THE SYSTEM FOR THE PROTECTION OF WOMEN VICTIMS OF TRAFFICKING FROM NIGERIA, GENDER VIOLENCE AND LAW

Nazzarena Zorzella

The legal and social condition of women in Nigeria, particularly in Edo State, is well summarized in the article by Odi Lagi. This is the starting point, together with information obtained during the Conference in Lagos in February 2020, to try and analyse *if* and *how* that specific condition is relevant and *effectively* taken into consideration by Italian institutions when Nigerian women victims of actual or potential trafficking enter the social protection system (Article 18, Consolidated Italian Legislative Decree 286/98) or the international protection system (Italian Legislative Decree 251/2007 and Italian Legislative Decree 25/2008).

Various studies and reports witness that, for many years, the vast majority of women trafficked for sexual exploitation who arrive in Europe or are detained in transit countries, especially Libya, come from Nigeria and, in particular, from Edo State (in the south of the country)[1].

While until 2012-2013, institutional intervention to protect women victims of trafficking largely developed (if not exclusively) in the context of Article 18 Consolidated Legislative Decree on immigration 286/98, in recent years requests for recognition of international protection by Nigerian women and other nationalities have significantly increased in Italy, many of which indicate subjection to trafficking in human beings. However, there are no statistical data for the acceptance rates of such requests, neither in administrative nor judicial spheres, and therefore the following analysis proposes considerations starting from empirical data and personal experience.

The central aspect whereby a woman victim of trafficking gains protection, both in the system pursuant to Article 18 of the Consolidated Legislative Decree on immigration as well as international protection (Legislative Decree 251/2007, Legislative Decree 25/2008 and Legislative Decree 142/2015), is her **collaboration** with Italian authorities, albeit interpreted in different ways in either scope, but with the risk that both imply and assume submission of the woman passing from one system (criminal) to the other (institutional protection).

In the legal device of social protection, pursuant to Article 18 of Consolidated Legislative Decree on immigration 286/98, although it cannot be activated only in relation to collaboration involving judicial or police investigations but also through the mere acceptance of entering a local authority social project, in practice the first (so-called judicial) approach has become a central priority, since the onset and inclusion in a social project is granted only if and only in so far as the victim of violence or serious criminal exploitation provides useful information to judicial authorities in the fight against criminal networks. This practice, while not exclusive, is certainly prevalent in many situations, in contrast with legal dispositions and occurs in the silence of the entities that manage anti-trafficking projects.

In the context of the international protection recognition procedure, however, collaboration is qualified as **cooperation** with the competent examining authority, which translates into the duty to make statements about personal affairs that are coherent, not contradictory and as detailed as possible. If these characteristics are absent, it prevents activation of the correlated duty of the authority examining the application itself to cooperate with the asylum seeker, i.e. ascertaining whether that narrative is consistent with the pertinent information about the country of origin. This is the complex application examination process for recognizing international protection and assessing credibility, as outlined in Article 3 of Italian Legislative Decree 251/2007 and Articles 8, item 3 and 27, item 1bis of Italian Legislative Decree 25/2008; the outcome may be recognition one of the two forms of international protection (political refuge or subsidiary protection) or the complementary form, now defined as “special protection” (“humanitarian protection” until 2018).

Correlating that type of collaboration/cooperation with the specific nature of the condition as a victim of trafficking could hardly, in abstract terms, come within the scope of international protection, because one of the characteristics that emerges in many studies and reports is the fragmentation, contradiction and “reticence” of victims of trafficking to talk about themselves which, when “translated” into the asylum system, are equivalent to non-cooperation/non-collaboration.

As already mentioned, within the legal mechanism of Article 18 of the Consolidated Legislative Decree on immigration, the practice established over the years since 1998 has increasingly shifted the centre of gravity of the balanced system towards criminal aspects, with significant resistance from public security authorities to issue a residence permit in the absence of a denunciation of exploiters and/or traffickers. This may have contributed towards increased entry by trafficked women into the international protection system, which does not formally require any such denunciation.

However, it should be noted that this implementation was determined not so much or not only by significantly "easier" access to the asylum system but, even beforehand and to a greater extent, by the transformation of organized crime over the last decade, from the implosion of Libya starting in 2011, and, last but not least, as a result of the increasingly restrictive policies of the European Union and Italy characterized by substantial closure of borders in the absence of legal means of entry. This series of factors has brought about modifications and adaptations as regards the organization of human trafficking as well as migratory flows that mix victims of trafficking and people fleeing other violations of human rights or armed conflicts, with increasingly numerous arrivals from Libya from 2013-2014 onwards. In this new scenario, which has substantially incorporated migratory flows, the only way to avoid immediate repatriation or become an illegal presence in Italian territory was to request asylum already in the hot-spots, i.e. the places created since 2015 in the ports of arrival, where there was and still is the immediate distinction between asylum seekers and economic migrants, with consequent inclusion of the former in the reception/asylum system but, for the latter, the path towards expulsion arising from unauthorized entry as so-called "illegal immigrants".

The unavoidable path of international protection has itself brought about an increase within the asylum system of asylum seekers who are victims of trafficking, especially from Nigeria, with significantly higher numbers since 2014[2]. Data collected through first-hand experience suggest that a smaller percentage of women victims of trafficking have had access to the international protection system outside that scenario, i.e. by applying for asylum a long time after disembarkation and/or arrival in Europe and often after having been subjected to long-term exploitation, prostitution or other forms of criminal violence in Italy or the EU.

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This rather brief description of the two protection systems unequivocally highlights that the collaboration or cooperation of the victim of trafficking is an aspect shared by both and, especially in the administrative sphere, the outcome is "no collaboration, no protection".

The particular nature of the subject abstractly destined to either of the two protection systems meant that a relationship between them had to be created, if only to offer the asylum system the experience gained over the years by the anti-trafficking system in identifying the subjective status as victims of trafficking. This is how a kind of protocol was developed between the two institutions, expressed in the **2017 UNHCR and Ministry of the Interior Guidelines**: *The identification of victims of trafficking among applicants for international protection and referral procedures. Guidelines for*

Territorial Commissions concerning the recognition of international protection, updated in January 2021 in the light of experience gained in applying the previous version[3]. One of the main aspects of these Guidelines concerns the full-scale Standard Operating Procedures that precisely seek to qualify an asylum seeker (male or female) as a victim of trafficking through the identification of typical indicators, i.e. aspects of the story told by the potential victim which, in accordance with an experience-based framework, ensure "identification" as such and therefore potential recognition for protection. Indicators concerning the place and methods of recruitment, itinerary, methods and stages along the migratory path, age indicated on documents different from effective age and, as far as this is concerned, "*A contradictory story or related to facts that recur frequently in applications for international protection because of reluctance/fear over telling personal stories in their entirety - Narration of facts that, in a fragmented manner, comprise aspects of human trafficking (recruitment methods, violence suffered, sale); - Resistance to discuss matters with respect to current personal situations*" (page 51, 2021 Guidelines).

The latter aspects abstractly conflict with the general rule which, as already mentioned, in the field of international protection requires consistency and non-contradiction in declarations by the asylum seekers but which, on the other hand, take on a different meaning if they arise in a context of ascertaining human trafficking. In other words, what has to be coherent and linear in the "routine" asylum application, when it comes from a victim of human trafficking, it is precisely the inconsistency, contradictory nature, fragmentation and even mendacity of the story that integrates identification as a victim. The general system, inasmuch, seems to have adapted to the specific nature of the condition of victims of trafficking seeking asylum, in line with the general principle that requires "case by case" examination of the application and taking into account the specific aspects of each individual (Article 3 of Italian Legislative Decree 251/2007).

To achieve the objective of correct qualification of asylum seekers, the Guidelines also introduced the referral system, i.e. intervention by the anti-trafficking entity in the international protection recognition procedure, as an external expert in the identification of victims of human trafficking. Yet this has had a largely distorting effect, since it has effectively entailed entrusting those entities with the assessment of the credibility of the (potential) victim of trafficking. An assessment where collaboration by these women once again plays a central role but which, otherwise, has in many cases led to denial of international protection. It should be noted that collaboration is not necessarily focused on obtaining a denunciation; but it cannot be denied that the very fact of not being collaborative with the entity, of not telling personal stories in full and denouncing the names of

traffickers, prevents these aspects from being sent *ex officio* to the judicial authority in order to start criminal investigations, given the obligation of public officials or the person in charge of a public service to notify judicial authorities of the possible existence of an offence that could be prosecuted *ex officio*, i.e. the crime of trafficking referred to in Article 601 of the penal code. Yet even if one wishes to exclude a risk such as an official denunciation, there is no doubt that the expectation of collaboration, understood as the consistency and precision of the narrative, arouses considerable fear among victims over repercussions against themselves or their family members in the country of origin. This has always characterized the strong resistance of women victims of trafficking to reveal the details of their story. So much so that precisely to avoid this risk Article 18 of the Consolidated Legislative Decree on Immigration in 1998 inevitably avoided linking protection with criminal action; but, unfortunately, that approach, as already mentioned, has gradually waned over the years.

The juridical short circuit effectively caused by inter-linking the two systems is evident. The collaboration of victims of trafficking, required in the procedure referred to in Article 18 of the Consolidated Legislative Decree on Immigration 286/98, has now passed into the international protection procedure, although not required for the specific category of victims of trafficking, thereby becoming an essential requirement for recognition of protection.

One example is the recent decision taken by the Bologna Territorial Commission which denied international protection based on a lack of cooperation by the applicant, even in the presence of evident indicators of trafficking contained in the applicant's declarations.

"Collaboration" by trafficking victims has therefore become an aspect of both systems. In itself, this is a very significant critical aspect, in terms of their efficiency and equally in terms of appropriate application of the intended protection, since in both cases the focus is shifted from the purpose of protecting the person who has already suffered very serious violations of human rights to the needs of the State to combat human trafficking, turning the former into a mere instrument of investigation (and inasmuch not always considered "useful" for that purpose).

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This distorted view of victims of trafficking embodies in itself another critical aspect, namely the omitted consideration of personal and social conditions on departure, that is, whether they gave rise to the "occasion" for women to become victims of trafficking and, in parallel, whether this is a risk factor in the event of repatriation, returning them to a social and/or regulatory context which in itself generates violence of various kinds, and exposing them once again to the risk of gender persecution.

In other words, over and above the fact that trafficking has its own legal significance, proof of very serious violation of the victim's fundamental human rights (which in itself is an aspect for well-founded fear of return, pursuant to Article 4 of Italian Legislative Decree 251/2007), limiting to this without taking into consideration the woman's individual and social condition at the time of her departure excludes emphasis being given to gender as a factor of persecution and consequently its assessment by institutions as an aspect for well-founded fear of repatriation essential for recognition of international protection.

At present, administrative or judicial decision-makers seem inclined to assess the risk of repatriation exclusively or largely in relation to the risk of re-trafficking, especially with regard to Nigerian women. This highlights the inadequacy or insufficiency of the institutional measures taken by the federal state of Nigeria and/or individual states, such as Edo State, for the protection or social reintegration of repatriated women.

In truth, we must broaden the viewpoint and understand the origin of criminal exploitation for sexual or work purposes, bearing in mind that the 2011 Istanbul Convention, ratified in Italy with Law no. 77/2013, recognizes the **structural nature of violence against women**[4], interpreting the concept of violence in broad terms[5] and specifying that "*the term 'gender-based violence against women' means any violence directed against a woman simply because she is a woman, or which affects women disproportionately*" (Article 3). The obligations indicated for the State also include the adoption of measures "*based on an <u>understanding</u> of gender-based violence against women, as well as domestic violence, and focused on the human rights and safety of the victim; they are based on an <u>integrated approach</u> that takes into consideration the relationship between victims, perpetrators, children and their wider social context* " (Article 18 of the Convention).[6]

Inasmuch, the Convention indicates that account must be taken of the social context in which violence originates, interpreted in various ways, having the safety of victims as its main purpose, which also means preventing their return into a circuit of violence similar to the initial context.

More specifically as regards the relationship between political asylum and gender-based violence, Article 60 of the Convention states that "*the Parties shall adopt the legislative or other measures needed to <u>ensure</u> that gender-based violence against women can be recognized as a form of persecution within the meaning of Article 1, A (2) of the 1951 Convention concerning the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.*"

The need to take a perspective on gender, and thereby acknowledge gender-based violence as a form of persecution or serious harm, is well argued in the article by E. Rigo, included in the focus presented here. It must also be reiterated that, in order to ensure the dispositions of the Istanbul Convention, it is not only necessary to identify correctly, in abstract terms, the indicators of trafficking and to set them in the specific case but also and above all to understand the origins of such a condition in order to preserve the safety of the victim against re-entry into a context producing the same violence that originated it in the first place.

In this perspective, the "collaboration" of preordained women victims of trafficking in judicial investigations is irrelevant because, as already mentioned, it shifts attention from a system of protection to a system of sanctions, which has a completely different purpose that may *even* include protection of such victims but only in a collateral and unsure manner. When imposed, such collaboration is set in a context in opposition to the aims pursued by the Istanbul Convention, the 1951 Geneva Convention on Refugees, European legislation on international protection and, last but not least, Article 10, item 3 of the Italian Constitution.

As regards the condition of women in Nigeria, the article by Odi Lagi describes the discrimination they suffer, as a consequence of full-scale legal arrangements as well as still deep-rooted traditions, which certainly suggests that the repatriation of a woman who is already a victim of human trafficking implicitly includes the risk of persecution or serious harm. In fact, if gender persecution includes *any violence directed against a woman simply for being a woman, or which affects women disproportionately*, there is no doubt that whenever the risk of suffering it again is ascertained, in view of their personal history, family and social background of origin, such well-founded fear that gives rise to international protection must be considered as an integral factor.

Brief review of Italian jurisprudence with reference to gender-based violence and trafficking

The problematic inter-linking between the protection systems that can be activated for victims of trafficking and the critical aspects that have ensued, as well as the low relevance of gender persecution as a factor as such integrating the need for international protection, are clearly visible in many administrative decisions taken by Territorial Commissions. In this regard, decisions that, on the

other hand, take these aspects into consideration are rare (a recent decision of the Turin Territorial Commission stands out from the prevailing direction in recognizing the status of political refuge to former victims of trafficking, living in Italy for many years, whose risk in the event of repatriation was found to lie not so much in re-trafficking as in the social alienation and stigma associated with returning to Nigeria).

With specific reference to trafficking, jurisprudential decisions on the other hand seem to be more nuanced. From an initial, general consideration of the female condition, they increasingly seem to analyse the specific condition of women victims of gender violence, as this particular condition progressively "made its way" into the asylum system. At the same time, there are jurisprudential guidelines that implicitly or explicitly refer to the question of "collaboration" by trafficking victims as a prerequisite for recognition of a form of protection.

Despite the non-exhaustive nature of this review, rulings specific to trafficking include those that acknowledge collaboration with an anti-trafficking entity (Court of Bologna 16.12.2020 - RG. 9833/2018; Court of Bologna 11.1.2019 - RG. 19126/2017; Court of Florence, 8.7.2019 - RG. 16524/2017), while others do not mention it (Court of Messina 7.12.2020 - RG. 1927/2020; Court of Florence, 21.3.2020 - RG. 11819/2017; Court of Rome 29.4.2020; Court of Milan, 22.10.2020 - RG. 42241/2018). It should be noted that some Courts (Florence and Rome) appear to collaborate with anti-trafficking entities, not so much as to obtain evaluations but help in ascertaining trafficking indicators, in accordance with the recently updated UNHCR and Ministry of Interior Guidelines of 2017.

Some rulings increasingly highlight the irrelevance of the credibility of declarations or the need for self-recognition of the status as a victim of trafficking (Court of Messina, 7.12.2020 - RG. 1927/2020; Court of Milan 21.10.2020 - RG. 42241/2018)**.**

As for the risk in the event of repatriation, some rulings have ascertained a link with the risk of retaliation or re-trafficking (Court of Bologna 16.12.2020 - RG. 9833/2018; Court of Bologna 11.1.2019 - RG. 19126/2017; Court of Florence, 8.7.2019 - RG. 16524/2017), while others increasingly associate the risk with gender persecution (Court of Florence 03.21.2020 - RG. 11819/2017; Court of Rome 29.4.2020).

The **jurisprudence of legitimacy** deserves a more articulated and particular consideration. Over the years, it has progressively elevated gender-based violence as a factor for recognition of a form of

protection within the asylum system. However, it must be added that it is not always considered as integral to the prerequisites of political refuge as much as, on the other hand, subsidiary or humanitarian protection. An approach that appears to contradict itself, since if gender persecution is a reason for protection, if its origins are based on arbitrary distinctions that shift from a negative value of the female gender on which all societies are based, that condition, if ascertained, and the resulting consequences in terms of violation of fundamental rights, should inevitably come within the conditions for being a political refuge, given that Article 1A of the Geneva Convention offers protection to those who are persecuted or discriminated by reason, among others, of "*belonging to a particular social group*", which women of course are, as perfectly highlighted by Enrica Rigo.

Inasmuch, there is no legal reason that justifies the recognition of minor forms of protection to asylum seekers who motivate their requests for protection in relation to personal histories involving persecution or discrimination. One may even perceive in these decisions a kind of unwillingness/reluctance to give full juridical significance to gender persecution, as if it hides the difficulty in considering it to be a universal issue that questions every person and every society, the answers to which are neither easy nor taken for granted because they involve all of us.

The brief review indicated below is an example of this approach even if one should highlight a trend, as yet still to be consolidated but certainly important, towards a gender approach to the female question wherever it crosses paths with the institutional system of safeguards.

With reference, in general, to **gender-based violence**, starting from the first rulings, **ordinance n. 25463/2016 of the High Court of Appeal** identifies the forced marriage of a Nigerian woman as a "*grave violation of dignity and, therefore, inhuman and degrading treatment which also incorporates serious harm*", a prerequisite for the recognition of subsidiary protection, the private sphere of such violence being irrelevant if the State does not provide appropriate protection. With **decision no. 28152/2017**, the Court annulled the decision at appeal level (which in turn had annulled the ordinance of the Court of Bologna recognizing subsidiary protection for a Nigerian woman who was the victim of discriminatory inheritance practices) and, with express reference to the 2011 Istanbul Convention (ratified in Italy by law no. 77/2013), identified domestic violence as the imposition on a woman to marry her brother-in-law, after the death of her husband, because of religious or traditional practices. The passage in which the Court states that the asylum seeker's case falls within the scope of political refuge, since the persecution suffered is perpetrated for belonging to a social group "*i.e. in being a woman*", is interesting.

Again in 2017, ordinance **no. 12333/2017** involving an asylum seeker from Morocco, criticized the denial of protection put forward by trial judges, recalling the broad definition of domestic violence in the Istanbul Convention and identified the inhuman and degrading treatment inflicted on the woman by her husband pursuant to Article 14, letter b) of Italian Legislative Decree 251/2007 (subsidiary protection).

Again on a general level, the following deserve to be reported: ruling **no. 18803/2020** (criticizing the court decision not to recognize any form of protection for an Albanian woman who was the victim of domestic violence but deemed not to be credible, by highlighting that denigration of women is also one of the ways of exercising violence and that this can never be a private matter but personal persecution coming within the scope of political refuge); ordinance **no. 17954/2020** (concerning the practice of FGM in Mali and the consequences on parents who refuse to have it performed); ordinance no. **21437/2020** pertaining to the risk of forced marriage involving a woman from Sri Lanka, wherein the High Court of Appeal criticized the trial judge for not having assessed that the woman's right to self-determination was compromised as well serious harm being caused to her dignity, thereby qualifying as inhuman and degrading treatment for the purposes of recognition of subsidiary protection.

The interesting yet concise motivation behind ruling no. **27258/2020** concerned an asylum seeker from Nigeria who complained of violent subjection by her partner in Nigeria and the fear associated with his belonging to a cult. The Procedural Court criticized the Court which had denied any form of protection due to lack of credibility for failing to verify whether "*the above-mentioned risk exists, regardless of the relationship with her former partner, with reference to the - albeit inferred - condition of a woman in a particularly degraded socio-family context.*"

With specific reference to trafficking, the following rulings of the High Court of Appeal are significant.

Ordinance **no. 17698/2018** considered the reference to the "*tragic situation*" of women in Nigeria to be generic and therefore confirmed the denial of protection to a Nigerian asylum seeker who reported having been a victim of trafficking ten years earlier and emphasized the risk posed by repatriation, given the danger of Nigerian organizations and the condition of women in general.

The ordinance of the High Court of Appeal **no. 29603/2019** annulled a trial decision which had denied any form of protection to an asylum seeker from Nigeria because her statements were

deemed contradictory and improbable, even though it had believed the historical fact to be plausible, namely when woman claimed to have been sold by a friend to traffickers, taken by the latter to Libya and forced into prostitution, as well as doing time in prison. First and foremost, the High Court of Appeal cited the jurisprudential direction that also attributes importance to violence suffered in transit countries, such as Libya, at least for the purposes of recognizing humanitarian protection, given the condition of vulnerability that ensued, but above all criticised the fact that "*the Court, while not disputing that the applicant was 'sold' through a friend - which presumably means that she was the victim of flourishing human trafficking between Nigeria and Libya - contrary to pertinent legislation (starting from Article 8 of Italian Legislative Decree no. 25 dated 2008) it does not appear that this fact was given any importance*", thereby failing in its duty to ascertain whether a form of international protection can or should respond to such facts, taking into account that "selling a human being" is itself violence and a form of slavery.

Ordinance no. **1104/2020** concerned an asylum seeker from Nigeria who reported having suffered sexual exploitation during her migratory journey, especially in Libya, where she had been forced into prostitution. She was terrified or the risk of re-trafficking in the event of repatriation. The High Court of Appeal surprisingly over-ruled this risk because the woman worked as a hairdresser before leaving. On the other hand, the Court annulled the trial decision for not having effectively assessed the vulnerability of the asylum seeker in having been exposed to repeated episodes of sexual violence, both in Nigeria and Libya, to the extent of having to question "*the residual capacity of a woman already subjected to such experiences to undergo, and still be able to accept, endure and suffer any further form of violence - albeit of an unquestionably different type and intensity."* The High Court of Appeal does not refer to the Istanbul Convention but, on referring the case back to the judge with an invitation to assess the conditions for humanitarian protection, quoted sources of information denouncing that domestic violence in Nigeria is "*very widespread and endemic*" and "*may involve physical, moral, psychological, sexual and economic abuses or constraints, threats, intimidation and isolation.*"

With its ordinance **no. 24573/2020**, the High Court of Appeal addressed the issue of **non-collaboration** with authorities on the part of women who had been denied protection precisely because of this, and consequently deemed not to be credible. The ruling contains several interesting profiles, including the lack of hearing by the trial judge despite having found "symptomatic aspects" of a trafficking route from Nigeria for purposes of sexual exploitation, as also testified to by bodily injuries caused by acts of violence.

As regards credibility, the High Court of Appeal confirmed an important principle, which differs from routine legal parameters for the examination of applications for international protection, namely that *"the handling of the application for international protection by a young woman who is possibly a victim of trafficking must have very special characteristics, with special reference to the preliminary investigation and the applicant's hearing. In other words, the judge should not merely check any improbability, inconsistency and gaps in the story and its consistency with information relating to the country of origin, but must make use of all available tools to bring out the history of trafficking despite the contrast with the apparent allegation of the applicant, including the paradigmatically indispensable hearing in court, in order to recognize through the description of the existence of a different historical reality, a different human story and the underground trafficking concealed by the applicant herself*."

The Court also referred to the information envisaged by Article 18 of the Consolidated Decree 286/98 but did not analyse the relationship between the two systems.

Again with reference to the topic of "non-cooperation", expressed in terms of non-self-recognition of the status of victim, the ordinance of the High Court of Appeal **no. 1750/2021** annulled a decision taken by Bari Court of Appeal, which had denied a Nigerian asylum seeker any form of protection because the woman claimed not to have suffered any criminal sexual exploitation despite the fact that many indicators emerged from her statements that identified her as a victim of trafficking; so much so that the appeal judge sent *ex officio* documents to the Public Prosecutor's Office and to the Commissioner in order to verify the crimes as per Articles 600 and 601 of the penal code[7]. The High Court of Appeal highlighted the contradictory nature of the negative assessment of credibility expressed by the trial judge, since despite having verified the existence of trafficking indicators, the judge gave priority to "*the fact that the applicant denied finding herself in this condition*", thereby considering the "*explicit admission by the asylum seeker to have been in the past and even currently a victim of trafficking for the purposes of sexual exploitation*" as a necessary element. Such self-recognition is irrelevant, according to the High Court of Appeal, because "*where indicators of trafficking and sexual or labour exploitation referred to in the Guidelines emerge from the applicant's story, who in the case in question actually made generic and non-credible statements about the journey from Nigeria to Italy and who paid for it, as well as the freedom in her activities as a prostitute, the failure to recognize the applicant's condition of exploitation by no means prevents the judge from recognizing the applicant's condition of objective personal vulnerability for the purposes of issuing the residence permit for humanitarians reasons*."

This was an important decision and entirely in keeping with the rules for assessing asylum applications based on the condition of being a victim of human trafficking, as outlined by humanitarian agencies. However, at the same time, there may also be an evident, worrying limit when the case is "only" associated with humanitarian protection, i.e. the weakest and most precarious form of protection, not so much because of the conditions on which it is based but on the residence permit related to it.

Ordinance **no. 10/2021** has a different character, whereby the High Court of Appeal addressed the case in which a Nigerian asylum seeker had obtained recognition of political refugee status by the Court of Bologna that was later annulled by the Court of Appeal which deemed that statements were not credible. The High Court of Appeal challenged the criteria under which the appeal judge had identified the applicant's statements as not being credible and, with reference to the definition of political refuge as well as to Article 60 of the Istanbul Convention which includes gender persecution among the reasons for political refuge or complementary protection, stated that "*one must then recognize the structural nature of violence against women, in that it is based on gender, thereby meaning any violence directed against a woman simply for being a woman, or which affects women disproportionately (Preamble and Article 3, letter d, Istanbul Convention, 11 May 2011*)." The Court specifically interpreted the principles of the asylum system, pointing out that the applicant can present factual elements even if only "by way of circumstantial evidence" with respect to which it is the duty of the judge to play an active role by acquiring specific information about the country of origin. With particular reference to the phenomenon of trafficking, the Court framed it within the scope of political refuge and stated that the analysis undertaken by the judge must be all the more meaningful "*in the event of a more violent assault on the freedom and dignity of women, as in the case in question, of the applicant being 'sold', which is inherently an integral part of slave-like treatment, thereby requiring that specific information be obtained regarding the situation of Nigerian women, while also bearing in mind that victims of trafficking often do not report the violence they have suffered for fear of retaliation (Court of Appeal, 14 November 2019, no. 29603*)."

Lastly, a very recent and in many ways innovative ruling by the High Court of Appeal should be mentioned (**no. 2464/2021**) whereby the Court, in criticizing a sentence issued by the Milan Court of Appeal, provided an important framework for the "trafficking" issue in the asylum system. The judge began with the assessment of the credibility of the statements of a Nigerian asylum seeker,

reiterating that not only is it wrong to isolate secondary aspects of the narrative, thereby losing sight of the overall picture, but that contradictions themselves must "*be appreciated by the trial judge and take into account the particular vulnerability of the victim, or potential victim, of trafficking, which is expressed above all in the difficulty of describing, in front of strangers, a story that obviously focuses on absolutely personal events*", which may involve feelings of reservation, shame or difficulty in referring details to strangers that may also negatively impact one's personal esteem. On a strictly legal level, the Court reiterated that assessment of credibility cannot be based on the subjective perception of the decision-maker, who must instead comply with the rules of law outlined in Article 3 of Italian Legislative Decree 251/2007 and Article 8 of Italian Legislative Decree 25/2008, by objectively verifying the story narrated by asylum seekers in the light of pertinent sources of information. With reference to the foregoing, the High Court of Appeal discussed specific features of the proven or potential condition as a victim of trafficking for purposes of sexual exploitation, making reference to international legislation (United Nations Protocol against trafficking in 2000, Istanbul Convention in 2011), as well as European legislation (Directive 2011/36/EU) and Italian legislation relating to the asylum system (Legislative Decrees nos. 251/2007, 25/2008 and 142/2015), which consider the specific nature of the condition in question and its direct connection with the Geneva Convention of 1951 which also offers protection to social groups, including women.

With reference to the definition of 'victim of trafficking' contained in the Palermo Protocol dated 2000 and finding that a form of protection envisaged by Italian law is outlined in Article 18 of the Consolidated Legislative Decree on Immigration 286/98, the High Court of Appeal stated that this rule is in no way an obstacle to recognition of international protection, provided it is ascertained in accordance with the criteria mentioned above and having assessed that such fear is well-founded. It is with regard to the aspect of fear that the Procedural Court takes a significant step forwards in keeping with the dispositions of the 2011 Istanbul Convention, as well as the Geneva Convention, in stating first and foremost that it must be "founded" and not necessarily characterized by "certainty", and above all must be "*seen in relation to the specific situation of the applicant and therefore with the context the applicant came from.*" The conclusion reached by the High Court of Appeal is that "*a woman who says that she has been an actual or potential victim of trafficking falls entirely within the scope of international protection, with regard to the immediate fear of returning to her country of origin and thus being exposed again to the danger from which she fled, as well as with reference to so-called 're-victimization*'", understood as the return to a social context in which women victims of violence are stigmatized, and also with regard to aspects not directly connected to that condition "*but linked to the degraded socio-economic context, or a significantly male-oriented environment,*

where the condition of alienation of women arises, whereby they are effectively even denied the right to access the protection envisaged by local legislation."

In other words, the Court not only or exclusively considered a danger associated with the condition of (already) being a victim of trafficking but extended it to include the general social condition of the woman, in this case in Nigeria, where she can be excluded/persecuted/discriminated merely because she is a woman, with the risk of bringing about a "*substantial descent into slavery*", which excludes any possible private qualification of personal affairs. This condition itself, which the Court does not state explicitly but clearly intends, may have given rise to the sexual and criminal exploitation that determined the asylum seeker's departure from her own country.

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This brief review sought to outline developments in jurisprudence which, if consolidated, may lead towards an approach to the question of gender-based violence against women in compliance with international standards, that is, which considers its structural nature as the only way to attempt to tackle and resolve it. An opportunity that should go hand in hand with due thought even in the variegated world of assistance organizations which, by entering into a relationship with foreign victims of gender violence, know how to combine shared characteristics or those threads of a common plot that on the one hand make it possible to overcome us-against-them opposition (which erroneously makes us feel uninvolved in the creation of violence), at the same time repositioning the condition of women victims of violence in the context of inviolable human rights.

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[1] Report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/41/46/Add.1), 16 April 2019

https://reliefweb.int/sites/reliefweb.int/files/resources/G1910872.pdf

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[2] For a reconstruction of the phenomenon, see F. Nicodemi, *Il sistema anti-tratta italiano compie venti anni. L'evoluzione delle misure legislative e di assistenza per le vittime e le interconnessioni con il sistema della protezione internazionale*, in IUS MIGRANDI, Trent'anni di politiche e legislazione sull'immigrazione in Italia, edited by M. Giovannetti and N. Zorzella. Can be freely download from: http://ojs.francoangeli.it/_omp/index.php/oa/catalog/book/553

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[4] Introduction: "Recognizing the structural nature of violence against women, in being based on gender, as well as recognizing that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men."

[5] Article 3, letter a): "The expression 'violence against women' is intended to define a violation of human rights and a form of discrimination against women, including all acts of violence based on gender that cause or are likely to cause harm or suffering of a physical, sexual, psychological or economic nature, including threats to commit such acts, coercion or arbitrary deprivation of liberty, both in public and in private life."

[6] See E. Rigo, *La protezione internazionale alla prova del genere: elementi di analisi e problematiche aperte, in Questione giustizia*

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[7] Pursuant to Article 32, item 3-*bis* of Italian Legislative Decree 25/2008, if the Territorial Commission for the recognition of international protection denies international and special protection, it can refer the matter to the Commissioner if it recognizes the conditions covering the offences referred to in Articles 600 and 601 of the Penal Code: "*3-bis. The Territorial Commission also sends the documents to the Commissioner for assessments of competence if, during the investigation, well-founded reasons emerge whereby the applicant was likely to have been a victim of the crimes referred to in articles 600 and 601 of the penal code."*