few recent cases, for example, the case of a 23-year-old Nigerian woman who was willing to testify during the reflection period in order to protect the other victims who were in captivity with her<sup>313</sup>. The cooperation with the police provided her with extended residency

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<sup>311</sup> Ibid.

<sup>312</sup> Ibid.

<sup>313</sup> Ibid.



permit for two years<sup>314</sup>. Usually, after eighteen months, victims leave the project. However, in this case the victim was pregnant, and she was able to use the social services and shelter for two years. After two years, the victim, with the help of an NGO, renewed her work permit and participated in the recovery project for another six months<sup>315</sup>. The data collected during the interviews suggest that each case of human trafficking is different, and the procedures are not strictly standardized. Successful assistance to human trafficking victims depends heavily on the diligence, resourcefulness, and skills of the NGO workers.

There are many cases of forced labour in Italy. Most commonly, Nigerian men are sent to Italy without documentation, placed in emergency shelters, and later escape to connect with traffickers. The social worker from On the Road Onlus explain a recent case of Nigerian boys who were rescued by her colleague: “Teenage boys arrived to Italy to work in an agriculture factory. They were exposed to extensive work hours, low salaries, violent conditions and kept in isolation with no time to eat. Two boys managed to escape after three months of exploitation, thanks to the social worker they met in the emergency centre who explained to them the risks of exploitation and provided them with contact information. They contacted the social worker, who arrived on the place of violations and helped them to escape. The reason why he did not call the police is that the police procedures take a long time and this situation was tough to withstand any longer”<sup>316</sup>. Moreover, police need to investigate the work place before providing any judgments and prosecutions<sup>317</sup>. In many situations, time is vital to rescue the person. The cases of forced labour of Nigerian men differ significantly from those of Nigerian women who were sex trafficked. Even though, the victims were from the same country of origin, and experienced violent conditions, isolations, and fear of cooperation with the authorities, the main

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<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid.

<sup>317</sup> Ibid.

difference is that the women were enslaved through the use of “*juju*” rituals; their captivity started when they were still in Nigeria.

The Italian government emphasizes its willingness to provide trafficking victims a full recovery without the need for their testimony. The “social path”, analysed in Chapter 1, proposed by the government, seems to be a positive solution to the problem of victims being forced to testify against their traffickers. However, as one of the social workers explained “Obtaining approval to stay and to be identified as a victim through the “social path” is extremely difficult and does happen rarely”<sup>318</sup>. In spite of the availability of the “social path” victims of trafficking are constantly pressured to cooperate during identification processes<sup>319</sup>. As in Poland, “police officials are convinced that the best recollection of the events happens straight after rescuing the victims”<sup>320</sup>.

Despite the many flaws of the Italian and Polish systems, response to human trafficking in both countries works quite effectively with victims from Europe or with those who already have a work visa<sup>321</sup>. In such cases, the procedures are straightforward; there is no need for further bureaucratic procedures as the victim can legally stay in the country even if no testimony is provided. The problems begin when the victims are immigrants from the non-European country without documents and permits to work. In these cases, the immigration policies make it impossible for victims to obtain services and recovery longer than three months without providing testimony and cooperating with police<sup>322</sup>. In many cases, likely the vast majority, due

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<sup>318</sup> Ibid.

<sup>319</sup> Interview with Dr. Esohe Aghatise, the Founder and Executive Director of IROKO Association, November 5, 2019.

<sup>320</sup> Ibid.

<sup>321</sup> Interview with Stefanie Massucci, the Drop-in Coordinator, Identification and Referral in On the Road Onlus Italy, September 23, 2019.

<sup>322</sup> Ibid.

to lack of testimony victims cannot be certified as trafficking victims and are deported<sup>323</sup>. In more severe cases, where victims have suffered severe physical violence, residence permits are issued. However, victims do not need to have visible scars to be entitled to recovery in a destination country. A large number of trafficking victims are controlled by criminals using tactics such as threats and psychological attachments. Because the traumas these victims have experienced are not straightforwardly visible to the law enforcement officials, they are left without protection and assistance, are deported, and back in their home countries, are at great risk of re-trafficking.

In Italy, as well as in Poland, research reveals that services provided to the victims are often not given high priority. The focus is placed on identification and swift recovery rather than the provision of adequate services to help victims recover from physical and psychological trauma. Considering the long history of trafficking in Italy, professionals there are better specialized, and there are more services available than in Poland. There are only a few NGOs in the whole country of Poland that provides psychological help for victims of trafficking. In contrast, in Italy, each region has several places where victims can seek help, even though Italy still struggles to provide appropriate service to all victims. In both countries, the anti-trafficking NGOs obtain their funds annually from the government<sup>324</sup>. Such an approach should be changed into more structural and stable one<sup>325</sup>. The interaction between social workers and victims needs to improve as these are often the only people victims are in contact with. Moreover, strengthening cooperation between social workers, police, and other law enforcement officials who are present in the area where the victim is identified is vital to provide victims with adequate help.

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<sup>323</sup> Ibid.

<sup>324</sup> Rosanna, Paradiso. "Trafficking in human beings: the present, the past and the victims' need", 228.

<sup>325</sup> Ibid: 228.

## Conclusion

The international instruments addressing human trafficking are powerful because of human rights norms and standards but rarely are fully implemented by the countries that ratify them. Each country has the right to implement procedures in parallel to the international requirements adding cultural specificity, as internal laws need to address domestic factors. The comparison of two legal systems of Italy and Poland demonstrates the successes and limitations of the ways in which these two countries balance the implementation of their domestic immigration and criminal laws with international human rights remedies for human trafficking victims. Even though, significantly distinct geographically as well as governmentally, Poland and Italy share significant similarities in the ways in which they carry out their obligations under international human rights law to protect and assist victims of human trafficking. The approach towards victim identification and protection is comparable. Their lack of appropriate identification and protection mechanisms do not comport with their obligations, increasing victims' powerless and voiceless.

Considering the long-standing and extensive history of trafficking in Italy, one might assume that services there are well developed and maximally protective of victims' safety and rights. However, numerous deficiencies are apparent in the systems of both countries in their response to the detection and protection of victims. Even though the awareness of trafficking in Italy is much more pervasive than in Poland, which in part derives from a more substantial number of trafficking cases in Italy as well as the efforts of NGOs to raise awareness and improve systems' response to victims, the identification and protection mechanisms have numerous shortcomings. The identification of victims in Italy is not conducted in accordance with

international standards. Even though written laws and regulations comprehensively protect victims' rights, in practice the implementation of this legislation and policy is quite tricky. The emphasis and pressure brought by law enforcement officials for victims to provide testimony are still extremely high, and the procedures are very oriented toward the goal of imprisoning the traffickers rather than helping the victims to recover and reintegrate into society. It is of course understandable that governmental authorities are focused on providing law enforcement with the evidence it needs to successfully investigate and prosecute human traffickers, especially since these criminals continue to seek out and prey on new, vulnerable victims including immigrants. However, this must be balanced against the important interest of protecting victims and preventing the traffickers from committing further crimes.

The favourable treatment of victims appears in the cases of EU-migrants. These victims do not need a permit to stay or work in the country; therefore, their dependence on the competency of officials and bureaucratic procedures is irrelevant. However, non-EU victims need to overcome numerous challenges. Lack of authorization to legally stay and work in the country is the most prominent challenge these immigrant victims fear.

Because of the traumatic effects of human trafficking, swift referral to appropriate and comprehensive services is of vital importance to victims' recovery. Professional, trauma-informed, and ongoing support should be provided to each victim to increase their chances of recovery and their integration into society. Unfortunately, due to inadequate funding in both Poland and Italy, and the resulting limited number of personnel, many victims cannot be provided with sufficient help. Psychologists are available only a few times per week to assist larger numbers of victims, and the support they are able to provide is minimal. Even though in both countries, victims are provided with immediate emergency help, such as medical

examination, shelter, clothing, and food, direct psychological support is provided to few and even then, is usually sporadic and of short duration. The reflection period, which should serve as a time to recover, is too short and often portrayed as a period to re-consider victims cooperation with law enforcement officials and provide them with an opportunity to assess the credibility of victims' testimony. The omnipresent pressure for cooperation overwhelms victims and sends the signal to them that their wellbeing is subordinate to other governmental ends.

The most significant finding of the research was the link between inadequate identification and protection mechanisms and a negative attitude towards migrant victims. Tragically, the growing discrimination and resentment towards migrants in Europe especially those from the global South, significantly influences the amount and kind of support victims are able to obtain. The ignorance of law enforcement about the harms committed towards migrants and their negative perceptions of these vulnerable people affect the willingness to provide appropriate investigation and help to migrants who have suffered the horrific crime and severe human rights violation of sex or labour trafficking. The victim's life and wellbeing depend entirely on the individual response of law enforcement officials who often lack adequate training and fail to understand that human trafficking is a severe crime carried out over time by means that are often insidiously subtle. Too often, when directly confronted with acts of human trafficking they fail to recognize them.

Even though in Poland, the problem of awareness is much more acute, the Italian officials struggle with it as well. Raising awareness is crucial in providing victims with proper help; states should make it a top priority to increase official's awareness that human trafficking is taking place in their own backyards and provide them with training they need to understand its

complex dynamics and the profiles and characteristics of victims and their exploiters. Officials require special training on forced labour cases, where violations have often been treated as violations of employees' rights rather than severe crimes of trafficking. Due to time-consuming procedures and the lack of evidence, often incurred because of a lack of diligence, law enforcement officials prefer to quickly close cases. The hurtful treatment of victim by governmental officials is mostly associated with procedural ineptitude. The absence of standardized trafficking procedures facilitates false investigations, leading to incompetent recognition, and consequently, with inappropriate help and recovery.

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