

M.<sup>a</sup> BELÉN MORATA GARCÍA DE LA PUERTA  
GIORGIA BULLI  
ANA M.<sup>a</sup> HUESCA GONZÁLEZ  
*(editors)*

# Human mobility and social protection in Europe

Comparative studies and professional practices



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**HUMAN MOBILITY  
AND SOCIAL PROTECTION IN EUROPE**

**Comparative studies and  
professional practices**




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# HUMAN MOBILITY AND SOCIAL PROTECTION IN EUROPE

Comparative studies and  
professional practices

GRANADA, 2025

# COLECCIÓN TRABAJO SOCIAL Y BIENESTAR SOCIAL

*Directoras:*

BELÉN MORATA GARCÍA DE LA PUERTA y MARÍA TERESA DÍAZ AZNARTE  
Universidad de Granada

*Comité Científico:*

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Universidad de Granada

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École de Service Social de la Croix Rouge

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Université du Québec à Montréal. UQÀM

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# PREFACE

## HUMAN MOBILITY AND THE PROTECTION OF RIGHTS IN EUROPE: A CRITICAL PERSPECTIVE OF THE GLOBAL-ANSWER PROJECT

This monograph is a contribution from the researchers of the Global-ANSWER project, examining the phenomenon of migration and rights protection in Europe, with a focus on Spain, Italy and Sweden. The work brings together academics, professionals, and technicians from social services and third-sector organisations, who have collaborated to critically and comparatively analyse social intervention in contemporary contexts of human mobility. The aim is to move beyond institutionalised categories that treat migration as a problem to be solved, with the aspiration of transforming the way people on the move are perceived and treated. This is therefore a collective effort to discover how social protection systems respond to the complexity generated by migratory flows and international protection in the Euro-Mediterranean region.

Human mobility has ceased to be an anecdotal or circumstantial phenomenon, becoming instead a defining factor of Western societies and a force that redefines social relations. However, migration governance is highly politicised, with efforts to manage the perceived ‘threat’ posed by migrants shaped by struggles and tensions. The securitisation of borders and the rise of populist discourse contribute to an approach to the phenomenon that results in highly restrictive policies and, in particular, the inability of governments to guarantee fundamental rights. Additionally, migration is often described as a social ‘cost’ from the perspective of ‘welfare chauvinism’. This term is widely used to perpetuate the perception that migrants restrict access to social rights by using scarce resources.

In this context of widespread politicisation, it is crucial to reinstate the pivotal role of social services. The Global-ANSWER project, ‘Global Social

Work and Human Mobility’, aims to identify, analyse and disseminate good practices in social work and social services with migrants, refugees and asylum seekers at a local level across the Euro-Mediterranean region. This work is valuable because it addresses some of the most important issues raised by politics, research and professional practice around human mobility.

The current migration landscape is characterised by significant political polarisation and the manipulation of discourse. Therefore, it is an ethical and epistemological imperative to disseminate research results based on rigorous, contextualised knowledge to dismantle the simplifications and prejudices that dominate public debate. This work presents comparative studies that counteract the criminalisation of migration, social hostility, and the tendency to oversimplify complex issues such as ‘threat’ or ‘danger’. Media coverage sometimes reinforces biases through the use of alarmist language, perpetuating stereotypes that contribute to the social construction of the ‘other’ as not only different, but also problematic or even parasitic to the host society. The significant contribution of migration to sustainable development is overlooked, while issues associated with ‘emergency, crisis or invasion’ are emphasised and generalised.

The criminalisation of migration is offset by the work presented here, which emphasises a human rights-based perspective, since mobility is a universal right. Analysing the legal and institutional frameworks in Italy and Spain reveals that, despite the existence of a supranational human rights model in Europe, implementation is characterised by selectivity, a lack of harmonisation, and the outsourcing of border control. The results of the research therefore show regulatory inconsistencies, such as in the Italian case, which have given rise to “irregularity” caused by regulatory rigidity. Legislation that promotes short-term and cultural migration models (‘guest workers’) hinders the stabilisation and inclusion of migrants.

Through this publication, the Global-ANSWER Network seeks to actively promote the social inclusion of migrants and asylum seekers. Inclusion, defined as the primary goal of human mobility, goes beyond the traditional concept of ‘integration’, which is often identified as the individual responsibility of migrants to adapt to the host society. Thus, ‘inclusion and incorporation’ oppose ‘integration’, a rigid and uniform way of adapting newcomers that ignores their valuable experiences and life stories. This perspective, known as migrant knowledge, is crucial in dismantling the subordinate position of migrants as second-class citizens.

One of this work’s contributions is identifying and analysing the systemic vulnerability faced by migrants and asylum seekers. This vulnerability takes many forms, such as the lack of residence or citizenship

rights, which expose them to continuous precariousness and increase the risk of labour exploitation. Another example is the tension between the need for regularisation and the exclusion of vulnerable groups, such as people applying for international protection. Another issue is the vulnerability experienced by women and girls during and after their migratory journey, and their special situation as invisible victims in the absence of approaches, strategies and networks that address their unique vulnerability.

A critical finding is how social protection systems can consistently fail, even when designed to favour vulnerable groups. This phenomenon, known in the literature as ‘non-take-up’, is a very worrying issue. In Spain, research on the receipt of the Minimum Vital Income — an economic benefit designed to cover basic needs — shows that at least 40% of potential beneficiaries do not receive it. In such cases, we can no longer speak of individual errors, but rather systemic failures caused by bureaucratic complexity, stigmatisation, or fear of conditionality. These factors act as barriers that violate fundamental rights and constitute institutional violence. The book therefore advocates local governance of migration that focuses on rights and human security, placing people at the centre and guaranteeing social, cultural and economic rights regardless of administrative status.

This work is organised into three main parts, each addressing essential themes relating to the research carried out by the Global-ANSWER Network on the relationship between human mobility and social protection in Europe. The first section focuses on contexts and frameworks. It analyses the institutional, legal, political and media frameworks that shape the lives of migrants in Europe. The tensions between national sovereignty and supranational human rights obligations are examined.

From a legal perspective, this section examines the inflexibility and inconsistency of Italy’s regulatory model for foreign workers’ entry and residence, noting how regulations —such as the Turkish-Neapolitan and Bossi-Fini laws— have fostered precariousness and irregularity, effectively turning migrants into ‘guest workers’. Spanish criminal policy in the fight against trafficking, labour exploitation and hate crimes is also analysed, highlighting the need to harmonise with European legislation. Similarly, the crime of facilitating illegal immigration under Spanish law is critically examined, concluding that the Spanish state prioritises controlling migratory flows over protecting the rights of migrants. The first part also critically examines the new Spanish immigration regulations (2024). Immigration Regulation of 2024, highlighting the reformulation of *arraigo* (residence permit based on social ties) and the exclusion issues arising

from the calculation of stay time for international protection applicants. Finally, the transformations of the welfare state in Sweden are discussed from a migrant knowledge perspective, challenging the ‘institutionality’ paradigm by questioning migration as a problem.

From a political and media perspective, the first part of the book discusses how migration has become a battleground for political debate. The politicisation of migration is a reality in both Spain and Italy for different reasons, but with similar effects in terms of polarisation. Conversely, media representations of migration in Italy exhibit traditional biases, adopting a framework of ‘permanent emergency’ with limited direct input from migrants.

The second part of the book explores experiences of vulnerability and the shortcomings of protection systems. It explores the phenomenon of non-take-up and the administrative barriers it faces, as well as the stigma and fear that prevent migrants from accessing social benefits despite the existence of protection systems. The analysis of vulnerability and its challenges includes the recognition of qualifications in Europe, fighting discrimination, and the need to strengthen protection systems in the long term. The book also includes research on the legal precariousness of migrant women exposed to gender-based violence and how institutional categories determine their access to protection.

This section also examines the vulnerability of European borders and the fences that have been erected along them. The study also examines Spanish-Moroccan cooperation in migration control, as well as the controversial “hot return” practices that prevent access to the right to international protection.

The third and final section of the book presents responses to the lack of social protection in the form of inclusive practices. This section focuses on the social innovation practices and intervention models for the social inclusion of migrants that are central to the Global-ANSWER project. The case of the ‘Meridiano 13’, an appartamento di sgancio (transition apartment) in the city of Palermo, is presented as a model of reception and autonomy. This initiative is aimed at young people reaching the age of majority, facilitating access to housing, employment, and education as a strategy for inclusion in the face of invisibility and exploitation. The Italian institution of the Voluntary Guardian of Unaccompanied Foreign Minors, established in 2017, is also analysed as a pioneering European mechanism for protecting and facilitating the social and labour integration of this particularly vulnerable group.

Similarly, the ‘Women and Girls Safe Space’ (WGSS) project in Palermo demonstrates how social intervention and community services can provide

physical and emotional protection for migrant women and adolescents, promoting their empowerment and raising awareness of gender violence. Oxfam Italia's work on intercultural mediation in the social and health sectors is conceived as a 'ford' that requires effort, rather than a mere bridge. This highlights the Community Health Educator Model.

In this third section, inclusive practices in which civil society plays a key role are presented, such as those carried out by social organisations in Granada that support young people with irregular administrative status and challenge discriminatory practices and police abuse. Finally, the need for coordinated, protocolised social intervention against gender violence affecting migrant women in Andalusia is addressed, with the creation of local coordination committees proposed as a potential good practice to guarantee rights.

As detailed, the Global-ANSWER project's research has focused on identifying, analysing and transferring good social intervention practices that have been shown to be coherent, awareness, reflective and sustainable. A key finding is that effective practices emerge from an approach that challenges the concept of 'migrant' (demigrating) and recognises the value of migrants' knowledge. In this sense, the book highlights several important findings in the context of European migration.

Firstly, it addresses the inclusion/exclusion paradox. Despite the legal and institutional framework for protection, insufficient or ineffective protection of the migrant population has been identified for the aforementioned reasons (bureaucratic rigidity or discretion as subtle exclusion mechanisms). In addition, there is a lack of planning for migratory flows in Italy, combined with a low acceptance rate for applications for international protection. This results in a high percentage of migrants with irregular status, which encourages exploitation.

Secondly, the deterioration of the European welfare system and the advance of silent racism. The dismantling of the welfare state, which is particularly evident in Sweden, generates an existential fear and encourages individualism over solidarity. This has an impact on the educational and labour trajectories of migrants.

Thirdly, the fiction of social rights. The phenomenon of non-take-up shows that if social protection systems are inaccessible or unproactive, formally recognised rights become a fiction, particularly for the most vulnerable groups.

The practices described in this book illustrate the need for social intervention to be multidimensional and networked, providing solutions. Alongside a technical response, political commitment and critical awareness are required from professionals and institutions alike. Internships offer a

genuine alternative to vulnerability, moving beyond the logic of passive assistance. They are characterised by the use of embodied knowledge and a reflective methodology. Examples of good practice on construction sites include the following:

The case “Women and Girls Safe Space (WGSS) is defined as a good practice, due to its focus on empowerment and community leadership. It works with full awareness of the risks of gender violence, promoting women’s autonomy and ability to recognize their own potential.

In the case of the “Meridiano 13” flat, social intervention, coordinated with the SAI (Italian Reception and Integration System), is highlighted as a good practice to facilitate a gradual and responsible transition towards the autonomy of young people, as a strategy to prevent exclusion and exploitation.

The “Community Health Educator” model provided by Oxfam Italy shows that intercultural mediation is a tool that decodes needs and opens bridges where cultural differences hinder communication. The active participation of migrants to improve access to services and the promotion of healthy lifestyles are also part of the strategy.

The case of the volunteer tutor in Italy is also presented as good practice and an example of personalised protection and support. It is a strategy of active citizenship and even of ‘social fatherhood’. The basis of its success is individualised legal and administrative care and support for educational and labour integration, acting exclusively in the interests of the child.

In Andalusia, the establishment of Local Coordination Commissions against gender-based violence is regarded as a promising approach because it addresses the regulatory fragmentation and the invisibility of migrant women in existing protocols, ensuring interventions are consistent, informed, and thoughtful.

This book demonstrates the Global-ANSWER Network’s intention to transform reactive diagnoses into proactive action plans. This explains the variety of cases, contexts and narratives that incite action and reflection. The ambivalence of current migration-related regulations and policies (utilitarianism versus securitisation) reveals the inherent tension between legal frameworks and fundamental rights, which frequently conflict with states’ migration control practices. Being a proactive action map means using the research carried out as a roadmap for the future, supported by social innovation. The aim is to transform precariousness and vulnerability into alternatives of dignity and solidarity that are committed to inclusive practices which value the experiential knowledge of migrants. In a sense, repoliticisation aims to raise awareness in social

care spaces and strengthen multilevel collaboration, affirming the founding values of Europe.

Therefore, we intend to occupy a space where theoretical knowledge and practical experience converge. This is an exercise in reflective dialogue through which we can analyse reality and react against intolerance, driving the true social inclusion of all citizens.

M. BELÉN MORATA GARCÍA DE LA PUERTA,  
GIORGIA BULLI,  
ANA MARÍA HUESCA GONZÁLEZ



# **part I**

## **CONTEXTS AND FRAMEWORKS**

### **Institutional and Legal Frameworks**



# 1. GOVERNING IMMIGRATION FROM THIRD COUNTRIES

## Evolution and Limitations of the Regulatory Framework for the Entry and Stay of Foreign Workers in Italy

IVANA ACOCELLA  
*University of Florence*

### INTRODUCTION

Until the late 1960s, migration flows directed towards Italy predominantly involved three categories: foreign students, migrants from postcolonial territories and political exiles. As of the following decade, these groups were gradually joined by an increasing number of individuals – largely from third countries (i.e., non-EU states) – drawn by the prospect of employment. These new flows marked a substantial departure from the past and a turning point in the configuration of international migration: Italy, traditionally a country of emigration, began to take on the role of a destination country for foreign labour (Colucci, 2018a). Nonetheless, until the 1990s, the Italian regulatory framework on immigration remained disjointed and lacked a coherent, comprehensive governance structure (Colombo & Sciortino, 2004).

A comparison with other European contexts highlights the exceptional nature of the Italian case. In the post-World War II period, countries experiencing strong industrial expansion – such as the Federal Republic of Germany – attracted foreign labour through organised recruitment mechanisms aimed at meeting the growing demand in highly industrialised sectors, whose Fordist organisation required large amounts of manpower. In parallel, in countries like France and the United Kingdom, migration flows coincided with the period of decolonisation, leading to the arrival of migrants predominantly from former colonies (Ambrosini, 2010).

In Italy, by contrast, labour immigration became particularly relevant in the late 1960s, coinciding with the introduction of the first immigration restrictions by Northern European countries. This phenomenon was largely unexpected and took place during the transitional phase of Italy's shift towards a post-Fordist economy that was increasingly less reliant on large-scale labour. As a result, the Italian political system was largely

unprepared to devise strategies to manage the incoming migration flows or promote effective integration policies for the new arrivals (Einaudi, 2007). This chapter aims to examine the ambivalences and contradictions inherent in the Italian legislation on the entry and residence of foreign workers, with a particular focus on provisions concerning nationals from third countries. Specifically, it will analyse the so-called *Turco-Napolitano Law* (Law No. 40/1998) and the corresponding Consolidated Act on Immigration (*Testo Unico sull'Immigrazione* or TUI – Legislative Decree No. 286/1998), which represent the most ambitious attempt to systematically structure Italian immigration law for non-EU citizens. Particular attention will be paid to how this law combines the goal of a controlled immigration and residence policy with certain mechanisms intended to stabilise migrants' presence in the country – employment, family reunification and long-term residence status. Subsequently, it will examine the main legislative reforms that have reshaped this framework, in particular the so-called *Bossi-Fini Law* (Law No. 189/2002) and the *Security Decrees* introduced since 2009, which amended Legislative Decree No. 286/1998 by introducing restrictions on entry and residence. Emphasis will be placed on the regulatory provisions that have weakened the status of migrant workers – especially non-EU nationals – and increased their exposure to precariousness, to constant reversibility in their living conditions and to various forms of occupational segregation and exploitation. The inconsistencies produced by this increasingly rigid regulatory framework – which risks fostering irregularity and undermining the conditions for genuine inclusion – will be analysed by considering two key moments in Italy's recent history: the 2008-2009 economic crisis and the so-called “refugee crisis” triggered by the Arab uprisings which intensified in 2015.

## 1. THE 1990S: THE “DISCOVERY” OF IMMIGRATION AS AN ORDINARY SOCIAL PHENOMENON

Although Italy began to receive migrants in search of employment as early as the 1960s, the first comprehensive law concerning immigration from non-EU countries, the *Turco-Napolitano Law* (Law No. 40/1998), was only introduced in the 1990s. The general framework of this law was confirmed in Legislative Decree No. 286/1998, whose full name is the Consolidated Text on Immigration and Provisions on the Status of Foreigners (*Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*). These measures have introduced an integrated reform of border control systems, the regulation of entry flows and the

integration of foreign nationals residing in the country (Colombo & Sciortino, 2004).

The first attempts to regulate new migration flows for work purposes actually began a few years earlier. However, the so-called *Foschi Law* (Law No. 943/1986) on the placement and treatment of immigrant non-EU workers and combating undocumented immigration (*Norme in materia di collocamento e di trattamento dei lavoratori extracomunitari immigrati e contro le immigrazioni clandestine*) focused exclusively on subordinate employment, without introducing any kind of planning. Furthermore, the mechanisms for regulating entry were overly complex and thus ineffective in practice (Einaudi, 2007).

A few years later, the *Martelli Law* (Law No. 39/1990) introduced significant innovations in the regulation of inflows and border control. For the first time, it established the residence permit as the legal instrument for the regular presence in the country and formally distinguished between “clandestine” migrants (those who have never held a residence permit) and “irregular” migrants (those who have failed to renew their permit after expiry). It also introduced a visa requirement for many of the countries of origin of the migratory flows, while transforming expulsion from a public order measure into a tool to combat irregular immigration. In terms of managing migration for employment purposes, the Martelli Law brought in important innovations: it regulated residence permits for work reasons and established the concept of entry “quotas” – namely, the definition of a maximum number of authorised entries for non-EU workers – as a planning tool for migration flows, with annual decrees based on the country’s labour and production needs, in coordination with the economic ministries, regional governments and social partners (Paoli, 2014). While the Martelli Law marked the beginning of a systematic approach to border control and the regulation of inflows, it lacked policies to permit the residence and integration of migrants already present or arriving in the country. As a result, it proved deficient in long-term migration governance (Colombo & Sciortino, 2004).

The Turco-Napolitano Law – along with the related Consolidated Act on Immigration (*Testo Unico sull’Immigrazione* or TUI) – represents the most comprehensive and ambitious attempt to structure Italian immigration law. The aim of the original regulatory framework introduced by the law in 1998 was not only to ensure the controlled and legal management of entry and residence, in continuity with the path laid out by the Martelli Law, but also to promote a form of migration governance capable of fostering long-term integration and the stable settlement of migrants in the country. In this sense, the Turco-Napolitano Law can be seen as both

a strict regulatory framework – refining and expanding the mechanisms for border control and the fight against irregular migration, including increased expulsion measures and the introduction of detention centres for migrants awaiting removal – and as the recognition of the presence of foreign nationals as an “ordinary” feature of contemporary society, which has to be governed as such. Thus, albeit later than other European countries, the Italian state came to explicitly confront the necessity – and responsibility – to manage this presence with a systemic and structured approach (Colucci, 2018a).

Due to the increase in non-EU citizens arriving in Italy in search of employment during those years, work became a central means of accessing and residing legally in the country. In this context, a three-year plan for incoming migration flows was established alongside the introduction of new types of residence permits, for example, for seasonal work. This planning mechanism was broader in scope than the one provided for by the Martelli Law and supplemented annually by ministerial decrees defining the quotas for residence permits based on labour market needs (Montanari, 2010)<sup>1</sup>. A part of these quotas was reserved for residence permits for migrants seeking employment under the guarantee (so-called “sponsorship”) of Italian citizens or regularly residing foreign nationals or collective entities such as volunteer organisations<sup>2</sup>. This measure was devised to make the matching of labour supply and demand more flexible, especially in certain sectors – such as care or small businesses – in which a preliminary encounter between employer and prospective employee is often essential to build a relationship of trust (Paggi, 2020).

The issue of labour placement for non-EU citizens was framed within a broader approach integrating conditions of entry and stay in the country (Colombo & Sciortino, 2004). For example, the law stipulated that residence permits for seasonal work could not exceed six months – extendable up to nine in specific sectors – while permits for non-seasonal subordinate employment or self-employment could last up to two years, with the possibility of renewal for double the duration of the initial permit, up to a total of six years<sup>3</sup>. Furthermore, it introduced the possibility of converting a previously issued residence permit – such as one for family or study reasons – into a permit for subordinate work or self-employment

1 Articles 3-4 and 19 of Law No. 40/1998; Articles 3-4 and 21 of Legislative Decree 286/1998 - henceforth TUI.

2 Articles 19 and 21 of Law No. 40/1998; Articles 21 and 23 of the TUI.

3 Articles 3 and 19 of Law No. 40/1998; Articles 3 and 21 of the TUI.

within the framework of the quota system<sup>4</sup>. The aim of the provisions laid out in the original regulatory framework of 1998 was therefore to enable foreign nationals already residing in the country to maintain their regular status while adapting their migration and personal life plans to changing needs over time.

Moreover, the residence permit for subordinate work or self-employment came with numerous rights, not only in the area of employment, but also regarding access to social and healthcare benefits, although protections varied based on its duration (Einaudi, 2007). For instance, in the event of job loss – due to dismissal or resignation – the individual was allowed to register at the job centre and remain regularly in the country for up to twelve months in search of new employment. An exception was made for seasonal workers, who could only stay for the remaining validity of their permit. In addition, non-seasonal and self-employment residence permits granted access to vocational or university-level training and made it possible to request recognition of academic qualifications obtained abroad. While all residence permits for work purposes granted immediate registration with the National Health Service, a one-year permit also allowed access to social and economic assistance on a par with Italian citizens, with a two-year permit granting eligibility for public housing programmes<sup>5</sup>. Within the regulatory framework defined by the Turco-Napolitano Law, work thus assumed a key role not only as a tool to ensure regular entry and residence, but also as a gateway to broader social integration.

Better living conditions also enabled the migration path to be redefined on the basis of longer-term, if not permanent, projects. Specifically, with regard to labour migration, the academic literature has shown that foreign nationals' settlement in the host society tends to unfold as a gradual process made up of distinct phases. Initially, individuals arrive alone, driven by the objective of improving their living conditions, often without a clear long-term plan to remain. Subsequently, as their employment and housing situations become more stable and the desire to stay for longer periods strengthens, family reunification with relatives left behind in the country of origin is likely to be initiated (Della Puppa, 2010). This possibility was recognised by the Turco-Napolitano Law, which placed strong emphasis on the “principle of family unity” and thus on migrants'

4 Articles 16, 24, 28 of Law No. 40/1998; Articles 18, 26 and 30 of the TUI.

5 Articles 19, 20, 24, 32 and 35-38 of Law No. 40/1998; Articles 21, 22, 26, 34 and 37-40 of the TUI.

right to reconstitute their family unit in the country of immigration<sup>6</sup>. In this perspective, the law expanded the range of family members eligible for reunification to include the spouse, minor children, parents and dependent relatives up to the third degree. Nevertheless, at the same time, it introduced a number of requirements that had to be met to apply for family reunification, such as holding a residence permit with a validity of over one year, earning sufficient income to support oneself and family members, and having accommodation meeting the legal standards of habitability. All of this confirmed the importance of strengthening the work residence permit, not only as an effective tool to ensure regular residence, but also to support migrants' social integration, as outlined in the original spirit of the regulatory framework introduced in 1998. In fact, the aim was to support work as a means of achieving living conditions that met the criteria required for family reunification, thus facilitating the transition from predominantly economic to more stable, settlement-oriented migration (Zincone, 2000).

The length of regular stay in the national territory was therefore a central element in the Turco-Napolitano Law, for accessing greater protections and rights, and for achieving a stable presence in Italy (Acocella, 2014). In this perspective, the law also introduced the “*carta di soggiorno*” (residence card), granted indefinitely to non-EU citizens residing regularly in the country for at least five years<sup>7</sup>. For the first time in Italy, this provision established a “long-term residence status” (Rinaldini, 2010, p. 112), conferring a set of rights previously only accessible through the acquisition of Italian citizenship. Indeed, this status decoupled the legitimacy of residence from performing a specific activity (e.g., employment or study), thereby limiting the risk of expulsion to cases of threats to public order or national security. This status could also be extended to the holder's spouse and minor children, further strengthening the principle of family unity. Ultimately, it laid the groundwork for permanent settlement in the country, constituting a form of “denizenship” – that is, resident citizenship – which, while not equivalent to full formal citizenship, anticipated some of its key features in terms of rights and social recognition.

The Turco-Napolitano Law and its related Consolidated Act on Immigration (*Testo Unico sull'Immigrazione*, TUI) still form the main normative framework for the regulation of non-EU immigration in Italy. Subsequent legislative interventions – primarily amendments to the Consolidated Act

6 Articles 26-28 of Law No. 40/1998; Articles 28-30 of the TUI.

7 Article 7 of Law No. 40/1998; Article 9 of the TUI.

– have modified or supplemented this framework but have not repealed it. However, the interventions have partially altered the original spirit of the 1998 legislative framework. Indeed, the initial phase of the law – with its relatively more inclusive approach – has since been followed by a period of increasing regulatory rigidity, marked by the introduction of measures hindering the stabilisation of migratory pathways and, particularly for non-EU citizens, increasing the risks of precariousness and continuous reversibility of their living conditions.

## 2. THE NORMATIVE FRAMEWORK IN THE FOLLOWING YEARS: THE INCONSISTENCIES OF A REGULATORY TIGHTENING THAT GENERATES IRREGULARITY AND UNDERMINING THE CONDITIONS FOR REAL INCLUSION

Through amendments to the Consolidated Act on Immigration (*Testo Unico sull’Immigrazione*, TUI), the *Bossi-Fini Law* (Law No. 189/2002) does not alter the types of residence permits available for employment purposes but tightens the requirements to obtain and maintain them. In particular, the entry into force of this legislation has significantly affected non-EU citizens’ possibilities to arrive and remain in Italy for reasons of employment, intervening in both the mechanisms for determining annual quotas (the so-called “flow decrees”; in Italian “*decreti flusso*”) and the rules governing the issuance of the relevant residence permits.

With regard to the flow decrees, the law abolishes both the previous automatic reopening of quotas and the binding nature of the three-year planning document. Indeed, it provides that “in the absence of publication of the annual planning decree, the President of the Council of Ministers may issue a transitional decree within the limits of the quotas established for the previous year”<sup>8</sup>. As a result, political discretion in determining entry quotas has been strengthened, while the obligation to assess the actual needs of the labour market has been significantly weakened (Paggi, 2020).

As for the residence permit for employment purposes, the law abolishes the figure of the “sponsor”, and thus the possibility of entry for the purpose of seeking employment first, while making the issuance of a residence permit for subordinate work dependent on a “*contratto di soggiorno*” (contract of stay) with the employer<sup>9</sup>. Therefore, an autonomous private act becomes the precondition for regulating an administrative

8 Article 3 of the TUI as amended by Law No. 189/2002.

9 Article 5 of the TUI as amended by Law No. 189/2002.

procedure (Montanari, 2010). The contract of stay must indicate the characteristics of the employment (job title, duration and salary) and must provide for at least 20 working hours per week. Employers are also required to ensure the availability of suitable accommodation and the necessary financial means to cover the repatriation of the worker at the end of the employment relationship. The duration of the residence permit is linked to that of the contract of stay, while it is stipulated that it cannot exceed one year for fixed-term contracts and two years for permanent contracts. At least until 2014, the only way to renew the permit was by signing a new contract,<sup>10</sup> the duration of which could not exceed that of the initial permit. Lastly, the maximum period of regular stay for an unemployed foreign worker seeking a new job has been reduced from twelve to six months.

Whereas the measures introduced by the Turco-Napolitano Law aimed to ensure controlled, legal management of migratory flows, with employment nevertheless acting as a key tool for migrants' long-term stabilisation in the country, the stricter provisions introduced by the Bossi-Fini Law convey the opposite message. In fact, the approach introduced by this regulation is characterized by greater rigidity in migration policies, which has especially weakened the regular status of migrant workers, particularly those from non-EU countries (Pastore & Zorzella, 2020). The intention to move away from the model outlined by the regulatory framework of 1998 becomes even more evident if one considers that, when the Bossi-Fini Law was introduced, for many immigrants subordinate work provided the main reason for their regular residence in Italy, also for the purpose of long-term or definitive migration projects (Ludovico, 2002)<sup>11</sup>.

Undoubtedly, the increasing flexibilisation of the labour market in Italy, initiated with the so-called *Treu Package* (Law No. 196/1997) and continued with the *Biagi Reform* (Law No. 30/2003 and Legislative Decree No. 276/2003), and the growing use of atypical, intermittent and temporary forms of employment contract, has proven to be little compatible with the stricter requirements imposed by the Bossi-Fini Law for the issuance of residence permits for subordinate work. Consider, for

10 Legislative Decree No. 40/2014, which implemented Directive 2011/98/EU on the so-called "single permit", repealed the requirement of a new residence contract for renewal of a residence permit for employment purposes.

11 Between 1998 and 2002, residence permits issued for employment reasons accounted for approximately 60% of all residence permits granted to third-country nationals; among these employment-related permits, 80% were issued for subordinate work (Source: demo.istat.it).

example, the requirement of a minimum of 20 working hours per week. These incompatibilities have contributed to making migrant workers' condition more structurally and pervasively vulnerable (Acocella, 2014). Moreover, combined with the elimination of sponsors and the reduction of the period for which unemployed migrants can remain in Italy, these strong links between labour contracts and residence permits have bound migrants' regular stay in the country significantly to the needs of the economic market. This, in turn, has increased the risk of exploitation and blackmail (Pastore & Zorzella, 2020). In this regard, in analysing the data on the presence of foreign workers in Italy in the years following the implementation of the Bossi-Fini Law, in his book *Richiesti e respinti* (2010) Maurizio Ambrosini observes that, from a functionalist and subaltern perspective, foreign labour – particularly from non-EU countries – has been predominantly channelled into occupations not taken up by Italian citizens, located in the low-skilled niches of the labour market. These jobs, though necessary to meet specific economic and productive needs, are often precarious, strenuous, poorly paid, socially stigmatised and sometimes even hazardous.

It should also be pointed out that the reduction in the overall duration of the residence permit for non-seasonal work – from six to four years – has further complicated migrants' gradual transition towards stabilisation. It has particularly affected the residence card path, which, as pointed out, had been facilitated within the original framework of the Consolidated Act on Immigration (in Italian TUI) through the strengthening of work-related residence permits as a means to reach the five years of residence required to obtain long-term residence status (Rinaldini, 2010)<sup>12</sup>. Similarly, the increasing precariousness and vulnerability of migrants' living and working conditions have made it harder to achieve the standards of living necessary to meet the requirements for family reunification, thereby compromising another essential component of a stable migration project.

It is also significant to note that, while imposing restrictions on non-seasonal subordinate employment, the law simultaneously promotes and expands the regulation of seasonal work. In particular, the duration of the residence permit for seasonal work is extended to nine months; furthermore, the law also introduces the possibility of multi-year entry

12 In connection with this provision in 2023, a change was made that will be made explicit of the next paragraph.

authorisations, valid for up to three consecutive years, in the case of recurrent employment<sup>13</sup>.

Ultimately, the regulatory framework established by the Bossi-Fini Law has significantly reduced the possibilities for migrants to settle and stabilise their presence in the country, in favour of short-term, circular migration models. This has produced a migration policy built around the figure of migrants as “guest workers”, welcomed to meet immediate labour market needs but conceived within a logic of temporariness and reversibility (Colombo & Sciortino, 2004). Migrants have thus been reduced to a “resource”, maximising their economic contribution in the short run: as long as they can work – and thus contribute – they are tolerated; otherwise, they can easily be replaced (Livi Bacci, 2002). However, this regulatory framework has resulted in fragile, partial and subordinate forms of social inclusion for migrants, as well as increased risks of discontinuity in their administrative regularity, expanding the pool of people exposed to undeclared work and encouraging the spread of exploitative labour practices involving foreign workers (Chiaromonte, 2020).

The 2009 economic crisis marked the beginning of a new phase in the management of migration, during which the presence of foreigners has come to be increasingly interpreted through a security-oriented lens (Melossi, 2008). While the Bossi-Fini Law had already intervened in the area of combating irregular migration (for example, tightening expulsion measures<sup>14</sup>), since 2009 the migration-security nexus has begun to take the shape of a veritable regulatory device. Suffice it to say that, since then, the main government measures on immigration have increasingly been included in decrees addressing public security (Colucci, 2018a). The so-called *Security Package* (Law No. 125/2008 and Law No. 94/2009) represents a symbolic turning point of this shift.

Among the measures introduced by the 2008-2009 Security Package, special mention should be made of the “*accordo di integrazione*” (integration agreement), a sort of points-based “contract” signed when the residence permit is granted<sup>15</sup>. This agreement binds the non-EU foreign national to

13 Article 24 of the TUI as amended by Law No. 189/2002.

14 Articles 11-14 and 21 of the TUI as amended by Law No. 189/2002. Several measures were adopted in this regard; by way of example, it is worth noting that in those years expulsion with enforcement – previously reserved for exceptional cases – became the standard procedure, and imprisonment was introduced for foreign nationals who, having received an order to leave the country, remained irregularly. These measures were later softened or repealed with the transposition into Italian law of the “Return Directive” (2008/115/EC) through Law No. 129/2011.

15 Article 4bis introduced into the TUI by Law No. 94/2009.

the achievement of various integration goals – such as acquiring knowledge of the Italian language, civic culture and the functioning of key national institutions – under penalty of point deductions, which may ultimately result in expulsion if the score reaches zero (Zorzella, 2011). While the goals set by the integration agreement are undoubtedly important for anyone choosing to live and settle in the country, it must be noted that the introduction of this instrument has marked a shift towards a new paradigm of integration, centred on the culture and values of the Italian community as the reference point in relations between natives and newcomers. This approach has altered the regulatory framework set out in the original version of the 1998 Consolidated Act on Immigration (in Italian TUI), which conceived of integration as part of a structural inclusion strategy, grounded in the principles of legal equality, recognition of diversity and rejection of discrimination. The integration agreement thus represents a fundamental turning point, marking the transition from a phase in which inclusion measures were regarded as a right for immigrants – at least for those with valid residence permits – to a phase in which those same measures have become an obligation for newly arrived migrants (Gargiulo, 2014).

However, the factor most clearly indicating the security-oriented paradigm of the package was the intensification of the fight against irregular migration, along with the attempt to address migration control issues through the use of criminal law (Masera, 2020). For instance, the “*reato di clandestinità*” (offence of irregular entry and stay) is included in the migration regulation system, thus creating offences that specifically relate to the violation of immigration laws and which, by definition, can only be committed by migrants<sup>16</sup>.

While these measures have helped paint a picture of migrants as “dangerous” and projected onto them social anxieties during a period of economic regression, they have largely failed to address the most obvious issue: namely, that the increase in irregular migration is largely the result of inefficiencies in the system of managing incoming flows, especially for labour reasons (Chiaromonte, 2020). Instead, it was from those years onward that the “political” use of migration flow decrees has become increasingly apparent, with the result being the undermining of their effectiveness as instruments for regulating the arrival and stay

16 It should be noted that the offence of irregular entry and stay, introduced by Law No. 94/2009 (which added Article 10-bis to the TUI), was progressively decriminalised by the judiciary, changing from a criminal offence to an administrative violation in 2014 (under Law No. 67/2014).

of non-EU citizens for employment purposes (Paggi, 2020). Indeed, to prioritise national security and the needs of Italian families during the economic crisis, the approach to circular, short-term migration tailored to the country's economic needs – promoted since 2002 in Italy – has become even more pervasive, while a containment policy on new migrant entries has also been implemented. In 2008, the last major flow decrees allocated preferential quotas to specific occupations, with 105,400 of the 150,000 non-seasonal work permits assigned to domestic or personal care workers, areas prioritised in response to a growing demand, which had already been met in previous years precisely through immigration<sup>17</sup>. In 2009, the Italian government decided to suspend new entries for work, with the sole exception of seasonal employment<sup>18</sup>. To do so, it partly relied on the *Treaty of Friendship, Partnership and Cooperation* signed with Libya in 2008. This treaty effectively required Libya to block the transit of migrants towards the Italian coast, and set up detention centres, in exchange for financial support. In 2010, following a partial reopening of the flow decrees for non-seasonal workers, 52,080 out of 98,000 preferential entry pathways were reserved for countries collaborating in the fight against irregular migration, and 30,000 quotas were again allocated exclusively to domestic workers<sup>19</sup>.

### 3. THE RECENT HISTORY: NEGLECT OF “ORDINARY” MIGRATION MANAGEMENT IN THE FACE OF A PERPETUAL STATE OF EMERGENCY

Since 2011, with the Arab uprisings and, shortly thereafter, with the so-called “refugee crisis”, there has been further change in both the national and international landscape. The rapid transformation of the Mediterranean geopolitical scenario has had significant effects on the dynamics of migration flows. Indeed, following the declaration of a state of emergency in response to the 2011 sea arrivals and the subsequent increase in asylum applications, a new phase began, marked by further restrictions on labour migration. In 2011, the Italian government immediately imposed a new block on incoming flows of non-seasonal workers, admitting only 60,000 seasonal workers. In the following years, the total number of authorisations for employment purposes (seasonal and non-seasonal

17 Prime Ministerial Decree (DPCM) of 3 December 2008.

18 Prime Ministerial Decree (DPCM) of 20 March 2009.

19 Prime Ministerial Decree (DPCM) of 30 November 2010.

workers) never exceeded 50,000, gradually decreasing to just 30,850 new entries in 2020<sup>20</sup>. Considering that part of these quotas was reserved for the conversion of residence permits issued for other reasons into work permits, it can be argued that, during those years, regular entry channels for work purposes were closed. Thus, the only regular pathway to enter Italy appears to have been the option of seeking asylum, which – in the face of the closure of flows for work purposes – emerged as an extreme attempt to get through the very tight “mesh” of Italian migration policy (Colucci, 2018a). The bitter consequence of this is that those unable to access any form of international protection have remained hidden in the shadows of irregularity, further swelling the ranks of the exploited within the informal economy (Chiaromonte, 2020).

Instead of developing political solutions, the country has entered a new phase of criminalisation of migration. Suddenly, the public and political debate has focused intensely on the distinction between “economic migration” and “forced migration”, increasing the pressure for a more rigid interpretation of the category of asylum seeker. This has paved the way for specific mechanisms of “categorisation”, “screening” and “channelling” of the so-called “mixed flows”, to distinguish those in genuine need of international protection from other categories of migrants. Against the backdrop of a “perpetual emergency” and with increasing emphasis on the irregularity of sea arrivals, the stigma of the so-called “bogus refugee” has been exacerbated, thus fuelling the narrative of “fake” asylum seekers exploiting the asylum system simply to gain entry to an EU country for economic reasons. This narrative not only explicitly denigrates economic migrants, but it has also influenced the very concept of asylum seeker, shifting them from people “in need of protection” to people “who must prove the authenticity of their condition” (Sciurba, 2017). At the same time, outside Italy, a broad process has taken shape to externalise border control procedures and strengthen cooperation with third countries (either of origin or transit) to combat irregular migration, with the aim of tackling the causes of migration “at the source”. A paradigmatic example of this approach has been the renewal of relations with Libya (with the memorandum of understanding signed on 2 February 2017) to intensify efforts to stop migrants transiting through Libyan territory, despite humanitarian organisations’ widespread criticism of the gross human rights violations perpetrated against migrants there (Masera, 2018).

20 See: <https://integrazioneimmigranti.gov.it/it-it/Altre-info/id/68/Archivio-decreti-flussi>.

However, over time, these choices have revealed their inconsistencies. In particular, the prolonged absence of planned incoming flows for work reasons has been intertwined with a sharp drop in the percentage of international protection claims accepted in Italy (peaking in 2019 with a rejection rate of 76.8%<sup>21</sup>), especially following the abolition of humanitarian protection by a new decree on public security<sup>22</sup>. These two circumstances – which have structurally contributed to swelling the ranks of irregular immigrants, as well as the pool of undeclared work – have led, albeit timidly, to a change of direction in Italian policy on labour immigration.

And so, in May 2020, the government introduced a measure to regularise undeclared work. Despite being limited to certain sectors (agriculture, domestic work and personal care), it allowed residence permits to be issued for subordinate employment or for job-seeking<sup>23</sup>. This provision therefore revived the so-called “*sanatoria*” – that is, the extraordinary and retrospective regularisation of foreigners living in the country – which had previously represented an alternative to the regulation of incoming flows, falling into disuse around 2012. However, in addition to recovering the same functionalist framework underlying the Bossi-Fini Law (given the exclusive focus on employment sectors deemed a priority for the country), such measures risk leading to the opposite effect to what is officially intended. Indeed, they may reinforce the idea that it is only possible to gain regular status *after* a period of irregular stay, while simultaneously fuelling conditions of vulnerability, deprivation of fundamental rights and exploitation (Paggi, 2020).

In addition to this measure, in recent years – and in particular under the Meloni government – there has been an attempt to boost residence permits for work reasons, partly in opposition to previous trends. The first significant measure concerns the duration of residence permits for self-employment or open-ended subordinate employment, which can now be renewed up to a maximum of three years (and no longer two, as laid down in 2002)<sup>24</sup>. This has at least in part restored the possibility of migrants settling in Italy through work as envisaged in the original regulatory framework of the 1998 Consolidated Act on Immigration (*Testo Unico sull’Immigrazione*, TUI); indeed, this measure allows the migrant to aspire to apply for the long-term residence permit (now called the EU long-

21 Source: Statistical Dashboard of the Ministry of the Interior (summary sheets as of 31 December 2019).

22 Law No. 132/2018 converting Decree-Law No. 113/2018.

23 Article 103 of Decree-Law No. 34 of 2020.

24 Article 5 of the TUI, as amended by Law No. 50/2023.

term residence permit) by obtaining and renewing these two residence permits for work reasons for five consecutive years.

A second relevant measure concerns the partial reopening of flow decrees for work reasons. While a slight increase was already implemented between 2021 and 2022 (with 69,700 and 82,705 new entries respectively<sup>25</sup>), in 2023 a three-year plan was established, providing for the total entry of 452,000 non-EU workers<sup>26</sup>. However, despite this renewed investment in flow decrees, the overall impact of the Bossi-Fini Law on the management of migration for economic reasons remains unchanged. Indeed, preferential quotas remain reserved for the entry of foreigners from countries that collaborate in combating irregular immigration, and it is established that around 60% of the new entries will be seasonal workers (thus reconfirming a substantial reversal in the distribution of quotas in favour of seasonal over non-seasonal workers, as first seen in 2009). Moreover, within the category of non-seasonal entries, additional quotas are exclusively reserved for workers in certain occupational sectors, such as family assistance, further reducing the openings for regular entry for citizens from countries that do not benefit from preferential quotas.

A significant concern is also highlighted by the “I was a foreigner” campaign, which notes that, owing to the rigid and cumbersome maze of procedures (acceptance of the application, issuance of the *nulla osta* and finalisation with the signing of the contract), only 13% of the quotas established by the government in 2023 and only 7.8% in 2024 have actually translated into residence permits and stable, regular jobs. The rest of the people who arrived in Italy have been left in an irregular status and, thus, in a condition of extreme precariousness and vulnerability to exploitation or coercion – a paradox for a system that should instead guarantee the regular entry of labour and contribute to the country’s growth. As highlighted by the promoters of the campaign,<sup>27</sup> the data collected underline the urgent need for a structural reform of the system for admitting workers from third countries. The aim should be to facilitate the matching of labour supply and demand by reintroducing the “sponsor” figure – and thus a residence permit for job-seeking – or by designing more flexible forms of recruitment from abroad outside the quota system, its timeline and the restrictions on specific occupational sectors. Similarly, mechanisms for the regularisation of migrants already present in the country should be strengthened by activating ordinary channels to emerge from irregular

25 Prime Ministerial Decree (DPCM) of 21 December 2021 and 29 December 2022.

26 Prime Ministerial Decree (DPCM) of 27 September 2023.

27 See report: <https://erostraniero.it/aggiornamento-flussi2025/>.

status, accessible on an individual basis at any time and not dependent on exceptional measures such as “*sanatorie*”. These instruments should offer the possibility of regularising migrants on a case-by-case basis by assessing the availability of an employment contract or the applicant’s actual social integration in the country, as may be inferred from factors such as the existence of family or emotional ties within Italian territory.

## CONCLUSIONS

The timid opening towards labour immigration that has emerged in recent years paradoxically highlights the profound neglect of “ordinary” immigration. Indeed, the presence of migrants continues to be governed by a regulatory framework that has become outdated and increasingly ineffective in managing a socio-economic reality that has profoundly changed compared to the context in which those rules were originally designed in the late 1990s (Chiaromonte, 2020). The quantitative inadequacy of entry decrees in relation to the real needs of the productive system, the dysfunctions inherent in their implementation, the increasingly precarious legal status of foreigners present in the country, and the periodic recourse to extraordinary, retrospective regularisation measures – which, in the absence of an active foreign labour recruitment policy, tend to become belated and often ineffective – are structural features of an increasingly obsolete management system. To this must be added the substantial absence of integration policies, replaced by legislation that reproduces a logic of subordination, portraying migrants as functional to the country’s economic needs rather than as rights-bearing individuals.

The resulting picture is one of a “constant vision of the foreign presence as exceptional, always seen as a parenthesis – somehow destined to close – and not as a structural dimension of a complex society” (Colucci, 2018b, 35). This narrative of immigration as an emergency phenomenon has been used – as seen in the two critical moments analysed, namely the economic downturn of 2009 and the humanitarian emergency of 2015 – to legitimise policies that oscillate between utilitarian approaches and security-based measures, increasingly restricting the rights and regular status of foreign workers. All of this is taking place in a country whose constitutional architecture is based on the principle that work is an essential tool for dignity and social emancipation.

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## 2. CRIMINAL MEASURES TO COMBAT THE VICTIMISATION OF MIGRANTS

### Spanish criminal policy and the need for a harmonised European legal system

CARLOS ARÁNGUEZ SÁNCHEZ  
*University of Granada*

#### INTRODUCTION

Human trafficking is big business, and an illegal one at that. It is estimated that the annual global profit from human trafficking is €29 billion. In the EU alone, the total cost of human trafficking in a single year is estimated at €2.7 billion (European Commission, 2020).

These data reveal the true magnitude of human trafficking: it is not only a crime that violates people's dignity and fundamental rights, but also a criminal activity with enormous corrupting power, comparable to drug or arms trafficking. The fact that the European Commission values the economic benefit at such a high level reflects the fact that criminal organisations consider trafficking to be a highly profitable business with relatively low risk, making it difficult for countries to combat.

According to the Statistical Balance of Trafficking and Exploitation of Human Beings in Spain (2018-2022), in 2022, the most common form of human trafficking in Spain was for sexual exploitation (129 cases), followed by labour exploitation (89 cases), criminality or forced begging (9 cases), and forced marriages (2 cases). Women continue to be the main victims (139), followed by men (75) and children (15).

These figures clearly demonstrate the ongoing prevalence of sexual exploitation as the primary motive for trafficking, with 129 cases identified in 2022 compared to lower figures for labour exploitation. This shows that there is a marked gender gap, confirming that women continue to be the most affected group, with 139 victims identified compared to 75 men and 15 minors, which requires protection measures to incorporate a real and effective gender approach. In addition, the fact that labour exploitation is in second place (89 cases) warns of the diversification of forms of trafficking and the need to strengthen labour inspection and early detection mechanisms.

As established in the National Strategic Plan against Trafficking and Exploitation of Human Beings (2021-2023), the gender dimension is even more evident when it comes to trafficking in persons for the purpose of sexual exploitation, where the total number of women and girls detected amounts to 92%. On the other hand, in the area of trafficking for forced labor, 59% of the victims detected were men and boys, compared to 41% of women and girls (Ministry of the Interior, 2021).

In the same vein, the Communication from the Commission to the European Parliament on the EU strategy to combat trafficking in human beings (2021-2025) states that almost half of the victims of human trafficking in the European Union are EU citizens and a considerable number are victims of trafficking within their own Member State. The majority of victims in the EU are women and girls trafficked for the purpose of sexual exploitation, and almost one in four is a minor. The majority of traffickers in the EU are EU citizens and almost three-quarters are men. This type of crime generates enormous profits for criminals and a huge human, social and economic cost (European Commission 2021).

As for those arrested for trafficking, according to the Statistical Balance of Trafficking and Exploitation of Human Beings in Spain (2018-2022) (Ministry of the Interior, 2023), the gender gap is reversed in the case of aggressors: in 2022, 59% of those arrested for human trafficking were men, compared to 41% women. The fact that 41% of those arrested in 2022 were women shows the strong female participation in these criminal networks, often linked to roles of recruitment, control or supervision of victims, which responds to the internal logic of the organizations: women generate greater trust when approaching potential victims, especially in contexts of sexual exploitation. However, at the criminological level, men are more likely to commit crimes. In 2022, 82% of crimes committed will be committed by men.

According to the Draft Law of the Comprehensive Organic Law against Trafficking and Exploitation of Human Beings (Government of Spain, 2022) the comprehensive approach, according to which the response of public authorities to the trafficking and exploitation of human beings must go beyond the essential criminal response (investigation and prosecution of the crime). It must also address awareness of prevention and society, as key elements for the desirable eradication of these practices.

Therefore, in this study we will systematically analyse the legal-criminal treatment of hate crimes and human trafficking in the Spanish legal system, focusing on their impact on migrant groups as a particularly vulnerable group. To this end, in the first place, the national and international legal corpus on the subject will be addressed, as well as the

crime of trafficking in persons (art. 177 bis CP), with special emphasis on the excuse of acquittal in art. 177 bis.11 CP. Next, we will analyse in depth the crimes against workers' rights (articles 311 to 313 CC), with special attention to their application in contexts of labour exploitation of migrants, and to the procedural protection of victims of trafficking under LO 19/1994, highlighting the need to strengthen protection mechanisms for witnesses and experts to avoid their revictimisation. Finally, we will also study the crime of favouring illegal immigration (art. 318 bis CP) and, finally, hate crimes (art. 510 CP) and the aggravating circumstances of racist and xenophobic discrimination (art. 22.4 CP).

## 1. INTERNATIONAL AND NATIONAL PROTOCOLS AND REGULATIONS IN THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS: A VISION OF THE PIONEERING NORMATIVE BASES

The fight against trafficking in human beings has been the subject of increasing international and European attention, reflected in the adoption of important normative and strategic instruments. From the Palermo Protocol, which we consider to be the first modern international framework on this subject, to Directive 2011/36/EU, regulatory developments have sought to improve prevention, as well as the prosecution of crime and the comprehensive protection of victims.

In parallel, both the European Union and the Member States are developing specific strategic plans, such as the National Plan against Trafficking and Exploitation of Human Beings (2021-2023) or the EU Strategy 2021-2025 (European Commission, 2021), all of which focus on the fight against organised crime and ensuring a comprehensive and effective response to this serious human rights violation. In all this, we analyze a historical guide to the international protocols and regulations that were pioneers:

(A) Palermo Protocol (United Nations, 2000): First modern international instrument against trafficking in human beings adopted within the United Nations. In its general part, the Protocol establishes three central objectives (art. 2): to prevent and combat trafficking, with special attention to women and children; to protect and assist victims, ensuring respect for their human rights; and promoting international cooperation. In addition, according to Article 5, the protocol obliges states parties to criminalize trafficking in persons in their domestic legislation, including

an agreed and uniform definition in Article 3(a), which reads as follows: “Trafficking in persons” shall mean the recruitment, transportation, transfer, lodging, or receipt of persons, by the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for exploitation purposes. Such exploitation shall include, at a minimum, the exploitation of third-party prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

As we can see, the definition given by this normative instrument already covers the recruitment, transport, transfer and accommodation or reception of people. This protocol was ratified by Spain through the Instrument of Ratification of 21/02/2002 and, like other States Parties, undertook to adapt its domestic legislation accordingly.

In addition to all this, the Palermo Protocol also recognized prevention and cooperation measures in its articles 6 and 9, as well as prevention and cooperation (articles 9 to 13), in which States were urged to promote information campaigns, training in the public sphere and social and economic programs to eradicate the social vulnerability that causes these phenomena.

(B) Council of Europe Convention on Action against Trafficking (Council of Europe, 2005). It is considered the pioneering instrument in the European Union, it entered into force in 2008 and was ratified by Spain in 2009, with the aim of preventing and combating human trafficking, as well as protecting the human rights of victims of trafficking and designing a global framework for the protection and assistance of victims. This convention now applies to all forms of human trafficking, whether national or non-domestic and whether or not they are related to organized crime, which is a departure from the Palermo Protocol, which required “the involvement of an organized criminal group”.

In this sense, we can say that both the Palermo Protocol (2000) and the Warsaw Convention (2005) define trafficking in human beings almost identically, encompassing both the recruitment, transport and accommodation of people, using means such as coercion, deception, abuse of vulnerability or payments to third parties, for the purpose of exploitation (sexual, labor, slavery, servitude, or organ removal/removal). However, we note nuances in the terminology between the two legal instruments, since the Warsaw Convention speaks of “recruitment” instead of “recruitment” and “transfer” instead of “transfer”, while

replacing the term “abuse of power” with “abuse of authority”, which may, depending on the interpretation, be limited to more institutionalized or hierarchical relations of subordination. As for the rest, we note that Warsaw consolidates and adapts the Palermo definition to the European context, especially with regard to what should be understood by trafficking in human beings and the value that should be given to the consent of the victim in these contexts.

- Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA).
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. This directive is considered the key instrument of the European Union in this area, adopting an integrated approach in which human rights are placed at the centre from the perspective of gender, children and vulnerable victims. In this way, the Directive aims to create a common framework of harmonised criminal definitions of trafficking, including its forms of exploitation, and to replace Framework Decision 2002/629/JHA.

Among its new features, we can highlight the obligation not to prosecute or punish victims for crimes committed under the duress of their traffickers, as well as the appointment of guardians for minor victims, also including access to restorative compensation. In this sense, Spain transferred this directive to our legislation through various criminal and procedural reforms, specifically Organic Law 1/2015 of 30 March, which modifies Organic Law 10/1995, of 23 November, of the Criminal Code, which reinforced art. 177 bis CP and the protection of victims.

On the other hand, it is also relevant to note that in June 2024 the European Union approved a reform of this Directive through Directive (EU) 2024/1712 to strengthen the response to new trends in trafficking. This amendment explicitly incorporates exploitative surrogacy, forced marriages and illegal adoptions as forms of exploitation, given their increasing incidence. It is also committed to preventive measures, such as data collection and monitoring, European coordination and early detection of victims, assessing that this was one of the main challenges facing the European Union in this area, as recital 5 of the amendment states the following: “The shortcomings identified in the response to criminal law that require adaptation of the legal framework relate to crimes related to trafficking in human beings committed in the interests of legal persons, the system of data collection, cooperation and coordination at Union

and national level, and the national systems for the detection and early detection of, specialized assistance and support for victims of trafficking in persons”.

In addition to these main normative instruments, there are other directives at EU level that tangentially regulate issues affecting victims of trafficking in human beings. Thus, Council Directive 2004/81/EC provides for the granting of a temporary residence permit for third-country nationals who are victims of trafficking and cooperate with the authorities, Directive 2011/92/EU addresses the fight against sexual abuse and sexual exploitation of children, complementing the protection of minors against phenomena such as child trafficking, and Directive 2012/29/EU In the rights of victims of crime, the rights of victims of trafficking to information, assistance, protection and participation in criminal proceedings have been strengthened at the procedural level, often recognising them as *particularly vulnerable victims* requiring special measures.

Also at the policy level, we currently have the European Union Strategy to Combat Trafficking in Human Beings (2021-2025), which sets out the following objectives of the plan: “The strategic objective of the Plan is to ensure adequate protection, assistance and recovery for victims of trafficking and exploitation of human beings, neutralizing the threat posed by organized and serious crime operating in these areas”. It is necessary to evaluate the results obtained and readapt the policies to prevent and fight against trafficking for 2024 and beyond”.

### *1.1. Regulatory instruments for protection against trafficking in persons at the national level*

In the field of national legislation, in addition to Organic Law 5/2010 of 22 June, which incorporated article 177 bis into the Criminal Code that expressly criminalises the offence of trafficking in persons – to which we will refer later – there are also various non-criminal provisions that include and regulate the main measures for the protection of victims. However, the dominant feature in this area has so far been the fragmentation of regulations, dispersed between laws on foreigners, labour regulations, social assistance or international protection. This lack of coherence hinders the uniform application of victims’ rights and creates gaps in their effective protection. Precisely for this reason, the Preliminary Draft of the Comprehensive Organic Law against Trafficking and Exploitation of Human Beings (2022) declares the central objective of overcoming this dispersion and offering a unitary and systematic legal framework,

capable of comprehensively guaranteeing both the criminal prosecution of the phenomenon and the protection and reparation of those who suffer from it. In this way it is said: “In this line, the Government recovers the preliminary draft of the Comprehensive Organic Law against Trafficking and Exploitation of Human Beings to restart its procedure, which fell in the previous legislature with the call for elections”. Press release from the Ministry of Equality, 8 March 2024.

Some really relevant normative instruments of protection can be found in Organic Law 4/2000 on the rights and freedoms of foreigners and their social integration and its implementing regulations, approved by Royal Decree 557/2011 of 20 April, Law 35/1995 of 11 December, Law 19/1994 on the protection of witnesses and experts in criminal cases, Law 1/1996 on free legal aid and Royal Decree 1192/2012, modified by RD 576/2013, which included victims of trafficking (among other vulnerable groups).

Starting from the first, in relation to Organic Law 4/2000 on the rights and freedoms of foreigners and their social integration and its implementing regulations, approved by Royal Decree 557/2011 of 20 April, we must bear in mind that, given that many victims of human trafficking in Spain are foreigners in a vulnerable situation, Organic Law 4/2000 on Foreigners and its implementing regulations have incorporated specific provisions to protect this group. In particular, article 59 bis of LO 4/2000 (introduced by a reform in 2009) regulates the status of “*foreign victims of trafficking in persons*”. This provision obliges the authorities to take the necessary measures to identify victims of trafficking, in accordance with Article 10 of the 2005 Council of Europe Convention. Once there are “*reasonable grounds*” to believe that an alien in an irregular situation may be a victim, he is informed of his rights under this article and the procedure is initiated to grant him a period of rehabilitation and reflection.

Thus, article 59.1 of Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration establishes the states. “A foreigner who is illegally present in Spain and is a victim, injured party or witness to an act of illegal trafficking in human beings, illegal immigration, labour exploitation or illegal trafficking in labour or exploitation in prostitution by abusing his or her situation of need, may be exempt from administrative liability and shall not be expelled if he or she denounces the perpetrators or collaborators of such trafficking or cooperate and cooperate with the competent authorities, providing essential information or testifying, where appropriate, in the relevant proceedings against the perpetrators”.

Article 59 bis of Organic Law 4/2000 also provides for a period of reinstatement and reflection: “The competent administrative bodies,

when they consider that there are reasonable grounds to believe that an alien in an irregular situation has been a victim of trafficking in persons, shall inform the person concerned of the provisions of this article and shall submit to the competent authority for resolution the corresponding proposal on the granting of a period of reintegration and reflection, in accordance with the procedure provided for in the regulation. The cooling-off period must be at least 90 days.

On the other hand, article 31.2 bis of Organic Law 4/2000 provides for an exemption for trafficking in persons and a suspension for victims of gender violence. It literally says: “If, when reporting a situation of gender-based violence against a foreign woman, her irregular situation is revealed, the administrative sanctioning procedures for infringement of article 53.1.a, and the administrative sanctioning procedures that would have been initiated for the commission of said infringement before the complaint or, where appropriate, the execution of the expulsion or return orders that may have been agreed, shall not be initiated, will be suspended”.

In summary, the Spanish Foreigners Law, through article 59 bis (and its regulation, RD 557/2011), establishes a real mechanism for the protection and temporary assistance of foreign victims of trafficking, in line with international standards of identification, a period of reflection and options for regularisation for cooperation or humanitarian reasons.

With regard to the Statute of Victims of Crime, the Act provides in its Preamble that the rights contained in the Act shall apply to all victims of crimes that have occurred in Spain or that may be prosecuted in Spain, regardless of the nationality of the victim or whether or not they enjoy legal residence.

This law transposes Directive 2012/29/EU into Spanish legislation, enshrining a catalogue of procedural and extra-procedural rights for *all* victims, thus applicable to victims of trafficking. These rights include the following: the right to understand and be understood in the proceedings, the right to information from the first contact with the authorities (on procedures, assistance, compensation), the right to psychological, medical and social assistance, the right to special protection measures during the proceedings (videoconference testimony, protection order, etc.), the *right to free legal aid*, to active participation in criminal proceedings and to the protection of their privacy and security, among others. For example, Article 13. 1), Article 9 includes the crimes of trafficking in persons as one of the grounds for which victims may be notified of the order by which the Judge of Prison Supervision agrees to classify the prisoner in the third degree, prison benefits or conditional release, including the right of victims to appeal this decision.

However, the victims' statute does not provide for specific measures aimed at migrants. Its system focuses on guaranteeing a common status of protection and assistance, with special attention to vulnerable groups such as minors, victims of trafficking or gender-based violence, although without configuring migrants as a category of their own. This absence contrasts with European legislation, in particular Directive 2012/29/EU, which requires an individualised approach for victims in a situation of particular vulnerability, and Directive 2004/81/EC, which regulates residence permits for victims of trafficking in irregular situations. Thus, while in Spain the reinforced protection of migrants depends on sectoral regulations such as Organic Law 4/2000 on Foreigners (art. 59 bis), the Victims' Statute continues to be a generic cover, without explicitly recognizing the particular needs of this group.

### *1.2. The "badly" protected witness: The need for a reform of Organic Law 19/1994, on the protection of witnesses and experts, to guarantee the testimony of victims of trafficking in human beings*

Organic Law 19/1994 of 23 December 1994 establishes a special protection regime for witnesses and experts in criminal cases, allowing protection measures to be applied to any witness or expert who, being obliged to intervene in criminal proceedings, is considered to be in serious danger to his or her life, liberty or property, and therefore it is necessary for the accused not to know his or her identity.

In cases of human trafficking, victims who choose to cooperate with the justice system often meet this requirement, as these criminal phenomena are part of a hierarchical power dynamic that increases the possibility of retaliation by these trafficking networks. In fact, judicial practice shows that the vast majority of trafficked persons obtain the status of protected witnesses, since by testifying against traffickers they assume considerable risks to their personal safety and that of their relatives and, in addition, relieve the psychological traumas they suffer with their aggressors. This was highlighted at the Meeting of Prosecutors Specialized in Foreign Affairs Matters, held in Madrid on October 25 and 26, 2021, entitled "Preconstitution of witness evidence of the victim of trafficking in persons. Evaluation of the statement of the victim of human trafficking. Summary of the jurisprudence of Chamber II of the Supreme Court" as follows: the experiences suffered by victims during the course of the trafficking episode, in a very high percentage, cause various psychological traumas, significant post-traumatic stress disorder or other psychological

damage that can be aggravated unbearably for those who suffer from it if they are brought to criminal proceedings in such conditions that they are forced to face each other face to face with the perpetrators of their ills or to relive their tragic experiences in a repetitive way by imposing successive statements on them.

We can thus conclude that the purpose of this organic law is to reconcile the protection of witnesses with the guarantees of criminal proceedings and, more specifically, the right to contradiction that all defendants have in criminal proceedings. Already in its Explanatory Memorandum, the law stresses that the guarantees provided for witnesses and experts cannot be absolute and unlimited, that is, they cannot violate the principles of criminal procedure. Therefore, the objective of this Law is to achieve the necessary balance between the right to a fair trial and the protection of the fundamental rights inherent in witnesses, experts and their families.

In line with this, the doctrine of the European Court of Human Rights (ECtHR) recognises that threatened witnesses can receive protection as long as the rights of defence of the accused are respected, and especially the right to contradict, to be able to cross-examine the prosecution's witnesses. Thus, Supreme Court judgments 686/2016; 167/2017; 1002/2016; 132/2018 report that the European Court of Human Rights states that Article 6(1), combined with paragraph 3, requires States Parties to take all appropriate measures to enable the accused to examine or have examined witnesses against him (see *Sadak et al., v. Turkey*). This measure is part of the diligence to be exercised by the High Contracting Parties to ensure, in an effective manner, the enjoyment of the rights protected by Article 6 (see, *inter alia*, *Colozza v. Italy*, 12 February 1985).

However, this right to adversarial proceedings is compatible with the obligation to avoid secondary revictimization and to ensure the protection of victims of trafficking. Thus, Directive 2011/36/EU, for example, obliges Member States to guarantee victims of trafficking special treatment to avoid secondary victimisation in criminal proceedings. Article 12(4) of the directive provides that without prejudice to the rights of the defence, and subject to an individual assessment of the victim's personal circumstances by the competent authorities, Member States shall ensure that victims of trafficking in human beings receive special treatment aimed at preventing secondary victimisation, avoiding, as far as possible and in accordance with criteria established by national law and rules relating to the discretion, practice or guidance of the courts: (a) unnecessary repetition of interrogatories during the investigation, prior to trial or trial; (b) eye contact between victims and defendants including during the presentation of evidence, such as in cross-examination and

cross-examination by the opposing party, by appropriate means such as the use of appropriate communication technologies; (c) testify in open court; and (d) asking about the victim's private life when it is not absolutely necessary.

These guidelines are reflected in Spanish practice through the application of Organic Law 19/1994 to victims of trafficking. Thus, when witness protection is granted under Organic Law 19/1994, the investigating judge adopts a series of precautionary and procedural measures aimed at preserving the identity and security of the witness on the one hand and the witness on the other. In order to preserve identity, the judge may order, firstly, that the witness's personal data (name, surname, address, place of work, etc.) should not be included in the proceedings, replacing them with a code or pseudonym, in accordance with article 2 of the said law, whenever he considers it necessary. The purpose of this confidentiality is to ensure that neither the record nor court documents contain information that could reveal who the protected witness is.

Secondly, it provides that the witness may appear in the proceedings through procedures that prevent his or her habitual visual identification. Therefore, in practice, the testimony of the protected witness can be made through the use of a screen, videoconference or some image concealment system, and even modulating the voice by means of audio distorters, to keep the witness hidden. In this way, the accused is prevented from recognizing the deponent, without renouncing the presence of the witness at the trial or in his interrogation.

We must also bear in mind that these protective measures must not erode the probative value of the protected witness, so that he or she continues to have the status of a witness and can serve as one of the prosecution's evidence that the court takes into account, provided that the right to contradict is respected. For example, in STS judgment no. 468/2020, of March 12, the Supreme Court made it clear that the mere fact that the witness is protected and receives anonymous status does not imply that he or she is on a par with an anonymous informant, so that, although the latter cannot be the basis for adopting interference measures, the former can.

In addition to procedural anonymity measures, the law provides for security measures in Article 3.2, announcing that "witnesses and experts shall receive, where appropriate, police protection. In exceptional cases, they may receive documents of a new identity and financial means to change residence or place of work. Witnesses and experts may request to be taken to the court premises, to the place where the proceedings are to be conducted or to their home in official vehicles and, during their stay

in such premises, they will be provided with a room reserved for their exclusive use, duly guarded.

Therefore, during the trial (or even afterwards, if the danger persists) the witness may be assigned permanent police protection. In extreme cases, the witness may be provided with documents with a new identity and financial means to move his or her residence or place of work, or be transferred in an official vehicle to court or home to protect his or her integrity, and wait his or her turn to testify in a reserved and guarded room within the court premises. These security measures, in our opinion, are relevant and necessary on many occasions when we talk about criminal phenomena such as human trafficking, since exploitation mafias usually have a transnational reach and the ability to intimidate or attack those who testify against them.

After all of the above, we can say that, depending on the level of protection received by the witness, there are two subcategories of protected witnesses, as indicated by the Supreme Court (STS no. 649/2010) two categories in order of level of protection: anonymous witnesses, whose personal data are not even communicated to the parties; and hidden witnesses, who identify themselves personally with names and surnames, but who testify in the plenary session with different degrees of opacity with respect to the vision or control of the parties in the proceeding.

And as regards the criteria for determining the level of protection to be afforded to the victim, the non-jurisdictional plenary session of the Chamber held on 6 October 2000, which reached the following agreement, subsequently ratified by the Supreme Court judgement STS1165/2000, is undoubtedly important: (a) In order to adopt the measure that prevents the accused from examining the testimony of a witness in the act of the oral trial, as mentioned in section b) of article 2 of Organic Law 19/1994 on the Protection of Witnesses and Experts in Criminal Cases, it is necessary for the Court to reasonably justify its decision. This applies whether protective measures have already been adopted during the investigation (art. 4), or whether such a measure has been agreed upon at the time of the oral trial. b) In the latter case, it is sufficient to set out the reasons in the minutes of the oral trial, with the scope required by the situation of danger, and also what the parties consider with respect to said restriction on the publicity of the debate, as well as the acceptance or respectful protest to the decision adopted by the Court. (c) The consequence of the absence or insufficiency of such reasoning may be reviewed by appeal, which leads to the nullity of the oral trial with the reinstatement of the proceedings, so that the trial may be held again before a tribunal composed of different judges.

From all this, we can see that the act of the oral trial deserves special attention. At the beginning of the oral trial, the court must review and decide whether to maintain, modify or lift the protection measures agreed during the investigation, and even whether to adopt new ones. As mentioned above, this is especially important because of the right of contradiction and the right of defense that the accused has, since the moment of the oral trial is when the evidence must be heard and the culminating moment to destroy the presumption of innocence that he possesses.

Therefore, this new decision requires a careful assessment of the conflicting rights: on the one hand, the fundamental rights of the witness (life, integrity, privacy) and the public interest in the prosecution of the crime; on the other, the right of defense of the accused, which includes the principle of dissemination of the trial, immediacy and contradiction in evidence. The law provides that, if any of the parties so requests in a reasoned manner in their indictment or defence briefs, the court must disclose the identity (name and surname) of the protected witnesses whose testimony has been admitted. This rule in art. 4.3 of Organic Law 19/1994 aims to guarantee that the defense is not totally blind with respect to who accuses it, allowing it to investigate possible credibility failures (enmities, background, etc.).

And it is here that we must explore the tensions generated by Article 4 of this law, which allows the identity of the witness to be revealed. The first thing to bear in mind is that, as established by STS 384/2016, May 5, 2016, the Law does not prevent the rejection of the request to reveal the identity of protected witnesses, when there are well-founded reasons to do so. As well as the request to reveal the identity of the protected witnesses “to assert the right of defense”, without expressing a specific motivation for the request, which is totally insufficient to reveal the identity. In the same sense, and as established in the aforementioned judgment, STS 395/2009, of 16 April, establishes that the duty to disclose the name and surname of witnesses is not absolute. Article 4.3 itself subordinates its scope to the fact that the request made in this regard by the parties in their brief of provisional conclusions is made with reasons, and is also subject to the usual judgment of relevance. This doctrine had already been followed in Judgment 322/2008 of 30 May.

This means, therefore, that the defence must provide some indication as to why knowing the identity might be relevant to the case (e.g. suspicions that the witness is lying out of enmity or the need to verify certain information). Particularly important in this regard is that, according to STS no. 447/2019, of 3 October, it is not possible for the defence to appeal that the protected witness did not reveal his identity if he did not

expressly request it before the trial in accordance with article 4, on which we commented, stating that the defence of the accused did not request at any time, neither reasoned nor irrational, that the Court provides the names of the protected witnesses, so it is neither coherent nor reasonable for it to now question the testimonies sent on appeal and cassation once it accepted the anonymity and concealment of the protected witnesses during the judicial process.

In addition, the Supreme Court also requires that, if the witness was declared a protected witness in the investigation, the defence must request, under article 4, that he or she cease to be a protected witness and, if this is rejected, file a protest for the purposes of subsequent appeals. This can be observed in accordance with STS no. 525/2012, of June 19, which establishes that in the present proceedings, the defense did not register its protest at any time, neither before the oral trial, nor during the trial, nor, specifically, when it learned of the court's decision on the way in which the witness's statement should be heard. This lack of reaction implies an acquiescence to the Court's decision, implicitly accepting that the manner in which the evidence was presented did not affect the rights of the accused in any relevant way. This acceptance, with the consequent failure to raise the issue in the lower court, now precludes an assessment of this violation, which could and should have been reported in a timely manner so that the Court could give adequate reasons for its decision after hearing the parties.

Also in constitutional jurisprudence, the Constitutional Court in its STCS 64/1994 and TC 65/2013 confirmed that the restrictions derived from the protection of witnesses do not violate the right to a fair trial if they are properly assessed against the effective judicial protection and defense of the accused. However, the problem with all this is that, in practice, since anonymity implies a strong restriction on the right to defense, courts often use the hidden witness more than the protected witness, i.e., the witness testifies hidden without the direct and visual presence of the accused, but his identity is revealed. In this regard, we understand that this is partly due to a compilation of ECtHR case law that grants cautions and reservations to absolutely anonymous testimony, such as the judgments in the Kostovski and Windisch cases, in which reinforced elements of real danger to the victim are required in the event that the identity of the witness is revealed, as well as the need to evaluate the burden of proof that exists against the witness.

In any case, and in our opinion, excessive demands on the need to demonstrate the real danger of the witness would not lead to overly restricting the status of the protected witness, making him or her really

“unprotected”. On this point, we agree with the Supreme Court (STS 686/2016), which considers that in this case the identity of the witnesses could be easily deduced and, even more importantly, the defense at no time alleged possible animosities with the only witnesses who could have seen it. Thus, he affirms that “at no time did he state that he had had any conflict with any of the neighbors who could have had the intention of harming him (...) Given that it had not done so, and the Court considers that the reasons that justified the initial protection during the investigation (...) still exist, it can be considered that the refusal to reveal the identity”, which seems to us a more balanced reasoning, that is, to evaluate the possibilities of defense that are limited by the non-disclosure of the identity of the witness.

In summary, Spanish jurisprudence recognizes the special vulnerability of victims of trafficking and has developed a body of doctrine and practice that seeks to effectively protect them during criminal proceedings, although we can still see that there is a reluctance to grant the status of anonymous witness due to the possible erosion that this could cause to the right of defense, and in many cases the status of hidden witness is considered, with the revelation of the identity of the witness but preserving the rest of the protection measures that prevent direct viewing with the accused.

## 2. THE CRIMINAL RESPONSE: A JURISPRUDENTIAL ANALYSIS OF ARTICLE 177 BIS OF THE CRIMINAL CODE

At the national level, the inclusion of the crime of trafficking in persons in the Penal Code was carried out in 2010, through the addition of article 177 bis. This measure arose to comply with Spain’s international commitments, mainly in accordance with the Palermo Protocol and the Warsaw Convention. In this section we will study each of the phases of criminal execution in the crime of trafficking in persons and, in addition, the excuse of acquittal.

### 2.1. *The typical conduct and phases of the crime of trafficking in persons: recruitment, transfer and exploitation*

The jurisprudence of our superior court identifies at least 3 phases; STS 144/2018 of March 22 indicates the phases of the crime of trafficking in human beings typified in art. 177bis:

- Recruitment phase: luring a person by deception to control their will in order to exploit them, which is equivalent to recruiting the victim.
- Transfer phase: moving a person from one place to another using any available method and using the uprooting technique.
- Exploitation phase: Use of coercion or violence for economic gain.

On the other hand, STS 191/2015, of April 9, illustrates the typical conduct. “We have stated that in the crime of trafficking in persons it is required that the perpetrator know the situation before recruiting the victim and include his conduct in one of the typical verbs of the action. In addition, the crime does not disappear until the victim’s vulnerability, threat or intimidation has ended”.

Therefore, we can say that the modality of criminal execution in the crime of trafficking in persons consists of the recruitment of victims, either by deception, abuse of position or coercion, although normally in practice false job offers are increasingly frequent. From there, people are transferred from one part of the national territory to another, being housed in a specific address and subjected to a situation of labor exploitation that borders on slavery. It is quite common, in this sense, to deceive the victim into believing that they owe a debt and that, therefore, their salary is extremely low, or that they must work subhuman hours.

As for when a situation of vulnerability or need should be understood as existing, the wording of the precept itself establishes that it will exist when “the person in question has no alternative, real or acceptable, but to submit to abuse”, so that, in the words of the Supreme Court, the illegality of the action implies “taking advantage of a reality that restricts the freedom of decision of the passive subject”. Vulnerability is understood as a socio-economic reality that can be considered as one of social exclusion, insofar as it places the victim in a situation in which he or she cannot choose not to submit to exploitation.

With regard to the phases of trafficking in persons, the consolidated doctrine includes the definitions of each phase according to the UNODC (United Nations Office on Drugs and Crime), including the following:

Recruitment phase: The first phase of the crime of trafficking in persons consists of an initial conduct of recruitment, which consists of luring a person to control his or her will for the purpose of exploitation, which is equivalent to recruiting the victim. In this recruitment phase, deception is commonly used, in which the trafficker, his collaborators or his organization articulate a mechanism of direct or indirect approach to the victim to “hook” or accept the proposal. Deception is also frequently combined with coercion.

Transfer phase. This is the second link in the criminal activity of human trafficking. Moving a person from one place to another using any means available (including the company's footing). The use of the term transfer emphasizes a person's shift from one community or country to another and is related to the technique of "uprooting," which is essential to the success of the criminal activity of trafficking. The transfer can be made within the country, although it is more common at border crossings. Uprooting consists of the victim being separated from the place or environment where he or she has grown up or lived, thus severing the emotional ties he or she has with her through the use of force, coercion, and deception.

Exploitation phase. This consists of obtaining economic, commercial or other benefits through the forced participation of another person in acts of prostitution, including acts of pornography or production of pornographic materials. The Palermo Protocol of 15 December 2000 refers to the exploitation of prostitution of third parties, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs as purposes of trafficking in human beings.

And with regard to both the intention and the consummation of the crime, the Supreme Court (STS 191/2015) establishes that in the crime of trafficking in human beings it is required that the perpetrator know the situation prior to the recruitment of the victim and that he or she include his or her conduct in one of the typical verbs of the action. And furthermore, the crime does not disappear until the victim's vulnerability, threat, or intimidation has ended.

In summary, we can see how the crime of trafficking in human beings presents a multi-phase structure, in which each stage fulfills a specific function in criminal logic. Thus, trafficking is revealed as a crime of a permanent nature, which continuously attacks the dignity and autonomy of the person, and which does not cease until the victim's situation of vulnerability ends, which reinforces the need for a forceful criminal response to its different manifestations.

## *2.2. The excuse of acquittal in the crime of trafficking in human beings*

The excuse of acquittal of the victim in art. 177bis: 11 states that without prejudice to the application of the general rules of this Code, the victim of trafficking in human beings shall be exempt from punishment for crimes committed in the situation of exploitation suffered, provided that his participation in them was a direct consequence of the situation

of violence, intimidation, deception or abuse to which he was subjected and that there is an adequate proportionality between this situation and the criminal act committed.

Article 177 bis.11 of the Spanish Penal Code enshrines the so-called *principle of non-punishment* or acquittal in favor of victims of human trafficking. Their reason lies in avoiding double victimization: first at the hands of criminal networks and then by the criminal justice system. In essence, it seeks to safeguard the human rights of victims, prevent further victimization and encourage them to collaborate as witnesses in proceedings against traffickers, according to STS 960/2023 of December 21.

This measure recognizes that victims are often forced by their exploiters to commit crimes (e.g., transporting drugs, using false documents, stealing, or practicing prostitution when criminalized) and aims to prevent the state from punishing them for acts committed under duress, deception, or abuse. In the words of the Supreme Court (STS 59/2023), the objective of the excuse of acquittal “*is none other than to separate victims of trafficking from the exploitation they suffer, prevent them from suffering further victimization and encourage them to act as witnesses*”, which, in our opinion, is a necessary and central victimological approach in a criminal law that does not punish people in a situation of extreme vulnerability caused by the aggressor.

In the same way, it includes the reasons for the excuse of acquittal, stating that it would be manifestly contradictory to this objective if the mere possibility of obtaining the legal benefits that protect victims were to be transformed into a cause for the evidentiary invalidity of their incriminating statements. It is also true that these procedural benefits require a special evaluation of the testimony, in order to rule out cases in which the incrimination of third parties is used in a spurious manner and safeguard the right to the constitutional presumption of innocence of said third parties (STS 214/2017, of 29 March).

However, we must bear in mind that this special clause is not intended to grant indiscriminate impunity, but to recognize the lack of true culpability of those who act without free will under submission, giving priority to considerations of humanitarian criminal policy. Villacampa (2013, 2022) explains that the State, in these cases, considers it “more useful to tolerate the crime than to punish it”, knowing that the victim did not act of her own volition, and with the additional purpose of encouraging the reporting of traffickers. In addition, Gil Nobajas (2022, p. 104) points out that this non-punishment clause stems from the transposition of Directive 36/2011/EC of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and that it in turn has its roots in the Council

of Europe Convention on Action against Trafficking in Human Beings of Warsaw, of May 16, 2005.

In other words, the acquittal, in addition to being based on European Union law, reflects the idea that it is not necessary to punish or reprimand the exploited victim, either in a general way or in a special preventive manner, in line with the essential principles of the State's *ius puniendi*, which are unnecessary in the present case.

This principle, although it only benefits the affected party (the victim), and in accordance with the interpretation given by Villacampa Estiarte (2022), does not exclude the possible concurrent application of other causes of exclusion from criminal liability provided for in the Criminal Code, such as insurmountable fear or a state of necessity. In summary, the excuse of acquittal in art. 177 bis.11 PC is presented as a criminal policy tool aimed at protecting the dignity and fundamental rights of the victim, recognizing his situation of extreme vulnerability and facilitating his recovery and integration without the additional burden of a criminal conviction.

In summary, the excuse of acquittal in art. 177 bis.11 CP was born in 2010 in the context of alignment with international obligations and has been confirmed and qualified in subsequent reforms. However, according to the Serra Schönthal Foundation, its practical application was practically non-existent during the first decade of its application. In fact, it took *ten years* before a Spanish court applied it for the first time in a sentence.

As for the legal requirements for its application, art. 177 p.11 PC expressly establishes the cumulative conditions under which this excuse for acquittal operates. The rule establishes that: "Without prejudice to the application of the general rules of this Code, the victim of trafficking in human beings shall be exempt from punishment for the crimes committed in the situation of exploitation suffered, provided that his participation has been a direct consequence of the situation of violence, intimidation, deception or abuse to which he has been subjected and that there is an adequate proportionality between that situation and the criminal act committed".

From this legal formulation the requirements for the application of the exemption from punishment can be deduced. On the one hand, a subjective condition, consisting of being a victim of trafficking in persons, which means that the victim must have suffered any of the criminal conduct described in art. 177 bis 1 of the Criminal Code, and have been a victim at the time of committing the criminal acts of which he is accused, and, on the other hand, a condition of temporal relationship or connection with the crime committed, so that the criminal act is causally connected

to this situation of vulnerability, so that there is no excuse for acquittal in those cases in which there does not seem to be a causal, contextual and temporal connection between the imputed act and the situation of trafficking.

Regarding the subjective requirement, Gil Nobajas (2022, p. 107), on whether this requirement requires a prior conviction in which the person now accused had been a victim of trafficking, states that “neither art. 177 bis, nor the international commitments assumed by Spain in relation to the enhanced protection of the victim of trafficking, require that this be recognized exclusively in a trial for this crime”. in addition to being contrary to the presumption of innocence” and, therefore, it is not necessary to consider that the accused person has committed the crime in exploitative conditions. In the same vein, the jurisprudence establishes that it is not limited to the strict framework of criminal proceedings for this crime, but can be accredited through administrative resolutions, social reports, residence permits for exceptional circumstances, as well as through coherent and corroborated statements by the person involved, as reflected in the evidentiary evaluation carried out in STS 59/2023. of February 6.

In practice, this involves proving that the defendant was in an exploitative situation at the time of the facts. This was done, for example, by the Provincial Court of Barcelona in the Angelina case, based on the defendant’s statement and a comprehensive expert report from a specialized non-governmental organization (SICAR Cat) that corroborated all the circumstances of exploitation, although there was still no formal identification by the authorities at the time. However, the Angelina case is equally suitable for analysing the temporal and causal relationship with the crime of trafficking in persons, since the Supreme Court, in its Judgment 960/2023 of 21 December 2023, denied the application of the excuse of acquittal to the accused, arguing that we were dealing with a case of a bank mule. Therefore, there was no causal connection between the crime of trafficking in persons and the criminal action carried out by the defendant. The main arguments of the Chamber – which were subsequently heavily criticised – were twofold: (1) that the *principle of non-punishment can only be applied in the context of a trial for the offence of trafficking in human beings*, not in proceedings for other isolated offences, and (2) that trafficking requires some *permanence or repetition* in exploitation, whereas Angelina had only been used “*sporadically*” criminal act (a single transport of drugs), and therefore did not comply with the essence of the crime of trafficking. Based on this, the Supreme Court understood that in this case the exemption of 177 bis.11 did not apply, but instead analyzed a possible

exonerating circumstance of state of necessity (alternatively alleged by the defense due to the extreme difficulty of the accused) that could be more in line with this principle. The Supreme Court's ruling annulled the sentence and reinstated the procedure to analyse whether there could be another type of exonerating circumstance.

One of the most criticized arguments in this judgment was the requirement that the excuse of acquittal only applies if there is a vocation of temporary permanence. In view of this aspect, we consider especially interesting the thesis upheld in the dissenting opinion of Judge Javier Hernández, which establishes the following: "I do not question that in the phenomenology of trafficking for the purpose of sexual or labor exploitation, begging or slavery, there are normally characteristics of permanence over time, of creating conditions of continuous submission to favor the intended exploitation. However, it is not possible to deduce from this an element of the type such as the "certain permanence of the situation of exploitation", which is not contemplated in this type. Among other reasons, because it is impossible to identify it in other cases of trafficking, such as those involving organ removal or forced marriage. It does not seem conceivable that in these cases a situation of successive exploitation or a certain permanence is required. Nor do I consider that it may be necessary in the case of trafficking for the purpose of exploitation for the commission of criminal activities. Its requirement raises many questions: how is this continuity measured, by the number of crimes committed, by the length of time, is it excluded if the arrest occurs after a single crime has been committed or while this case is being committed, why is it excluded in this case, the answers to which are not identified in the sentence?"

In summary, and as we can see, from the analysis carried out on the jurisprudential treatment of the excuse of acquittal, two different lines of interpretation can be deduced:

On the one hand, a flexible line, which maintains that it is enough to establish the condition of the victim of trafficking to apply the excuse, provided that a situation of vulnerability and dependence is accredited that places the person in the hands of a criminal organization, determining his participation in criminal conduct. This interpretation would be the one defended by Judge Javier Hernández himself.

On the other hand, there is a restrictive line, outlined in the Supreme Court's ruling on the so-called *Angela case*, which requires not only the accreditation of such vulnerability, but also the existence of an intense and prolonged relationship of dependence over time, that is, a certain degree of belonging. Under this conception, the excuse of acquittal would

only operate in contexts in which the victim's life is completely subsumed within the framework of trafficking – as in the case of continuous labor or sexual exploitation – ruling out its application in isolated or specific cases, in which it can be considered that there is a concurrence of criminal intent.

Finally, it should be noted that, from a doctrinal point of view, there is significant support for the principle of non-punishment, understood as an essential advance in the protection of victims of trafficking. However, the debate persists on the most appropriate way to articulate and improve it. In this context, the restrictive line seems to be aimed at limiting the application of the excuse of acquittal in cases such as that of the *bank mule*, to avoid both scenarios of generalized impunity and the possible instrumentalization of the victims by criminal organizations.

However, we consider that these limits require a more detailed and nuanced examination, especially to determine whether, in those cases in which the criminal act is structurally linked to the situation of trafficking but does not reach the intensity required by the jurisprudence of the Supreme Court, it would be possible to resort subsidiarily to the defence of necessity, offering the possibility of a criminal defence or mitigation for those who act in a context of coercion or exploitation, and in which case there is no social benefit in the penalty for that person in that context.

### 3. LABOR EXPLOITATION AND TRAFFICKING IN WORKERS: ANALYSIS OF ARTICLES 311, 312 AND 313 OF THE CRIMINAL CODE

Spanish criminal legislation provides for several specific offences to combat labour exploitation and labour trafficking, including those cases that particularly affect migrants in vulnerable or irregular situations. In the current Penal Code (CC), articles 311, 312 and 313 (all in Title XV, “Crimes against workers’ rights”) criminalize different forms of labor exploitation, ranging from the imposition of illegal working conditions to the illegal hiring of labor, with aggravating circumstances when the victims are especially vulnerable (such as migrants without work permits). Below is an exhaustive analysis of each precept (311, 312 and 313 PC), its typical elements, active/passive subjects and penalties, its relationship and differences with the crime of trafficking in persons for the purpose of labor exploitation (art. 177 bis PC), so that we can establish an overview of when these criminal modalities can affect the migrant collective.

In relation to article 311 of the Penal Code, this precept criminalises the conduct of those who, through deception or taking advantage of a

situation of need, impose working or social security conditions on their workers that reduce, suppress or limit the rights recognised by regulations, collective agreements or individual contracts. In addition, the legislator provides for an aggravated subtype for cases in which these practices are carried out through violence or intimidation, in which case greater penalties are foreseen.

As for habitual conduct, the Supreme Court clarifies in its judgment STS 270/2016, of April 5, that the typical conduct of the crime is configured when the employer takes advantage of his position of superiority in the workplace, using it improperly to impose illegal working conditions for his own benefit. The jurisprudence recalls that these cases are characterised by the existence of abusive conditions that lead to the deprivation of the essential rights of workers, to the point of approaching situations of genuine labour exploitation.

With regard to passive matters, the Supreme Court, in judgment STS 639/2017, of 28 September, establishes that the holders of the rights protected by the criminal offences that constitute Title XV are working citizens as a whole. We are dealing with a unitary object of protection, without prejudice to the fact that certain types of crimes grant specific immediate protection to some of these rights” and, therefore, the taxpayer would be made up of employed workers. It should also be taken into account that the taxable person reaches foreign workers in an irregular situation, in accordance with STS 348/2017, of 17 May, which specifies that the scope of protection of the precept also extends to foreign workers in an irregular situation, so that imitating the recognition of this right only to those who have legal authorization to work could generate unacceptable social inequality. To the extent of allowing employers to impose abusive and discriminatory working conditions on immigrants in irregular situations without fear of any sanction, despite the fact that this would violate essential values linked to the dignity of the person proclaimed in article 10 of the Constitution, the validity of which is not conditioned by borders or administrative situations, so today the application of the criminal precept in these circumstances is beyond doubt.

In view of all that has been said so far, we can say that article 311.1 of the Security Code deals with the prototypical case of labor exploitation, in which the employer takes advantage of deception or the precarious needs of the worker (for example, his economic or migratory situation) to impose conditions below the legal minimum. Regarding working conditions, Rodríguez and Idiákez (2019, p. 16) understand these conditions “in a broad sense, they must include all those that constitute the content of

the employment relationship, that is, all those that affect the conclusion, execution and fulfilment of the contract”.

Now, focusing on the consideration of the typical verb “to impose”, jurisprudence has interpreted this verb to imply that the worker lacks the real capacity to react in defense of his rights, even without physical violence; in other words, a situation of subjugation outside the normal channels of labor negotiation. The active subjects are usually employers, entrepreneurs or those who have management power in the employment relationship, while the passive subject is any worker under their authority (the regulation protects “*the compensation of the employment relationship*”).

Focusing on Article 312, it specifically regulates conduct linked to illegal labor trafficking and labor exploitation, with special emphasis on the situation of vulnerable people such as migrants in irregular situations, articulated in two different sections, which respond to different assumptions but united by a common preventive purpose: to prevent abusive practices in the labor market.

These two modalities are, on the one hand, the first paragraph (clause 1) which criminalizes illegal trafficking in labor, imposing a prison sentence of two to five years and a fine of six to twelve months on those who “illegally traffic in labor”. The legal formula, broad and deliberately indeterminate, has been interpreted by the doctrine as a reference to the actions of intermediaries or “recruiters” who channel workers to jobs outside the law. On the other hand, article 312.2 of the Criminal Code punishes, with the same penalties provided for in the previous article, those who carry out two different conducts: on the one hand, the recruitment of people by deception, that is, inducing them to leave their jobs by offering them false or non-existent jobs or working conditions; and, on the other hand, the hiring of foreigners who do not have a work permit, when this is done in a framework that undermines, suppresses or limits the rights to which they are entitled under the law, collective agreements or their individual contracts.

On the other hand, typical conduct requires a situation of infringement beyond the mere absence of registration with Social Security. Thus, STS 348/2017, of 17 May, establishes: “It is necessary that the conditions of the contract imply a prejudice to their labour rights, beyond those derived from their illegal situation, which results from the lack of a work permit and the absence of registration with Social Security”.

As for the relationship between the offence of article 312.2 of the Criminal Code and article 311.1 of the Criminal Code, it is true that they overlap in part, but article 312 focuses on the particular circumstance of the absence of a work permit. While Article 311 requires proof of deception or

of the situation of need exploited, Article 312.2 “reduces” this requirement by presuming vulnerability due to irregularity. Even so, case law requires proving that the conditions objectively violated basic labor rights, beyond the mere absence of a contract. Thus, STS 503/2010, of 24 May, establishes that “The way in which this type of crime is committed is to carry out the work “in conditions that harm, suppress or restrict the rights that are recognized...”, which could be said in the case of STS 503/2010, of 24 May...” which could be said in the case in question, since “the two victims (as they should be considered, although they were satisfied with their salary and the facilities provided by the company) were not registered with the Social Security and, in addition, had a working schedule of nine to ten hours a day for six days a week. At least in these two areas, their labor rights were ignored”.

In relation to article 313 of the Penal Code, it establishes that “any person who determines or favours the emigration of a person to another country by simulating a contract or placement, or using another similar deception, shall be punished with the penalty provided for in the previous article”, which means that it punishes favouring migration to another country through deception or deception of a labour nature, so that the illegality of the action lies in making a person migrate by means of a simulation trick of a labor nature. According to STS 188/2016, of 4 March, since the reform introduced by Organic Law 5/2010, “this law has limited the criminal offence to cases of promotion of emigration, eliminating the definition of clandestine immigration for the purposes of this precept”, as the latter would be typified in both article 312 of the Criminal Code and article 318 CP, or even as human trafficking, depending on the particularities of the criminal execution.

This article, although less invoked in practice, complements Article 312.2(a) and the crime of encouraging illegal immigration (Article 318 bis CP). The Prosecutor’s Office has interpreted that articles 312 and 313 CP “specifically regulate illegal work”, while art. 318 bis CP (crimes against foreign citizens) punishes conduct that facilitates illegal immigration that *may have as its objective the creation of this illegal work*, protecting different but complementary legal goods. In the same sense, STS 678/2014, of October 23, makes a great distinction between articles 312, 313 and 318 bis in this sense, concluding that “the rights of workers who migrate to another country as a result of a simulated contract, a placement or other similar deception, are covered by article 313, which provides for a lesser penalty than that contemplated in article 318 bis”.

#### 4. HYPOCRISY OF THE TITLE “CRIMES AGAINST THE RIGHTS OF FOREIGN CITIZENS”? THE DEFENCE OF THE INTERESTS OF THE STATE IN MIGRATION CONTROL IN ARTICLE 318 BIS PC

Article 318 bis of the Penal Code punishes any person who “intentionally helps a person who is not a national of a Member State of the European Union to enter Spanish territory or transit through it in a way that violates the legislation on the entry or transit of foreigners”, as long as it is not motivated by humanitarian aid. With respect to this principle, the Supreme Court has established that the crime of clandestine immigration will always be transnational in nature; in this case, the defense of the interests of the State in the control of migratory flows predominates.

It also differentiates between trafficking in persons and the provisions of article 318 bis CP, establishing that both conducts involve the movement of human beings, generally to obtain some benefit. However, in the case of trafficking, there must be two additional elements with respect to illegal immigration: a form of undue recruitment, with violence, intimidation, deception, abuse of power or payment of the price; and a purpose of exploitation, mainly sexual.

As for the active subject, the crime can in principle be committed by any person, so that it does not require any special qualification of the perpetrator, being sufficient if he intentionally helps a foreigner to violate immigration regulations. As for the usual conduct, it mainly consists of providing assistance to a non-EU citizen to transit or stay illegally in Spain, in violation of the applicable legislation. In this regard, the jurisprudence of the Supreme Court has stated that the offence includes as illegal trafficking the use of formulas that authorise entry or transit in the country (e.g. tourist visa) in order to stay, seek or not comply with the administrative rules authorising it under such conditions (S. 28 September 2005; 19 January 2006) and is therefore considered an immigration offence clandestine entry into Spain as a tourist with the intention of staying here working, in the case of people who do not have a work and residence permit in Spain; in the same way, it is declared that it is illegal trafficking to enter as a tourist with the aim of staying illegally in Spain without regularizing the situation.

We can see, therefore, that the modality of commission contemplates facilitating entry into Spanish territory or crossing it evading legal controls, or staying there illegally and without authorization, but in the latter case only when there is a motive for profit, the crime being consummated with the mere fulfillment of the act of facilitating.

As for the passive or legal matter, formally the heading of Title XV bis suggests that they are rights of foreign citizens. However, in the basic type (aiding illegal immigration) no specific victim is identified, since in fact, the law expressly states that the immigrant will never be punished for this crime, reducing his offenses to the administrative sphere of foreigners. It is the State (the migratory public order) that is the mediator of the protected interest.

All this means that there are key differences between this crime and trafficking in persons as defined in Article 177 bis and reinforces the jurisprudence of the Supreme Court, which clearly delimits the scope of protection of Articles 318 bis and 177 bis CP, especially after the reforms of 2010 and 2015. The High Court stresses that Article 318 bis protects the interest of the State and the European Union in maintaining the control of migratory flows as the main legal interest, while the reduction of the sanction in the most recent wording of the precept responds to this conception, relegating the protection of the movable property of migrants to art. 177 bis PC, which independently criminalizes trafficking in persons.

The Chamber also highlights the historical confusion between smuggling, illegal immigration, and human trafficking, stating that although both conducts involve the movement of persons, trafficking is different and requires two additional elements: First, improper recruitment through means such as violence, intimidation, deception, abuse of power, or vulnerability, and the purpose of the exploitation of these migrants, since, as we said before, it is a crime in several phases in its mission.

In addition, the judgment also highlights three structural differences between Article 318 bis and Article 177 bis of the Criminal Code: the source of the economic benefit, insofar as illegal immigration with stay requires a single payment linked to entry, while trafficking requires continuous economic exploitation; secondly, the territorial scope, since article 318 bis requires the necessary transnationality in illegal immigration, but not in trafficking, which can be national; and finally, the administrative heterointegration that characterises Article 318 bis, in which the infringement of the entry, transit or stay regime constitutes a typical element. 318 bis, in which the infringement of the regime of entry, transit or stay constitutes a typical element. In contrast, in trafficking, the implication of consent and exploitation is essential, even if the violation of migration rules is not appropriate.

In any case, we must bear in mind that differentiation is crucial for proper criminalization and for respecting the principle of *ne bis in idem*: today, no one can be convicted twice for 318 bis and 177 bis for the same acts, but the main applicable crime must be chosen, in accordance with

the rules of concurrence of rules governing article 9 of the Criminal Code. When in doubt, courts tend to look at whether there was serious coercion or deception (indicative of human trafficking) or just an illegal transportation arrangement with the migrant's valid consent. It should be mentioned, however, that there may be a real concurrence between the two offences if there are distinct and differentiated phases in time, so that the transfer enjoys its own autonomy which may be included in article 318 bis and, after all this, a crime of trafficking in persons is committed, as is repeatedly recognized.

Finally, and like trafficking in persons, article 318bis also includes an acquittal clause, although linked to other reasons of criminal policy, in this case reasons of humanitarian aid. Thus, the second subparagraph of paragraph 1 expressly states that “acts shall not be punishable when the objective pursued by the perpetrator is solely to provide humanitarian aid” abroad. This means that, although objectively the conduct fits the type (aiding illegal entry or transit), it is exempt from punishment if it is carried out for genuine humanitarian reasons, without any other motivation. However, part of the doctrine (Martínez-Escamilla, 2019) has stated that this clause is hardly applied in practice, adopting a restrictive view of it. For example, Andrieu (2024) states that Martínez-Escamilla (2019) warned against the non-application of the excuse of acquittal, and our analysis has produced the same result. This indicates that, despite having a regulation that allows humanitarian aid not to be criminalized, in practice no conduct has been evaluated in this way. Moreover, although it is true that no trial has judged the solidarity actions of civil society, it is important to consider that not only the actions of NGOs or anonymous individuals should be considered as humanitarian aid.

In summary, Article 318 bis PC configures a complex criminal type, with a relatively mild basic type (after 2015) to punish the facilitation of illegal immigration, and aggravated subtypes to attack organized networks and lucrative behaviors that endanger migrants or pervert public authority. At the same time, it incorporates humanitarian safeguards (non-punishability of assistance for human reasons) and modulations of penalties (discretionary mitigation) to balance criminal repression with the protection of rights and proportionality in the application of the norm.

#### *4.1. Justification and political-criminal purpose: migration control or protection of migrants' rights?*

As we have already mentioned, Article 318 bis PC is found in Title XV bis, “Crimes against the rights of foreign citizens”, which suggests a

protective purpose for immigrants. However, since its modification with the reforms of 2010 and 2015, there has been an intense debate about which legal right is really protected and, therefore, about the penal policy that underlies the criminalization of these phenomena: these behaviors are punished to defend the migratory public order of the State (control of flows, compliance with the Law on Foreigners) or to protect the human rights of foreigners themselves against exploitation networks who seek to obtain economic or personal benefits from these crimes?

In this sense, the letter of the law expressed in the explanatory memorandums has oscillated between these two justifications. On the one hand, it is argued that these behaviors infringe on important state interests: the state has the right to regulate who enters its territory, and illegal human trafficking entails a violation of sovereignty and democratically established migration policies. This is evidenced, for example, by the recent case law of the Supreme Court, which states that the objective of the crime is the “control of migratory flows” and the protection of migration regulations. For example, the High Court establishes that it is a crime whose objective is the control of migratory flows, in violation of the rules governing entry.

Therefore, a simple reading of both the criminal type and the jurisprudence allows us to conclude that, unlike trafficking in persons, the legal interest protected by article 318 bis of the Criminal Code is not the dignity or rights of the migrant citizen, but the interests of the State in the control of migratory flows. Thus, the jurisprudence of the Supreme Court establishes that the crime of clandestine immigration will always have a transactional nature, predominating, in this case, the defense of the interests of the State in the control of migratory flows, adding, as a consequence of the need to provide the system with internal coherence, this restructuring of the rates has required the repeal of the rules contained in articles 313.1.

In relation to the 2015 amendment, the criminal offence replaces the concept of clandestine immigration with that of entry or transit (in addition to the stay or stay mentioned in the new 318 bis 2), in contravention of legal norms.

This, in line with the new legal right considered – exclusively the administrative legality of the entry and presence in Spanish territory of non-European citizens (if they are citizens of an EU country, a profit motive is required) – may imply a total assimilation of the criminal response with the administrative response. A reading of the latter allows us to understand that not all illegality can be equated with clandestinity.

Our jurisprudence, before the last reform, had already issued severe warnings. This reveals that, in the application of the criminal offence and the legal subsumption of the act, the public interest prevails in the enforcement of the laws on foreigners over the rights of the foreigner. However, this is not incompatible with the fact that the legislator has also presented a humanitarian and protective purpose for criminal offense, in which he seeks above all to discourage criminal networks that benefit from clandestine migration. In this sense, by punishing human traffickers, the legislator indirectly intends to protect immigrants from the dangers of irregular immigration. At least this is clear in the Explanatory Memorandum to Organic Law 13/2007, which described illegal trafficking and clandestine immigration as crimes against internationally recognized essential humanitarian values.

He also noted that, in order to treat migrants with dignity and fully protect their human rights in the face of endless migratory flows, it was necessary to prosecute organized groups that endanger their lives and safety, which means that there are still criminal policy reasons that elevate what at first appears to be a simple administrative offense to punishment. And this is because, if the only protected asset were the “interest of the Administration in migration control”, there would be doubts about whether the entity of the protected legal asset deserves criminal protection, especially taking into account that irregular migrants do not even fully enjoy certain social rights until they regularize their status. On the other hand, presenting it as a crime against the rights of the foreigner himself gave it greater political-criminal legitimacy, aligning it with the fight against human trafficking and other behaviors that directly harm vulnerable individuals, although it is not included in crimes against persons, nor does it specifically define which individual right is harmed, as is the case with the criminal offense of trafficking in human beings.

In Spanish legislative and judicial practice, it can be concluded that the main justification of article 318 bis has been to provide the State with a criminal tool to control irregular immigration, criminally prosecuting those who facilitate migratory flows outside the law. In fact, authors such as Martínez-Escamilla (2019) go even further, stating that a reading of the typical action punished by the first precept of the article shows that neither danger to the migrant nor any risk situation is required, so we are really facing the instrumentalized use of criminal law to control migratory flows. This is clearly the opposite of what happens with the crime of trafficking in human beings, in which human dignity is placed at the center of the legal right protected by this type of crime. It is precisely for this reason that the Attorney General’s Office issued a circular (5/2011)

in 2011, on criteria for the specialized unit of action of the Attorney General's Office in matters of foreigners and immigration, and established that no state interest in the control of migratory flows is compromised by this crime which, obviously, does not require the illegal crossing of any border. The crime refers to trafficking in human beings, not trafficking in aliens. This means not only that it is possible to commit the crime in the territory of a single State (domestic or internal trafficking), but also that any discrimination in its prosecution based on the nationality of the victim is inadmissible.

The conclusion we reach from all of the above is clear: Article 318 bis PC is currently configured as a criminal instrument essentially aimed at controlling migratory flows and defending administrative legality in immigration matters, displacing the protection of the rights of migrant citizens. For this reason, although the legislator has tried in different reforms to invest the precept with a humanitarian and protective purpose, legislative and jurisprudential practice reflects that what is unequivocally protected is the interest of the State in maintaining sovereignty over its borders and, therefore, controlling migratory flows, even when this implies a blurred border with a mere administrative infraction.

That is why article 318 bis is radically different from the crime of trafficking in human beings, where the dignity of the person and the direct protection of the victim are in the foreground. However, the political-criminal tension persists, and has led a certain part of the doctrine to consider a large part of article 318 bis as a criminal measure to maintain control of the borders and the entry of migration into our country, something that should be reserved exclusively for the administrative sphere, although the need to punish those who economically exploit clandestine migration is recognized.

## 5. OTHER MIGRATION-RELATED CRIMES: THE CRIMINAL TREATMENT OF XENOPHOBIA AND HATE SPEECH. ARTICLES 22.4 AND 510 OF THE CRIMINAL CODE

### 5.1. *Hatred as an aggravating circumstance: Article 22.4 of the Penal Code*

Article 22.4 of the Penal Code stipulates: "Committing the offence of racist, anti-Semitic, anti-Roma or other discrimination relating to the ideology, religion or beliefs of the victim, the ethnic group, race or nation to which he or she belongs, his or her sex, age, sexual or gender

orientation or identity, reasons of gender, aporophobia or social exclusion, the disease from which he suffers or his disability, regardless of whether these conditions or circumstances are really present in the person on whom the conduct is committed”.

In this regard, the Supreme Court ratifies the reason for the aggravating circumstance, since it is based on the greater culpability of the perpetrator due to the greater reproach of the motive that drives him to commit the crime”, so the basis of the aggravating circumstance is that the perpetrator commits the crime for a reason that does not fit in our contemporary societies: Racism.

The social motive for the racist and xenophobic aggravating circumstance is clear. In this regard, according to the Annual Report on the situation of migrants and refugees in Spain (2022), in 2022, 1,570 discriminatory incidents were registered, of which 407 occurred in the area of access to goods and services; 196 in the workplace; 186 in the housing area; 144 in the area of health services; and 141 in the field of education, where the main ones were, for example, the denial of aid, scholarships, recognition of qualifications and access due to the use of the veil; derogatory comments; *situations of harassment* ; and physical aggression. In the same vein, and on the victimization of migrants, the Report states that the total impact of awareness-raising entities is 31% compared to 69% for hate speech.

With regard to the application of the aggravating circumstance, the Supreme Court has reaffirmed in numerous judgments that the xenophobic or racist motives of the aggressor allow the aggravating circumstance of art. 22.4 CP to be assessed, provided that it is demonstrated that such motives were decisive in the commission of the crime, so that there must be a causal connection between the motivation and the criminal execution, in such a way that it complies with a greater illegality from the perspective of the subjective type. However, García Álvarez (2021, p. 159), rightly mentioning STS 983/2016, 11 January, states that the motive for the crime is not sufficient, but it is also necessary that “the aggravating circumstance refers to the victim and will not operate when the personal quality that is the object of the discriminatory motive does not coincide with the passive subject of the crime”. According to Echevarría (2013), this requirement would mean that hate crimes are different from ordinary crimes not only because of the motivation of the offender, but also because of the impact on the victim. The aggressor selects the victim because of his or her membership of a group or collective.

As for the cases in which the aggravating circumstance of xenophobic discrimination has been applied and in which there are migrant or ethnic

minority victims, an example is the Miwa Buene Case, Judgment No. 717/2010 of the Provincial Court of Madrid, June 28, in which the defendant was convicted of a crime of injury with the aggravating circumstance of racist discrimination, in addition to aggravated assault, and sentenced to 10 years in prison, for beating a young black man until he was quadriplegic, shouting racist insults that showed xenophobic and racist motives as the central motive for the attack.

On the other hand, the Provincial Court of Huelva, in its judgment of September 3, 2008, procedure 197/2008, ratified the conviction of several of the defendants as perpetrators of a crime of public disorder with the condition of accomplice of deprivation of the right to vote and as perpetrators of a crime of damage, with the aggravating circumstance provided for in art. 22.4 PC for committing the crime for racist reasons, since the victims were migrants and the criminal phenomenon had occurred as a result of this reason.

There are also cases that deny the application of the aggravating circumstance, for example judgment no. 3093/2011, of March 31, 2011, of the Provincial Court of Barcelona. In this case, the defendant caused injuries in a bar during a fight between a Spanish citizen (drunk) and the owners of the bar, who were of Moroccan origin. Although the assailant uttered racist slurs during the fight, the AP concluded that “*xenophobia was not the determining factor in the commission of the crime,*” but rather that the fight was sparked by a previous alcohol-influenced argument, so the racist slurs were an adjuvant to the assault, but did not reveal a racist motivation as the primary cause of the fight.

In summary, case law confirms that xenophobia or hatred towards immigrants are punishable under the aggravating circumstances of article 22.4 of the Criminal Code, provided that their causal relevance to the crime is demonstrated. There are precedents for exemplary convictions when the attack was clearly based on the racial or national origin of the victim (e.g. cases of racist assault), as well as sentences that annul the aggravating circumstance if discrimination is not sufficiently proven as the main ground, usually when racist expression is not a prior cause of the aggression or the main trigger for it, But there is another cause or motive that displaces it. Therefore, we conclude that Article 22.4 of the Criminal Code requires, on the one hand, the identification and proof of the discriminatory motive in the specific case, that it fits into one of the legal assumptions and that it demonstrates that it inspired the criminal act in a relevant way and, on the other hand, that the victim can be considered part of this group. When these requirements are met, the judge

must apply the aggravating circumstance, increasing the penalty within the legal margins provided for by the criminal dosimetry.

### *5.2. An approach to the crime of hate speech: Article 510 of the Penal Code*

The essence of the crime of incitement to hatred contained in article 510 of the Criminal Code is the protection of the principle of non-discrimination, conceived as an autonomous right derived from the fundamental right to equality proclaimed in article 14 of the Spanish Constitution. This right is an essential requirement for the enjoyment of other public freedoms, which explains its systematic place in Title I of the Constitution, within the fundamental rights. In this framework, the right to equality and the prohibition of discrimination not only protect individual situations, but also reinforce the democratic and pluralistic structure of the social State based on the rule of law.

However, before moving forward with the study of this crime, we must make it clear that, as the Attorney General's Office warns in its Circular 7/2019, of May 14, on the guidelines for interpreting hate crimes typified in article 510 of the Criminal Code, and recognized by Daunis Rodríguez himself (2021, p. 1053) when establishing that "hate crimes are not reduced to art. 22.4 CP and 510 CP. 1053), "hate crimes are not limited to art. 22.4 CP and 510 CP", so that "the expansive nature of the criminal response has not led to the incorporation of a univocal category of hate crimes, but they are dispersed throughout the penal code", the crimes typified in articles 578, 490.3, 522, 170.1, 174.1, 314 or 522 to 524 of the Penal Code as normal examples.

In relation to section 510 CP, section a) punishes with a penalty of one to four years imprisonment those who publicly, directly or indirectly, foment, promote or incite hatred, hostility, discrimination or violence against a group, a part of it or against a specific person because of his membership of that group, for racist, anti-Semitic, anti-Roma or other reasons related to ideology, religion or belief, family situation, membership of its members to an ethnic group, race or nation, national origin, sex, sexual orientation or identity, for reasons of gender, aporophobia, illness or disability.

As we can see, the object of protection of Article 510 CP focuses on attacks on equality by generating inequality based on hatred towards certain groups, including migrants. This hatred may be expressed on the basis of ideology, religion, sex, race, nationality, sexual orientation

or identity, disability, illness or other grounds expressly included in the offence.

Focusing on the nature of the crime, the hate crime provided for in article 510 of the Criminal Code fits, according to the doctrine and jurisprudence of the Supreme Court, in the category of crimes of abstract danger. This has been pointed out, among others, in STS 675/2020, of 11 December, which specifies how the configuration of this criminal offence responds to the requirements of international harmonisation derived from Council Framework Decision 2008/913/JJA, aimed at combating forms of racism and xenophobia through criminal law. The objective is clear: to punish conduct that, by its very nature, poses a risk to collective legal interests such as the equality and dignity of persons, even if there is no concrete danger or immediate harmful result.

The Framework Decision states that public incitement to violence or hatred against groups defined by race, religion, descent or ethnic or national origin must be punished. It also includes the dissemination of writings, images or other materials with the same purpose, thus consolidating a common repressive model at the European level. This framework is reinforced by Joint Action 96/443/JHA of 1996, which, although repealed, already pointed out the need to reconcile freedom of expression with respect for the rights of others, in line with Article 19 of the International Covenant on Civil and Political Rights of 1966.

The key lies in the fact that the legislator, following these international commitments, understands that certain conducts, even without generating a tangible result of danger or injury, have an intrinsic detriment due to their potential to affect the protected legal right. In this way, the barriers of criminal protection are raised, so that the reproach focuses on the action itself, insofar as it is dangerous in the abstract, without the need to wait for it to cause concrete effects on coexistence or the dignity of people.

In this sense, the difference with crimes of concrete danger is evident. While in the latter it is essential to demonstrate the creation of a specific situation of risk, in crimes of abstract danger the consummation is achieved simply by carrying out the conduct described in the type. In other words, the disvalue lies in the action itself, because it is objectively dangerous, and not in the material result derived from it. Therefore, in the case of Article 510 PC, it is sufficient to incite hate speech or disseminate discriminatory messages to consummate the crime, without the need to demonstrate that these messages produced violence or an effective discriminatory result.

In this way, the legislator gives priority to the contempt of the action over the result. The criminalization of hate speech not only seeks to punish specific harms, but also to prevent them from occurring, avoiding

the spread of messages that erode equality and fuel contexts of violence or discrimination. Therefore, the sanction is justified by the inherent danger of this type of message which, if allowed unchecked, could lead to scenarios of structural discrimination, social exclusion or group violence.

However, the doctrine emphasizes the fact that what should be understood by “directly or indirectly encourage, promote or incite hatred, hostility, discrimination or violence” precisely because of the principle of last resort and minimum intervention of criminal law, and because of the obvious collision between this type of crime and the right to freedom of expression. This has led Lorenzo (2019, p. 463) to warn that hate crime cannot be given a “comprehensive version”, so it should not include “any act or public manifestation of rejection or animosity towards any group of people or even towards institutions deeply rooted in the social structure”, given the risk that it could be used as a “squid box” for a crime that already implies raising the barrier of criminal offence protection.

For this reason, and with regard to what is required to substantiate the typical action, Daunis Rodríguez (2020, p. 1053) advocates the use of the well-known “Rabat Test” as an interpretation formula, also adopted by the Attorney General’s Office itself in its circular *cited above*. Case law has consistently stressed that, in order to assess the existence of the hate crime provided for in Article 510 CP, a merely literal evaluation of the expressions made is not sufficient. Both STC 112/2016 and STS 31/2011, of 2 February, insist that the analysis must also take into account the meaning and intention with which the words have been used, given that language admits multiple interpretations. Therefore, the determination of whether or not a conduct fits with the criminal offense requires an interpretative judgment that goes beyond literal formalism.

Likewise, the jurisprudence of the Supreme Court (SSTS 299/2011, of 25 April and 106/2015, of 19 February) has emphasised that this examination must be carried out on a case-by-case basis, taking into account not only the judgments pronounced, but also the context, the occasion and the circumstances in which they occur. Speech, isolated from its context of enunciation, can give rise to misinterpretations, so judicial evaluation requires a global perspective that takes into account the true purpose of the speaker and the effect that can reasonably be produced in the audience.

On this point, the interaction between the criminal offence and the fundamental rights to freedom of expression and ideological freedom, recognised in Article 20 EC, is particularly relevant. The Supreme Court has warned that, when the clash between the criminal protection of equality and the safeguarding of freedom of expression is at stake, an individualized and rigorous analysis is indispensable. This examination should assess,

as a whole, whether the message constitutes a legitimate contribution to public debate or whether, on the contrary, it crosses the border into hate speech, which erodes the constitutional values of pluralism and equality.

The doctrine of these judgments also recalls the application of the principle of *favor libertatis*, which must be applied in cases of doubt. This means that, in the face of ambiguous interpretations, the judge must opt for the option that allows greater respect for and safeguarding of the rights to freedom of expression and ideological freedom, as long as the message does not clearly fall within the scope of criminally sanctioned hate speech.

Consequently, the evaluation of this crime cannot be automatic or decontextualized. The judicial evaluation must be meticulous, individualized and reflective, to avoid criminalizing expressions that, although uncomfortable or controversial, are part of the legitimate sphere of freedom of expression. Only when the discriminatory intent and the context reveal a frontal attack on the equality and dignity of the protected persons or groups can the conduct be considered to be subsumed under Article 510 of the Criminal Code.

As for the passive subjects who may be victims of hate crimes, authors such as Tapia (2021) argues that we are actually dealing with two protected legal assets: the crime “has a double dimension. On the one hand, there is an individual dimension, since discriminatory conduct is directed at a specific person who is precisely the one who suffers it directly and immediately. And, on the other hand, a collective dimension, insofar as the collective, the minority, which sustains the circumstance suspected of discrimination, is affected because a discriminatory act against a person perpetuates, helps to normalize or deepens his or her status of inferiority”.

Therefore, we can affirm that we are dealing with a crime that generates a direct victim, the person to whom the hatred is directed, and an indirect victim, the vulnerable group to which the defendant rejects and projects his hatred and rejection.

In addition, we must bear in mind that the crime is also committed for “racist, anti-Semitic, and ethnic or racial motives”, so we understand these references to refer to the transversality of racist hatred, i.e., racism as an ideology that drives typical action. Precisely, Machado (2002, p. 213) proposes to replace all the circumstances mentioned above with the general reference to “ethnic group”, which encompasses both ethnicity and race, and obviously integrate anti-Semitism and racism, which are the ideological basis of all of them.

Focusing on this type of criminal action against migrants and ethnic minorities, we find several cases in case law. In practice, both public

discourses (demonstrations, publications, social networks) that incite rejection or violence against foreign groups, and specific acts motivated by xenophobic hatred (verbal or physical attacks on immigrants, threatening graffiti, etc.), especially those uttered through the internet. A recent paradigmatic case is that of a Facebook group in Melilla where several users, in 2017, made extremely violent comments against unaccompanied foreign minors (MENAs) of Maghreb origin. Phrases such as “*We have to clean the streets with our own means*”, calling on the population to beat these minors, or others such as “*If I go by car, I will run over any [of them]*” or “*the only thing they deserve is to put them in a well and not come out*”. Thus, although in the first instance a court acquitted the defendants, in 2023 the Provincial Court of Melilla annulled and convicted 7 people for hate speech, imposing sentences of up to 2 years and 6 months in prison (the highest amount imposed in Spain for hate speech in chains).

We consider the Judgment of the Provincial Court of Melilla (September 6, 2023) a must-read, because it offers an exhaustive analysis of a large number of messages that took place in a chat group of more than 14,000 people in Melilla, in which it was considered that some messages fit the criminal type of article 510 and others were harsh, harsh and morally reprehensible criticisms, but not criminal. In any case, the judgment was forceful in stating that some of these expressions *openly induced hatred, discrimination and even violence* against a vulnerable group (migrant minors), undermining the dignity of its members for the simple fact of being different, from another nation and in a precarious situation, valuing expressions aimed at creating voluntary patrols or “a lawless day” as expressions that could be classified as hate crimes. While they exalt and normalize the use of violence against the MENAS group, far removed from mere social or political criticism.

In conclusion, the evidence in hate speech crimes focuses on three axes: what was said objectively (literal content of the message), with what intention it was said (discriminatory intent of the sender, analysis of their personal context) and what possible effect it may have (risk generated in society, possible glorification). In this line, the judgment of the Provincial Court of Melilla mentioned *above* constitutes an advance in Spanish judicial practice. It recognizes that, in contexts of social tension, messages disseminated on social networks that openly incite violence against vulnerable groups – in this case, migrant minors – generate a climate of hatred incompatible with democratic coexistence, which cannot be protected by the right to freedom of expression. Its ruling highlights that when words seek to transform rejection into violent action, they cross the border of what is opinionated and enter the realm of the criminal.

Experience also shows that the normalisation of this type of discourse on social networks can become the prelude to serious altercations, as happened in Torre Pacheco (Murcia), where hostility towards migrant groups accelerated violent incidents with xenophobic overtones. These types of episodes exemplify how hate speech, if not sanctioned and contained in time, can crystallize into physical aggressions, riots and crimes committed by the irrationality of prejudice, so in these cases it is advisable to process these speeches through the criminal justice system.

## CONCLUSIONS: RECOMMENDATIONS AND PROPOSALS TO HOMOGENIZE A EUROPEAN CORPUS

Throughout this text, we have seen that the evolution of international and European legislation against trafficking in persons has generated a robust but also dispersed framework, with instruments of different natures that partially overlap. From the Palermo Protocol (2000) to Directive 2011/36/EU and its recent reform in 2024, through the Warsaw Convention (2005) and other sectoral directives (2004/81/EC, 2011/92/EU, 2012/29/EU) that we have described, we can undoubtedly observe a legal mosaic that seeks to harmonize criminalization and strengthen the protection of victims. However, the differences in terminology and scope between these texts, in addition to the constant need to adapt to new forms of exploitation, highlight the absence of a unitary and fully coherent framework.

This obliges States to carry out continuous internal reforms to comply with international and European commitments. But, by the way, at the national level, the regulatory dispersion is even more evident, since, together with art. 177 bis PC, multiple sectoral provisions coexist: LO 4/2000 on Foreigners (art. 59 bis on restoration and reflection period), its regulation (RD 557/2011), Law 35/1995 on aid to victims of violent crimes, LO 19/1994 on protected witnesses, Law 1/1996 on free legal aid, RD 1192/2012 on health or the Statute of the Victim of Crime itself, all regulatory instruments that regulate issues dispersed in this area. That is why we are faced with a fragmentation of regulations that generates overlaps, gaps and practical difficulties to guarantee comprehensive and uniform protection of victims of trafficking, which is why the Draft Law on the Comprehensive Law against Trafficking and Exploitation of Human Beings (2022-2024) is proposed as necessary Response to overcome the current dispersion and consolidate in a single legal framework all prevention measures, prosecution and assistance.

In this regard, on the dispersion of regulations and the need to standardise a national and international body of law in this area, the *Communication from the Commission to the European Parliament on the EU strategy to combat trafficking in persons (2021-2025)* offers us a roadmap that we consider essential to combat this criminal phenomenon through an approach that we can consider multidimensional. Among its priorities, which we believe to be correct, is the need to improve international cooperation, strengthen foreign policy instruments and, to that end, finance mechanisms to facilitate the exchange of information between States.

In parallel, a 2020 study on national and transnational referral mechanisms in Member States identifies four key areas for improvement: early detection of victims, access to adequate accommodation – especially for minors – inter-institutional cooperation (including civil society) and evaluation of results. The Commission is also proposing, together with Eurojust, the creation of a thematic group of specialised prosecutors, with the aim of promoting judicial cooperation and developing specific guidelines to strengthen the criminal response to trafficking.

In this regard, the *Communication from the Commission to the European Parliament on the EU strategy to combat trafficking in human beings (2021-2025)* already recognised that one of the main needs at European level was judicial and international cooperation on this criminal phenomenon. In particular, it notes that it is essential to promote international cooperation and partnerships by maximising the use of foreign policy instruments, cooperation tools and funding to exchange criminal information and intelligence on trafficking and related crimes, as well as criminal networks.

In addition, the report *Study on the review of the functioning of Member States' national and transnational referral mechanisms (2020)* indicates four areas for improvement in European action: detection of potential victims; access to adequate accommodation, especially for child victims; strengthen cooperation among all actors, including civil society organizations; improve the monitoring of the effects and results of measures at all stages of the referral process.

Furthermore, the *Communication from the Commission to the European Parliament on the EU anti-trafficking strategy (2021-2025)* states: “In addition, the Commission will facilitate, together with Eurojust, the creation of a thematic group of prosecutors specialised in the fight against trafficking in human beings, in order to strengthen judicial cooperation. These actions will create opportunities to strengthen cooperation between law enforcement and the judiciary, while also leading to the development of guidelines in this area of work”.

We have also seen how LO 19/1994 offers a useful but in our opinion insufficient framework for trafficking cases: the practice actually leans towards the “hidden but not anonymous witness”, for fear of eroding the contradiction, leaving “little” protection for the witness who needs it most. In the light of the ECtHR and Dir. 2011/36/EU, there is an urgent need for reform to raise the threshold of effective protection (including anonymity when there is a real risk), to establish clear criteria for judicial reasoning, to avoid revictimisation (limitation of statements, visual and technological barriers, restrictions on private life) and, at the same time, ensure sufficient adversarial proceedings through protocols where access to identity is necessary, for example, where evidence reveals that there is possible animosity towards the witness, or personal circumstances that the defence claims must be revealed.

This reform must also be complemented by ensuring access to comprehensive support services for migrant victims of serious crimes, such as medical care, safe accommodation, psychological counselling, and social and labour reintegration programmes, tasks that are still pending in practice and without which procedural protection is incomplete and insufficient, leaving the victim stranded.

And also with regard to victims of trafficking in persons, a review of the excuse of acquittal in Article 177 bis.11 CP has allowed us to evaluate it, and we can conclude that it represents an essential mechanism of penal policy to ensure that victims of trafficking are not punished for crimes committed under duress, deception or abuse, thus avoiding double victimization and encouraging their collaboration in the processes against traffickers. However, it must be said that the jurisprudence has oscillated between a flexible interpretation, sufficient to prove the status of victim and the causal connection with the crime, and a restrictive one, which requires continuous or permanent exploitation, as in the “Angela” case, limiting its scope in specific cases, which has meant a restrictive framework in its application.

Articles 311, 312 and 313 of the Penal Code constitute a regulatory block designed to specifically punish the various manifestations of labour exploitation and trafficking in workers, with special attention to the vulnerability of migrant workers in irregular situations. The jurisprudence that we have evaluated confirms that the protection of these precepts also affects those who lack administrative authorization to work, preventing their precariousness from being used to legitimize abusive conditions, thus articulating a criminal system that prosecutes both employers who impose illegal conditions by taking advantage of necessity or deception, as well as intermediaries who traffic in labor or promote fraudulent migrations.

This is not the case in the same way with article 318 bis, which, as we have seen, reveals a clear tension between its title – “Crimes against the rights of foreign citizens” – and its true political-criminal purpose. Although formally it seems to be intended to protect migrants, jurisprudence and judicial practice show that the true legal good protected is the control of migratory flows and the defense of state sovereignty against irregular immigration.

Finally, the evaluation of both the aggravating circumstances of Article 22.4 of the Criminal Code and the autonomous crime of Article 510 of the Criminal Code allows us to conclude that they constitute differentiated but complementary responses to phenomena of hatred and discrimination. While the former functions as a mechanism to intensify the penalty when the racist, xenophobic or discriminatory motive is a determining factor in the selection of the victim or in the commission of the crime, very focused on the subjective spirit, the latter acts as a type of abstract danger that seeks to prevent and punish incitement to hatred against vulnerable groups in advance.

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### 3. RETHINKING THE SWEDISH WELFARE STATE FROM MIGRANT KNOWLEDGE

NORMA MONTESINO

*Lund University*

ALBERTO HERRERA

*Free-thinking scientist*

MAGDALENA TRILLO-DOMÍNGUEZ

*University of Granada*

#### INTRODUCTION

In social research, human mobility —particularly that of poorer populations— has often been perceived and treated as a problem. This perception has become an established paradigm in both academic and institutional contexts, taking as its point of departure an assumed state of crisis and the corresponding need to devise measures to resolve it. The “industry” of immigration policies has been sustained by this discourse, and social work, as both a discipline and a field of intervention, constitutes a classic example of the proliferation of such an approach which, in the case of Sweden, began to develop after the Second World War (Montesino, 2012). From this perspective, migrants, particularly those of non-European origin, are perceived as passive subjects who, in social workers’ representations, lack the resources to integrate into society autonomously. This view underpins the significant investment in and demand for projects designed to “support” these individuals in their process of “integration”, a process in which responsibility is placed almost exclusively on the migrants themselves.

Breaking with this paradigm has been one of the key challenges taken up in recent decades by scholars across disciplines, who seek to deconstruct institutionalised discourses that categorise certain groups as “migrants”. This constitutes an epistemologically inclusive project, as it dismantles the institutionalised dividing lines produced by such categories. Demigrantising the figure of the migrant holds significant potential, as it opens new horizons for understanding society as a whole. Bridget Anderson (2021) expands on this idea by proposing the migrantisation of the category of citizen: she discusses how processes that create precarity erode the social rights of both migrants and non-migrants; categorical divisions construct false boundaries that legitimise exclusion, create difference, reinforce

the erosion of social bonds, and contribute to polarisation and social disintegration. Demigrantising the migrant and migrantising the citizen presupposes a critical interrogation of the assumptions that naturalise the distinction between migrants and natives.

In this chapter, we begin by questioning the institutionalised paradigm on human mobilities. To do so, we incorporate the voices, knowledge, and experiences of migrants regarding the processes that are transforming the Swedish welfare state. In exploring this knowledge, we aim to demigrantise, that is, to recognise the social condition of migrants as social subjects. This approach is sustained by an ethical positioning, since it acknowledges the social existence of people who are seldom recognised as creators and bearers of knowledge. By adopting this perspective, we seek to include knowledge that is generally ignored, but which provides insight into the significance of the transformations of the Swedish welfare state for those who live in the country. From this point, we may envision strategies of social protection where migrants and non-migrants learn together, where experience and knowledge produced from conditions of vulnerability also constitute a resource and a contribution to community life.

Methodologically, as we shall argue further on, we draw on a reflexive dialogue that emerged from interviews conducted within a project aimed at incorporating the perspective of those who sought refuge in Sweden (Montesino & Villalobos, 2017). The dialogue seeks to contribute towards dismantling the institutionalisation and imposition already discussed by Bourdieu (1999), and which is very clearly revealed in this work through the testimony of one of the very same people interviewed previously:

*For example, now I'm part of a project for you. You're the researcher, I'm only a number, a research project. There are many case numbers and I, I'm only that, a number. But there must be someone who sees me for what I am, a person, and my value as a person must be recognised. Not as a number, not as a project. Do you see what I mean? Yes, it's true, I'm criticising, but at the same time I'm offering a solution (Interviewed person. N. 1).*

This idea of migrantising and demigrantising interviewees, through a conversation with a constructive focus on what had already been contributed by the initial corpus of interviews, will ultimately become the centre of this study.

## 1. THEORETICAL AND RESEARCH CONTEXT

The idea for this article emerged within the framework of a project funded by the European Union (Global-ANSWER), whose aim is to identify

good practices in social work with migrant populations. In other words, a project that emerges as migrantising, presupposing the existence of migration as a problem by adopting institutionalised categories and assuming the subordinate position of individuals perceived as migrants in processes of social insertion. At the same time, however, it seeks to move beyond those limits in order to contribute to the necessary process of demigrantisation to which we have referred.

The project brings together universities, institutions, and non-governmental organisations from three countries: social workers from NGOs and public institutions, and social work researchers from universities in Spain, Italy, and Sweden, three countries with different welfare systems and migration histories. Sweden, the case that concerns us here, has a longer history of immigration than either Italy or Spain, one that began in the aftermath of the Second World War. The presence of professionals and people categorised as migrants within welfare institutions drew the attention of social workers and researchers in southern Europe. From this arose our reflection on the role of people categorised as migrants in Swedish institutions, their capacities, knowledge, and perspectives in analysing the transformations of the welfare state. Out of these reflections emerged a research approach that distances itself from the category of migrant and instead refers to people living in Sweden, who contribute to social welfare as workers and professionals—a perspective that, as mentioned above, is generally ignored or understood exclusively within the paradigm of the social problem in research.

Two main themes thus provide the motivation for this study:

- The first objective is to identify work spaces and collaborative strategies of action that incorporate the knowledge and experience of people categorised as migrants—not as victims or objects of support or aid, but as subjects who create and carry knowledge. In doing so, they renew the social landscape by introducing alternative perspectives and new tools that enrich our understanding of life in society. In this way, we position ourselves within an emerging field of study, described by some historians as *migrant knowledge*.
- The second objective is to demonstrate how the knowledge of migrants who settled in Sweden during the peak of the welfare state can provide constructive contributions that allow us to rethink the strategies of social protection developed by social workers. From the concept of migrant knowledge, and from the perspective of migrants living in Sweden, the transformations of the Swedish welfare state since the 1970s are examined from the concept of migrant knowledge

and from the perspective of migrants living in country. Specifically: what changes have occurred in systems of social protection, and which groups have been affected by those changes? The ultimate purpose is to contribute a distinct dimension of knowledge in which people categorised as migrants act as carriers, interpreters, and creators of knowledge.

From a theoretical standpoint, it is important to note that the history of knowledge is an expanding field of research, whose agenda has been developed across multiple disciplines. Within this field, historians and sociologists have offered new perspectives on the role of migrant knowledge in processes of social transformation. (Burke, 2017; Lässig, 2016; Lässig & Steinberg 2017; Westermann & Erdur 2020; Östling *et al.*, 2023).

The British historian and scholar Peter Burke (2016) argues that knowledge is a social phenomenon situated in space and time, shaped by the context and positionality – such as age, class and gender – of the person producing it. From this standpoint, he proposes a broad definition that recognises the existence of different forms of knowledge: practical and theoretical knowledge, knowledge based on experience, and abstract knowledge (*ibid.*). The concept of knowledge is linked to that of experience: everyday practical knowledge is formed through concrete experiences (Burke 2016; Lässig & Steinberg, 2017). Within this conceptual framework, knowledge exists in plural forms and involves multiple actors and perspectives. Individuals and groups in diverse positions construct networks, disseminate, interpret, translate, and transform knowledge (Östling *et al.*, 2023).

Burke (2017) demonstrates that human mobilities bring perspectives from the peripheries or margins of society, where the migratory experience challenges the foundational assumptions that underpin local forms of knowledge. In his study on the contributions of exiles to Western thought, Burke argues that when a person is forced to leave their country of origin, they are compelled to recode social life and to seek new ways of thinking and acting. In other words, they must rearticulate, transform, and create knowledge that adapts to their new circumstances (Burke 2017, pp. 16-33). In the same vein, Lässig & Steinberg (2017) emphasise the active role of migrants as carriers, interpreters, and creators of knowledge - individuals who chart their own path while remaining connected to society, and who contribute meaningfully to social change.

The concept of migrant knowledge brings into focus subjects that have been largely overlooked in the study of knowledge production. Migrant knowledge is a broad concept that encompasses knowledge about

migrants and migration, as well as knowledge produced by migrants themselves about migratory processes, and the knowledge that so-called migrants acquire regarding both their countries of origin and the host countries (Burke, 2017; Lässig & Steinberg, 2017; Westermann & Erdur, 2020). In this text, it is this migrant knowledge—rooted in the experience of mobility—that is situated as the theoretical framework for approaching the transformation of the Swedish welfare society.

## 2. METHODOLOGY

The research at the centre of this chapter combines a dual methodological approach, justified by our own critical reflection as authors on the limitations of the interview in incorporating migrant knowledge into the analysis, evolution, and transformations of the Swedish welfare state.

We began with a corpus of ten semi-structured interviews with refugees who arrived in Sweden from the 1970s onwards. These are individuals who have lived through and continue to experience the processes of transformation that have taken place in this country, and whom we interviewed in 2016. Among them, some arrived in the 1970s and witnessed what it meant at the time to have the right of asylum recognised; rights that were radically questioned after 2015, when Sweden closed its borders and drastically restricted access to protection in the country. From the 1970s to the present day, dramatic changes have occurred in welfare policies, shifting from a welfare system based on social rights and collective responsibility to the privatisation of different social services, where each individual is compelled to demonstrate their entitlements and take charge of their own welfare. Some of the interviewees have also experienced the consequences of these restrictions.

Starting from this initial vision—which served as an exploratory step in identifying topics and focal points relevant to our study—we incorporated dialogic conversation as the principal methodology of the research, an approach that enabled us to subject a selection of the most significant ideas from the previous interviews to reflection and constructive dialogue. We considered, echoing the criticisms made by some interviewees themselves (such as the example cited in the introduction), that the interview tends to result in an analysis in which knowledge is mediated by the researchers who, once again, contribute to reinforcing the notion of migration as a distinct phenomenon that requires the expert gaze of the specialist researcher.

The interview is a strategy in the search for knowledge, in our case used as a method to identify and reflect on migrant knowledge. However, it carries certain ethical and epistemological implications, since it uses the knowledge and experiences of interviewees to achieve objectives that displace the voices of the carriers of such knowledge and reaffirm the supposedly central role of the researcher. Bourdieu (1999) had already warned years earlier of the “distortions” and somewhat arbitrary “intrusion” (even “symbolic violence”) implied in the act of interviewing, insofar as it often takes place as an “interrogation”, with the researcher assuming an asymmetrical position of superiority: it is the researcher who “initiates the game” and unilaterally sets the rules. This is why he advocated “reflexivity”, grounded in the “craft” and “eye” of the sociologist, as a strategy for achieving active and methodical listening that avoids the *laissez-faire* aspect of the interview and allows the researcher to “put themselves in the other person’s place”. In *Understanding*, what Bourdieu defends is nothing other than the transformation of the interview into a “conversation” (1999, pp. 527-556), a dialogue that replaces the initial monologue and facilitates a genuine exchange of knowledge.

It was precisely the review of the transcripts that led us to identify these limitations and contradictions inherent in a methodology that, in theory, recognises the subjectivity of the people it engages with, but in practice ends up reducing them to objects in their condition as interviewees. Thus, although we used the interview, the interviewee was turned into an object, both in the act itself and, above all, in the subsequent stages (analysis, publication, dissemination). In sum, we employ such knowledge while reducing the subjects—creators and bearers of knowledge—to objects, where the responsibility of the researcher is to elaborate supposedly unelaborated experiences.

As Burke (2016) reminds us, knowledge arises and takes shape through concrete experiences. The concept of migrant knowledge, therefore, not only implies an ethical stance but also questions the institutionalised assumptions held in academia and institutions regarding certain forms of human mobility.

The proliferation of negative discourse on human mobilities, particularly when focused on the poor, began to develop in Sweden after the Second World War (Montesino, 2012) and has since been reproduced in other European contexts, such as Spain, once it shifted from being a “country of emigrants” to a country with a growing foreign-born population (Gil Araujo, 2010). Within this paradigm, migrants lacking economic resources were initially perceived as passive and different, whereas today they are seen as potentially dangerous subjects—a latent and manifest content with

clear racist connotations. Such views are expressed in representations of migrants of non-European origin: people once seen as incapable of entering society, for whom significant investments and projects were designed to “support” their process of “integration”, discourses that now increasingly construct the migrant as a threat, justifying proposals and measures that have become progressively more repressive (Sebastiani, 2015).

From a wholly alternative standpoint, Janine Dahinden (2016) questions the very existence of this specialised field of research as a unit and proposes demigrantising the figure of the migrant in order to break with the paradigm that conditions the understanding of what we call migratory phenomena, and to identify the exclusionary elements implicit in its discourses and categories. To demigrantise the migrant means to dismantle the categories and representations that dominate the social sciences, which relegate those labelled as migrants to subordinate positions—as objects of analysis, or, for social workers, as objects of measures aimed at “integrating” them into a society that continually reminds them of, and adds arguments to, their supposed otherness.

It is these assumptions that lead us to reorient the methodological approach of this work by incorporating a conversation among equals: three individuals residing in Europe who share and contrast knowledge on the object of study, taking as their starting point the essential contributions of the interviewees. The conversation takes place among two academics (an engineer and a social sciences researcher at Lund University) who emigrated from Chile in the 1970s and continue to reside in the Nordic country—witnesses, therefore, to both the peak of the Swedish welfare state and its evolution—and a journalist and communication researcher who provides a counterpoint from Spain.

The participants are motivated by the search for a strategy to transcend the confines of institutionalised categories while reflecting together on the contents and consequences of the transformations of the Swedish welfare state: from a system of supposedly inclusive social policies to one that has restricted social rights and reduced the possibilities of social protection for those seeking asylum in the country. With the aim of working collectively to understand and reflect on the consequences of these transformations, the interlocutors—drawing on the theoretical perspective implicit in the concept of migrant knowledge and speaking from different geographical positions—discuss the processes that have reshaped Swedish policies and, consequently, the living conditions of those residing in the country.

### 3. FROM GOOD PRACTICES TO SITUATED KNOWLEDGE

To speak of “good practices” in the field of migration—the focus of the Global-ANSWER project, which underpins the collaboration and research developed in this chapter—also means asking from where they are defined and what assumptions sustain those referred to as good practices. The anthropologist Luca Sebastiani (2017) discusses how this concept operationalises a way of understanding the integration of migrants in Europe. The concept has been promoted by the European Union and represents a logic of depoliticisation and technification of institutional practices—an apparent depoliticisation, since it is rooted in negative assumptions about the phenomenon of human mobility (“migration”) and supports the need for regulation through an integration project imposed on people categorised as migrants. This author argues that migrants are legally and socially constructed as a threat to social order (Sebastiani, 2015, p. 539), and that migration represents disorder—a disorder that must be regulated through certain recipes functional to institutional thought.

This understanding—and the practices it entails—have little to do with the lived experiences of those confronted with externally imposed norms and programmed tasks that do not identify with them. Not only do they deny genuine possibilities for participation, but they also impose an identity. Social rules are not neutral: they reflect and reinforce dominant values, conditioning expectations and possibilities for action—in this case, of those who arrive. Social role and integration become a set of rules that formalise these values, clashing with the expectations and hopes that newcomers bring with them.

Within the discipline and practice of social work, professionals often express frustration, as they understand good practices to be fundamentally social—that is, political—projects. Space, time, and empathy are minimal conditions for implementing such practices. Yet, as these professionals themselves note, they are today confronted with a bureaucratic logic that undermines the possibility of listening to, understanding, and accompanying people who require social protection with respect (Lauri, 2016). This critical perspective is indispensable when a project such as Global-ANSWER seeks to identify models or practices for replication. Unless the frameworks that make these practices possible—or impossible—are interrogated, there is a risk of reproducing a vision disconnected from both people’s lived experiences and the limitations of the institutional system itself.

The discussion of good practices in migration inevitably leads to a deeper question: from which frameworks do we define what constitutes a

“good” intervention and - above all- who holds the authority to formulate and implement such practices? At this level, fundamental tensions emerge between lived experiences, institutional demands, and research logics.

It is precisely from this critique that the concept of the *migrantising project* arises—a key theoretical foundation of this work, addressed transversally across the interviews and analysed in the ensuing conversation. The concept highlights how certain academic and political perspectives not only interpret migration as a social problem but also contribute to producing and reproducing it as a fixed and homogeneous category. Far from fostering recognition or genuine inclusion, these approaches reinforce subtle and not-so-subtle forms of exclusion, under a veneer of technical neutrality or institutional goodwill.

This approach generates and multiplies a web of institutional, research, and discursive practices that transform migrants into objects of diagnosis, intervention, and permanent categorisation. Instead of understanding migration as a social phenomenon composed of diverse and complex processes, situated and multiple, difference is represented as abnormality—as a “social problem”. Stigmatising representations emerge, whereby difference was once perceived as disability and is now seen as a threat to order and normality.

To be a migrant is to assume an identity imposed from the outside. This reflection extends to other identity categories, such as gender, where certain institutionalised forms of feminism also generate homogeneous expectations that overlook individual needs. In all cases, the critique points to the same tension: the gap between discourses that categorise and the lived experience of those externally interpellated. Concepts such as integration or diversity become devices of normalisation that operate through the logic of control.

Demigrantising research on human mobilities implies shifting the focus from difference to the situated experiences of people, contextualising the conditions that produce these mobilities: migration policies, the history of mobilities, national and local responses, relations between migrants and native populations, the knowledge and strategies of newcomers for establishing themselves, and the opportunities and regulations that enable or obstruct these processes. The aim is not classification, but rather to understand how those we speak about represent themselves, what they feel, the environment in which they live, the opportunities they create, and the obstacles that hinder their wellbeing.

Both the experiences shared in our conversation and the voices of migrants previously collected through interviews challenge the technocratic approach that typically guides both academic research and

social intervention. The call to demigrantise thinking and to recognise the value of “situated knowledge” (Haraway, 1988) invites us to break with the classificatory logic that turns migrants into objects of study and intervention. This critical exercise is not rooted in nihilism or destruction, rather, it seeks to open possibilities. We argue that, in times of uncertainty, projects such as Global-ANSWER are particularly valuable—not because they offer closed solutions, but because they create spaces of reflection and listening, where lived experience carries its own weight and more sensitive, flexible, and human-centred frameworks can emerge. Everyone benefits from guidance or tools that help make sense of complex realities. In this context, the role of the university is less about producing ready-made answers and more about cultivating individuals capable of critical thought.

What is proposed is not a normative model or a formula to be applied, but an attitude: openness to dialogue, the creation of languages that resist simplification, and the recovery of thought as a political practice. In a context saturated with propaganda, slogans, and prefabricated discourses—in both the media and academia — reclaiming thoughtful conversation is an act of resistance. In our analysis, we agreed that it is not merely a matter of speaking with those who think differently, but of doing so with depth, context, and substance. Migrant knowledge brings complexity, nuance, and lived experience to the fore. Listening to these voices is not only a matter of epistemic justice, but also of political possibility: if transformation is our aim, we must learn to look from within, and build with those who, historically, have been named, categorised, and acted upon without ever having truly been heard.

#### **4. MIGRANT KNOWLEDGE, UNCERTAINTY, AND FEAR IN TIMES OF TRANSFORMATION**

When recognised as a source of knowledge, the migrant experience enables a critical re-reading of the structural changes in Swedish society: its resistances, its openings, and its limits. The questioning of traditional categories with which migration is analysed arises from the experience of living in Sweden for more than 40 years. From rupture we had to rethink in order to position ourselves and act in an initially unfamiliar context, and from that position we began to recode our understanding of the social environment. Ruptures entail—or lead to—a search for strategies through which people construct new ways of thinking and acting. Reflecting on the transformations of Sweden in the 1970s—when there existed a social

environment and spaces that facilitated encounters among those who were different—leads us to recognise that the situation has changed.

In our conversation, a distinction emerges between “integration” and “incorporation”. From this distinction we step back from the institutionalised discourse—laden with presuppositions—which constrains the understanding of the very failure of the integration project. From this distance, we propose speaking of “incorporation”. To “incorporate” means to unite a person or a thing with another or others so that they form a whole (Real Academia Española). By displacing—or rather to replacing—“integration, a term that has lost its meaning, we speak of incorporation, a distinction key to understanding the evolution of institutional projects in the context of transformations in the Swedish welfare state.

What has been referred to as integration was constructed from a single mould into which newcomers were expected to fit, a mould that ignores their life stories. We argue that what is ultimately at stake is the capacity of the welfare state to sustain not only formal rights, but also meaningful life trajectories. Therefore, the distinction between integration and incorporation is crucial for rethinking its transformations from a critical perspective. The problem is not how to integrate; the problem is how to ensure that an individual functions, thrives, and contributes to the collectivity into which they are incorporated.

The conditions for initiating a process of incorporation have changed profoundly. In the interviews, some testimonies nostalgically recall a time when welcome was not only institutional but also communal and affective. One interviewee summarised it as follows:

In reality there are two forms of welcome. One has to do with organisation (where you live, what you do), but the other is from the environment—how you are received by those who know nothing about you. It started from what could be shared in common; it was another way of sharing with someone else.

He illustrated this with an anecdote from decades ago:

By mistake I got off at a deserted station in winter. The only person there was a very old lady. She invited me to her home, I spent three hours with her and her sister, drinking coffee and eating biscuits. Today you would never see that, because now everyone is afraid (Interviewed person. N. 2).

The comparison between that warm welcome and the present situation runs through the testimonies collected and is manifested in our dialogue. At that time, people were both professional and human. Today, they are professional but more bureaucratic; the human dimension has been lost.

This change cannot be explained solely by political or administrative transformations, but by a deeper malaise: a paralysing existential fear that has displaced solidarity with mistrust. Protection no longer exists. Solidarity has disappeared. It is the law of the jungle. Fear is the first thing produced, and over time people cease to react to the suffering of others.

This new context also affects personal trajectories. Education, historically a path to social mobility, now appears constrained by social, racial, and cultural structures. “Here there’s a hierarchy”, explained another interviewee: “First the whites who come from the USA, then the Europeans, and finally those who come from outside Europe”. Another interviewee echoed this critique, noting that “immigrants aren’t encouraged to study”, that the educational system (Komvux) promotes subordinate roles and sustains a “silent racism” that few dare to name. “Many arrive fleeing dictatorships, they don’t know their rights. Komvux has an evaluation system, but it’s useless... Nobody tells the truth”.

The deterioration of the Swedish welfare model is reflected not only institutionally but also linguistically: it has become more technocratic, more normative, more controlling. What was once accompaniment is now perceived as surveillance. What remains of the welfare state resembles a monitoring apparatus, focused on verifying whether individuals are meeting prescribed requirements. Support is largely absent, and people live in fear of what they might lose.

In this scenario, the migrant experience continues to offer essential critique. What is at stake is not only access to services but also the deeper meaning of community, reciprocity, and belonging. What is called into question is a policy of integration that demands silence, and what is asserted is a mode of living together based on mutual recognition, rather than forced assimilation or fear.

The deepest change is not individual but social. What in the 1970s was experienced as a curiosity to know the other has today been replaced with mistrust and suspicion. The unknown, once a source of mutual learning, has become a source of fear. Where curiosity once led to engagement with those who were different, it now produces apprehension—a shift that reflects a transformation in the collective imaginary and directly affects forms of coexistence as well as the social system’s lack of openness. The unknown is no longer sought; it is avoided. What was once an opportunity for encounter is now experienced as a threat. Migration policies and their practices are illustrative: similar processes are reflected in social policies and in their consequences for native populations, where the erosion of social bonds manifests as loneliness and social isolation, reinforcing distance and fear of the other. The communicator resumes this reflection

to enquire into the role played today by new generations, both in Sweden and in other European countries. Does that effort to understand, to adapt, to communicate still exist, or are we witnessing a form of individualist withdrawal, facilitated by technology and characterised by immediacy?

In Sweden, much emphasis is placed on the need to learn the language, but the issue extends beyond linguistic tools; it is closely tied to the life project that each person may or may not be able to develop. Elements such as personal history, self-esteem, social recognition, and the opportunity to engage in meaningful activities shape the experiences of both migrants and natives. Some individuals can negotiate their own path, even in the early stages when the system has already established a predetermined route. In contrast to a passive and regulated reception, in the 1970s newcomers were able to engage in active participation, seeking work under conditions that aligned their own interests. Today, however, such autonomy is largely unavailable, or accessible only to a minority— and even then in a very limited way: for those whose skills and knowledge are in demand in the labour market, those who speak English (and are therefore not required to learn Swedish), and those whose expertise renders them necessary as workers, with market's demands regulating such selection. This system, however, does not address the needs of those fleeing wars and other forms of violence. Instead abandonment, punishment, and expulsion shape the content of contemporary welfare policies.

These processes unfold within a troubling context of growing deterioration in the conditions for public dialogue, as the far-right gains prominence across Europe by fuelling hate speech, rejection of difference, and the criminalisation of migrants. The communicator highlights another key aspect: the banalisation of discourse. “How can one counter something that rests on a slogan without substance? she asks, alluding to the impact of falsehoods and prejudices in shaping public opinion on migration. The problem extends beyond disinformation: it is the absence of rigorous analysis. The challenge lies in creating spaces for critical reflection that carries substance. Propaganda and partisanship dominate discourse, in which culture, communication, and politics have been trivialised.

This impoverishment of public debate, and of the very conditions that make thought possible, is far from a minor issue when it comes to understanding complex phenomena such as migration or welfare. How, then, can content be created? Only collectively. Without engaging with others, without seeking and creating in common, there is no possibility of generating knowledge. What we propose is not a nostalgic defence of the past, but a critical reappropriation of the present—of words, of methods, of meaning.

In this regard, the role of the university and of the media becomes fundamental. Projects such as Global-ANSWER are valuable insofar as they succeed in generating thought. If statistical material or interview data into something more— by posing problems not in order to resolve them, but to prompt people to take interest, to think— then something meaningful is achieved. This is the value of the conversation we develop here: a space in which, together we initiate a dialogue aimed at understanding through the incorporation of diverse perspectives and experiences, grounded in a context of shared concerns

## CONCLUSIONS

This chapter has been guided by a simple yet profoundly political premise: rethinking the transformations of the Swedish welfare state from the perspective of migrant experience. To this end, we adopted a mixed methodology that combined interviews with migrants and a reflexive, horizontal conversation, enabling the articulation of embodied knowledge, the questioning of fixed categories, and the illumination of tensions that rarely surface in official discourses.

The conversation, developed around themes and concerns previously identified in the interviews, is presented as an open dialogue, reflexive dialogue that does not aim to offer a closed diagnosis or definitive solution. Rather, the exchange seeks to articulate is a form of *knowledge-in-motion*: a reflexive practice that interrogates the frameworks through which we tend to think about human mobility, about responses to such mobility, and about the welfare state itself. It is a conversation grounded in migrant knowledge, the concept that orients the contents of this work.

Throughout these pages, seemingly neutral concepts such as “good practices” and “integration” have been called into question. From the situated knowledge of those who have been protagonists of migratory processes emerges a critique not only of institutional policies, but also of academic methodologies that tend to name, categorise, and intervene from the outside. The commitment to a dialogic and horizontal conversation is therefore not merely a narrative or methodological choice, but a political and epistemic positioning: meaningful knowledge can only be constructed through encounter with the other.

This exercise in dialogue has allowed us to identify two key elements for rethinking the transformation of the welfare state from the standpoint of migrant knowledge. The first is the recognition of the structural role migrants play in sustaining contemporary European societies, particularly

in sectors such as care, education, and social services, as well as in the renewal of language, literature, science, and the arts. The second is the need to reclaim the critical dimension of thought—within both in universities and the media—in the face of the growing threat posed by propaganda, simplification, and the hollowing out of content.

One of the most persistent themes in the voices collected is the critique of how the meaning of welcome has been displaced. Today, interviewees describe, “there are two forms of welcome”: a formal one, organised by the state through resources, housing, and procedures; and a communal one, offered by ordinary people in everyday settings. The former has become increasingly rigid and bureaucratic, while the latter has all but disappeared. Suspicion now permeates social relations; people are weary and few are willing to encounter further difference. Hospitality has been replaced by fear, and accompaniment by control.

This transformation is closely linked to a deeper shift in the welfare imaginary. What was once understood as a model of protection and solidarity is now perceived as a system of verification, marked by suspicion, conditionality, and the individualisation of responsibility. Little remains of the welfare state beyond an apparatus of control. Protection is eroded and people live with a pervasive sense of existential fear, leaving scant room for empathy.

Such fear—of losing one’s job, of having no future, of being unable to support one’s children—blocks any reaction to the suffering of others. A logic of daily self-punishment is thus installed, inhibiting collective reflection. In this scenario, migrant knowledge emerges not only as testimony but also as epistemic critique: a situated form of knowledge that exposes invisible hierarchies of origin, race, class; silencing mechanisms such as institutional racism in education; and narratives that justify inequality through the language of efficiency or meritocracy.

One of the most significant contributions of migrant knowledge in this study is the identification of less visible—yet deeply effective—forms of social exclusion. Existential fear, described as a state of constant alert that prevents responsiveness to the suffering of others, emerges as a paralysing emotion that undermines both solidarity and critical capacity. This fear, generated by job insecurity, precariousness, and uncertainty about the future, leaves little room for empathy and collective action. Alongside this, several interviewees describe what they term silent *racism*: a web of practices, omissions, and tacit hierarchies operating particularly within educational and labour systems, which hinder the full development of migrant trajectories. The conjunction of these two elements—fear and

silence—contributes to the depoliticisation of the migrant experience, weakening its transformative potential.

As emphasised throughout the chapter, the intention is not to offer technical solutions or normative proposals. The contribution lies elsewhere: in valuing conversation as a method, critical thought as a form of resistance, and experience as a legitimate source of knowledge. Conversation serves to analyze and generate meaning, not to impose a mode of thought, and such content creation is only possible when undertaken collectively—a process that is inherently social rather than individual. This requires recognising voices that have historically been silenced and creating the conditions for active and transformative listening. The freedom in the use of words, as exercised in this dialogue, is ultimately a freedom of thought, indispensable in times of crisis and moments of profound changes

To reclaim this collectively—in research, politics, the media, and everyday life—is perhaps the most radical act we can imagine today. The day we no longer need to speak of migration, feminism, or other forms of oppression will be the day these inequalities cease to structure our lives. Ultimately, approaching migration from the standpoint of migrant knowledge does not mean speaking *about* migrants, but *with* them—and above all, listening to what that their knowledge reveals about the societies in which we live. As the conversation concludes, what is truly relevant is not who we are or where we live, but what we say and how we share it.

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## 4. THE NEW SPANISH IMMIGRATION REGULATIONS

### A critical social analysis of Royal Decree 1155/2024, issued on 11 November

MARÍA TERESA DÍAZ AZNARTE  
*University of Granada*

#### INTRODUCTION

It is extremely illustrative to carefully read the Explanatory Memorandum of RD 1155/2024, a regulatory text that aims to advance in the simplification of the different regulatory procedures for the processing of visas and administrative authorisations (improving on its predecessor, Royal Decree 557/2011, of 20 April, which it repeals in its entirety). The legislator offers us an exercise in reflection aloud on the migratory reality in Spain, describing it as a “structural phenomenon”, essentially linked to motivations of an economic nature, since from its first lines it alludes to “human mobility in search of opportunities and a better life”. According to May 2025 data from the Ministry of Inclusion, Social Security and Migration, 14% of the population of our country is foreign (about 7 million people, of which more than 3 million are affiliated to the public Social Security system).

However, we cannot fail to point out the excessive dose of complacency that oozes statements such as that the Spanish migration policy, built over the years, is “solid, stable and effective”. Certainly, the regulations on Spanish immigration have undergone relevant modifications essentially since the beginning of the twenty-first century, trying with greater or lesser success, to adapt to the dynamism of the phenomenon in our country, which in a few decades has become a place of destination for thousands of migrants, when our past defined us as just the opposite.

Obviously, the regulatory framework of our migration policy is strongly conditioned, firstly, by the international texts to which Spain is a party (highlighting the Global Compact for Safe, Orderly and Regular Migration, approved by Resolution of 19 December 2018 by the United Nations General Assembly).

Secondly, as a member country of the European Union, Spain participates in the design of EU policies on migration and asylum,

having in parallel the duty to implement them. The successive European Covenants on Migration and Asylum (in their two most recent versions, of 23 September 2020 and 14 May 2024), emerge as important points of reference when it comes to calibrating the political and legal orientation of the European Union. The European Commission, in its Communication to the 2020 Pact, stated the following:

We will adopt a humane and humanitarian approach. Saving lives at sea is not optional. And those countries that comply with their legal and moral obligations or that are more exposed than others must be able to count on the solidarity of the whole of our European Union.... We all have to redouble our efforts and take responsibility.

Despite this grandiloquent and hopeful statement, which should permeate any legislative initiative, both EU and internal, in the EU member countries, what we have been observing in recent years is the conversion of these provisions into a dead letter, despite the fact that they link us from the perspective of the most elementary respect for human rights. Because the sad reality is that this text (both in 2020 and 2024) focuses its efforts on the control of irregular immigration, the waterproofing and shielding of borders and the facilitation of repatriations, without advancing in the configuration of real and effective mechanisms of responsibility and collective solidarity between the 27 countries of the EU. Díaz Aznarte (2021) carries out an analysis of the 2020 Pact, in light of the vulnerable situation of non-EU foreigners in the context of the 2020 pandemic.

This critical look, in the light of the defence of human rights, is essential when studying the reconfiguration of certain legal institutions related to the regulation of the Spanish migratory reality. The entry and stay in Spain of migrants through non-regular channels (a reality that we share with many of our European partners, for geographical reasons), their informal incorporation into the labour market (with the lack of social protection that this entails), the difficulties in functioning normally in the daily life of our country due to the lack of administrative authorisations, together with the absence for decades of the implementation of regularization processes, have led to the exponential growth of this group.

Once the reality has been diagnosed, the appropriate thing to do is to legislate accordingly. And this is where legal policy takes the initiative. The approval of the new Immigration Regulations, in a direct and unequivocal way, directs its gaze towards the group of migrants (with special emphasis on those who lack administrative residence and/or work permits) and does so from a markedly social perspective, although the text is not exempt from serious deficiencies that we will

highlight at a later time (mainly in relation to applicants for international protection and the figure of *arraigo*<sup>1</sup>). This perspective is defended also by Rodríguez Copé (2025).

We must also underline that RD 1155/2024 seeks to adapt to the European regulatory framework, materializing (partially) the transposition of different community regulations, among which are:

- Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on entry and residence requirements for third-country nationals for the purposes of research, studies, traineeships, volunteering, student exchange programmes or educational projects and *au pair placement*.
- Directive (EU) 2024/1233 of the European Parliament and of the Council of 24 April 2024 establishing a single application procedure for a single permit authorising third-country nationals to reside and work in the territory of a Member State and establishing a common set of rights for third-country workers legally residing in a Member State, 2024/1233 (Single Residence and Work Permit)
- Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence.

In general terms, we understand that the Spanish legislator, with the new Regulation, has introduced modifications in the immigration regulations that make us move in the right direction, although it is absolutely necessary to point out those more than debatable aspects that in our opinion should be subject to a future review that we hope will take place in a short period of time.

## 1. THE MAIN NOVELTIES REGULATED BY RD 1155/2024

### 1.1. A first approximation

Among the most notable novelties incorporated by the new Regulation (an extensive text of 265 articles, a wide range of additional provisions

1 The Spanish term *arraigo* is kept untranslated as it is very specific to Spanish Immigration law and has no exact equivalent in common law systems, such as those in the US and the UK. *Arraigo* is a means of regularisation that allows a temporary residence permit to be obtained in exceptional circumstances.

and a single transitional provision), are the administrative simplification in the different migration management procedures (visas), the temporary extension of administrative authorizations and their extensions, the implementation of new categories in relation to the residence permit for job search (the duration of the visa for job seekers is extended from three months to one year), the partial modification of the right to family reunification, the inclusion of women victims of sexual violence (together with victims of gender violence) in the cases that give the right to obtain administrative residence and work permits due to exceptional circumstances and, In particular, we must mention the qualitative reformulation that has taken place of the figure of *arraigo*. An interesting analysis of the new Regulation in Aguelo Navarro and Núñez Herrera (2025).

### *1.2. The reformulation of the modalities of arraigo. Legal regime after the entry into force of the new Immigration Regulations*

*Arraigo* is configured in Spanish legislation as a way (formally exceptional, but quite generalized “de facto”) through which it is possible to regularize the administrative situation of non-EU foreigners who are in our country without the mandatory authorizations. RD 1155/2024 introduces important modifications in the legal formulation of *arraigo* (tweaking the name of some, partially softening the requirements of others and incorporating the so-called “*arraigo de segunda oportunidad*”, one of the main innovations of the regulatory text).

Article 124.1 of RD 1155/2024, which approves the Regulation of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, establishes the following:

In accordance with the provisions of article 31.3 of Organic Law 4/2000, of 11 January, in view of the exceptional circumstances that occur, the Administration may grant an exceptional temporary residence permit to foreigners who are in Spain in the cases of roots, humanitarian reasons, collaboration with the public authorities or reasons of national security or public interest.

Spanish legislation, in the EU context, is the only one that contemplates the figure of *arraigo* as a legal tool through which migrants who are in our territory without the mandatory administrative authorisations, can obtain an exceptional temporary residence permit when they can prove the concurrence of a series of requirements.

Let's see below what the modalities of *arraigo* are contemplated by current Spanish legislation, pointing out the novelties introduced by the recent Immigration Regulations whose entry into force took place on May 20, 2025.

In accordance with art. 125 of RD 1155/2024:

1. "A temporary residence permit for reasons of rootedness will be granted to foreigners who are in Spain, when there are links with the place where they reside, whether economic, social, family, work or training, provided that they meet the requirements established in articles 126 and 127".

Temporary residence permits for reasons of roots, at present, can be of the following types:

- a) By reason of second chance roots. One of the main innovations of the new Regulation.
  - b) By reason of socio-labour roots.
  - c) By reason of social roots.
  - d) By reason of socio-formative roots.
  - e) By reason of family roots.
2. The duration of these authorisations is one year, except for reasons of family roots, which will last five years.

In addition, art. 126 of RD 1155/2024, specifies a series of general requirements that, cumulatively, must be accredited when applying for the temporary residence permit for roots, in any of its modalities:

- a) Be in Spain *and not have the status of applicant for international protection at the time of submission of the application or during its processing*. To this end, an applicant for international protection shall be understood to be a foreign person who has made an application for international protection on which a final decision has not been taken in administrative and, where appropriate, judicial proceedings. This restriction, clearly expressed by the legislator, will be subject to a subsequent review, given the obvious situation of lack of protection that it causes in the vulnerable group of applicants for international protection, for the reasons that we will explain.
- b) Have remained in national territory continuously for at least two years prior to the submission of said application. For these purposes, when the foreigner has been an applicant for international

protection, the time spent in Spain during the processing of the application for international protection will not be counted until its final decision in administrative and, where appropriate, judicial headquarters.

Family roots will not require any minimum permanence.

- c) Not represent a threat to public order, security or public health.
- d) Have no criminal record in Spain and in the countries where they have resided during the last five years prior to the date of entry into Spain, for offences provided for in the Spanish legal system.
- e) Not appear as rejectable in the territorial space of countries with which Spain has signed an agreement in this regard.
- f) Where appropriate, not being within the period of commitment not to return to Spain.
- g) Have paid the fee for the processing of the procedure.

The specific requirements for each of the forms of *arraigo* are set out in art. 127 of RD 1155/2024:

- a) For the second chance *arraigo* (roots), to have previously been the holder of a residence permit, provided that it has not been granted due to exceptional circumstances, in the two years immediately prior to the date of submission of the application, and whose renewal has not been refused for reasons of public order, security and public health. However, it will be possible to request it if there is a judgment of denial, acquittal or dismissal of the case.
- b) For social and labour *arraigo* (roots), it is required to provide one or more employment contracts that guarantee, at the time of application, a certain income (at least the minimum interprofessional wage or the salary established in the applicable collective agreement) in proportion to the working day worked (this data is important, since the amount required is significantly weighted). It is also specified that the total weekly working day cannot be less than twenty hours in global calculation. The regulation specifies the cases in which more than one employment contract formalised with different employers may be provided:
  - 1.º In the case of carrying out work of a seasonal nature or linked to seasonal production activities.
  - 2.º In the case of carrying out activities in the same or different occupation, working partially and simultaneously for more than one employer.

- c) For social *arraigo* (roots), family ties with other foreigners holding a residence permit in Spain must be accredited, also justifying that there are sufficient economic means to maintain it, which, in any case, must reach at least 100% of the IPREM. For these purposes, family members are considered to be the spouse or registered partner and first-degree relatives in the direct line. The financial means must be available in Spain.

The public indicator of multiple incomes (IPREM) for 2025 is 7,200 euros per year (12 payments) or 8,400 euros per year (14 payments). The amount of the IPREM has been frozen since the approval of the General Law on the General State Budget for 2023, since in the last two years in our country it has not been possible for the parliamentary approval of an updated rule, inexorably leading to the extension of the previous one (and everything seems to indicate that this situation will not change with respect to the Budgets for 2026).

In the event that the existence of this type of family ties is not proven, the foreigner's integration effort will be assessed and this will be done by providing a favourable report from the competent bodies of the Autonomous Community of their place of residence that recommend the granting of the authorisation. The report must be issued within a maximum period of one month from its request. It is pertinent to add that art. 68.2 of LO 4/2000, on the rights and freedoms of foreigners and their social integration, refers to the figure of the report on the social integration of foreigners whose habitual residence is in their territory that, prior to the granting of authorizations for roots, the Autonomous Communities or, where appropriate, the City Councils must issue. The aforementioned report must assess a series of circumstances: the period of permanence, the possibility of having housing and livelihoods, the links with family members residing in Spain, and the integration efforts through the monitoring of socio-labour and cultural insertion programmes.

The report, if favourable, will certify participation in training activities, knowledge of and respect for the constitutional values of Spain, the statutory values of the Autonomous Community in which one resides, the values of the European Union, human rights, public freedoms, democracy, tolerance, equality between women and men and, where appropriate, learning the official languages of the place of residence.

- d) For socio-educational *arraigo* (roots), the applicant must be enrolled or be studying one of the training referred to in articles 52.1.b) (i.e., completion of post-compulsory secondary education studies in an

authorized educational center in Spain, within the framework of a full-time program, leading to the award of a recognized degree) and 52.1.e) 5.º, (completion of complete training, neither modular nor partial, in an authorised educational centre in Spain, leading to the obtaining of professional certificates from the offers of the vocational training system of grade C), as well as the face-to-face offer corresponding to compulsory education within adult education. At this point, it is essential to differentiate the figure of socio-formative roots from the possibility of applying for long-term authorisation for studies, student mobility, volunteer services or training activities, provided for in art. 52 of RD 1155/2024.

If the enrolment has an official deadline for its formalisation, the application for the authorisation of socio-educational roots must be submitted within the two months prior to the start of that period. Proof of enrolment must be accredited to the immigration office within three months of notification of the decision granting the authorisation. In duly justified cases, enrolment may be submitted for training other than that initially planned, provided that the requirements of the training referred to in the previous paragraph are met. Failure to accredit proof of enrolment within the deadline will be cause for the termination of the authorisation granted.

This temporary residence permit for socio-educational roots may also be applied for by foreigners who undertake to carry out training promoted by the Public Employment Services in Spain and aimed at the performance of professions included in the Catalogue of occupations of difficult coverage that is prepared and updated quarterly at regional and provincial level (art. 75.1 RD 1155/2024). The preference in employment of Spanish nationals over non-EU foreigners is materialised in our country through this figure, which leads to taking into account the national employment situation when granting or not granting work permits. Thus, the Public Employment Service is entrusted with the preparation of this Catalogue, in the preparation of which the information provided by the different regional employment services plays a central role, after consultation with the Tripartite Labour Commission on Immigration. The classification of an occupation as difficult to cover implies the possibility of processing the initial permit for temporary residence and work as an employee aimed at the foreigner.

Failure to provide proof of the completion of such training will be cause for the termination of the authorisation granted.

In addition to the above requirements, the report on social integration in Spain will be required in the terms that we have already analysed at a previous time.

- e) For family *arraigo* (roots), the legislator requires proof of the following requirements:
1. Be the father or mother or guardian of a minor, a national of another Member State of the European Union, the European Economic Area or Switzerland, provided that at the time of submitting the application he or she proves that he or she resides in national territory, is responsible for the child and lives with him or her or is up to date with his or her parental obligations.
  2. To be the person who provides support to a person with a disability, who is a national of another Member State of the European Union, the European Economic Area or Switzerland, for the exercise of their legal capacity, provided that the applicant is their family member, is responsible for the person with a disability and lives with them.

In this case, no previous period of stay in Spain is required.

What are the contributions of RD 1155/2024 regarding the legal figure of *arraigo*? We are going to make a synthesis of the most innovative and relevant aspects of the regulation:

- Creation of the second chance *arraigo*
- Two types of rootedness are reformulated, using new denominations (socio-labor and socio-educational) and tweaking some aspects.
- In the case of socio-occupational roots, the need to provide the report of the social integration effort is eliminated.
- All foreigners who have obtained a temporary residence permit by rooting are authorised to work from the outset.
- The periods provided for in the previous regulations to be able to apply for *arraigo* are shortened, in such a way that in accordance with current legislation, two years (instead of three) of continuous stay in Spain will be required.
- Family roots will not require any minimum time of stay in Spain to be requested.
- Temporary residence permits for rooting will have a duration of one year as a general rule (and after their renewal their validity will be extended to four years).
- The duration of the family attachment authorization will be extended to 5 years from the beginning.

However, in the reform carried out in 2024, as has been fervently highlighted by the most authoritative voices, a serious mistake has been made that, if not corrected, will lead to the defencelessness of extremely vulnerable groups. We are referring to the situation in which applicants for international protection are left and the legal impossibility, as the new Immigration Regulation has been drafted directly and unequivocally, by not allowing their request for asylum to be matched with the possibility of obtaining a temporary residence permit through the figure of *arraigo*.

### *1.3. Application for international protection, permanence in Spanish territory and disconnection from the figure of *arraigo*. Reflections on the urgent need for revision of the Rules of Procedure and/or possible alternatives*

The wording of art. 126 of RD 1155/2024 and the expeditious affirmation by the legislator in relation to the impracticability of considering the time of stay in Spain of the applicant for international protection until there is a final resolution in this regard, for the purposes of availing themselves of the figure of *arraigo*, has provoked intense and absolutely justified criticism that, finally, they have led to the filing of an appeal before the Contentious-Administrative Chamber of the Supreme Court, that fortunately has been admitted for processing in May 2025 and is therefore pending resolution. The appeal is filed by the associations Extranjeristas en Red, Coordinadora de Barrios and the Association for Human Rights of Spain. In it, 31 articles and provisions of RD 1155/2024, which approved the Regulation of LO 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, are challenged. The plaintiffs argue that the new Regulation does not respect the provisions of Community regulations or different international treaties ratified by Spain. They also request that the Supreme Court refer a question to the Court of Justice of the EU for a preliminary ruling to analyse the compatibility of the Regulation with the European Directive that addresses the regulation of the right to asylum (Directive 2013/32/EU on common procedures for granting and withdrawing international protection). Although the appeal calls into question the legality of different aspects of the regulation, one of the main grounds on which it is based is the infringement of the rights of asylum seekers for the reasons given.

In order to adopt this questionable decision embedded in a very restrictive political-legal orientation, with difficulty in adjusting the Community regulations relating to the procedure of international

protection and asylum, it is not risky to advance that the legislator had very much in mind the important network that would cushion the result of the filing of foreseeable appeals before the Spanish jurisdiction. This is because the Supreme Court itself, in STS 414/2024 of 24 January, of the Contentious-Administrative Chamber, has already ruled on the matter along the same lines, although, as scientific doctrine has rightly pointed out, in the wording of the literal wording of art. 126 of RD 1155/2024, it has gone even further than what the Supreme Court had established. Some author points out that the legislator has gone even further than the doctrine contained in this controversial judgment (César Cancio, 2025).

This is so, because STS 414/2024 of 24 January, refers exclusively to labour roots, while on the contrary, the legislator has established, as a general requirement applicable to any type of roots, that of not *having the status of applicant for international protection at the time of submission of the application or during its processing*.

On 30 January 2025, the Sub-Directorate General for Immigration and International Mobility published a Clarification Note on the fifth transitional provision of the new Regulation, based on the jurisprudential doctrine of the Supreme Court, which states in its third paragraph that “the new Regulation echoes the doctrine of the Supreme Court itself, which, in its Judgment 414/2024, of 24 January, indicated that “the situation of mere permanence and work in Spain of asylum seekers, if said request was denied and they challenged it in administrative and jurisdictional channels, cannot be used to acquire the residence of labour roots (Ministerio de Inclusión, Seguridad Social y Migraciones, 2025).

Partially aware of the undesirable dysfunctions that the requirements of article 126 of RD 1155/2024 would deploy in the group of asylum seekers in Spain, the legislator has opted for the provision of a transitional regime (Fifth Transitional Provision), to which asylum seekers will be able to benefit (from May 20, 2025 to May 20, 2026). To do this, they will have to meet a series of requirements:

- a) Be in an irregular administrative situation in Spain on 20 May 2025 due to the final rejection of the application for international protection. This implies having received notification of the decision from the Ministry of the Interior before that date and not having filed an appeal, or, having filed it, already having a negative response or withdrawing it.
- b) Have been in an irregular situation for six months before the application for *arraigo*.
- c) Obviously, the rest of the specific requirements will have to be met depending on the type of *arraigo* they request.

Obviously, reality will prevail and, inexorably, thousands of asylum seekers will be directly affected by the new wording of art. 126 of RD 1155/2024. The rule does not admit any alternative but to wait for the formal rejection of the asylum application or to withdraw it, so that the period of 6 months that enables the initiation of the *arraigo* procedure can begin to be computed (and this, during the transitional regime). This legislative decision will lead to the situation of administrative irregularity for at least 6 months for asylum seekers who intend to have some opportunity for recognition of roots in Spain.

The arguments adduced in favour of the provisions of the restrictive article 126 of the new Aliens Regulation are quite poor. Clearly, the aim is to prevent the waiting time to which applicants for international protection or asylum must submit before obtaining the relevant resolution from being “used” by this group to prove the irregular stay in national territory for the processing of the temporary residence permit for roots. It is inevitable to ask, from the perspective of the defense of the human rights of the migrant population, what is the benefit that the Administration would find in the displacement of this important group into a situation of administrative irregularity, an unavoidable requirement to access *arraigo*. Could not an exception to the general rule have been arbitrated for these cases? Would it not be fully justified for the sake of achieving the objectives that the legislator itself confesses in the Explanatory Memorandum of RD 1155/2024? Protective regulatory coverage, protecting the vulnerability of the migrant population in general and of applicants for international protection in particular, should have pointed in this direction, providing their situation with legal certainty.

Unequivocally, the legislator has started from the jurisprudential doctrine emanating from the Contentious-Administrative Chamber of the Supreme Court, elevating to legal category what was a simple, although important, judicial decision. Nothing prevented the legislator from departing from this interpretation of the computable times when a foreigner has applied for international protection but tries to ensure that the wait in the resolution also counts for a possible temporary residence permit due to roots.

All this is even more serious if we take into consideration the repeated and flagrant failure of the Administration to comply with the legal deadlines. The defencelessness to which applicants for international protection are exposed is evident if, in addition to suffering all of the above, they have to suffer the endemic delay in administrative resolutions, especially when the waiting time plays against them. In accordance with current regulations, the deadline for responding to the application for

international protection is set at six months (Law 12/2009, of 30 October, regulating the right to asylum and subsidiary protection and Law 30/1992, of 26 November, on the Legal Regime of Public Administrations and the Common Administrative Procedure). It is well known that this legal provision is difficult to comply with and, in the case of appeals against the administrative decision, it will be practically impossible to have a final resolution until a year has elapsed.

We are waiting for the Supreme Court to rule on the appeal filed by associations and NGOs already admitted for processing in May 2025, although honestly, there is not much reason to be optimistic, in view of the jurisprudence already issued by this court regarding the issue at hand. Obviously, the future Judgment will be of great importance and therefore the subject of multiple studies and comments due to its relevant practical implications.

However, the Supreme Court must take into consideration when arguing its decision, two decisions of the Court of Justice of the European Union that have entered directly into the substance of this issue:

- CJEU Judgment of 12 September 2024 (as. C-352/23). In this case, the CJEU states that EU legislation does not recognise the right to rootedness based on a prolonged period of stay in the territory of a Member State, although the possibility of granting residence for humanitarian or other reasons is always open.
- CJEU Judgment of 8 May 2025 (as. C-662/23). In this interesting judgment, a central issue is addressed, such as the delay of the Administrations in resolving applications for international protection, specifying who should be responsible for these delays and whether they may harm the administrated. Although it is true that the allusions to Directive 2013/32 show that it is not expeditious but rather quite flexible in relation to the possibility of extending the generic period for the resolution of these cases (set as a general rule at 6 months, although extendable when certain circumstances arise), what is truly noteworthy about the Judgment is that it states that only a significant and unforeseen increase in The number of requests may justify the delay. It is therefore unfeasible for a State, in the light of Community regulations, to hide behind the lack of personnel or the prior existence of a large number of previous unresolved files, to extend the 6-month period set in general. And this means that in such cases, the delay time for which the Administration is responsible cannot be interpreted against the

applicant for international protection, not even for the purposes of accessing the temporary residence permit for roots.

## 2. THE POPULAR LEGISLATIVE INITIATIVE IN DEFENCE OF THE REGULARISATION OF MIGRANTS WITHOUT ADMINISTRATIVE AUTHORISATIONS

In view of the above, after the chiaroscuro of the new Immigration Regulation approved by RD 1155/2024 and waiting for the Contentious-Administrative Chamber to rule (and perhaps even refer a preliminary ruling to the Court of Justice of the European Union, as requested by the appellants), the possibility of changing the situation of administrative irregularity of a large group of migrants in our country who have not obtained the relevant residence permits or have been successful in their application for international protection, necessarily involves arbitrating an extraordinary process of regularization in Spain.

It is difficult to explain that 20 years have already elapsed since the last regularization or normalization, as it has also been called. It is pertinent to point out that both socialist and conservative governments have resorted to this procedure since 1986, making it easier for hundreds of thousands of migrants to obtain their residence permits in our country.

In figures, the different regularization processes in Spain.

TABLE 1  
EVOLUTION OF REGULARISATION PROCESSES IN SPAIN

Year	Requests	Granted	% Acceptance	% Denial
1986	43.815	38.294	87,14%	12,86%
1991-92	142.170	114.423	80,48%	19,52%
1996	25.128	21.294	84,74%	15,26%
2000	272.482	264.153	96,94%	3,06%
2001	351.269	239.174	74,29%	25,71%
2005	691.655	576.506	83,35%	16,65%

SOURCE: ASIDI Association.

<https://asidi.com/la-regularizacion-de-inmigrantes-en-espana-un-analisis-historico/>  
Accessed on September 14, 2025.

Currently, a Popular Legislative Initiative (ILP) is being processed through the “Regularisation Now” movement, promoted by 900 migrant and anti-racist organisations and collectives, which aims to benefit more

than 500,000 migrants who are in a situation of administrative irregularity in Spain. The ILP can be defined as a “means of participation that allows citizens to propose directly to the Congress of Deputies the drafting of a law” Its legal regime is found in art. 87.3 of the Constitution and Organic Law 3/1984, of 26 March, regulating popular legislative initiative. To initiate this procedure, it is required to present proposals for legislation signed by the authenticated signatures of at least 500,000 registered voters of Spanish nationality (art. 3 of LO 3/1984). This ILP has exceeded 600,000 signatures.

After multiple vicissitudes and a complex process, finally on April 9, 2024, in the Congress of Deputies, the “taking into consideration of the ILP Regularization” was approved by an absolute majority (with the only vote against the far-right party VOX), an initial and essential requirement for its parliamentary processing. Currently, it is in a period of amendments, which will culminate in the drafting of an opinion, which will be the result of the presentation as a result of the contributions of the different political parties. It will then return to the Plenary of Congress for debate and approval if appropriate.

As stated by its promoters, this ILP seeks to amend LO 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, adding a single article, the literal wording of which would be as follows: “the Government, by means of a Royal Decree, will establish, within 6 months, a procedure for the regularisation of foreigners who are in Spanish territory before 1 November 2021”.

Given that the ILP Regularization was born and began to take shape in 2020, prior to the different modifications of the immigration legislation, in particular RD 1155/2024, the need to quantitatively expand the estimate of its potential recipients has been rightly pointed out, now including all those applicants for international protection who will irremediably move towards administrative irregularity if they consider initiating the procedure to obtain a temporary residence permit by roots.

## CONCLUSIONS

In general terms, our assessment of the new regulations is positive. It is undeniable that the legislator’s intention was to broaden the scope of residency based on long-term residence, adding new modalities and easing the time requirements for accessing this legal mechanism, which, within the European Union, exists only in Spain. It is extremely important to emphasize this aspect, as it could set a precedent for other EU countries.

This is because we must implement tools that allow non-EU citizens to regularize their status, as only in this way can they exercise their rights and obligations as citizens.

However, it is clear that the dysfunctions we have highlighted in relation to applicants for international protection must be resolved without delay.

From our point of view, it is unavoidable to coordinate the legal regime, both in terms of requirements and from the procedural perspective, of temporary residence permits for roots and applications for international protection.

Although an overall assessment of the new Immigration Regulation offers positive data in a social key, it is urgent to correct the defects detected given the seriousness of the consequences that they entail. Clearly, it has not been an omission or an error in the drafting of the rule, but a clear choice of legislative policy, leading to preventing the waiting time in Spain for the resolution of the application for international protection, from also being computed to obtain the temporary residence permit by roots. In any of its modalities, it being understood that in the first case, the foreigner is not in a situation of administrative irregularity. The literal wording of art. 126 of RD 1155/2024 does not allow for any interpretation, it has been drafted in a clear and forceful manner, and is also systematically located within the requirements for any type of *arraigo*.

At this time, realistically, there are only two possible ways out of this undesirable situation generated by the law: the first would be for the Contentious-Administrative Chamber to accept the arguments of the appeal that different associations and NGOs have presented (it would even be possible to raise a preliminary ruling before the CJEU); the other possibility is that the ILP finally completes its parliamentary processing and the dysfunctions of the Regulations are solved by implementing a new regularization process, in the terms set out in the proposal approved by parliament in April 2024.

As a final reflection, it is worth recalling that Organic Law 4/2000 of January 11, on the rights and freedoms of foreigners and their social protection in Spain, has now been in effect for twenty-five years. During this time, several legislative reforms of varying scope have taken place in our country, both in the text itself and in its implementing regulations. In all of them, one constant is evident: migration policies are subject to significant ideological shifts that materialize legally, losing sight of the inviolable limit that should be respect for the human rights inextricably linked to those subject to human mobility. As we have been arguing for years, the principle of equality and non-discrimination on the grounds of

nationality must occupy its true scope in international, EU, and Spanish law, alongside all other fundamental human rights (Díaz Aznarte, 2019).

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## 5. THE HUMAN RIGHTS SYSTEM OF HUMAN MOBILITY IN THE EUROPEAN CONTEXT

JOSÉ ENRIQUE CONDE BELMONTE  
*Comillas Pontifical University*

### INTRODUCTION

The Mediterranean Sea has long been celebrated as a cradle of civilizations, a space of commerce and cultural exchange. Yet, in recent decades, it has tragically become known as the world's deadliest migration route. This transformation, symbolized by repeated images of boats capsizing in open waters or of lifeless bodies washed ashore, epitomizes the paradox at the heart of the European project. Europe, the region that gave the inspiration to the Universal Declaration of Human Rights in 1948 and developed the most sophisticated supranational human rights system in history, has simultaneously erected formidable barriers that deny protection to many who seek safety and dignity.

The photograph of Aylan Kurdi, the three-year-old Syrian boy whose body was found on a Turkish beach in September 2015, briefly crystallized this paradox in the European imagination. The image provoked outrage and sympathy across the continent, leading to temporary expressions of solidarity and calls for responsibility-sharing. Yet within months, these sentiments were eclipsed by the language of crisis and securitization. Borders were reinstated, fences were raised, and asylum systems strained under political pressure. In many ways, 2015 marked a turning point, when the free movement ideal of Schengen collided with the securitarian reflexes of Member States.

But 2015 was not the beginning of Europe's struggles with mobility. Post-war displacement in the 1940s and 1950s prompted the creation of the Refugee Convention. The fall of the Berlin Wall in 1989 led to profound transformations in mobility, as citizens of Eastern Europe moved westward. The Balkan wars of the 1990s tested Europe's refugee protection mechanisms. The enlargement of the EU in 2004 and 2007 introduced new patterns of intra-EU labor migration, accompanied by anxieties about

“social dumping”. More recently, the COVID-19 pandemic revealed how quickly even EU citizens’ fundamental freedom of movement could be suspended. And in 2022, the war in Ukraine triggered the activation of the EU’s Temporary Protection Directive, demonstrating Europe’s capacity for collective action while simultaneously exposing selective solidarity.

Mobility in Europe is therefore not an episodic crisis but a structural reality that repeatedly tests the continent’s normative foundations. This chapter argues that mobility is not merely a technical question of border management or an economic question of labor supply. It is, above all, a human rights issue. By examining the interplay between international human rights law, EU law, and the Council of Europe’s system of protection, the chapter highlights both the normative richness and the structural contradictions of Europe’s approach to mobility. It contends that while Europe’s legal frameworks recognize the universality of rights, their practical application often reveals fragmentation, conditionality, and exclusion.

The analysis unfolds in four parts. The first lays out the theoretical framework, situating mobility as a human right under universal, EU, and Council of Europe law. The second addresses the principal challenges facing rights-based governance of mobility, including the tension between sovereignty and supranational obligations, the securitization of migration, the lack of harmonization among Member States, the particular vulnerabilities of certain groups, and the impact of recent crises. The third explores possible reforms, drawing attention to jurisprudential advances, local practices, proposals for systemic change, the embedding of social protection, and global compacts as normative benchmarks. The final section concludes with a reflection on Europe’s crossroads: whether to persist in fortifying its borders or to embrace mobility as constitutive of its democratic identity.

## 1. THEORETICAL FRAMEWORK: HUMAN MOBILITY AS A HUMAN RIGHT

### *1.1. Universal Human Rights Framework*

The recognition of human mobility as a right is rooted in the post-war international order. Article 13 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to freedom of movement and residence within the borders of each state and the right to leave any country, including one’s own, and to return (United Nations, 1948). Drafted

in the aftermath of regimes that restricted exit and trapped populations, Article 13 sought to guarantee individuals the ability to move both within and beyond state boundaries.

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, codified these principles in legally binding terms. Article 12 affirms the right of everyone lawfully within a state's territory to liberty of movement and freedom to choose residence, as well as the right to leave any country, including one's own. The Human Rights Committee's General Comment No. 27 clarifies that restrictions are permissible only if they are provided by law, pursue a legitimate aim such as national security or public order, and are proportionate (UN Human Rights Committee, 1999). Importantly, the right is universal, applying to citizens and non-citizens alike.

In parallel, the 1951 Refugee Convention and its 1967 Protocol established a framework for those compelled to flee persecution. The Convention defines refugees, articulates their rights, and enshrines the principle of non-refoulement, prohibiting return to a country where individuals face threats to life or freedom. This principle, recognized today as customary international law, represents the cornerstone of international refugee protection (Goodwin-Gill, McAdam & Dunlop, 2021). Its impact on mobility is profound: states may regulate entry, but they may not expel or return people to danger.

At the universal level, mobility is therefore affirmed both as freedom of movement and as protection against forced return. Yet implementation depends heavily on state discretion, and enforcement mechanisms remain limited. This universality in principle but selectivity in practice sets the stage for the contradictions visible in Europe.

## *1.2. The European Union Framework*

Within the European Union, mobility is both a legal right and a political ideal. From the outset, integration has been structured around the four freedoms: the free movement of goods, services, capital, and persons. Of these, free movement of persons has come to symbolize European citizenship while simultaneously generating the greatest political controversy.

Article 21 of the Treaty on the Functioning of the European Union (TFEU) grants every EU citizen the right to move and reside freely within the territory of Member States. Article 45 TFEU guarantees free movement of workers, prohibiting discrimination based on nationality.

These provisions are reinforced by the Charter of Fundamental Rights of the EU, particularly Article 45 (Peers, 2021).

The Schengen Agreement, fully integrated into EU law in 1999, epitomized the ideal of “a Europe without borders”. Yet Schengen has always contained derogation clauses allowing for the temporary reintroduction of controls in cases of serious threat. For years, these clauses were rarely invoked. But during the migration “crisis” of 2015 and again during the COVID-19 pandemic, they were activated across the continent (Huesca González & Conde Belmonte, 2022). The reimposition of border controls underscored the fragility of this foundational freedom.

The Dublin Regulation, designed to streamline asylum applications by requiring them to be lodged in the first country of entry, has had unintended consequences. It disproportionately burdens border states and often results in hardship for asylum seekers unable to access protection in overstretched systems. The Court of Justice of the European Union (CJEU) has limited this imbalance. In *NS v. Secretary of State for the Home Department* (Joined Cases C-411/10 and C-493/10, 2011), the Court held that transfers under Dublin cannot occur where systemic deficiencies in reception conditions or procedures would expose applicants to inhuman treatment. In *Aranyosi and Căldăraru* (Joined Cases C-404/15 and C-659/15 PPU, 2016), it extended this reasoning to the European Arrest Warrant, emphasizing that mutual trust is not absolute when fundamental rights are at stake.

The Court has also interpreted free movement expansively in some contexts. In *Chen v. Secretary of State for the Home Department* (Case C-200/02, 2004), it recognized that a minor EU citizen could derive residence rights for a non-EU parent. In *Metock v. Minister for Justice* (Case C-127/08, 2008), it held that third-country spouses of EU citizens enjoy residence rights regardless of prior lawful residence. Conversely, in *Dano v. Jobcenter Leipzig* (Case C-333/13, 2014), it restricted access to social benefits for economically inactive EU citizens, reflecting the political climate around “welfare tourism”.

Externalization has become a defining feature of EU migration policy. The 2016 EU-Turkey Statement, whereby migrants arriving in Greece could be returned to Turkey, exemplifies this approach. Similar cooperation with Libya and Morocco has raised questions of accountability, as outsourcing migration management to countries with weak rights protections risks violating non-refoulement (Moreno-Lax, 2017).

### 1.3. *The Council of Europe Framework*

The Council of Europe, with its broader membership of 46 states, provides another layer of protection through the European Convention on Human Rights (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR). While the Convention does not explicitly codify a general right to freedom of movement, its provisions have been applied to migration cases with significant impact.

Article 3, prohibiting torture and inhuman or degrading treatment, has been interpreted as embedding the principle of non-refoulement. In *Soering v. United Kingdom* (App. No. 14038/88, 1989), the Court held that extradition to a country where there was a real risk of inhuman treatment violated Article 3. In *Chahal v. United Kingdom* (App. No. 22414/93, 1996), it confirmed that even national security concerns cannot override this prohibition. In *M.S.S. v. Belgium and Greece* (App. No. 30696/09, 2011), the Court condemned Belgium for returning an asylum seeker to Greece despite systemic deficiencies, emphasizing that states remain individually responsible when implementing EU law.

Article 8, guaranteeing respect for private and family life, has also been applied to migration. In *Tarakhel v. Switzerland* (App. No. 29217/12, 2014), the Court required assurances about reception conditions before returning an Afghan family to Italy under Dublin. In *Jeunesse v. The Netherlands* (App. No. 12738/10, 2014), it found a violation where a mother of three Dutch children was denied residence.

Article 4 of Protocol No. 4 prohibits collective expulsions. In *Hirsi Jamaa v. Italy* (App. No. 27765/09, 2012), the Court condemned Italy's pushbacks to Libya without individual assessment, extending obligations extraterritorially. Yet in *N.D. and N.T. v. Spain* (Apps. Nos. 8675/15 and 8697/15, 2020), the Grand Chamber accepted Spain's practice of "hot returns" at Melilla, a controversial decision that scholars argue undermines protections against collective expulsions (Carrera, 2021).

Through these cases, Strasbourg has both expanded and, at times, contracted mobility protections. Its judgments underscore that while the ECHR provides powerful tools, their impact depends on political will and compliance by Member States.

### 1.4. *Interactions and Tensions*

The coexistence of universal, EU, and CoE frameworks produces a dense but often inconsistent web of protections. At times, the systems

complement each other, as when Strasbourg’s M.S.S. judgment informed the CJEU’s reasoning in NS. At other times, they pull in different directions, as seen in the contrast between *Hirsi Jamaa*, which condemned pushbacks, and EU support for externalization agreements.

Costello, Foster and McAdam (2021) aptly describe this as a “fragmented universality”. Rights are affirmed in principle but applied selectively in practice, depending on geography, nationality, and politics. An EU citizen moves freely; a refugee may or may not be protected depending on their route; a third-country national seeking work often confronts insurmountable barriers. This fragmentation illustrates both the richness and the contradictions of Europe’s human rights architecture.

## 2. STRUCTURAL CHALLENGES AND HUMAN RIGHTS DEFICITS

### 2.1. *Sovereignty versus Human Rights*

The assertion of sovereignty remains the foundational challenge to rights-based governance of mobility. While the EU has pooled competences in many areas, Member States continue to regard control of borders and admission policies as core aspects of national identity and political legitimacy. The mantra that states must “decide who enters and stays” is repeatedly invoked in domestic debates, even as states are bound by international and supranational obligations.

This tension is evident in detention and deportation practices. States justify restrictive measures on grounds of national security, irregular migration, or public order. Yet the ECtHR in *Chahal* (1996) made clear that Article 3’s prohibition of refoulement is absolute, even in cases involving alleged terrorism. Despite this, deportations to unsafe countries continue, often based on narrow or politicized risk assessments.

Resistance to harmonization further illustrates sovereignty claims. Hungary and Poland, for example, openly refused to implement EU relocation schemes adopted in response to 2015, framing them as illegitimate intrusions on sovereignty. Such defiance not only undermines solidarity but also corrodes the foundations of EU law, which depends on mutual trust and compliance.

### 2.2. *The Securitization of Migration*

Migration governance in Europe has been deeply shaped by securitization, the process by which issues are framed as existential

threats requiring extraordinary measures (Bigo, 2002). The creation and expansion of Frontex exemplify this logic. Once a small coordination agency, Frontex has become a powerful actor with operational and return mandates, a budget exceeding €750 million annually, and growing autonomy (Peers, 2021). Its accountability mechanisms, however, remain weak, and investigations have revealed its involvement in or tolerance of pushbacks.

Securitization also manifests in the criminalization of migrants and their supporters. Irregular entry, once treated as an administrative infraction, is increasingly criminalized across Europe. The term “crimmigration” captures this fusion of criminal and immigration law (Stumpf, 2006). Equally troubling is the “criminalization of solidarity,” whereby NGOs conducting search-and-rescue operations or individuals offering humanitarian assistance have faced prosecution. These measures not only deter life-saving activities but also erode civil society’s role as a watchdog.

De Genova (2013) highlights the symbolic dimension of this securitization: the “spectacle of borders”. Images of fences, patrols, and mass expulsions serve to reassure domestic publics of state control, even when such measures prove ineffective. Hungary’s heavily mediatised fences in 2015 are a case in point: their visibility mattered more than their actual deterrent effect.

### *2.3. Lack of Harmonization Among Member States*

Despite decades of legislative harmonization, disparities in asylum recognition and treatment remain glaring. Eurostat (2022) data show wide variations in recognition rates for applicants of the same nationality. In 2021, Germany granted refugee status to over half of Afghan applicants, while France recognized fewer than a third and Bulgaria fewer than one in ten. Such discrepancies undermine the principle of equal treatment and incentivize secondary movements.

The Dublin system compounds these disparities by allocating responsibility to the first country of entry, disproportionately burdening border states. Attempts to create solidarity mechanisms, such as relocation quotas, have been met with resistance. In 2017, the CJEU upheld the legality of relocation decisions in *Slovakia and Hungary v. Council* (Joined Cases C-643/15 and C-647/15), yet compliance has been minimal.

The result is a patchwork system that undermines both efficiency and fairness. Protection outcomes depend less on the applicant’s situation

than on the country where they lodge their claim. This inconsistency erodes trust and delegitimizes the EU's claim to a common asylum system.

#### *2.4. Vulnerable Groups*

Mobility interacts with pre-existing vulnerabilities, producing compounded risks for certain populations. Children are a particularly vulnerable group. In *Rahimi v. Greece* (2011), the ECtHR condemned the detention of an unaccompanied minor in degrading conditions, a judgment emblematic of systemic deficiencies. UNICEF (2022) has repeatedly highlighted gaps in guardianship systems, education access, and protection from exploitation. Age-assessment procedures often lack due process, leading to minors being treated as adults and exposed to detention or deportation.

Women also face gender-specific risks in migration contexts. Gender-based violence is both a driver of displacement and a risk encountered in transit and in reception centers. The CEDAW Committee's General Recommendation No. 38 (2020) emphasizes the need for comprehensive protection of trafficked women and girls. Yet in practice, many women remain exposed to exploitation in labor markets or unsafe reception conditions.

LGBTIQ+ persons encounter additional challenges. In *X, Y and Z v. Minister voor Immigratie en Asiel* (CJEU, 2013), the Court recognized that criminalization of homosexuality constitutes persecution under the Refugee Convention. Nevertheless, asylum procedures continue to rely on problematic credibility assessments that sometimes require invasive or humiliating evidence of sexual orientation (Jansen & Spijkerboer, 2011). Such practices reveal the persistence of stereotypes and the failure to treat applicants with dignity.

Climate-displaced persons represent an emerging challenge. Although not recognized under the 1951 Refugee Convention, displacement linked to environmental degradation and climate change is increasing (McAdam, 2012). The Human Rights Committee's decision in *Teitiota v. New Zealand* (2020) acknowledged that climate risks could, in principle, trigger non-refoulement obligations, even if the applicant's claim was ultimately rejected. Europe has yet to develop a coherent response to this category of displacement, leaving a normative gap that is likely to grow in significance.

## 2.5. *Impact of Recent Crises*

Crises have repeatedly revealed the fragility of mobility rights in Europe. The COVID-19 pandemic, beginning in March 2020, led to the reintroduction of internal border controls across the Schengen Area and unprecedented restrictions on both international and domestic mobility. Free movement, the EU's emblematic freedom, was suspended with little coordination or oversight. These measures disrupt not only the economy but also public trust in European solidarity.

The war in Ukraine in 2022 prompted the EU to activate the Temporary Protection Directive for the first time since its adoption in 2001. This decision granted immediate rights to millions of displaced Ukrainians, including residence, access to education, and health care (Council of the European Union, 2022). It demonstrated Europe's capacity for collective action but also highlighted selective solidarity. Ukrainians were embraced, while Afghans, Syrians, and sub-Saharan Africans continue to face hostility, exclusion, or slow asylum processes.

Meanwhile, ongoing tragedies in the Central Mediterranean highlight the persistence of systemic failures. Despite ECtHR rulings, pushbacks continue, and search-and-rescue operations are insufficient. The EU's reliance on the Libyan Coast Guard, despite ample evidence of abuse in Libyan detention centers, raises serious concerns about compliance with non-refoulement. These cases illustrate how crisis responses often entrench, rather than overcome, structural deficiencies.

## 3. TOWARDS A RIGHTS-BASED GOVERNANCE OF MOBILITY

Despite the formidable challenges, Europe has pathways toward a governance of mobility that centers rights rather than repression. Courts, local actors, civil society, and international frameworks provide entry points for transformation.

The jurisprudence of supranational courts remains a cornerstone. The ECtHR's rulings in *Hirsi Jamaa* and *M.S.S.* established that neither geography nor EU law absolves states of their responsibilities. The CJEU's decisions in *NS* and *Metock* demonstrated the potential to interpret EU law expansively in favor of protection. Strategic litigation by NGOs continues to bring new cases that expand protections incrementally. Although courts alone cannot resolve political conflicts, their jurisprudence establishes normative boundaries that constrain excesses and gradually reshape practices.

Local and municipal initiatives offer another source of innovation. Cities such as Palermo and Barcelona have declared themselves spaces of solidarity, offering services regardless of status and refusing to implement exclusionary measures (Oomen, 2018). Municipal authorities have experimented with integration programs, language courses, and housing initiatives that frame newcomers as part of the community rather than as threats. Civil society networks and NGOs complement these efforts, providing essential services and engaging in search-and-rescue operations despite state hostility. These practices demonstrate that governance is not solely top-down but also enacted from below, often in more rights-centered ways.

Structural reforms are essential at the EU level. The Dublin system must be fundamentally revised to ensure responsibility-sharing based on solidarity and applicants' preferences rather than geography. Legal pathways must be expanded to reduce reliance on irregular routes and smugglers. Humanitarian visas, resettlement programs, and labor mobility schemes represent concrete avenues. Oversight of Frontex must be strengthened through greater parliamentary and judicial scrutiny, ensuring compliance with rights. All migration policies should undergo fundamental rights impact assessments, embedding rights into their design and implementation.

Embedding social protection into mobility governance is equally crucial. The International Labour Organization's Social Protection Floors Recommendation (No. 202, 2012) provides a blueprint for guaranteeing basic income security and access to essential services for all residents, including migrants. The COVID-19 pandemic underscored the dangers of exclusion: vaccination campaigns and health care access had to be extended to migrants not only as a matter of rights but also as public health imperatives (WHO, 2021). Labor protections must be strengthened to prevent exploitation and ensure that migrants who perform essential work enjoy dignity and security.

Finally, global compacts offer normative benchmarks. The Global Compact on Refugees (2018) and the Global Compact for Migration (2018) articulate principles of responsibility-sharing, regular pathways, and the rejection of criminalization. While non-binding, they provide frameworks for aligning European policies with broader international commitments. Integrating these principles into European governance would counterbalance unilateralism and situate mobility within a global ethic of solidarity.

## CONCLUSIONS

Europe stands at a decisive moment. It can persist in reinforcing Fortress Europe, fortifying borders, outsourcing responsibilities, and criminalizing solidarity, or it can reaffirm its founding values of dignity, universality, and solidarity. The choice will determine not only the fate of millions on the move but also the credibility of Europe's human rights project.

Hannah Arendt (1973) observed that the most fundamental right is "the right to have rights," grounded in belonging to a political community. Migrants and refugees, often denied recognition and status, embody this paradox: they claim the right to have rights in a system that frequently excludes them. Their plight forces Europe to confront whether its commitment to universality is genuine or conditional.

Zygmunt Bauman (2000) described modernity as "liquid," characterized by mobility, uncertainty, and flux. Human mobility epitomizes this liquidity. Attempts to arrest it through fences, detention, or externalization are ultimately futile. Movement will continue. The question is whether Europe responds with repression or with rights.

Benjamin Ferencz, the last surviving Nuremberg prosecutor, tirelessly advocated for "law, not war" as the organizing principle of international order. In the context of mobility, this injunction demands that Europe govern not through force but through rights. To normalize pushbacks, tolerate deaths at sea, or criminalize humanitarianism is to betray the moral legacy Europe proclaims.

A rights-based governance of mobility is not utopian but indispensable. The history of European integration has been one of expanding freedoms, from economic to political to social rights. To halt that expansion at the border is to undermine the entire project. Europe must recognize mobility as a structural reality of our time, not an aberration. To embrace it fairly, regulate it lawfully, and protect the dignity of those on the move is both a legal obligation and a moral imperative.

The measure of Europe's fidelity to its founding values will be taken not only in its treatment of its citizens but also in its response to those who arrive at its shores, climb its fences, or seek refuge within its borders. Mobility is the test of universality. Passing that test is essential for Europe to remain true to its promise.

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# Political and Media Frameworks



## 6. MEDIA REPRESENTATIONS OF MIGRANTS IN ITALY

### Traditional biases and positive changes to remove “boundaries”

FRANCESCA RIZZUTO  
University of Palermo

#### INTRODUCTION

Many studies focused on the role played by news media in the perception of the *Other*, because this topic is central in a democratic system: the relevance of studying the representation of immigration in the media is connected to its effects on citizens' attitudes, especially because negative media frames of migration often lead to negative attitudes toward immigrants (Eberl *et al.*, 2018), so that the *foreigner-enemy frame* and the description of the migratory phenomenon as a *menace*, offered by journalism, may contribute not only to the spread of racism but also influence migration policies aiming at ensuring *safety* (Van Dijk, 1987; Dal Lago, 2004; Surette, 2007; Eberl *et al.*, 2018; Mancini *et al.*, 2021). Obviously, the way immigration is framed in the media is also influenced by the current migration context in European countries, which has recently strongly changed by the arrival of a growing number of asylum-seekers and migrants after the Ukraine's war and Gaza crisis. As Arcila-Calderón *et al.* (2023, P. 24) pointed out, “*although migration, and particularly immigration, is not a new phenomenon in Southern European countries, 2015's refugee crisis of the Mediterranean, together with the rise of nationalist, hate-filled anti-immigration discourses in many European and Western countries, led to an increase in the media interest in immigration and in its political consequences*”, favouring the growing influence of anti-immigration and nationalist parties in many democracies. Moreover, a deeper understanding of migration coverage that journalists offer is particularly relevant in the contemporary digital media ecosystem, where citizens live in a condition of increasing cognitive dependence on media resources: journalists produce narratives that become pervasive and are used by individuals to build representations of social phenomena and problems. At the same time, the profession and the news industry

face many challenges connected to the planetary spread of fake news and disinformation, which have become dangerous threats not only to freedom of speech and journalism, but also to a correct understanding of reality for citizens. Therefore, it seems useful to understand the representation of immigration in Italian news media to underline biases and false images of the phenomenon and to connect them to this specific political context as well as to some peculiarities of its informative system.

## 1. THEORETICAL FRAMEWORK

Many scholars have focused on the measurement of citizens' attitudes toward immigrants or applied framing or agenda theories to analyse the way migrants are represented: the main result is that media representations can help fostering the rejection of immigrants as well as leading to hate speech or hate crimes, since their representation of migrants is usually prejudiced or biased by superficial news perspectives. However, it is necessary to overcome a too simplistic perspective since journalism *tells facts*, but it is not a simple transfer from an event to an article: it is a real "transformation" (Schudson, 2003), because newsmaking is a "routinized professional process", which produces stories and provides an interpretative framework to the receivers (Zelizer, 2009). News professionals select and extrapolate segments of reality and recontextualize them in the format of a narrative product, offering an interpretation; moreover, the new role of the viewer in the platform society (Van Dijck *et al.*, 2018), who has become both a news-producer and a performer and the difficulty of controlling the content as well as the new sources of all informative pills, calls for a reflection on the peculiarities and biases of media representations of some relevant political and social "issues" like wars, terrorism or migration. Moreover, as the existing literature shows, there may be other factors that can influence the coverage of migration, which are strictly mixed in the newsmaking process: as Mancini *et al.* (2021) proposed, it is useful to adopt Masini's "Multilevel model of influence" (2017). Following the approach by Shoemaker and Reese (1996), this author affirms that one must consider a plurality of factors that determine the content, and also the discursive nature, of the news like national belonging, rooted traditions and structures of the media system; moreover, geographical proximity to the event may also address in some specific way the coverage as well as political alignment that may represent an important variable affecting information on migration. In general, we can assume, as most comparative research demonstrated, that there is a strong influence that the different

national media systems exert on the content of the news: national belonging plays some role in affecting the coverage of immigration as it shapes national journalistic routines and procedures that apply to immigration as well (Mancini *et al.*, 2021, pp. 847-849). Due to the peculiar social and economic characteristics of the context (lack of an independent press industry as well as of readers), Italian journalism has always maintained a privileged relationship with politics, being for decades “parallel” to power and political parties, which financed newspapers (Murialdi, 2006). Among many different *national* declinations, Hallin and Mancini (2004) included Italian journalism in the Mediterranean or pluralist-polarized model: according to these authors, in Italy, and in other Southern European countries (like Spain or Greece), there is a *peculiar* relationship between the media and politics and the tendency to consider media as instruments of political mobilization and to use them not to inform but to participate to politics. A fundamental turning point for Italian journalism is represented the emergence of commercial private news television and its competition with public television (RAI): from the 90s the success of infotainment logic made a radical change possible, since journalistic programs had to attract people and use a spectacular frame (Castronovo & Tranfaglia, 1994; Forgacs, 2000; Rizzuto, 2018). The most dangerous consequence is that, in the last decades, crucial issues like economic crisis, wars and migrations of millions of people to Europe are reported through a dramatizing lens; in addition, the radical transformations of media ecosystem and the digital revolution deeply transformed not only the newsmaking process, but also the definition itself of news as well as the actors involved in information global circuit (Splendore, 2017). As a matter of fact, through social media a process of growing “informative disintermediation” is now possible as well as a more direct relationship between leaders and citizens, bypassing both traditional media. This brought about a deep crisis in journalism because in the *hybrid* and *convergent* new media ecosystem individuals can have an active role in the communication circuit and discuss topics of general interest: they are no longer mere receivers of messages written by professionals but active *prosumers* (producers and content consumers) and networked citizens (Chadwick, 2013). One of the most relevant consequences is that, in the contemporary post-truth context, many information products claim to present reality and true stories, but they often mix reconstructions, actors or employ music and lights to enhance dramatic and entertainment elements: individuals are, therefore, encouraged to accept news content even if a clear boundary between true and false is often blurring (Cappello & Rizzuto, 2024). If journalists prefer short, visual stories, full of dramatic elements with an

actor (hero or villain) at the center, the main effect is the banalization of public debate and the selection of themes, problems, and facts, only if they can be easily transformed into a drama. With the complete fusion of information and show many issues or events are ignored or, on the contrary, reality is simplified, dramatized, fragmented, and personalized by using a lot of stereotypes and definitions.

## 2. OLD BIASES AND NEW TRENDS IN ITALIAN MIGRATION JOURNALISM

In this chapter I will underline the presence of some linguistic strategies used by Italian news media to present migrants as a *danger* and will put them in connection with two relevant turning points in the recent history of Italian journalism, which dramatically changed the journalistic profession both in procedures and in actors: the success of infotainment logic and the new circuits of direct digital information in the platform society. As we said, from the 90s Italian news media have privileged a softer and recreational use of news, imposed by the success of the market model in journalism (Schudson, 2003; Rizzuto, 2023), which has weakened the traditional supremacy of literary and political journalism. More recently, in the post-truth context in which the boundary between true and plausible has become opaque, the ambiguous connection between the logic of *emotainment* (Santos, 2009) and the duty of telling *true* stories obliges to put in evidence some relevant risks of the spectacle of news: if reality is used as a platform to build intriguing and exciting info-entertainment products (Thussu, 2007; Rizzuto 2024), journalists privilege special effects, horrors, drama and violence, to produce an emotionally engaging content. In this perspective, Italian news coverage of migrants has perfectly followed the logic of infotainment, aiming at a superficial and disengaged reaction to the “spectacle of the sufferings” presented by news (Boltansky, 1993).

One of the most relevant consequences of the spectacularising of news is that migration has been associated to dramatic events or crimes, too often connected to specific ethnic and cultural differences, which confirmed prejudices and stereotypes (Mansoubi, 1990; Corte, 2006; Cotesta, 2009; Binotto, Bruno & Lai, 2018; Mancini *et al.*, 2021). Facts like crimes committed by foreigners or the shipwrecks in the Mediterranean Sea are very newsworthy, because they offer personal tragedies, with tears or shouted denunciation, and the emotional and visual dimension are central. Many Italian scholars have highlighted this tendency towards a spectacular

journalistic construction of foreigners based on commonplaces, which erase the differences among individuals, through a “depersonalizing process”, useful to confirm prejudices on some specific ethnic groups. As Cotesta (2002) argued, the “Other” is usually presented as a cause of problems:

*It is an image based on the contrast between Us/Them and on the traits of a positive characterization for us and a negative characterization for them, because “us” implies order, rationality, solidarity; “them”, on the contrary, makes reference to privileges disorder, irrationality, need, thus legitimizing our superiority and their inferiority (Cotesta, 2002, p. 281).*

Italian journalists tended to focus more on migrants’ crimes rather than presenting stories of successful integration: as a matter of fact, there is a great discrepancy among the media representations of migrants and official statistics, so that journalists have been building for two decades a vicious circuit, in which the situation has often been described in terms of emergency, both as a crisis and as a threat to Italian society (Binotto *et al.*, cit, 2018). The presence of migrants is covered above all as a *safety* issue, since they provoke conflicts or disorders while, on the contrary, the natives appear in the newspapers only if they involved in protest actions or, more often, as victims. One of the most dangerous strategies used in Italian newscoverage of migrants is the frequent use of a metaphorical and hyperbolic language to deform facts, like literary or religious metaphors (*exodus* or *odyssey*), an epic style or reference to the *far west* as well as derisory lexical choices. In general, a *westernizing* vision of the migrants has been the dominant perspective, evident in many references to clothing, religious habits or physical habits, which contribute to socially building the image of *Others* as *too different* (Van Dijk, 1987; Dal Lago, 2004). The descriptions often use a physiognomic repertoire or somatic indicators, which help create deep group boundaries, so that a category of people is “created” simply by naming it (*the Maghrebi*) or attributing the adjective of colour (Blacks) as a “natural” indicator (Surette, 2007). As Cotesta (2009) pointed out newsmedia strengthen some racist equations like, for example, Albanian = criminal, Romanian = thief, Arab = terrorist (Cotesta, 2009): as a consequence, differences among foreigners are reduced, while those with the natives are maximized. In addition, it is often used a strategy of “inferiorization”, evident in terms like *poor* or *desperate*, which reaffirm a condition of marginality and inferiority and connect the image of the Other-migrant to the dimension of irregularity, seen simply in terms of an administrative or a police problem (Mazzara 1998; Dal Lago, 2008; Colombo, 2020). In this perspective the word “extra-comunitarian,” which focuses

on the fact that migrants are “outside” of the European/accepted world, is another way used to present migrants as “different” from Italian citizens, supporting the social construction of a category of individuals, non-EU citizens (Sibhatu, 2004): *extra* indicates, by exclusion, non-belonging to the new European homeland, but it is ambiguously used by news media only to refer to citizens from some African or Asian countries and not, as the word should indicate, to all citizens from all non-European states (therefore, also Americans, Japanese, Australians).

Since 2015, the Pavia Observatory has collaborated with the Association Carta di Roma<sup>1</sup> for the creation of an annual report on the media representation of the migratory phenomenon: these reports reinvigorated public discussion about the relationship among news coverage and racism as well as the growth of awareness of the role of social media in the dissemination of information on sensitive issues such as immigration. Reading the diachronic analysis presented in the different editions of the Report (from 2015 to 2024) it is useful to focus both on some of the symbolic words of each year, which have a significantly high relative recurrence, and to outline changes in frames or news values adopted to select or report events concerning migration in Italy.

As pointed out by many scholars, from these Reports it emerges that the definition of a *permanent emergency* is the most frequent element of Italian news coverage on the migratory phenomenon: the words used outline a frame of “infinite crisis”, endemic, which changes over time and spreads from the news to the political debate, within Italy and among European institutions. For example, *Lampedusa*, a place of hospitality and tolerance but also of emergency and humanitarian tragedy, was the symbolic word of 2013, in a setting of humanitarian crisis. *Mare Nostrum*, identifying the military and humanitarian rescue operation at sea of migrants instituted by the Italian government, was the symbolic word of 2014, confirming an endless crisis, due to the number of arrivals and the difficulties of containment. From 2015 the political thematization of the phenomenon becomes predominant and the symbolic words of

1 The Carta di Roma Association was founded in December 2011 to implement the ethical protocol for accurate reporting on immigration issues: it was signed by the National Council of the Order of Journalists (CNOG) and the National Federation of the Italian Press (FNSI) in June 2008. The association has become a stable point of reference for all those who work daily on the issues of the Carta di Roma, primarily journalists and information workers, but also professional bodies and institutions, associations, and activists long committed to the rights of asylum seekers, refugees, minorities, and migrants in the media.

the following years confirm this trend: for example, *Europe* in 2015 puts evidence of the supranational dimension of the migration issue; *walls* in 2016, refers to a systemic crisis of the European Union, undermining its founding principles. From 2017, whose symbolic word was “NGO”, it becomes evident the genesis of suspicion on humanitarian workers and a setting that turns into a rejection crisis, fuelled by intolerance and brutal cases of crimes broadly covered by news. In 2018, the year of parliamentary elections, the symbolic word was “Salvini”, the absolute protagonist of the titles, in a setting that changes into a crisis of values, due to the exacerbation of political debate. In 2019, the leader of the League was joined as a symbolic word by the humanitarian activist “Carola” (Rackete), main antagonist of a narrative frame with a divisive crisis, where the polarization of positions is widening. In discontinuity with the previous years, in the 2020 survey, the frame of *crime* disappears as an autonomous semantic core, that has proposed the binomial immigration-crime, and the crime frame, is partially replaced by that of the health alert for Covid-19 and the risk of spreading the infection due to the arrival of new migrants so that the term “clandestine”, legally wrong, is still widely used in the headlines of Italian newspapers.

Drawing from the most recent data collected by the Osservatorio di Pavia (2024), it is possible to observe some crucial changes in the media representation of migrants in Italy, above all an emerging “discontinuous” media attention, with peaks coinciding with some dramatic events like the death of the Indian laborer Satnam Singh or relevant political actions like the implementation of the agreements between Italy and Albania to build in Albania centres for migrants illegally arrived in Italy. The 12th Report entitled “Contrasting News” shows that in 2024 there was a general decline in coverage of the migration issue in the Italian press and television news (Milazzo, 2024). A content analysis was conducted on the front pages of six Italian newspapers (from January to October): *Avvenire*, *La Stampa*, *Il Giornale*, *La Repubblica*, *Corriere della Sera*, and *Il Fatto Quotidiano*. Front-page headlines and articles with explicit references to migration and its protagonists were explored. Newspaper front pages saw a 42% decrease compared to the previous year, while prime-time news programs recorded a 41% decline. It’s likely that highly newsworthy issues, such as the Russian-Ukrainian and Israeli-Palestinian conflicts, and the European and US elections, have contributed to this decline in coverage. The key word for this year is “Albania,” in relation to the agreement between the Italian and Albanian governments that led to the construction of *centres* for migrants in Albania and the resulting debate and tensions between the government and the judiciary over the legitimacy of the decree with

respect to international law and the directives of the European Court. However, despite the smaller attention in terms of presence in the press articles or tv news, 41% of Italian citizens still perceive immigration as a *threat to security and public order*: this trend confirms, once again, the potential influence of media reporting on the perception of risk associated with migration. The report highlights some peaks in media attention in June, coinciding with the death of Indian farmworker Satnam Singh, and an increase between September and October, during the implementation of the agreements between Italy and Albania. Headlines in the Italian press examined also decreased by 34%. The daily Catholic newspaper *Avvenire* continues to stand out for its high level of interest, with 254 published articles on migrants and migration: it keeps leading the coverage, with 870 headlines (a daily average of 2.9 headlines), despite a 17% decrease compared to 2023. The most frequent words in the headlines reflect a focus on political institutions, while terms such as “landing” and “sea” are less frequent. The media, however, continue to portray migration as a “permanent crisis,” with *alarmist* language that records a relatively constant presence of words such as “emergency,” “crisis,” “alarm,” and “invasion” (5,728 occurrences) in the period 2013-2024, although with a slight decrease in the last year. Migration is primarily presented as a political issue, with “polarizing tones and a rigid vocabulary that emphasizes contrasts”: even if in 2024 there is a reduction in attention to “landings,” the vocabulary remains unchanged, and coverage on integration and humanitarian protection issues, except for aspects related to legality and workplace safety, keeps declining. The use of stigmatizing terms such as “clandestine” has decreased. The stigmatizing term “clandestine” appeared 1,772 times in Italian press headlines between 2013 and 2024, with a peak in 2017 and 2018, and a subsequent downward trend. In the first 10 months of 2024, the term was used 37 times, equal to 1% of all headlines.

A positive trend is that the use of expressions such as “extracomunitario,” “vu cumprà,” “zingaro,” and “nomade” has decreased over the years from 5% in 2014 to 1% between 2022 and 2024. A significant decline in coverage of migrants was also observed in the seven national Italian news programs examined: -41%, for the same reasons as the increased newsworthiness of other topics. The two news programs that devoted space to the topic were Tg4 and Tg3, with 7% and 6.8% of the news coverage, respectively. Some other data show a positive change: in comparison with 2023, it is evident an increase of news about “Hospitality” (from 3.7% in 2023 to 2.9% in 2024), of the “Economy and Work” segment (11%) in connection with two events that occurred in 2024: the collapse of the Esselunga construction site in Florence and the death of Satnam Singh, which prompted news programs

to reflect on exploitation and the conditions of immigrant workers. Also, the segment “Society and Culture” increased (18.3%), reporting news on the political debate on citizenship (*Ius Scholae*) but also episodes of racism in sports. However, the most evident and problematic element emerging from the data is that in 2024, only 7% of news reports include the direct voices of protagonists in migration, while a third of news stories contain statements from politicians. Even on television, just under a third of news stories about migration (26%) contain at least one statement from an institutional politician and half of these are from a government official. This highlights a central role of politics in the media coverage of the migration phenomenon even if there are relevant differences among media, which reflect the proximity of some news organizations to the government: for example, RAI Tg2 has the greatest political prominence, with 38% of news stories containing political statements, while Tg La7 has 14% and the other networks present a range between 18% and 22%. Moreover, the negative side of reception, problematic and full of critical issues, still prevails in Italian news (48%) while a positive and virtuous side of reception emerges only in 32% of news stories, and in 20% of cases, the positive and negative aspects are absent or present together. However, once again, there are some evident differences among the media: Rai news programs portray the bright side of hospitality, while alternating it with problematic sides in a balanced way; Mediaset news programs, on the contrary, predominantly focus on the negative aspects. In conclusion, these data show new positive trends as well as old biases: it emerges that despite an evident decrease of the presence of the topic “migration” in the Italian news, this is mainly presented as a political issue, with polarizing tones and a rigid lexicon that emphasizes contrasts. The fact that in 2024 the 41% of Italian citizens still perceived immigration as a threat to their security and public order, confirms the potential influence of the media traditional narratives and frames on the perception of risk associated with migration: media strategies of categorization, differentiation, exaggeration have been encouraging a negative evaluation of ethnic minorities for years so that immigration is still seen as a direct cause of social problems, conflicts, cultural threats.

## CONCLUSIONS

To claim that news can affect the definition of problems means that journalism is central in our life: news media operate as the “definers”, offer frames to understand events and give them relevance in the public debate.

From this point of view, the real media power is not their capability to manipulate individuals during elections, but to create and disseminate pervasive images of the world that are daily accepted as real by citizens. In the newscoverage of migrations, journalists do not simply reflect a phenomenon or report facts and data, but they contribute to produce narratives and give visibility to social or political actors, presenting them in a hierarchical order: these representations become pervasive, are discussed by people and continuously reinforced through specific discursive forms as well as rhetorical figures and lexical choices, even if they are biased or prejudiced. In order to understand the relationship between migration and its newscoverage, therefore, it is necessary to overcome a simplistic perspective, according to which the media spread lies, voluntarily deforming the facts since news professionals are always led by ideological guidelines, in order to manipulate readers. Journalism by definition tells facts: it is not, however, a simple transfer from the event to the word but a real “transformation” (Schudson, 2003). The relationship with reality is not obvious: the point of view, the way of connecting events, the logic of temporal succession of facts or the causal logic of a *story* are just some of the elements that make clear the artificial and cultural nature of any journalistic product not to mention the national *declinations* of different news systems. Therefore, we can assert that the role of journalism in the construction of our perception of many social issues and their construction as “problems” is clear in the definition itself of news as a “cultural” product, linked to a context. In the case of migrations, it is necessary to understand how this “theme” is constructed, how migrants are presented to the audiences and which effects are produced.

As we said in the previous pages, many studies underlined that Italian news media have generally offered a banal and partial account of events involving migrants, in which stereotypes emerged and prejudices are confirmed: undoubtedly, infotainment and its excesses may be considered as responsible for a deep trivialization of the contents in Italian public debate, because of the dominance of dramatic and emotional elements. In the dynamics between news on migrants and spread of hatred or racism, defining the role, causal or not, of journalism in the production and reinforcing of prejudices is a central question: there is no doubt that media encourage biases and create an atmosphere of general intolerance towards migrants-others, but it is also true that individuals continually use media images to legitimize their attitudes and behaviours.

Nevertheless, especially in conflict situations, a simplistic explanation connecting media content with racist attitudes may become misleading,

as the media intervene with many other political and cultural factors. Undoubtedly, migration journalism has often been associated with negative issues, like, for example, human trafficking, violence, or marginalization, with a focus is on the arrival process (loaded boats, shipwrecks, border crossing issues, the closing of harbours): from this perspective, one of the most important problems is that of the consequences that the media definitions of the Other produced on the policies adopted towards migrants in the direction of reception or, on the contrary, severely repressive. In Italy, like many other countries, the journalistic profession's codes of ethics promote full coverage with a humanitarian focus, and fight against discriminatory discourses on minorities. Aiming at respecting these Codes, instead of giving voice mainly to political actors, journalism should *give voice* to migrants avoiding a *superficial* coverage, which cannot grasp the whole complexity of the phenomenon. News should be improved for the audience, to let them understand the multiple dimensions of migration by presenting a more individualized, human, and deeper coverage, not only showing thousands of people arriving in a new country, but analysing the causes and human stories behind them.

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## 7. POLITICISATION OF MIGRATION IN ITALY AND SPAIN

### Diverging origins, converging effect

GIORGIA BULLI  
*University of Florence*

#### INTRODUCTION

Contemporary migration has become a structural feature of Western European societies. Earlier portrayals of migration as a “challenge” have increasingly given way to interpretations that conceive migration as a structural component of contemporary societies. Yet, despite this perspective being well established in the scholarly literature, the political framing and administrative management of migration flows continue to represent a highly contested arena, marked by persistent conflict and politicization (Ambrosini, 2021). Multiple social, cultural, and political factors have contributed to transforming migration and the governance of migratory flows into a highly politicized issue. Ultimately, however, the central driver of migration politicization has been the strategic investment of political parties, which have framed migration as the primary source of citizens’ growing insecurity, the erosion of national—and even local—identities, and the strain on welfare resources already weakened by the economic and financial crises affecting Western European countries (Hadj-Abdou, 2021; Hutter and Kriesi, 2021).

This phenomenon of politicization —namely, the influence of political and partisan variables in the definition and framing of migration (Gattinara & Morales 2017)— has over time assumed relatively uniform national characteristics. These are linked both to international contingencies (such as the so-called “refugee crisis”) and to the investment of parties from the (radical) right-wing populist family, though not exclusively, as clearly highlighted by Hadj-Abdou *et al.* (2022) in their studies on the influence of center-right parties.

Although the literature on the politicization of migration shows that the drivers of politicization are not only radical right parties, and that the impact on policy-making in the field of migration does not always reveal

a direct incidence of populist radical right parties (PRRPs) in government (Lutz 2019), these parties have certainly contributed to making migration one of the most contested battlegrounds in political communication (Akkermann 2012). PRRPs have stigmatized the phenomenon of migration not only by attributing to migrants the responsibility for rising crime (Bigo 2002) and social disintegration, but also by advancing an idea of nativism (Mudde 2007), both social and economic (Betz 2019).

The politicization of migration is accompanied by increasing political polarization around the issue, a phenomenon that remains underexplored in the scholarly literature and in which national political contexts play a particularly significant role (Böhmelt *et al.*, 2024). The framing of migration as an “invasion” by radical and populist right-wing parties has progressively intensified, fueled by the dramatization and spectacularization ensured by media coverage of their positions and agendas in a context heavily shaped by technological innovations. With the advent of social media, the shift from mediated coverage to communicative disintermediation has further enabled the transfer of party agendas on migration to online platforms, where they often take the form of hate speech and extreme polarization (De Rosa *et al.*, 2021).

These dynamics have affected all Western European countries, albeit with different timing. Migration has been subject to politicization and polarization, regardless of factors such as the proportion of migrants within the total population, the strength or weakness of traditions of welcoming asylum seekers or refugees, or the availability of Welfare State resources. Not even the “historical memory” of having been, in previous centuries and up to the mid-20th century, “countries of emigration” has prevented the development, from the mid-1980s onward, of widespread anti-immigration rhetoric (Colucci 2011 for Italy; Pasetti 2017 for Spain). This applies particularly to Italy and Spain, two countries that experienced constant waves of emigration (both international and internal) until the mid-1960s and that are now experiencing the centrality of the immigration issue in politics at both national and local levels.

Despite the many differences that characterize the Italian and Spanish cases in terms of the forms and waves of politicization, the comparison between the two countries is particularly promising. Compared to Spain, Italy represents a case of early politicization of the migration issue. As will be discussed later, politicization in Italy occurred primarily through a populist regionalist party—the Northern League—which, since the early 1990s, had made the fight against migration one of its central issues (Schmidtke & Zaslove, 2014, p. 179). Anti-immigration rhetoric then spread to other center-right parties, in a dynamic of contagion that also

affected political formations outside that spectrum, especially at the local level (Castelli Gattinara 2016; Bale *et al.*, 2010). Spain, by contrast, long considered an exception with respect to the emergence of right-wing populist parties characterized, among other things, by anti-immigration rhetoric (Alonso & Rovira Kaltwasser, 2015), has only recently experienced the politicization of migration, following the electoral success of the VOX party, which introduced the issue both nationally and locally (Turnbull-Dugarte, 2019). The differences in timing are explainable and help shed light on the extra-partisan dynamics of politicization—addressed in the next section—which involve not only the national dimension but also the sub-national level (the regions in Italy and the autonomous communities in Spain).

The aim of this chapter is to reflect on the rise of anti-immigration rhetoric following the politicization triggered by populist parties and the migration management policies promoted and implemented in Italy and Spain. The chapter builds on insights developed within the European project RISE Global Answer, which examines the responses of social services and social work to the needs of integration, individual and collective empowerment, and the affirmation of migrant populations and/or those with a migratory background. Within this project, coordinated by the University of Granada, the observation and analysis of the recent politicization of migration have provided the basis for a comparative reflection between the two countries.

This chapter is divided into three sections. The first outlines the politicization of migration in Italy over the past thirty years, while the second examines Spain using the same analytical framework. For each country, three phases in the development of migration politicization are identified for comparative purposes. The final section underscores how politicization and polarization constitute two central elements of migration-related narratives and policy-making in two deeply different national contexts, Italy and Spain.

## 1. ITALY'S EARLY POLITICIZATION

As has long been noted in both academic and non-academic settings, references to the presence of migrant citizens in a given national territory are never entirely certain. The validity of the numbers is affected both by problems related to data sources and by the difficulty of estimating the presence of individuals who are not stably registered—or not registered at all—in the population registers, either because they are non-residents

or because they are in situations of irregularity (Natale & Strozza 1997; Acocella 2015). Despite these difficulties, and with the awareness that the available data are incomplete, it is still possible to draw on studies conducted by institutional sources and the most accredited agencies monitoring the presence of people with a migratory background.

According to ISTAT (2024), as of January 1, 2025, the foreign resident population in Italy was approximately 5,422,000, an increase of 169,000 (+3.2%) compared to the previous year. Foreign nationals make up 9.2% of the total population. It is also interesting to report on the regional distribution: North 58.3% (3,159,000 residents, 11.5% of the region's population), Center 24.4% (1,322,000, 11.3%), South 17.3% (941,000, 4.8%). Similar data emerge from the "Caritas Migrantes" Dossier (2024). As of January 1, 2024, the resident foreign population in Italy stands at 5.308 million people, an increase of 166,000 individuals (+3.2%) compared to the previous year. Foreign nationals now make up 9% of the total population. Northern Italy hosts the majority: 3.109 million (or 58.6% of all foreigners), with a regional incidence of 11.3%. The Central regions are also highly attractive, with 1.301 million foreigners (24.5% of the total), and an incidence rate of 11.1%. The South and Islands have a more limited presence: 897,000 foreign residents (16.9%), with an incidence of just 4.5%. In 2023, over 200,000 foreign nationals acquired Italian citizenship, a figure consistent with the previous year (214,000), though slightly lower.

Certainly, the figure for the foreign population is not indicative of the real presence of migrants or people with a migratory background in Italy. What is interesting, however, is the perception of the Italian population about the presence of migrants and their percentage. The issue of perception, or rather misperception, of the immigration issue is becoming increasingly relevant in the literature (Lutz & Bischnau 2023). Research dating back to 2017, based on Eurobarometer data, showed that the majority of citizens were not able to indicate the percentage presence of migrants in the territory. In the case of Italy, the margin of error was very high (+17%, in Spain the figure was 14.4%), the highest among those recorded in EU countries. In subsequent years, the situation has not improved. Recent surveys show that knowledge of the incidence of the foreign population remains far from the actual data. An important role in creating this discrepancy between the real situation and the perception and concern about the migration phenomenon is to be attributed to political parties and the politicization of the migration issue and to media coverage.

### *1.1. The first phase: The Northern League as political entrepreneur*

Attention to the migration issue, accompanied by phenomena of politicization, has had various waves, with increasing attention from the mass media, initially press and television. Immigration has gained silence in Italy since the end of 1990's (Urso 2018). For the purposes of the comparative analysis with Spain, the politicization of migration can be divided into three main phases: (1) from the early 1990s to the early 2000s; (2) from the early 2000s to the mid-2010s; and (3) from the mid-2010s to the present.

During the first phase, from the early 1990s to the early 2000s, Italy for the first time structurally faced the transition from a country of emigration to a country of immigration (Martiniello, 1992). The massive arrival of migrants from Albania and other Eastern European countries, following the collapse of communist regimes, posed new social and institutional challenges. The legal and political system did not yet have consolidated instruments for managing flows, and public debate was strongly influenced by the media impact of spectacular episodes such as the landings in Bari in 1991 (Campani, 1993). It was within this context that the first wave of migration politicization emerged, rapidly occupying spaces of political and media attention that had previously remained untouched. Despite the relatively limited number of arrivals compared to countries such as France and Germany, and the low salience of the issue in public opinion, the growth of migration flows driven by international developments rendered migration a “latent” issue.

Although the politicization of migration involved parties across the political spectrum (Urso 2018), some played a more decisive role as political entrepreneurs of the issue than others. In this first period, the main party driving politicization was the Northern League. Founded in the late 1980s as a regionalist populist party with secessionist ambitions (Biorcio, 1991), the League was characterized by anti-establishment, anti-centralist, and anti-Southern rhetoric. In its struggle to affirm the superiority of northern Italy—portrayed as productive and culturally homogeneous—internal migrants from southern Italy were stigmatized as “*terroni*” (a derogatory slang term historically used in northern Italy to insult people from the south of the country), likewise exploiters of the wealth laboriously produced by the northern regions (Huysseune, 2008). The anti-Southern stereotype (Rovati 1990, p. 494) soon gave way to other forms of xenophobia, this time focused on Italy's first real confrontation with the transition from emigration to immigration. The arrival of hundreds of thousands of Albanian migrants starting in the early 1990s, coinciding

with the collapse of Albania's political system, offered the League an opportunity to align itself with the anti-immigration discourse that was simultaneously gaining traction in many other Western European countries, where right-wing (radical) populist parties were beginning to achieve success. At this stage, the prominence of anti-immigration proposals in these parties' agendas reflected their anti-establishment orientation and their effort to distinguish themselves from traditional parties through a principle they considered "sacred": the direct and unfiltered expression of the people's will, fears, and anxieties. This positioning entailed a rejection of what they depicted as the mystifying—or even deceptive—practices of mainstream parties (Tarchi, 2015) and the adoption of explicitly anti-political stances (Mastropaolo, 2005). Up until the early 2000s, therefore, politicization of migration in Italy primarily referred to the ways in which the Northern League made migration—though not its main political platform—one of its most visible battlegrounds. Among other center-right parties, immigration played a much less prominent role: in Forza Italia, founded by Silvio Berlusconi, it remained marginal, while in Alleanza Nazionale (National Alliance-AN) it received secondary attention, though still more visible than in other parties.

### *1.2. The second phase: identity politics*

Between 2000 and 2015, Italy experienced a steady diversification in the structure and countries of origin of its migrant population. At the beginning of the 2000s, flows were still strongly characterized by arrivals from Eastern Europe. Significant communities also came from Morocco, Tunisia, and Egypt, reflecting Italy's geographic position in the Mediterranean. The events of the Arab Spring marked a turning point, triggering new and intense migratory movements from North Africa, especially from Tunisia and Libya, and reinforcing the perception of Italy as the main entry point into Europe through the central Mediterranean route. From the mid-2000s onwards, increasing numbers also arrived from sub-Saharan Africa and South Asia, contributing to a complex mosaic of communities differentiated by linguistic, cultural, and religious backgrounds. By 2015, Italy had consolidated its status as a multi-ethnic society, with foreign residents accounting for about 8% of the total population, and with a migrant presence that was no longer temporary or seasonal but increasingly stable, involving family reunifications, long-term settlements, and second-generation growth.

In terms of politicization, the early 2000s were shaped by the international context marked by the attacks on the Twin Towers of September 11, 2001, which redefined the perception of migration through a security lens. The polemical targets of anti-migration discourse began to add to their previous communitarian and extra-communitarian dimensions a religious connotation, with growing anti-Islamism and Islamophobia (Mammone 2024). From that moment, not only did the polemical targets of anti-immigration proposals change, but the xenophobic rhetoric advanced by the Northern League, and by other parties beginning to understand the political profitability of the migration issue, was also profoundly reshaped (Zincone 2006). It is no coincidence that the 2002 organic law on migration (Law 189/2002) bore the names of two signatories: the then leader of the Northern League, Umberto Bossi, and the then leader of the National Alliance, Gianfranco Fini. The so-called Bossi-Fini Law stipulated regular residence only for those already holding employment. The law also regulated aspects of a “security” nature already introduced by the previous Turco-Napolitano Law, issued by a center-left government in 1998, testifying to the fact that by the late 1990s the effects of the politicization of migration had “contaminated” even parties not belonging to the political culture of the right or of populism. The participation of the Northern League in center-right governing coalitions during this period (2001-2006; 2008-2011) ensured that migration assumed increasing political relevance, as confirmed by both national and supranational survey data.

The 2000s were therefore inaugurated under the sign of anti-Islamism and a torsion of anti-immigration discourse towards an identitarian dimension. While already present since the early phases of migration politicization, this dimension began to combine the religious and cultural element (the exaltation of Christianity against the perceived threat of Islamic obscurantism) with civil elements (such as the protection of women according to the principles of femonationalism – Farris 2017), and even political ones (the opposition between the Enlightenment idea of Europe and the threat of the advance of non-democratic regimes). Scholars have underlined how the Northern League, while initially centered on a regionalist and anti-Southern rhetoric (Diamanti 1993), progressively evolved into a full-fledged populist radical right party, with anti-immigration, anti-Islamic, and ethno-nationalist discourse becoming central to its identity. This evolution paralleled broader European trends, in which migration and Islam were framed as existential challenges to national identity and social cohesion.

### 1.3. *The third phase: polarized politics*

Starting from the so-called “refugee crisis” of 2015, Italy became one of the epicenters of migration routes in the central Mediterranean (Castelli Gattinara, 2017). Landings, tragedies at sea, and images disseminated by the media accentuated the emergency framing of the phenomenon (Colombo, 2018). At the same time, the economic crisis and growing political instability fueled the perception of immigration as a threat to security, welfare, and national identity (Tuorto, Gargiulo, & Morlicchio 2024). It is in this context that politicization assumed a polarized dimension, with the entry of new political actors and the systematic use of social media as instruments of propaganda.

With the early years of the 2010s, the politicization of migration entered a new phase. This transition was shaped both by international variables and by changes in the Italian party system. At the international level, the consequences of the Arab Spring compelled Italy, from 2011 onward, to manage landings on its coasts—primarily from Libya and Tunisia—which soon assumed tragic dimensions. The Mediterranean became a lethal route for hundreds of thousands of migrants who lost their lives either in highly mediatized shipwrecks or in a daily trickle of deaths that generated habituation to the news. From a political perspective, alongside the traditional actors of anti-immigration rhetoric—the Northern League, which in 2013 changed leadership under Matteo Salvini (Albertazzi, Giovannini, & Seddone 2018), and the successor of the National Alliance, refounded in 2012 under Giorgia Meloni as— Fratelli d’Italia (Brothers of Italy) — (Baldini, Tronconi, & Angelucci 2022)—new actors emerged. The first among these was the “Five Star Movement,” founded by comedian Beppe Grillo. A new populist party, it resisted placement within the conventional left-right distinction and initially did not include migration among its main issues (Tronconi, 2015). However, the international politicization of migration and the responsibility of European countries to respond to asylum requests after the “refugee crisis” soon also affected the Five Star Movement. Despite never adopting a clear position—oscillating between widespread criticism of migrants and NGOs engaged in assistance and rescue operations (often stigmatized as “sea taxis” to underline their alleged pull factor) and a more humanitarian framing oriented toward respect for international law—the party nonetheless pursued the path of forming a coalition government with the League after the 2018 elections (Mosca & Tronconi 2021). The government, which lasted just over a year under Prime Minister Giuseppe Conte, immediately signaled its anti-immigration agenda, consistent with the political history of its Interior

Minister and Deputy Prime Minister, Matteo Salvini. It approved the so-called Security Decree, which, among other measures, almost completely abolished humanitarian protection and confirmed Italy's refusal to adhere to the Global Compact on Migration (Corsi, 2019). The refusal to authorize the landing in Lampedusa of 147 migrants rescued by the "Open Arms" vessel, and the subsequent trial of Salvini, is emblematic of the extremely high level of politicization of this third phase (Castillo-de-Mesa *et al.*, 2021).

The climate of confrontation between political forces and within society was further intensified by the consolidated use of social media platforms as tools of direct, unmediated communication by party leaders. In this phase, ideological polarization became a true political spectacle, persisting even in the face of tragedies such as the shipwreck at Steccato di Cutro in February 2023, where 94 people lost their lives just a few meters from the coast. In the aftermath, Prime Minister Giorgia Meloni convened a Council of Ministers in Cutro (March 9), during which severe measures against "human traffickers" were announced and amendments to immigration law were introduced through a decree that became tragically known in public debate and among practitioners as the "Cutro Decree" (Ambrosini 2023). Both the Council of Ministers held in Cutro and the trial of Salvini—first convicted for kidnapping and later acquitted—stand as paradigmatic examples of polarized politicization, at once mediatized by traditional outlets and disintermediated through the social media strategies of party leaders, and are emblematic of the third phase of migration politicization in Italy (Lucchesi, 2025).

## 2. SPAIN'S LATE POLITICIZATION

For Spain, the politicization of migration is a relatively recent phenomenon in the political arena. Until 2000, the salience of migration was very low (Ros & Morales 2015). Despite its privileged ties with former colonies, from the mid-19th century until the 1980s Spain was often classified as a country of emigration. The situation changed in the 1990s, when Spain progressively became a country of immigration. Between 2000 and 2009, Spain received half of all migrants arriving in the EU-8 (González-Enríquez, 2017, p. 3). Spanish scholarship on migration has identified several key reasons for this boom, which transformed Spain into a net recipient of migrants: "the consolidation of a democratic political regime during the 1980s; the change in the economic structure towards an advanced post-industrial tertiary economy; and the pre-existing links with some countries that became societies of high migratory pressure"

(Ros & Morales 2015, p. 2). Combined with a favorable demographic context marked by an ageing population, these factors encouraged the inflow of migrant workers—primarily from Eastern Europe, Latin America, and the Maghreb—leading to a sharp rise in Spain’s immigrant population. This trend was temporarily interrupted during the economic and financial crisis, before resuming in 2013. From both a partisan and media perspective, however, the presence of foreign citizens did not for a long time represent a major political issue. Only after the end of the economic boom did public attitudes toward migrants become less positive (Oso *et al.*, 2021, 19).

This section develops the Spanish case by following the same structure applied to Italy: first, a brief account of the presence of foreign citizens in Spain; second, an overview of how the three phases of politicization unfolded; and finally, an analysis of the evolution of migration and its politicization, with a focus on the role of political parties in shaping the phenomenon within a continuously evolving media landscape.

In terms of incidence, the share of foreign residents in Spain is higher than in Italy. According to official data from the Spanish National Statistics Institute (INE 2024), the resident population on 1 January 2024 was 48,619,695, an increase of 534,334 compared to the previous year (+1.1%). Of this total, 42,117,413 were Spanish nationals (86.6%) and 6,502,282 foreign nationals (13.4%). Compared to 2023, the number of foreign nationals rose by 6.8%. The largest groups by nationality were Colombians, Venezuelans, and Moroccans. The perception of migration in Spain has been explored since the late 2000s, with contradictory findings, as shown by one of the most recent surveys from the Centro de Investigaciones Sociológicas (CIS, 2024). According to this survey, migration is considered the main problem facing Spain, while ranking fourth among the most urgent problems at the individual level. Critiques of this study, echoing broader methodological debates on opinion polls as infallible representations of reality, have highlighted the extreme sensitivity of the migration issue and its politicization. As in the Italian case, the diffusion of social media has also favored practices of dramatization and polarization of news concerning migration (Aguerre *et al.*, 2025).

The political and media debate on migration in Spain has undergone significant evolution since the 1990s, reflecting changes in society, the political system, and the international context. As in Italy, it is possible to distinguish different phases of politicization, alternating between periods of heightened visibility and conflict and periods of relative calm. For comparative purposes, a three-phase periodization is proposed: (1) from the early 1990s to the early 2000s; (2) from the early 2000s to the mid-2010s; and (3) from the mid-2010s to the present.

## *2.1. First phase: from marginality to visibility*

In the 1990s, Spain had become a country of net immigration following the democratic transition and accession to the EU in 1986. Migration, however, remained marginal in political and public debate. Numbers were still relatively low, and Spain was perceived as a country still undergoing economic modernization, which shaped a relatively non-problematic image of immigration. Two factors contributed to this: first, the economic boom from the mid-1990s to the early 2000s (González-Enríquez 2017, p. 3), which attracted migrants, especially in the construction sector; second, a relatively benign public perception of migrants. Late-1990s opinion polls (Diamanti, 2000) revealed that, compared to countries such as Italy, France, and Germany, Spaniards expressed far less fear of migration and migrants.

Serious incidents, however, began to increase visibility and tension. The most emblematic case was the anti-migrant riots in El Ejido (Almería) in February 2000, when several days of violence targeted Moroccan agricultural workers following the murder of a local woman. The riots exposed the structural vulnerabilities of Spain's agricultural economy, which relied heavily on irregular migrant labor, and revealed underlying racism and hostility toward migrant communities (Barrero 2003). At the same time, irregular sea routes across the Strait of Gibraltar became a growing concern. Throughout the late 1990s and early 2000s, small boats known as pateras attempted the dangerous crossing from Morocco to Andalusia, with a rising number of shipwrecks and deaths at sea (Carling, 2007). These tragedies drew considerable media attention, contributing to debates around "pull factors" and the perceived limits of Spain's capacity for reception (Oso, Sala & Comet 2021, p. 15). Media coverage increasingly concentrated on these events, reinforcing the narrative of Spain's transformation from a country of emigration to a country of immigration. Nevertheless, during this first phase, migration did not yet represent a source of systemic polarization, remaining a relatively secondary issue within the broader political debate.

## *2.2. Second phase: the rise of security and cultural frames*

The second phase of politicization began in the early 2000s. A shift from relative acceptance to greater tension and politicization can be traced to two main factors. The first was economic: after a decade of extraordinary growth, by the early 2000s the Spanish economy began to show signs of slowdown. The bursting of the real estate bubble and the

onset of the Great Recession (2008-2013) exposed the structural fragility of an economy heavily dependent on construction, tourism, and low-skilled services—sectors in which migrant labor had become central (Domínguez-Mujica *et al.*, 2014). As unemployment soared to over 25% by 2012, with migrant unemployment rates disproportionately high, immigration became increasingly framed as a pressure on jobs, housing, and welfare. Anti-immigration sentiments thus gained renewed legitimacy, even as migrants had contributed decisively to Spain's economic boom in the preceding decade.

The second factor was securitarian: following the September 11, 2001 attacks, Spain too began to frame migration through a security lens. The 2004 Madrid train bombings further reinforced this perception and made the alleged link between migration and terrorism a recurrent theme in political and media debates. Although the subsequent Zapatero government (PSOE) attempted to counterbalance these dynamics by enacting a mass regularization in 2005 that granted legal status to more than 500,000 migrants (Finotelli & Arango, 2005), insecurity and cultural threat frames linked to Islam gained increasing traction (Ramírez & Mijares, 2005). Media narratives increasingly emphasized these issues, contributing to the rise of identity-based discourses.

In 2006, Spain faced one of the most visible migration episodes of the decade: the arrival of over 31,000 irregular migrants in the Canary Islands, mostly from Senegal, Mauritania, and other West African countries, in what became known as the Cayucos crisis. The use of large wooden fishing boats (cayucos) highlighted the growing dangers of irregular sea crossings and triggered dramatic media coverage of overcrowded vessels and humanitarian emergencies (Díaz & Montes, 2008). This crisis encapsulated the tension between humanitarian responsibility and border control, and firmly situated Spain's migration debate within the broader European Union framework (Dudek & Pestano, 2019).

Despite these developments, the far right remained fragmented and marginal throughout this period. Scholars described the “absent presence” of a populist radical right party in Spain, attributing this to structural and electoral factors, such as the dominance of the Partido Popular on the right and the limited political opportunity structures available (Alonso & Rovira, 2015; Kaltwasser 2015). Opinion polls from the mid-2000s onward showed a gradual rise in critical attitudes toward immigration, and the salience of the issue grew accordingly, laying the groundwork for future polarization.

### 2.3. *Third phase: the rise of VOX and polarized politics*

The third phase began with the 2015 “refugee crisis,” which accelerated politicization in Spain. Media pressure, combined with arrivals via the western Mediterranean and the enclaves of Ceuta and Melilla, intensified public debate. Research shows that press narratives began to adopt more dramatic tones, increasingly structured around the populist polarization of “us” versus “them” (Terrón-Caro *et al.*, 2022). The turning point came with the rise of VOX, a far-right party founded in 2013 that became a parliamentary force in 2018 after entering the Andalusian parliament. VOX built part of its political identity on explicitly anti-immigration, sovereigntist, centralist, and anti-Islamic rhetoric. The ascent of VOX, however, cannot be explained solely by the increased salience of migration. Other factors played a crucial role, including the territorial crisis triggered by Catalan independence demands (Turnbull-Dugarte, 2019) and a broader anti-political climate within a rapidly changing party system (Rama *et al.*, 2021). While VOX cannot be considered a single-issue anti-immigration party, its nativist and ultraconservative positions quickly became defining features, and with them the media polarization that followed. The party strategically linked migration to other core issues—such as national sovereignty, security, and family values—creating a multidimensional platform that resonated with segments of the electorate disillusioned with mainstream parties.

The polarization introduced by VOX was amplified across both traditional and digital media. On television and in print, debates increasingly revolved around the dichotomy between VOX’s discourse of “invasion” and humanitarian counter-discourses. On social media, VOX leaders, particularly Santiago Abascal, adopted a combative communication style marked by dramatization, conspiracy rhetoric, and the circulation of sensationalist frames (Domínguez-García *et al.*, 2025). Studies have shown how VOX systematically uses platforms like Twitter and Facebook to spread narratives portraying migrants as criminals, welfare abusers, or threats to national identity, while simultaneously denouncing NGOs as “accomplices” in irregular migration (Soler *et al.*, 2022). VOX also systematically attacks traditional media (Carratalá & Palau-Sampio, 2022), reinforcing the anti-elite climate that is typical of populist discourse.

In this phase, migration has been portrayed as a multidimensional threat: to security, culture, the economy, and welfare. The resulting polarization is stark: on one side, the “invasion” frame promoted by VOX and echoed by parts of the Partido Popular; on the other, the humanitarian frame, largely supported by civil society organizations,

progressive media, and left-wing parties such as Podemos. The Covid-19 pandemic further strengthened securitarian and nationalist discourses, often coupled with fake news portraying migrants as virus carriers or as undeserving beneficiaries of public resources. This combination of populist polarization, strategic media use, and the securitization of health risks has entrenched migration as one of the central battlegrounds of Spain's political communication.

## CONCLUSIONS

The comparative analysis of Italy and Spain shows both converging effects and diverging origins in the politicization of migration. Italy represents a case of early politicization, where the Northern League pioneered anti-immigration discourse in the early 1990s and progressively transformed it into a central ideological marker, later adopted by other center-right and even center-left actors. Spain, by contrast, long displayed what scholars termed an “absent presence” of a radical right, with migration remaining marginal until the mid-2010s, when VOX rose to prominence and consolidated anti-immigration rhetoric as a core component of its platform.

Despite these different trajectories, the outcomes converge: in both countries, migration has become a central battleground of political communication, framed through securitarian logics, dramatization, and increasingly polarized narratives. The role of international contingencies—9/11, the Arab Spring, the 2015 “refugee crisis,” and the Covid-19 pandemic—was decisive in amplifying politicization in both contexts. At the same time, the evolution of the two party systems shaped the timing and intensity of politicization. In Italy, the early presence of a strong populist radical right actor within governing coalitions accelerated the mainstreaming of anti-immigration discourse. In Spain, by contrast, the late but rapid success of VOX occurred within a fragmented party system already under stress from the Catalan territorial crisis and broader patterns of political distrust.

The politicization of migration also affects the realm of welfare and social services. In Italy, welfare chauvinism has been a crucial instrument in the transformation of the Northern League into a fully-fledged radical right populist party. As Bellè and Gargiulo (2025) demonstrate, the League has increasingly promoted welfare policies at the local level that privilege “deserving” Italians over migrants. This process of localizing rights has institutionalized exclusionary practices and reinforced the idea that welfare

resources should primarily serve natives. By coupling welfare chauvinism with its longstanding anti-immigration rhetoric, the League has successfully linked questions of welfare provision with national identity, consolidating its populist appeal and framing migrants as both an economic burden and a cultural threat. In Spain, VOX has followed a similar trajectory, albeit within a different political and institutional context. Fernández-Suárez (2021) shows how VOX has mobilized welfare chauvinism by portraying migrants simultaneously as undeserving beneficiaries of public resources and as a challenge to security and social cohesion. Taken together, the Italian and Spanish cases reveal how welfare chauvinism has become a defining feature of right-wing populist strategies in Southern Europe, linking welfare, migration, and identity in ways that deepen polarization and undermine inclusive citizenship.

This chapter represents a first step toward a systematic comparison of politicization in Italy and Spain. Further research should refine at least three dimensions: first, the mechanisms of populist contagion whereby mainstream parties adopt frames initially developed by radical right actors; second, the predominance of the securitarian approach in European migration governance and its implications for national party competition; third, the specific features of online polarization, with social media enabling communicative disintermediation and the spread of hate speech in ways that reinforce political divides.

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# part II

## VULNERABILITY AND SOCIAL PROTECTION



## 8. THE PHENOMENON OF NON-TAKE-UP IN THE MIGRANT POPULATION

### A human rights approach and the challenges for social innovation

EVA MARÍA JUAN TOSET  
*University of Granada*

#### INTRODUCTION

Social protection systems, beyond the specificities of the contexts that define them, serve as a guarantee for people facing situations of social disadvantage. To fulfill their objectives, these protection systems must guarantee rights and remain accessible, especially for groups at greatest risk of exclusion—primarily those with the highest levels of vulnerability.

These protection systems, with their unique characteristics specific to each country's social models, represent for vulnerable populations the realization of the right to access benefits, services, or resources that guarantee protection against situations that undermine people's dignity, autonomy, or ability to access their rights. This accessibility, for the international migrant population defined as any person who has changed their country of residence, regardless of their legal status, the nature, or the reason for their displacement represents the enjoyment of their rights (United Nations, 2016).

The phenomenon known as “non-take-up” in the field of social protection represents an obstacle that prevents many people from effectively exercising their nationally and internationally recognized rights. Even when social protection measures exist, certain groups or collectives remain excluded due to factors such as impossible-to-meet administrative conditions, linguistic or ethnic discrimination, or insufficient funding of the protection systems themselves. This phenomenon, known as “non-take-up,” is as widespread as it is insidious (United Nations, 2022) and, on all too many occasions, remains an unknown and ignored element by social intervention professionals in the field of protection systems, administrations, institutions, and/or users.

As we will analyze in this chapter, non-take-up is a complex phenomenon that significantly affects the migrant population, representing

a systemic violation of human rights, especially economic, social, and cultural rights. It is a phenomenon to which we find virtually no references and which remains invisible when approached from the perspective of social innovation in social protection systems and a rights-based approach.

The European Foundation Eurofound estimated in 2015 that non-take-up in the European Union affected between 30% and 80% of means-tested benefits, reflecting a considerable scale of the problem (Dubois & Ludwinek, 2015). This phenomenon has continued to worsen among migrants, who face additional obstacles linked to their citizenship status, language barriers, lack of knowledge of social protection systems, and, frequently, structural discrimination.

However, although the non-take-up rates continue to be very significant, this gap in access to rights for migrants is not part of the social innovation agenda within social protection systems. In this chapter, we will analyze how social innovation could establish itself as a key driving force to address this critical gap.

Although institutions such as the International Organization for Migration (IOM) promote comprehensive strategies aimed at generating innovative and transformative responses, limitations persist in their practical application, with significant gaps in institutional approaches that transcend traditional approaches.

For these reasons, this chapter focuses on the challenges that social protection systems face in addressing the non-take-up phenomenon within social innovation models generated with migrants, centered on a human rights approach. This analysis focuses on an understanding of the different concepts involved, emphasizing the international context and the need for the actors involved to make non-take-up a priority that guarantees social protection and access to people's rights.

The various actors—public administrations, social organizations, professionals, and political representatives—share the obligation to ensure that social protection program coverage effectively reaches target groups through social protection programs that support them throughout the life cycle (United Nations, 2022). It is insufficient to establish minimum levels of social protection if these remain inaccessible to the very individuals and groups they are intended to protect, especially the most vulnerable groups, including migrants.

Aware of the complexity of the topics addressed in this chapter, we wish to emphasize the need for further research from a human rights perspective. We want to continue to delve deeper not only into the functioning of protection systems but also into the role that institutions (and professionals) themselves play in the process of rights violations

despite existing regulatory developments. We are aware that with this chapter, we are approaching a broad field of research in which social innovation could play a significant role.

For the development of this chapter, we conducted an integrative literature review using a documentary search strategy focused on official international texts issued by the main international institutions addressing human rights. By choosing this methodological approach, we have engaged with a complex and multidisciplinary research space that allows us to create an overview based on diverse sources emanating from organizations linked to the fundamental integrative perspective: the human rights framework. This approach aims to initiate a path of reflection and interaction, mindful of the complexity involved and the need for further study.

## 1. THE HUMAN RIGHTS APPROACH AS A FRAMEWORK FOR PROTECTING THE ECONOMIC, SOCIAL, AND CULTURAL RIGHTS OF MIGRANTS: SYSTEMS FOR THE PROTECTION AND GUARANTEE OF RIGHTS

According to the UN General Assembly (2018), the international human rights framework guarantees all people, regardless of their migration status, access to those rights under conditions of equality and without discrimination. This premise is the starting point for understanding how the human rights approach is configured as the essential conceptual and operational framework for the protection of the economic, social, and cultural rights of migrants, establishing protection systems as the institutional mechanisms that guarantee these rights.

The human rights approach to migration is based on the principle that “migration is a multidimensional reality of great relevance to the sustainable development of countries of origin, transit, and destination that demands coherent and comprehensive responses” (United Nations General Assembly, 2018, p. 5). This approach goes beyond the mere consideration of migrants as service users to identify them as legal subjects with the capacity to demand the fulfillment of their rights.

Human rights establish a comprehensive protection framework that always applies to all people and is based on the Universal Declaration of Human Rights and various instruments endorsed by states in the field of international protection in migration contexts. This universality implies that economic, social, and cultural rights, including guarantees regarding working conditions, social security, an adequate standard of living, housing,

health, and education, must be guaranteed to all migrants regardless of their administrative status.

### *1.1. Economic, Social and Cultural Rights: The role of protection systems as institutional guarantors*

Economic, social and cultural rights are those human rights that are related to work settings, social security benefits, situations that occur throughout the life cycle (long-term care), access to housing or healthcare, among others (Office of the High Commissioner for Human Rights, 2024a). These rights establish legally binding obligations for all States and imply the respect, protection and fulfillment of the economic, social and cultural rights of all persons within their territory and over whom they have jurisdiction or control (Office of the High Commissioner for Human Rights, 2024b).

Throughout this chapter, we refer to social protection systems as a conceptual category situated at a broader level of competence than social services. We have decided not to limit the review to social services under national legislation in order to provide a broader scope of analysis. This decision was made, first, due to the heterogeneity of existing models and regulations within the European area and, second, due to the limited benefits managed by social services in certain territories, where the guarantees inherent to economic, social, and cultural rights are not fully developed.

In this regard, it is worth recalling that, according to the International Organization for Migration, protection systems constitute “all activities aimed at achieving full respect for individual rights in accordance with the letter and spirit of the relevant bodies of law” (Inter-Agency Standing Committee, 2016, p. 1). In the migration context, these systems take on special relevance since they operate as institutional mechanisms that materialize State protection obligations, establishing organizational structures, procedures, and resources designed to guarantee the effective enjoyment of economic, social, and cultural rights.

The Global Compact for Safe, Orderly and Regular Migration recognizes that States have “a primary obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status” (United Nations General Assembly, 2018, p. 4). This obligation translates into the duty to establish protection systems that operate under specific principles, including the human rights-based approach, the gender and

child-sensitive perspective, and the application of the principle of the best interests of the child.

Protection systems must implement specific mechanisms to guarantee the economic, social, and cultural rights of migrants. The first constitutive element is the “identification and assessment of protection needs,” which requires States to establish “mechanisms and allocate resources to ensure that the protection needs of all migrants can be assessed individually and with due process” (Inter-Agency Standing Committee, 2016, p. 1). The second component would be “entry and stay mechanisms based on human rights protection grounds,” which include administrative and legislative mechanisms to grant legal status to migrants who cannot return, “in the form of temporary, long-term, or permanent protection status designed to uphold international human rights law” (Inter-Agency Standing Committee, 2016, p. 2).

The human rights approach recognizes that certain groups of migrants require specific protections due to their particular vulnerability. The Global Compact establishes a commitment to “address the legitimate concerns of communities, recognizing that societies are experiencing demographic, economic, social, and environmental changes of varying magnitude that may impact migration” (United Nations General Assembly, 2018, p. 4)

For migrants in irregular situations, the Committee on Economic, Social and Cultural Rights has established that “without prejudice to the sovereign prerogative to order the removal of irregular migrants, the mere presence of irregular migrants under the jurisdiction of the State imposes certain obligations regarding their access to and fulfillment of economic, social and cultural rights” (Office of the High Commissioner for Human Rights, 2024, p. 2).

## *1.2. Guiding Principles of Protection Systems from a Human Rights Perspective.*

The Global Compact establishes that guiding principles should inform the operation of protection systems. Among these is the principle of “people-centeredness,” which recognizes that migration “has an important human dimension that is inherent to the very experience of migration” (United Nations General Assembly, 2018, p. 5).

The principle of sustainable development establishes that “migration contributes to positive development outcomes and the goals of the 2030 Agenda for Sustainable Development, especially when well managed” (United Nations General Assembly, 2018, p. 5). This implies that protection

systems must operate from a perspective that recognizes the positive contributions of migration to human development and always under the umbrella of human rights.

The human rights approach constitutes the fundamental conceptual and normative framework for protecting the economic, social, and cultural rights of migrants, establishing protection systems as the institutional mechanisms that guarantee these rights. The effectiveness of these systems will depend on their capacity to operationalize the principles of universality, non-discrimination, and human dignity, eliminating structural barriers and facilitating effective access to services and benefits.

The implementation of strong and resilient protection systems is not only an international legal obligation but also represents an investment in building more inclusive, cohesive societies that respect universal human dignity. Recognizing migrants as subjects of rights, rather than objects of welfare policies, marks the difference between merely humanitarian approaches and genuinely transformative approaches based on human rights. These approaches are essential at times when the human rights framework itself is being challenged by international institutions or by States that limit access to protection systems, targeting migrants.

## **2. THE PHENOMENON OF NON-TAKE-UP: THE STRUCTURAL VIOLATION OF MIGRANTS' ECONOMIC, SOCIAL, AND CULTURAL HUMAN RIGHTS**

The non-take-up phenomenon can be defined as the situation in which a person or family unit, despite meeting the eligibility criteria, does not apply for or use the benefits, allowances or social services to which they are entitled (Eurofound, 2015; Goedemé & Janssens, 2020). This phenomenon is not merely an administrative failure, but we could affirm that it is a critical indicator of the ineffectiveness, inefficiency and inequity of public policies, and how this violation of rights interferes with the achievement of social protection objectives (Goedemé & Janssens, 2020).

The Special Rapporteur on extreme poverty and human rights, in his Report on the non-take-up of rights in the context of social protection, states that by not reaching the intended people, especially those in circumstances of greater vulnerability, non-take-up operates as a mechanism of indirect exclusion that nullifies rights, preventing their interpretation and practical translation (De Schutter, 2022).

The persistence of non-take-up thus constitutes a systematic violation of economic, social, and cultural rights, as noted by the United Nations

Special Rapporteur (De Schutter, 2022). This failure of systems to ensure that rights are fully exercised results in material and non-material deprivations that affect multiple spheres of life. Below, we outline the deprivations that are of particular interest in the area of social protection:

- a. **Right to Social Protection and Adequate Standard of Living:** The effective denial of material benefits (minimum income, housing subsidies, subsistence allowances) entails a direct breach of the right to social security and an adequate standard of living (De Schutter, 2022). By depriving eligible individuals of essential resources, non-take-up exacerbates poverty and economic insecurity, frustrating the purpose of social safety nets and compromising fundamental articles of international covenants and standards such as the International Covenant on Economic, Social and Cultural Rights.
- b. **Right to Health:** The lack of economic resources resulting from non-take-up impacts access to adequate nutrition, decent housing with decent living conditions, and healthcare (De Schutter, 2022). This exclusion from essential guarantees leads to stressful and unhealthy living environments, affecting quality of life and well-being, with significant economic and psychological costs for people (Dewanckel *et al.*, 2022).
- c. **Right to Non-Discrimination and Equality:** Non-take-up is often more severe among groups of people who already face disadvantage, revealing the existence of structural and contextual barriers (Janssens & Van Mechelen, 2022). The Council of Europe's Conference of International Non-Governmental Organizations (2023) has emphasized that redefining social protection as a human right helps reduce the risk of discrimination and stigmatization of claimants, which are key drivers of non-take-up.

Continuing with the analysis of the barriers faced by the migrant population affected by non-take-up, we can identify the following:

- a. **Information and Cultural Barriers:** The lack of accessible information in a variety of languages, the poor understanding of administrative systems and cultural differences in the conceptualization of social assistance act as a decisive impediment to the application and processing of many of the benefits or services that are developed within protection systems (De Schutter, 2022; Janssens & Van Mechelen, 2022).

- b. **Administrative and Bureaucratic Barriers:** The complexity of application procedures, the need for extensive documentation and long waiting times are daunting for any applicant, but are particularly difficult to overcome for those with limited knowledge of the language or the institutional structure of the host country (Eurofound, 2015).
- c. **Stigma and Fear of Conditionality:** Migrants may experience a strong stigma associated with needing assistance, in addition to the fear that applying for benefits could negatively affect their immigration status or future residency applications, creating a “psychological cost” that outweighs the perceived value of the benefit (De Schutter, 2022).

All of these barriers objectively increase the obstacles to accessing fundamental rights for a dignified life. These obstacles arise from the very functioning of these social protection systems, in which professionals and managers participate, directly or indirectly, in the violation of rights that directly impact the lives of migrants and the communities they belong to.

### *2.1. The non-take-up of rights in the European-Spanish context*

Quantitatively approaching the phenomenon of the non-take-up of social rights in protection systems is complex due to the absence of data collection at European and even national level. According to 2015 data, it affected more than 40% of potential beneficiaries of financial benefits in Europe (Eurofound 2015). For minimum income benefits, rates ranged from 29% to 57% depending on the country in 2022 (International Social Security Association, 2022).

In Spain, the situation is particularly worrying. During the first year of implementation of the Minimum Vital Income, only 26% of households in severe poverty received it, which represents a non-take-up of 74% (FOESSA, 2021). In 2023, the Independent Authority for Fiscal Responsibility estimated that 56% of households eligible for the Minimum Living Income did not have access to it, and that the child supplement had an even higher non-take-up of 73% (Independent Authority for Fiscal Responsibility, 2023).

Recent studies have reached even higher figures: rates of 74% of non-receipt for the Minimum Living Income and 88% for the child supplement (Noguera *et al.*, 2024). In addition, there is strong regional variability: in Catalonia, the coverage of the Minimum Living Income and other aid could reach 50% or even 100% when combined with regional programmes (Noguera *et al.*, 2024).

At the European Union level, the non-take-up phenomenon is recognized as a cross-cutting problem. The Conference of International Non-Governmental Organizations of the Council of Europe (2023) underlined the need for coordinated action against non-take-up, urging Member States to assess the policies implemented to combat poverty and non-take-up, in accordance with Articles 30 and E of the Revised European Social Charter (which focus on the right to protection against poverty and non-discrimination). The report emphasized that social protection must cease to be seen as charity and must be considered a human right, with the aim of strengthening the accountability of institutions. In other words, we must move away from traditional needs-based approaches and move towards human rights-based approaches. This progress should also involve professionals from the social protection systems themselves.

De Schutter (2022) report concludes that reducing the non-take-up phenomenon must be an urgent political priority that requires the adoption of proactive measures. These proposals include simplifying procedures, automating benefits (ensuring the inclusion of those without digital access), or coordinating actions to provide targeted and multilingual information. Integrated Rights Practices that act proactively to connect the most distant individuals with services represent an effective strategy against the barriers that perpetuate social exclusion (Boost *et al.*, 2020; Dewanckel *et al.*, 2022).

The failure to provide social rights represents a systematic violation of human rights that disproportionately affects the most marginalized populations, including migrants (Conference of INGOs, 2023). From a human rights perspective, failure to provide services cannot be viewed simply as an administrative failure, but as a manifestation of structural inequalities and systemic discrimination sustained by inaccessible protection systems, unattainable rights, and divergent practices that deviate from the objectives of the normative and conceptual frameworks of social and democratic states.

Although evaluations or research projects on the phenomenon of non-take-up are scarce in the European and national literature, it is worth highlighting two enlightening examples of the non-take-up phenomenon in the field of protection systems. First, the Evaluation of the Non-take-up of Public Services and Social Benefits carried out by Pierre-Marc Daigneault in 2023, which identified three main types of non-take-up (Daigneault, 2023):

- a. Non-knowledge (primary non-take-up): This occurs when eligible individuals and their households are unaware of the existence of a

public benefit or service. This lack of knowledge is a fundamental barrier to initiating any process.

- b. Non-demand (non-take-up): Occurs when an individual, despite being aware of the availability of assistance, decides not to apply for it. The reasons for this decision can vary, including a low perception of its usefulness, an application process perceived as excessively complex or burdensome, or fear of the social stigma associated with receiving public assistance.
- c. Non-receipt (Secondary non-take-up): This type of non-take-up occurs once the potential beneficiary has initiated the application process, but it is either incomplete or rejected. The reasons may include withdrawal due to difficulty or lack of accessibility to the administration, or formal administrative rejections due to time or formality issues.

Second, the project “Detection and mobilization of people eligible for the Minimum Living Income in a situation of non-take-up”<sup>1</sup> was developed in 2024, carried out by the European Anti-Poverty Network in Spain (EAPN-ES). This project highlights, among many other conclusions, that the lack of access to rights is not an individual error, but a systemic dysfunction in which policy design, bureaucratic complexity and socioeconomic conditions intertwine to create insurmountable barriers. This represents an implicit recognition that passive administration is insufficient and that the responsibility for ensuring that the right is exercised falls on institutions, in the management of social protection systems and on the actors involved, including professionals from the different social protection systems.

### 3. SOCIAL INNOVATION FROM A HUMAN RIGHTS PERSPECTIVE IN PROTECTION SYSTEMS FOR MIGRANTS

The incorporation of social innovation as an essential global issue is recognized internationally in documents issued by international organizations, identifying it as a fundamental mechanism for achieving, for example, the sustainable development goals established in the 2030 Agenda. This convergence requires a comprehensive approach that not only articulates international regulatory frameworks but also links them with institutional innovations that go beyond traditional approaches to migration management and social protection systems themselves.

Beginning with conceptual analysis dimensions based on a human rights approach, human dignity, as a foundational value, requires opera-

tionalization through concrete mechanisms that guarantee its practical effectiveness. When it is stated that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood” (OHCHR 2024a), this universal principle establishes the normative foundation upon which any social innovation aimed at protecting populations in situations of mobility must be built.

When we affirm that “everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” (UN 2024a), we are stating that the structural limitations faced by traditional social protection systems in contexts of human mobility cannot be ignored or omitted in any practice addressed from the perspective of social innovation.

Any proposed social innovation must be rooted in regulations that guarantee compliance with a human rights approach and must be implemented in institutional practice and, therefore, also in management and professional practice.

The Global Compact for Safe, Orderly and Regular Migration, the first intergovernmental partnership encompassing all dimensions of international migration, established in its content that by implementing the guiding principles of international protection for migrants, we guarantee effective respect for human dignity, and the protection and fulfillment of the human rights of all migrants, regardless of their migration status, at all stages of the migration cycle (OHCHR, 2018). This comprehensive approach recognizes the need for innovative mechanisms that address all dimensions of the migration experience from a rights-based perspective and that must integrate multidimensional perspectives in a coherent and sustainable manner to develop social innovations in the area of migration and human mobility (International Organization for Migration, 2024).

At the European level, the European Commission has developed specific regulatory frameworks that recognize the interconnection between social innovation and the protection of human rights in migration contexts. However, the effective implementation of these frameworks requires social innovations that allow for the operationalization of abstract concepts such as solidarity, vulnerability, and shared responsibility, as well as a consolidated agreement on the guiding principles of the international human rights framework, and the adoption of this approach across all social protection systems and Member States. These commitments are extremely complex to achieve, not only due to formal and doctrinal issues of Community law, but also due to the very drift in the management of migration policies that Europe is adopting under anti-immigration

discourses and narratives that criminalize a large portion of the migrant population.

Despite these obstacles, Europe continues to generate strategies in which social innovation is present and appears associated with objectives such as poverty reduction or progress towards a European social model where fundamental rights are present. In this regard, we could highlight the European Pillar of Social Rights, which establishes “twenty key principles and rights essential for fair and well-functioning labor markets and social protection systems,” while “the Action Plan of the European Pillar of Social Rights transforms the Principles into concrete actions to benefit citizens” (European Commission, 2025a; 2025b). This regulatory architecture provides structural foundations for transformative innovations that guarantee universal protection and are of interest to the European Commission.

Understanding migration from a contemporary perspective is in itself an innovative practice. It requires overcoming restrictive institutional and/or professional narratives to recognize the integral contributions of migrants to economic development, but, more over and above all, recognizing the human, social, cultural, and spiritual value of migrants. As the Office of the High Commissioner for Human Rights indicates, it is about incorporating into policies and their operationalization the fact that “the contributions of migrants to societies, policies, and economies around the world have not only been widely overlooked, minimized, and taken for granted, but also hindered” (OHCHR, 2024b). This perspective demands innovations at all stages that recognize the agency and transformative capacities of mobile populations, throughout the migration process, and in transit and host societies.

The demographic reality also demands institutional innovations that go beyond traditional bilateral mechanisms, as well as modernized and professionalized institutional architectures based on human rights approaches. Institutions such as the International Organization for Migration itself have established the main objectives for 2024-2028 of “saving lives and protecting people on the move, promoting solutions to displacement and facilitating pathways for regular migration” (United Nations, 2024b). This approach urgently requires practices that operate simultaneously at the local, national, and international levels through coordinated frameworks for action, elements also inherent to social innovation that enable the transfer of knowledge and good practices.

A rights-based approach applied to social innovation in the field of human mobility therefore requires innovative mechanisms that allow for effective political participation regardless of migratory status, through

inclusive participatory instruments, but also the materialization of innovative strategies that create effective bridges between abstract regulations and concrete everyday realities.

The most transformative social innovations are developed in integrated services that address multiple vulnerabilities simultaneously through holistic approaches and that reduce the risk of phenomena such as non-take-up. Integrated services primarily oriented towards employment or activation policies in which the European Commission “helps national governments, regional and local authorities, social partners and civil society by supporting early integration into the labor market, public employment services, access to education and training” of migrants while launching, in 2017, an instrument called the EU Skills Profile Tool for Third-Country Nationals, a multilingual online tool to help identify and map skills and qualifications (European Commission, 2025e).

The implementation of social innovations faces significant systemic obstacles that require coordinated multidimensional approaches. The parliamentary report on “human rights protection and the EU external migration policy” (European Parliament, 2021) identified structural tensions between migration control objectives and the effective protection of human rights. These tensions require innovations that reconcile security imperatives with fundamental humanitarian obligations within a conceptual and institutional framework that respects human rights and the principles enshrined in the law.

The convergence between the 2030 Agenda, European social rights frameworks, and international human rights obligations creates unprecedented opportunities to develop social innovation ecosystems that address gaps such as the non-take-up phenomenon through integrated social protection systems that are universal and sensitive to local specificities. This synthesis requires not only institutional creativity but also sustainable financing and political commitments that generate truly transformative protection systems based on principles of human dignity through concrete and measurable operational effectiveness. Social innovation is not an instrument serving profitability-based operations, but rather public policies that support fundamental human rights, upon which a fair, dignified, and equitable European social model for all people is sought to be built.

#### 4. SOCIAL INNOVATION AS A STRATEGY TO REDUCE NON-TAKE-UP IN PROTECTION SYSTEMS WITH MIGRANT POPULATIONS

Social innovation can be defined as the development and implementation of new ideas (products, services, and models) that meet social needs and create new social relationships or partnerships (European Commission, 2013). In the context of human rights and the migrant population, social innovation takes on particular relevance as a mechanism for overcoming the limitations of traditional service delivery approaches and, thus, reducing accessibility gaps to economic, social, and cultural rights, among others, deployed through social protection systems.

The European Commission has identified social innovation as a key element in addressing contemporary migration challenges, particularly in developing solutions that promote integration and effective access to rights (European Commission, 2016). This perspective recognizes that conventional approaches often fail to address the complex and diverse needs of migrant populations, undermining access to economic, social, and cultural rights. Its value lies in the fact that it not only improves efficiency but can also foster empowerment processes for vulnerable communities by democratizing services and developing accessibility as an essential element for the implementation of rights guarantees.

Among the benefits linked to social innovation, we could highlight: (1) the ability to offer local responses adapted to specific contexts (European Commission, 2013, p. 9); (2) the integration of multiple actors—State, civil society, private sector—in new forms of joint work (European Commission, 2013, p. 9); (3) the potential to reduce costs, which is crucial in environments of fiscal restrictions (European Commission, 2013, p. 9). The European framework itself recognizes social innovation as an essential component of cohesion policy, with the capacity to strengthen social inclusion and the fight against poverty (European Commission, 2013, p. 48). Furthermore, programs such as the European Social Fund Plus (ESF+) directly support innovative projects that seek to integrate vulnerable groups, including migrants (European Commission, 2013, p. 48; Competence Center for Social Innovation, 2025, p. 4).

Through a series of actions developed within the framework of social innovation, the 2025 Work Program of the Community of Practice on Social Inclusion emphasizes the importance of involving actors who support third-country nationals and migrants in the search for solutions to exclusion (European Competence Centre for Social Innovation, 2025, p. 4). This perspective highlights that social innovation is not peripheral, but central to responding to contemporary migration challenges.

In this regard, it is important to highlight the potential innovative strategies that can be implemented to reduce non-take-up. Social innovation approaches that can contribute to improving migrants' access to various social protection systems include:

- a. Simplifying and supporting processes: Creating mobile offices, community agents, or cultural mediators can reduce administrative barriers. Experiences in Brazil, where buses and boats were transformed into mobile agencies, demonstrate the effectiveness of bringing services closer to those living in isolated areas or with little information (United Nations Human Rights Council, 2022, p. 27).
- b. Inclusive digitalization: While digitalization can exclude, it also offers opportunities. Social lab initiatives and inclusive co-creation platforms can generate tailored solutions, provided they are supported by digital literacy and maintain face-to-face channels (United Nations Human Rights Council, 2022, p. 20; European Commission, 2013, p. 61).
- c. Proximity and participation strategies: The zero-non-take-up territories approach in France seeks to reduce non-take-up through coordinated actions focused on local communities (United Nations Human Rights Council, 2022, p. 27). These types of participatory methodologies resonate with the vision of social innovation that promotes cooperation between citizens, authorities, and civil society.
- d. New governance models: Promoting inclusive social contracts, such as those applied to migration in the Basque Country, legitimizes protection policies through participatory agreements between public, private, and community actors (European Commission, 2013, p. 47).
- e. Rights-based approach: Social innovation must be aligned with a rights-based framework, moving beyond the view of social protection as a “benefit” and recognizing it as an obligation of States (United Nations Human Rights Council, 2022, p. 21).

Ultimately, social innovation from a human rights perspective requires institutional innovations that integrate dimensions of social protection, labor integration, and citizen participation into coherent frameworks for sustainable and transformative empowerment. It is important to understand that social innovation transcends purely technical adjustments and involves paradigmatic transformations toward approaches that recognize the agency of migrants as protagonists of sustainable development processes within systems of legal guarantees, but also within systems that recognize

the dignity of people beyond migration contexts and the growing anti-immigration threat.

## CONCLUSIONS

Through the development of this content, we sought to address a problem of fundamental importance for the effective realization of human rights in contemporary societies: the phenomenon of non-take-up of rights among the migrant population. Aware of the complexity and scope of approaching this conceptual analysis, our main contribution lies in the conceptualization of non-take-up as a systematic violation of human rights, overcoming traditional interpretations that reduced it to mere administrative failures or individual shortcomings.

This theoretical reconfiguration places the phenomenon at the center of state protection obligations, transforming the framework of understanding from a perspective of charity or assistance to a paradigm of rights enforceable by migrants from institutions, and also from professionals and managers. With this work, we sought to present an integrative perspective that articulates three traditionally fragmented dimensions: the international human rights regulatory framework, the empirical analysis of non-take-up in migrant populations, and social innovation strategies as a mechanism for institutional transformation. This multidisciplinary synthesis could constitute a relevant methodological contribution for future developments in the field.

Despite the importance of the non-take-up phenomenon, it is worth noting the absence of quantitative data at the international and national levels. An empirical study that could not be carried out due to insufficient information regarding the data of the different protection systems.

The application of the human rights approach as an interpretive framework for non-take-up, moreover, supposes not only a theoretical innovation that redefines institutional and professional responsibilities, but also involves the professions inserted in the different protection systems and a reformulation of social policies that go beyond reproducing traditional, segmented formulas that do not contribute to generating more dignified, fair and accessible systems. By establishing that “passive administration is insufficient” and incorporating models of social innovation to reduce existing gaps that violate rights, this work has sought to substantiate the need to generate proactive systems to guarantee rights, shifting responsibility from individuals to institutional structures.

The integration of non-take-up into social innovation models acknowledges how it disproportionately affects migrant populations,

demonstrating that structural barriers overlap with the specific vulnerabilities of migratory status. This intersectionality of vulnerabilities constitutes a significant empirical contribution that sheds light on complex forms of social exclusion, essential for institutional approaches and also for the training and research of those involved in these interactions.

Social innovation is not limited to technical adjustments, but rather requires profound changes in the way we understand social protection, shifting toward approaches that recognize the agency of migrants as protagonists in sustainable development processes. This perspective goes beyond instrumental conceptions of innovation to position it as a mechanism for democratizing access to rights. This paradigm, within the European framework of social rights and international human rights obligations, can generate opportunities to develop integrated social innovation ecosystems. This synthesis could represent a strategic contribution to the design of transformative public policies based on principles of human dignity.

Reducing non-take-up among the migrant population represents one of the most pressing challenges for the effective realization of human rights in contemporary societies. Innovative approaches that combine human rights-based professional training, transformative practice, and social innovation strategies can generate substantive impacts in reducing these systematic violations. For these reasons, the path forward requires a sustained commitment to transforming both professional practices and the institutional frameworks that support them. Only through this comprehensive effort will it be possible to effectively realize the vision of a society where the human rights of all people, regardless of their origin, are respected, protected, and fully realized.

Finally, it is important to remember that non-take-up is not an individual error but a systemic dysfunction in which policy design, bureaucratic complexity, and socioeconomic conditions intertwine to create insurmountable barriers. This implicit recognition that the responsibility for ensuring the exercise of rights falls on institutions, on the management of social protection systems, and on the actors involved, marks a turning point in the understanding and approach to this fundamental issue for contemporary social justice. Above all, it generates a demand for a commitment, based on respect for human rights, to building more just, more dignified, and more equal societies for all people.

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## 9. PRECARIETY AND VULNERABILITY IN INTERNATIONAL MOBILITY

### Challenges for Europe

ANA M.<sup>a</sup> HUESCA GONZÁLEZ  
RAQUEL CARO CARRETERO  
CECILIA ESTRADA VILLASEÑOR  
*Comillas Pontifical University*

#### INTRODUCTION

The phenomenon of international mobility is prompting Europe to rethink its strategies and policies, as a growing number of migrants and refugees arrive at its borders in conditions of extreme precariousness. The vulnerability that characterizes these people requires effective responses to increasingly complex challenges, both for those arriving and for the receiving communities.

The drivers of these migratory movements are diverse. Economic crises, lack of opportunities, hunger, and structural poverty force millions of people to leave their places of origin in search of a dignified life. Likewise, disasters, armed conflicts, systemic violence, and climate emergencies displace millions of others who seek refuge in regions of the world not subject to such adversity. This forced mobility poses multiple challenges to host countries: on the one hand, a humanitarian imperative, but also political and social challenges that generate uncertainty in host societies.

For the displaced, the challenge begins with ensuring their survival, preserving their physical and mental health, and guaranteeing minimum security conditions. Host countries, for their part, must address issues related to the sustainability of their resources, social integration and community cohesion. In this context, the need to coordinate responses that are not only operationally effective but also consistent with human rights and human dignity becomes clear.

Since the 2015 migration crisis, tensions surrounding the management of international mobility have risen significantly. Europe's protection and asylum systems have come under increasing pressure, calling into question the collective capacity of the European Union to address these challenges in a coordinated, fair and humane manner. The sustainability of migration policies and the ability to ensure dignified and effective

reception require renewed commitment and greater cooperation both locally and internationally.

This chapter reflects on these global challenges of international mobility and their local repercussions. The analysis focuses on the different actors involved, emphasizing the human experiences of vulnerability and resilience. On the one hand, the vulnerability of those embarking on a journey into the unknown, facing risks and adversity; on the other, the perceived vulnerability of host societies, which often experience fears and uncertainties regarding the arrival of migrants and refugees.

Inclusion must be the primary goal of policies and practices related to international mobility. This chapter seeks to contribute to that goal by identifying key challenges, reflecting on current dynamics, and fostering a cooperative approach that advances toward more inclusive and supportive societies. Only through joint and sustained efforts will it be possible to transform vulnerability into opportunities for human and social development.

## 1. CHALLENGES IN THE FACE OF THE REFUGEE CRISIS, HUMAN MOBILITY, AND DISASTERS

Global migration, involving about 184 million people, including 37 million refugees, is now a structural phenomenon marked by economic inequalities, armed conflicts, widespread violence, and the growing impact of climate change (World Bank, 2023). By the end of 2024, over 123 million people were forcibly displaced, and by April 2025, the figure was approximately 122.1 million (UNHCR, 2025), marking the first decline in over a decade. The remarkable point is that climate change has become a decisive catalyst, exposing around 40% of the world's population to risks from rising sea levels, floods, droughts, and cyclones, forcing millions of people to leave their homes (Pérez-Segura *et al.*, 2025). In this context, refugee crises and disasters—whether natural or human-made—constitute a global and multidimensional challenge requiring comprehensive responses based on international cooperation, the protection of human rights, and the pursuit of sustainable solutions. From this reality, several challenges arise that must be addressed to ensure the effective protection and dignified integration of displaced persons.

### *1.1. Ensuring a Comprehensive Humanitarian Response to Mass Displacement*

Refugee crises triggered by armed conflicts, natural disasters, and humanitarian emergencies often exceed the capacity of host countries, exposing the limitations of international protection systems. Since the 2015 crisis, mass arrivals have placed pressure on local resources and revealed gaps in coordination and immediate assistance mechanisms—from rescue and health care to the provision of shelter and food (Ferrero-Turrión, 2016; UNHCR, 2015).

The challenge is to strengthen international cooperation frameworks and the capacities of UNHCR and European asylum and civil protection agencies. The experience of the war in Ukraine demonstrates the importance of agile systems that ensure equitable access to housing, health, education, and employment (Brookings Institution, 2023; European Commission, 2024). Effective solidarity among Member States and stable funding are essential to transform emergency responses into lasting protection.

### *1.2. Ensuring Safe Pathways and Reducing Mortality on Migration Routes*

The Mediterranean remains one of the deadliest migration routes in the world. During the 2015 crisis, more than 300,000 people crossed it, and in 2016, over 4,000 deaths were recorded—an average of eleven per day (El País, 2022; UNHCR, 2016). In 2023, more than 3,100 migrants lost their lives or disappeared, confirming the persistence of this tragedy (ECRE, 2024; ReliefWeb, 2024).

The scarcity of legal migration and asylum pathways, combined with obstacles to rescue operations and the criminalization of NGOs, aggravates the risk (SOS Méditerranée, n.d.; IOM, n.d.). Addressing this challenge requires establishing humanitarian corridors, reinforcing search and rescue mechanisms, and promoting cooperative agreements that guarantee shared responsibility among coastal States. In the long term, humanitarian action must be integrated with development and peace strategies to reduce the structural causes—conflicts, poverty, and environmental degradation—that drive people to embark on lethal routes.

### *1.3. Strengthening European Governance and Solidarity in Asylum Matters*

The 2015 crisis revealed deep shortcomings in the European Union's migration governance, stemming from a lack of consensus and solidarity among Member States. Many governments prioritized border control and securitization, implementing surveillance measures and accelerated deportations, while humanitarian protection remained secondary (Ferrero-Turrión, 2016; UNHCR, 2015).

The challenge is to reinforce the European asylum framework through binding burden-sharing mechanisms and a better-resourced, more competent asylum agency (European Commission, 2024). Only more cohesive and solidarity-based governance will enable an effective and humane response to present and future migration crises.

### *1.4. Eliminating the Double Standard in Refugee Protection and Integration*

Differences in treatment based on refugees' origin undermine the consistency of European asylum policies. The rapid and generous response to the arrival of millions of Ukrainians—with immediate access to basic services—contrasts with the difficulties faced by those fleeing Syria, Afghanistan or sub-Saharan Africa (Brookings Institution, 2023; Hoover Institution, 2024).

The challenge is to unify asylum procedures, guarantee equal rights and eliminate discriminatory practices in granting protection and in social and labor integration (Straehle, 2018; Real Instituto Elcano, 2015). Awareness campaigns promoting empathy and intercultural respect strengthen fair and universal reception.

### *1.5. Harnessing the Economic and Demographic Potential of Migration*

Well-managed migration can help offset demographic aging and stimulate European economies. However, the lack of recognition of qualifications and the mismatch between migrants' skills and labor market demands generate unemployment and overqualification (World Bank, 2023; Brookings Institution, 2023).

Turning the arrival of refugees and migrants into an opportunity for growth requires investing in training, recognition of degrees and active employment policies that facilitate their inclusion in sectors with labor shortages (European Commission, 2024; Pérez, 2020).

### *1.6. Strengthening Long-Term Reception and Integration*

After the initial emergency phase, many refugees remain exposed to precariousness. Lack of resources, administrative delays and fragmented responsibilities hinder their stable integration (Iglesias & Estrada, 2018; Brookings Institution, 2023).

The challenge is to build stronger reception systems with sustainable funding and active participation of local authorities, civil society and the private sector. Programs for affordable housing, language learning and employment mentoring transform emergency assistance into genuine long-term inclusion policies (Migration Policy Institute, 2021; Real Instituto Elcano, 2015).

### *1.7. Preparing Protection Systems for Future Disasters and Crises*

The growing frequency of natural disasters and conflicts shows that mass displacements can occur rapidly, exceeding the capacity of ordinary asylum and civil protection mechanisms (Brookings Institution, 2023; European Commission, 2024).

Integrating crisis and climate change perspectives into migration policies—with contingency plans, early warning systems and emergency financial mechanisms—is essential to ensure a swift and rights-respecting response (World Bank, 2023).

### *1.8. Promoting Social Innovation and Community Participation*

The future of refugee and migrant integration requires new forms of cooperation among institutions, civil society and local communities. Initiatives such as housing cooperatives, mentoring networks and migrant entrepreneurship projects have proven effective in improving access to employment, housing and basic services (Migration Policy Institute, 2021; Estrada *et al.*, 2024).

European societies face the challenge of encouraging citizen participation and financially supporting local initiatives. This strengthens social cohesion, fosters social innovation and turns inclusion into a sustainable long-term policy.

## 2. CHALLENGES OF SOCIOECONOMIC INTEGRATION OF MIGRANTS AND REFUGEES

The integration of immigrants and refugees is an economic and social challenge for host countries. The arrival of migrants, refugees and asylum seekers creates the need to guarantee their socioeconomic inclusion, which involves overcoming barriers such as recognition of qualifications, language training and discrimination in the labor market (UNHCR, 2021). Although some countries have developed specific training and employment programs to facilitate integration, refugees continue to face difficulties in accessing skilled jobs (EASO, 2021). In Spain, integration conditions are even more precarious, with high unemployment rates among refugees and strong dependence on informal labor sectors (EASO, 2021).

The following are some of the challenges host countries must address in this area through comprehensive policies that promote equal opportunities, social cohesion and effective integration of migrants and refugees (Estrada *et al.*, 2024).

### 2.1. Investment in Education and Training for Employability

Education and vocational training are the foundation of labor market integration that makes it possible to harness the capacities of migrants and refugees. Spain faces a particular challenge due to its production model, dominated by low-productivity sectors such as tourism and construction, which limits opportunities for skilled employment (European Commission, 2020; European Commission, 2022; Pérez, 2020). Refugees often face long periods of unemployment after arrival due to language barriers, cultural differences and lack of support networks (Iglesias & Estrada, 2018; Verdasco *et al.*, 2024).

Overcoming these obstacles requires investment in language learning programs, technical training and skills accreditation. These measures not only facilitate access to quality jobs but also contribute to social cohesion and economic competitiveness (Estrada *et al.*, 2024).

## 2.2. *Recognition of Qualifications and Streamlining of Administrative Procedures*

Recognition of degrees and professional competencies acquired abroad remains a slow and complex process in Spain, causing overqualification and underutilization of the human capital of many migrants and refugees (Iglesias & Estrada, 2018; Estrada, 2023). This situation not only generates frustration but forces them to accept jobs below their level of preparation.

To avoid this, it is necessary to simplify administrative procedures, expand skills validation programs and provide specialized counseling. This will foster labor market integration aligned with the education and experience of newcomers (European Commission, 2022; Pérez, 2020).

## 2.3. *Combating Discrimination and Promoting Equal Treatment*

Prejudices and stereotypes related to ethnic origin, religion or gender continue to limit access to employment, housing and basic services for migrants and refugees (Allport, 1954; Fernández *et al.*, 2017). In Spain, high unemployment and a precarious labor market increase these difficulties (Pérez, 2020).

Combating discrimination requires strengthening legal frameworks, promoting public awareness campaigns and implementing inclusion programs that foster equal treatment. A gender perspective is essential, as refugee women face specific obstacles, such as lack of childcare services to reconcile work and family life (UNHCR, 2021; Estrada *et al.*, 2024).

## 2.4. *Strengthening Social Welfare Systems*

A strong welfare system is fundamental for migrants and refugees to integrate sustainably. Temporary employment, low wages and labor precariousness leave many in vulnerable situations even when they find work (Iglesias & Estrada, 2018; Pérez, 2020). Support from the Reception and Integration System (SAI) is often limited and temporary, increasing insecurity (Estrada, 2023).

Strengthening social protection mechanisms, ensuring decent housing and guaranteeing universal access to health care and education are essential steps. Cooperation with local administrations and social organizations can enhance the effectiveness of these policies (Estrada & Rodríguez, 2021; European Commission, 2022).

## 2.5. *Active Participation in Social and Political Life*

Full integration requires the involvement of migrants in social and political life, fostering their sense of belonging and strengthening local democracy (Fernández *et al.*, 2017). However, barriers persist, such as lack of knowledge of participation mechanisms, lack of time due to precarious jobs and language difficulties (Iglesias & Estrada, 2018).

Addressing this requires promoting civic education, supporting intercultural community initiatives and creating spaces for dialogue between government, civil society and migrants, so that they can exercise their citizenship effectively (European Commission, 2020; Estrada *et al.*, 2024).

## 2.6. *Inter-Institutional Collaboration and Multisectoral Partnerships*

The integration of migrants and refugees depends on effective coordination among different levels of government, civil society, businesses and local communities. Fragmentation of competences and scarcity of resources can create duplication and gaps in service provision (Iglesias & Estrada, 2018).

Clear cooperation frameworks, sufficient funding and the exchange of best practices are necessary. Involvement of the private sector in training, hiring and corporate social responsibility projects strengthens the effectiveness of these strategies (European Commission, 2020; Rietig & Müller, 2018; Estrada *et al.*, 2024).

## 2.7. *Economic Sustainability and Adaptation to Crises*

Economic downturns and reliance on low-productivity sectors increase the vulnerability of migrants and refugees (European Commission, 2022; Pérez, 2020). The crises of 2008 and COVID-19 demonstrated how cyclical unemployment affects those without legal stability and support networks particularly harshly (Iglesias & Estrada, 2018).

Public policies must promote training in digital and green skills, encourage the transformation of traditional sectors and ensure the financing of integration programs, so that progress in rights and social cohesion is preserved even during recessions (European Council, 2023).

## 2.8. Demographic Challenges and Social Cohesion

Migration is a key factor in sustaining the active population and ensuring generational renewal in aging societies (Fernández *et al.*, 2017; European Union, 2021). However, its positive effect is not automatic: it depends on reception policies that promote coexistence and counteract prejudice (Pérez, 2020).

Intercultural awareness, strengthening community networks and active participation of migrants and refugees in local life are essential strategies to reinforce social cohesion and prevent tensions (UNHCR, 2021; Estrada *et al.*, 2024).

## 2.9. Preventing Exclusion and Promoting Social Innovation

Persistent precarious employment, limited access to housing and unequal distribution of services increase the risk of exclusion, especially during economic or health crises (Iglesias & Estrada, 2018; Pérez, 2020).

Social innovation—migrant entrepreneurship, solidarity economy, housing cooperatives—emerges as a key tool to promote the autonomy of refugees and strengthen community resilience. Its development requires public support, collaboration with social organizations and the use of digital technologies to facilitate training and labor market insertion (Estrada, 2023; Estrada *et al.*, 2024).

## 3. CHALLENGES RELATED TO HUMAN SECURITY

The link between human rights, development and security is captured by the concept of human security. Both socioeconomic challenges and those posed by planetary crises and disasters can be addressed through the lens of human security.

The systematic development of the notion of human security is found in the Human Development Report of the United Nations Development Programme (UNDP, 1994). There, security is introduced as an essential dimension of human development itself, defined as the ability to exercise vital choices freely and safely, without fear of losing them from one day to the next. In this way, human security is intrinsically linked to the expansion of freedoms and human rights, understood as the basis of development (Sen, 1999).

The 1994 report also highlights that human security must be understood as a multidimensional phenomenon, transcending the military sphere to include factors related to health, food, the environment, social cohesion and economic stability. In this sense, the concept offered a normative shift by questioning the centrality of the State as the sole referent of security, placing people at the core of the analysis (Tadjbakhsh & Chenoy, 2007).

Later, the Commission on Human Security presented the report *Human Security Now* (2003), which consolidated a dual strategy: protecting people from threats and strengthening their capabilities. Within this framework, human security is conceived as inseparable from the effective realization of human rights. However, despite its normative ambition, this conceptualization triggered intense academic debates. One of the most frequent criticisms has been its excessively broad conceptual scope, which complicates its operationalization within public policy frameworks (Paris, 2001). It has also been questioned for the risk that the notion might become diluted in an overly extensive catalogue of threats, losing analytical power (Krause, 2004).

During the decade following the 2003 report, the United Nations made efforts to apply human security both normatively and programmatically. Nevertheless, from 2014 this process entered a ten-year period of institutional silence. This pause ended in 2024 with the publication of the Secretary-General's report *Human Security: report of the Secretary-General (A/78/665)*, which underlines the need for new tools and alliances to address interconnected crises and accelerate the 2030 Agenda. That same year, an informal debate was held at the General Assembly on the human security roadmap, emphasizing its relevance for identifying gaps in multilateral responses and reinforcing the implementation of the Sustainable Development Goals (United Nations, 2024).

Today, the following challenges can be identified from the perspective of human security in relation to human mobility.

### *3.1. Using the Concept of Human Security*

The first challenge concerning the phenomenon of human mobility lies precisely in accepting and using the approaches of human security to address the challenges raised. Its seven key dimensions (UNDP, 1994) are: economic, food, health, environmental, personal, community and political.

### *3.2. Avoiding Misuse by Traditional Power Structures*

Critical theory and security studies have pointed out that human security can be instrumentally used by States and international organizations to legitimize interventions in vulnerable contexts, under a discourse seemingly centered on people but in practice linked to geopolitical agendas (Chandler, 2008). The second challenge is therefore to avoid the risk of cooptation by traditional power structures that could limit its emancipatory potential.

### *3.3. Practical Applicability of the Concept*

The third challenge lies in achieving practical application given the difficulties it poses. Only in recent years has the United Nations sought to advance in this regard (United Nations General Assembly, 2016), publishing manuals and other guiding documents. Processes aimed at ensuring human security must include a first phase of analysis, identification and planning, a second phase of implementation and a third of rapid evaluation.

### *3.4. Incorporating Participatory Processes*

Security priorities must aim to substantially improve people's security by addressing their vital needs (UNDP, 2022, p. 3). This leads to the next challenge: to ensure meaningful participation of people in processes to achieve national solutions compatible with local realities. The participation of civil society and the associative fabric of the territories is fundamental.

### *3.5. Inter-Institutional Cooperation, Third Sector Organizations and Civil Society*

The planet is now in the Anthropocene era, marked by large-scale threats and disturbances (Khoo, 2023). The challenge is to address these threats collaboratively, involving governments, international and regional organizations and civil society. International cooperation is more necessary than ever (United Nations General Assembly, 2012, p. 3 g).

### 3.6. *Special Attention to Vulnerable Populations*

The Anthropocene has highlighted the urgency of global intervention for many of the phenomena taking place, including massive movements of people around the world. In this sense, a key challenge is to attend to the most disadvantaged and vulnerable, respecting their dignity, livelihoods, needs and experiences. It is these populations that mainly bear the consequences of environmental degradation.

### 3.7. *Facing Anthropocene Challenges with Global Solidarity*

Achieving global solidarity to confront the Anthropocene is the final challenge identified by the United Nations. Although human security traditionally sought to protect people and their communities, in the current era institutions and policies should systematically consider the interdependence between all people and between humanity and the planet (UNDP, 2022, p. 6). In a recently approved resolution on this issue, the UN General Assembly recognizes ‘the need to strengthen the multilateral system and its institutions’ (United Nations General Assembly, 2024).

## CONCLUSIONS

This chapter has shown that contemporary international mobility intertwines with multiple factors of vulnerability—structural inequalities, violence and conflicts, environmental degradation and extreme events—which place pressure on both displaced people and host institutions. In the face of this situation, Europe needs coherent responses that combine immediate protection, sustainable integration and governance reforms. The following conclusions summarize the key contributions of the chapter:

1. Transitioning from emergency response to sustained protection. Refugee crises and disasters (natural or human-made) overwhelm local capacities without robust cooperation frameworks. Moving from emergency response to lasting protection requires intergovernmental coordination, stable funding, operational strengthening of asylum and civil protection systems, and effective guarantees of access to housing, health, education and employment. Without safe pathways, mortality on routes such as the Mediterranean remains unacceptably

high; enabling humanitarian corridors and strengthening search and rescue is an ethical and operational minimum.

2. European governance and effective solidarity. Experience since 2015 highlights the fragmentation of EU asylum governance and the predominance of security-oriented approaches over protection. An adequate response requires binding burden-sharing mechanisms, common procedural standards and enhanced administrative capacity. Internal consistency (avoiding double standards based on origin) is essential for the legitimacy of the European asylum system.
3. Migration as a demographic and economic opportunity—if well managed. The potential contribution of migrants and refugees to aging economies depends on policies that align supply and demand for skills: investment in language and training, rapid recognition of degrees, employment counseling and intermediation, and active labor policies that facilitate integration into sectors with labor shortages. Without these mechanisms, overqualification, precariousness and under-integration become entrenched.
4. Integration with rights: welfare, housing and anti-discrimination. Socioeconomic integration is inseparable from accessible welfare systems and a rights-based approach. Ensuring decent housing, health and education, and combating discrimination (including intersectional discrimination affecting refugee women) are pillars to avoid exclusion trajectories. Civic and community participation is not an add-on but an accelerator of social cohesion and sense of belonging.
5. Multilevel cooperation and public-social alliances. The complexity of the phenomenon requires collaborative governance: coordination among levels of government, an active role for cities and regions, and alliances with civil society, academia and the private sector. These alliances should translate into concrete mechanisms—comprehensive reception and integration pathways, mentoring programs, entrepreneurship and social economy initiatives—with continuous evaluation and learning.
6. Resilience to crises and climate change. Integrating risk and Anthropocene perspectives into migration policies requires contingency plans, early warning systems and rapid response funds, as well as local adaptation strategies. Reducing climate vulnerabilities at origin and destination is part of a stability and peace agenda that must combine humanitarian and development objectives.

7. Human security as a normative and operational framework. The human security approach provides a compass for aligning protection, freedoms and capabilities in seven interdependent dimensions (economic, food, health, environmental, personal, community and political). Its value lies in orienting people-centered priorities with participatory processes and safeguards against instrumental uses of the concept. The current agenda demands moving from rhetoric to implementability: analysis, planning, execution and evaluation methodologies applicable to real contexts.
8. Social innovation and community participation. The scale and persistence of challenges call for complementing state policies with social innovation: housing cooperatives, mentoring networks, solidarity economy initiatives and digital solutions for training and labor market integration. Supporting, funding and scaling these experiences increases the resilience of local communities and of migrants and refugees themselves.
9. Coherence, evidence and evaluation. The strength of policies depends on their internal coherence (without double standards), alignment with international obligations and evidence-based evaluation. Comparable indicators on access to rights, labor market integration, language learning, housing and discrimination should guide decision-making and budget allocation.

In sum, Europe faces a dual imperative: to protect those who move in conditions of vulnerability and to strengthen its own governance and integration capacities. The path to achieving this combines human security, binding solidarity and rights- and evidence-based public policies, supported by multilevel cooperation and social innovation. Only in this way will it be possible to transform precariousness and vulnerability into pathways of dignity, inclusion and reciprocal contribution.

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## 10. LEGAL PRECARITY, CIVIL SOCIETY ORGANIZATIONS AND THE USE OF KNOWLEDGE

CLAUDIA DI MATTEO  
*Lund University*

### INTRODUCTION

In 2018, only two weeks after graduating with a master's degree, I planned my transition back into the professional realm of social work. I chose France as my new home, and non-governmental organizations (NGOs) working with migrants as my preferred occupational area. In Paris, I was hired by a French NGO whose main responsibility is to provide shelter and comprehensive psycho-social support services to migrants, including asylum seekers and refugees. I worked in two emergency shelters — one only for male and the other only for female residents.

While starting my job, I was introduced to my professional tasks within the organization by reading templates and short manuals about different national and international policies affecting our work with migrant populations, organizational guidelines and procedures, the codes of conduct, and ethical regulations. I worked in a team with three other professionals with an educational background in social work and international development. The four of us were supervised by a manager with a background in political science. Each of us had more or less 20 individual cases to manage, which for the sake of simplification can be classified into three categories: 1) migrant men and women who had just arrived in France and asked for asylum; 2) migrant men and women stuck in the “Dublin process<sup>1</sup>”, which means they had to go through administrative and legal procedures to obtain asylum in the host country or else be repatriated to other EU countries of first arrival; 3) situations that did not fit into any specific administrative asylum categories and had to be framed using different administrative categories.

All migrant men and women I met in the shelters recall different experiences of violence and they all went through difficult migrant journeys to arrive in Europe. Finally, within the resettlement context,

they had all been subjected to some type of administrative control from several public authorities, from the police to the migration agency to the social services. While working in Paris, I encountered Fatima – one of the many migrants present in the women’s shelter. Through her story, I want to highlight how the situations of migrant women, even if each of them is unique and diverse, are intrinsically connected with their experiences of violence. More specifically, I want to point out how those experiences are met by welfare systems within the EU context. Indeed, once the lived experiences are met in institutional and organizational settings, Fatima’s struggles are “categorized” and “framed” in welfare terms by diverse public authorities. Her real-life situations are “problematized” in a way that can be interpreted and seen as rendering Fatima a subject of welfare protection.

## 1. THE STORY OF FATIMA

In Paris, I met Fatima, an Ethiopian woman whose journey unfolded against the backdrop of a tragic event—her son’s participation in a protest against the government, which had cost him his life. Her husband had succumbed to persecution as well, and another son had escaped Addis Ababa and hidden to save his life. Faced with arrest, sexual abuse while in prison, and a directive to surrender her surviving son, Fatima embarked on a solo journey to Europe, the path of which she never completely revealed. When I met her, she was already in the shelter navigating her “Dublin process”. She escaped a first shelter of arrival in which she was hosted as an asylee, only to resurface in Paris 18 months after her escape. As she spoke only her native language, Oromo, I attempted to bridge our communication gap by using an interpreter and relying on nuanced non-verbal cues. In this way, Fatima and I embarked on a two-month journey to articulate the details of her experiences of violence. In agreement with Fatima, I contacted a legal counselor who specialized in migration laws to help us “build a case” for the migration officer, who would then decide on her legal status. The legal support and (mental) health services were accessed through informal networking with individual professionals working mostly in NGOs whose mission was to support migrants regardless of their administrative situation. Fatima prepared diligently for the impending interview with the immigration agency, offering a detailed account of her story. Despite her tenacity, the migration agency rejected her asylum request and issued her a harsh directive to leave the country.

### *1.1. Fatima: Shaping the Subject in Advanced Welfare Societies*

Fatima's story, her life journey, and her struggles are deeply personal, filled with emotions and challenges only she can fully express. Yet her situation is as representative of precariousness as it is unique.

Fatima endures a combination of physical and sexual abuse in her country of origin, which is compounded by other forms of physical, moral, and symbolic violence throughout her challenging migration journey. This pattern of cumulative violence continues upon her arrival in Europe. In the resettlement context, her exposure to violence is exacerbated by the classification systems used to frame her problem (e.g., GBV) and categorize her into those who are allowed protection and those who are not. Initially seen as an irregular migrant with a rejected asylum request, she was placed in a shelter for those people caught within the Dublin Process, and later she claimed to be recognized as a woman victim of gendered persecution in her home country. Finally, with the denial of Fatima's asylum request, she found herself in a place of confinement. In other words, Fatima's story provides an insightful introduction to the challenges of accessing social protection for migrants exposed to GBV. It helps conceptualize the precarious situation of women who find themselves facing significant barriers to accessing social rights, welfare services, and a sense of stability and belonging because of a continuous state of deportability (De Genova, 2002).

Fatima's situation exemplifies precariousness as she lacks residency or citizenship rights, which limits her access to welfare and protection. At the same time, it is this precariousness, a product of the migration system, that increases her vulnerability to further violence. In this regard, in my doctoral thesis, I aim to approach Fatima's story, examining how she became a subject defined through various categories that could make it possible for her to access some forms of social protection. Is Fatima a woman, a migrant, an asylee, a victim of GBV, or a survivor? These categorizations are framed by powerful types of knowledge that produce and reinforce classification systems embedded in institutional practices.

In Fatima's story, the many professionals she encountered in France categorized her in various institutional spaces—sometimes as a migrant woman, other times as an asylee, a victim to rescue. By examining the various frames through which categories are assigned to Fatima, we can uncover how these labels influence professionals' ability to navigate different administrative systems of support and protection. This approach also sheds light on the power dynamics at play in these institutional spaces, where certain identities (e.g., gender, ethnicity, class) may be

prioritized, marginalized, or ignored, affecting the level of assistance and recognition that Fatima receives. In other words, what I pinpoint is how constructing people as subjects remains a significant aspect in defining “who gets what and how” in welfare terms, manifesting a logic for classifying those who can have access to specific welfare provisions, and which actor has the authority and responsibility to decide “who can get what” in advanced welfare societies.

Institutional categorizations and frames within Western welfare states are deeply embedded with increasing global disparities between different world regions (Fraser & Gordon, 1994; Ranci & Pavolini, 2015) and the accumulation of wealth in Western countries (Bhambra & Holmwood, 2018). The resulting inequalities in the redistribution of resources have led to people’s categories governing bureaucratic local social support (Bhambra, 2014; Robinson & Acemoglu, 2012; Quijano, 2007; Mignolo, 2000; Ribas-Mateos, 2021). In this context, contemporary welfare reforms characterized by new public management, reductions in public spending, and the outsourcing of services have influenced the convergence of diverse European welfare states (Henriksen *et al.*, 2016), which has limited even more migrants’ access to public provisions. This debate on the convergence of EU Welfare systems and access to service provisions oriented my attention to studying welfare systems that are traditionally positioned in two different welfare typologies, namely Sweden (Socio-Democratic Welfare model) and Italy (Familistic Welfare model), and guided my attention to the local levels, particularly to non-state actors who act in the double role of service delivery for the public authority and civil society representing specific interests groups. This choice has been made to better understand the similarities and continuity between different countries (and welfare systems) when it comes to migrant women’s access to local social service provisions. Furthermore, this study primarily focuses on exploring the complex interplay between frames, categorization, and access to social protection, as illustrated in Fatima’s story.

## 2. CATEGORIES AND KNOWLEDGE PRODUCTION

Different types of knowledge play a crucial role in the categorization of individuals, particularly in how subjects are constructed within institutional frameworks. It is often more accurate to refer to ‘knowledges’ in the plural, acknowledging the diverse, socially produced types of knowledge that shape social practices and welfare interventions. These interventions are developed by different social actors who have the power and authority

to establish the boundaries of what is considered permissible to say and do within the social protection system. Historically, academia and civil society have played an important role in producing knowledge (e.g. frames, categories, concepts) that shape classification systems embedded in institutional practices. In particular, academic and civil society knowledge production has been considered credible and legitimate when constructing social problems, such as in the case of GBV experienced by migrant women, and possible solutions to solve societal issues.

Production of the knowledges that shape the welfare subject who has access to social protection in advanced welfare societies is in focus. In particular, attention is addressed to the precarious legal status of migrant women, defined here as a particular condition of dependency created by legislation compounded with insecure socioeconomic conditions into which certain women are positioned (Butler, 2004, p. 25). Thus, the precarious migration status creates a specific structural dependency that exposes migrant women to the risk of GBV, while at the same time making it difficult for them to exit the violence and access social protection.

Recalling the story of Fatima, her problems can be framed as “GBV,” while Fatima can be categorized as a “migrant woman,” and her position vis-à-vis the nation-state is framed as “precarious legal status” outside the recognition of citizenship rights in advanced welfare societies. Their precarious legal status increases the risk for migrant women to experience real forms of GBV (Mezzadra & Neilson, 2012; De Genova, 2002; Khosravi, 2010; Sager, 2011). Migrant women like Fatima often face unique challenges due to their precarious legal status, which can make them more vulnerable to GBV and simultaneously limit their ability to seek help or protection. This situation is compounded by the lack of recognition of migrant women’s rights within the host country’s legal and social protection systems. Because of this lack of recognition and rights, the knowledge produced and made available to interpret the situations of GBV migrant women’s experience can have profound implications for their ability to access social protection.

In my research, I critically explore various knowledges that categorize Fatima through specific frames designed to protect subjects identified as migrant women with precarious legal status who are experiencing GBV. The knowledge underpinning this issue is produced by a diverse array of actors, including social science researchers, professional groups such as practitioners and social workers, and civil society actors (CSAs), as well as the state apparatus that wields influence over laws, policies, and public institutions (Bacchi, 2009, p. 25). In my doctoral thesis (Di Matteo, 2025), from which this chapter is based on, the focus is exclusively on academics

and civil society actors (CSAs), which contribute to the production of knowledges that seeks to frame the issues of GBV and the precarious legal status of migrant women in an institutional framework (Abji, 2018; Bhuyan *et al.*, 2016; Baksh-Soodeen & Harcourt, 2015). Academic research plays a crucial role in framing the problem at hand and the solutions to it, providing insights that inform the practice of social protection. Simultaneously, CSAs produce knowledge alongside other sources of expertise to address the complex issues faced by migrant women with precarious legal status, framing the problem and its solutions. The study of the dynamic interplay between academia and civil society knowledge production not only enriches both fields, but also increases our understanding of the many influences shaping the social protection systems available to migrant women with precarious life conditions.

I do not know what happened to Fatima. In a probability scenario, she might have stayed undocumented in France; she might have fled to a new EU country as an undocumented person and be exposed to other types and forms of violence and exploitation; she might have been deported, or instead, found a helping hand and a community where she could belong.

### 3. THE RESEARCH PROBLEM

In advanced welfare societies, we are witnessing a progressive erosion of public welfare expenditure through neo-liberal state politics, oriented in favor of economic interests and individual gains (Bhambra & Holmwood, 2018). Nowadays, a growing number of people in advanced welfare societies are experiencing precarious job positions and lacking labor-related security. Additionally, they lack one or more citizens' rights that prevent them from accessing state benefits, community support, private insurance, and supplementary money earnings (Standing, 2011, p. 12). As a result, those groups living precarious existence, defined as the new social class of the "precariat" (precarious and proletarian) (Standing, 2011, p. 7), face new social risks that are not recognized, or only partially recognized, within the traditional categories protected by existing welfare programs. Among the variety of people falling into the category of the precariat, migrants are one of the groups who have access to fewer welfare entitlements and social rights and, therefore, to a system of protection.

Zooming in on the social rights linked to migrant groups in precarious conditions, the legal status of migrants (Sainsbury, 2012) —whether they are documented, undocumented, refugees, or asylum seekers—has played a crucial role in determining migrants' access to social rights. For instance,

documented migrants in many countries may have had access to hospitals and schools, while undocumented migrants may have been excluded from these services, depending on the availability of universal healthcare and education. Finally, refugees and asylum seekers often have specific social rights under international law, but the extent and enforcement of these rights could vary based on national systems (Sainsbury, 2012). When examining the social rights of migrants through the lens of traditional welfare typologies, several limits and critiques arise. One major critique is that these models often oversimplify the complex and dynamic nature of welfare systems, overlooking the nuances and hybrid forms that exist within individual welfare nations (Ranci & Pavolini, 2015). Traditional welfare typologies (see Esping-Andersen, 1990) underestimate the ways in which many welfare states incorporate elements from multiple models (Ranci & Pavolini, 2015). Additionally, the focus on state-provided welfare can overlook the role of informal networks and community-based support systems offered by different CSAs that are crucial in organizing and delivering social protection in many advanced welfare societies (Ryndyk, Suter & Odden, 2021).

A clear example of how CSAs are important players in organizing and delivering welfare support is the field of social protection available to women in general, and migrant women in particular (Baksh- Soodeen & Harcourt, 2015; Campomori & Ambrosini, 2020). Indeed, in this field, the role of CSAs such as non-governmental organizations (NGOs) and community groups (i.e., associations) is crucial in providing specialized services that are more attuned to the needs of migrant women (e.g., multilingual support, culturally competent counseling, medical and legal assistance), highlighting the limitations of welfare state programs that often are designed with a one-size-fits-all approach, which considers the needs of the “general” population, neglecting the unique challenges faced by migrant women in precarious conditions. In this regard, the group of migrant women, even if diverse and heterogeneous, is particularly subjected to the kind of social, economic, and political precariousness that exposes them to a great risk of experiencing GBV. Examples of this precariousness can be identified in the global care chain (Hochschild & Machung 2012; Parreñas, 2015), where migrant women are segregated in the so-called 3-C sectors (cooking, caring, cleaning) and comprise the majority of domestic workers with little or no job security, being exploited in the shadow economy, or being dependent on their employers for access to residency and shelter. Another example of a precarious condition is the migratory situation linked to transnational marriage or family reunification, where migrant women are dependent on their partners for access to regular permits and social

rights, which in turn, may expose them to greater risks of violence and abuse within the household (Ambrosini, 2020; 2022; Mezzadra & Neilson, 2012). Moreover, migrant women can also be undocumented or fall into the categories of refugees and asylum seekers, whose lack of social, civil, and political rights makes them more vulnerable to the risk of violence and chronic precarity (Standing, 2011, p. 92).

In sum, we are witnessing a general increase in reliance on CSAs in providing welfare support for diverse groups of the precariat that fall outside the traditional categories recognized and protected by welfare programs (Ranci & Pavolini, 2015). The important role played by CSAs in supporting and protecting migrant women with precarious legal status can also highlight the changing dynamics characterizing the welfare systems (Villa & Johansen, 2019; Bonetti & Villa, 2014). This changing context emphasizes the paradoxes and contradictions in the organization of different levels of social protection that are increasingly dependent on contextual institutional relationships between state and non-state actors and civil society's ability to organize and deliver interventions in the social protection field, replacing public authorities.

#### 4. THE STORY OF FATIMA: BETWEEN LEGAL PROTECTION AND SOCIAL RECOGNITION

Fatima is a migrant woman from Ethiopia who experienced various types of violence and ended up in France, asking for social protection. Her struggles and the efforts to overcome them are emblematic when describing the situations of the precariat, where an increasing number of people lack labor security and one or more social rights, impacting their access to social protection in advanced welfare societies. In particular, the precarious legal status of some migrant women not only limits their ability to access social protection but also exposes them to a greater risk of experiencing GBV. Fatima cannot access the formal social protection system without being seen by social actors through a set of frames, categories, and classification systems grounded in diverse types of knowledge. In other words, given their precarious legal situations, migrant women experiencing GBV need to be recognized as being eligible for social protection through specific categories, concepts, and frames. It is only by framing the story of Fatima using knowledge deemed credible and valid within the institutional context that it becomes possible for Fatima to be recognized as a welfare subject who can access specific but limited forms of social protection.

Throughout my doctoral thesis, I critically examine the various types of knowledge that produce Fatima as a welfare subject, framing the situations of GBV she experienced, and identifying the consequent solutions to it. In particular, I focused my attention on academic and civil society settings, where different actors are producing knowledge that frames the problem and the solutions at hand. My findings highlight how the knowledge produced by those actors renders visible the precariousness lived by migrant women in the social protection field. Knowledge produced within academic and civil society settings forms a micro-space at the intersection of GBV, migration, and welfare. In this micro-space, various knowledge systems are mobilized by social actors to interpret and articulate the stories of migrant women with precarious legal status. This process helps in recognizing those women's stories in welfare terms, impacting their ability to access social protection in advanced welfare societies.

At the end of my work, Fatima's future remains uncertain due to her precarious legal status, which does not ensure any specific outcomes based on the traditional welfare framework linked to rights and entitlements. As in many cases, women in precarious legal situations face uncertainty due to a lack of clear legal protections in the resettlement context. Factors such as legal status, asylum claims, or residency issues can all contribute to this uncertainty. However, it is possible to acknowledge that various actors producing knowledge in academic and civil society settings are playing a role in generating knowledge that brings visibility and recognition to Fatima's story.

Categories and frames structured by certain rules and norms are mobilized to recognize Fatima's struggles in welfare terms. Those rules are not set in stone and can be constantly reshaped by new knowledge. This possibility to reshape, renegotiate, and challenge dominant, taken-for-granted frames and categories is crucial because it allows some CSAs to respond to migrant women's needs within a shifting and restrictive political context. The fragility and contestability of frames, categories, and classifications of people into welfare subjects highlight the dynamic nature of these classification systems, where different actors—researchers and activists, among others—can advocate for change and propose alternatives. This ongoing and dynamic process of negotiation and contestation is essential in ensuring that social protection systems remain relevant when addressing the needs of all marginalized communities and individuals who are left out of or only partially included in traditional public programs. In conclusion, the possibilities for different actors to mobilize knowledge for the recognition of Fatima's social rights are still limited by the structure governing the social protection system. However, under various

circumstances, Fatima can be socially recognized as a welfare subject, regardless of her legal status, through the production and mobilization of knowledge that dynamically shapes frames, categories, and classification systems, producing solutions to the problem.

The process of knowledge production is essential in ensuring some limited degree of social protection for migrant women subjected to GBV. In this regard, a significant finding of my research is that these processes of knowledge production contribute to blurring the traditional separation between academia, typically associated with theoretical knowledge, and civil society, often seen as the realm of practical knowledge. By examining the processes of knowledge production in the particular field at the intersection of GBV, migration, and welfare, my thesis highlights how the boundaries between academia and civil society are increasingly permeable, illustrating how the thinking and the acting of professionals in both academia and civil society influence and are influenced by each other's knowledge. Together, academia and civil society are working collaboratively, creating an epistemic community at the intersection of GBV, migration, and welfare that can potentially influence policymaking and social practices, ensuring that diverse voices are heard, and thus strengthening democratic processes. Nevertheless, both academia and civil society are collaborating in a space that is highly politicized and institutionalized. For instance, we can look at commissioned research from governmental bodies that foster collaboration between academia and civil society, but that, at the same time, define the rules and limits governing what actors can say and do. This means that, in a politically shifting context, collaboration does not always equal a democratic process of knowledge production that serves the interests of marginalized communities.

The findings of the thesis suggest that professionals and civil society actors producing an epistemic community at the intersection of GBV, migration, and welfare have maintained a dynamic interaction with each other while remaining in their respective spheres of action, which means academia and civil society can collaborate and learn from each other while maintaining their distinct roles. Having said that, it is important to point out another key finding related to the epistemic community working at the intersection of GBV, migration, and welfare, which concerns the micro-spaces collectively created by actors in both academic and civil society settings to make visible the precarious legal situation of migrant women while ensuring some forms of social protection to migrant women with precarious legal status. Within this micro-space, as previously discussed, knowledge is not only produced but also contested and refined, contributing to a more diverse and pluralistic understanding of the

problem at hand and its solutions. In this regard, within the landscape of micro-spaces, professionals in academia and civil society mobilize knowledge for negotiations, contestations, and disagreements about what concepts, categories, and frames are better suited to define the problem of GBV experienced by migrant women with precarious status and the solutions to it.

The mobilization of knowledge emphasizes the role of academics and practitioners in making migrant women's stories visible and recognizable in welfare terms. Indeed, professionals within academic and civil society settings are trying to generate knowledge to dynamically frame and reframe the situations of precarity lived by certain groups of migrant women. The framing of precarity is deemed necessary within the context of advanced welfare societies characterized by welfare retrenchments, privatizations of social services, and budget cuts increasingly guided by managerial and neo-liberal logics. In this context, the process of knowledge production, the framing of the problem of GBV, and the solutions to it are crucial to recognizing migrant women's struggles and to demanding that state authorities assume responsibility for their welfare. The concept of mobilizing knowledge, as highlighted in the title of this thesis, refers to the process of making knowledge accessible and usable for a specific purpose—namely, making migrant women's stories visible and recognizable for organizations and institutions operating within the social protection system.

This mobilization involves several key processes. First, it includes transferring knowledge from one group to another, such as extending women's rights to diverse groups of migrant women as a ground for social protection. Second, it involves translating knowledge that is often used in separate institutional fields that do not typically communicate with each other, such as integrating gender equality frames into the migration institutional framework, which is grounded in different categories and knowledge bases. Third, it requires using knowledge strategically to emphasize salient elements of a violent situation or characteristics of a migrant woman, making them more recognizable within the context of social protection. Fourth, by contesting, challenging, and renegotiating dominant categories and frames, the boundaries of knowledge and disciplines become blurred. Some academics are seeking to apply an interdisciplinary perspective to the question of gender equality, looking at the problem at hand and its solutions with alternative intersectional perspectives, including class, ethnicity, country of origin, and other categories of power and oppression. Some CSAs are developing intersectional, transnational, and intersectoral work, seeking to find alternative perspectives and

approaches to develop social interventions that counterweight the current limitations of traditional welfare provisions. Finally, mobilizing knowledge involves knowledge sharing, which emphasizes the collaborative aspect of knowledge production that is shared or redistributed among various social actors.

Hence, the collaboration between researchers and activists is key in producing knowledge that contributes to public debates, reshapes attitudes, and interpretations of the issue at hand, and collectively mobilizes people for social change. Concerning that, as a final note, I would like to discuss the reason why professionals in academia and civil society settings have a mutual interest in each other's work. Since the establishment of European democracies after the Second World War, there has been a general political intention to divide and balance the relations of power and the redistribution of resources between diverse state authorities based on democratic principles. Hence, a free and independent academia as well as a free and independent civil society, in a democratic system of rules and regulations, are crucial to maintaining and ensuring the functioning of democratic institutions, including the social protection field and the welfare system at large. In a democratic state, a free academia allows scholars to critically debate without censorship or undue political or economic influences, fostering an environment in which diverse perspectives previously disregarded and overlooked in the scientific field can be recognized, examined, and understood. Similarly, a free civil society provides a platform for various groups and individuals to express their views, beliefs, and interests, advocate for positive change, and engage in public discourse while avoiding violence and riots. Nevertheless, the changing political landscape with the prevalence of liberal politics, on the one hand, and the rise of far-right parties, on the other, is impacting the role of universities and civil society as free institutions. In this sense, the micro-spaces at the intersection of GBV, migration, and welfare that are offspring of the knowledge produced by some professionals in academia and civil society may be a testament to the struggles for freedom and autonomy that these actors are experiencing while producing knowledge concerning highly controversial social problems and alternative solutions to them.

## CONCLUSIONS

In conclusion, knowledge produced by academics and activists working with marginalized communities may potentially be under threat in the

future. Thus, further research on knowledge production could shed light on the extent to which researchers and activists can maintain their role and collaborations in the framing of social problems and solutions, given the current politically changing context in advanced welfare societies. Social work, as both an academic discipline and a professional practice, must navigate the realms of both settings. In this regard, this chapter based on the results of my doctoral thesis (Di Matteo, 2025) is an invitation to reflect on the challenges and tensions involved in doing research that moves between the academic context and everyday work in civil society settings. For researchers in social work, it is crucial to produce knowledge that is recognized within the field of social sciences as influencing the academic world of research and knowledge production. Simultaneously, it is essential to conduct empirical work that is relevant and useful to activities carried out by CSAs and other non-state actors. This is the space in which social work research moves, and efforts should focus on collaborating with the various actors to keep the connection between academia and civil society alive, in this way challenging institutionalized knowledge hierarchies and practices.

Traditionally, academia represents an ivory tower where abstract concepts and frameworks are developed, often detached from ordinary people's struggles and not usable for practical applications, particularly in civil society settings. In contrast, civil society actors are seen as the realm in which practical knowledge is applied, which has little to do with thinking and theorizing. This dichotomy has been critiqued in this study for oversimplifying the complex interplay between theory and practice, potentially hindering collaborative efforts as it restricts the flow of ideas and insights between these two settings. In response to that, activist scholarship in social work is committed to carrying out research that has the potential to be more useful to collective actions for social change. This does not mean that all social work research produced thus far has not been useful or critical; however, it takes a more marginal role within the field of science. At times, concepts related to activism, social change, social movements, liberation, and resistance to oppression can be easily exploited. As Choudry explains (2020a. p. 40), academic spaces are often places where people are highly rewarded for their supposed detachment from the problems faced by the rest of the world. To build an academic CV and get research grants, academics need to prove their worth, producing social impacts. The societal impact, however, is calculated by counting the number of publications in high-ranking journals or opinion papers, while researchers who play an activist role within civil society settings are not rewarded for their contribution to society. As such, the intellectual work

done within civil society settings is not often appreciated in academic settings, and conversely, the academic knowledge produced does not hold a central place in the thinking developed in civil society settings. Nevertheless, knowledge production can, for the time being, be helpful in challenging, renegotiating, and reshaping dominant scholarly and civil society understandings of social problems, suggesting and envisioning new hopeful courses of action for social change across time and space.

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# 11. HUMAN MOBILITY AND SOCIAL PROTECTION ALONG THE EUROPEAN BORDER

## Perspectives from Melilla and Ceuta

MARIA STELLA ROGNONI

ALBERTO TONINI

*University of Florence*

### INTRODUCTION

The European Union countries Greece, Italy, France and Spain constitute the so-called “Northern shore” of the Mediterranean, while its Southern shore is defined by Morocco, Algeria, Tunisia, Libya and Egypt. However, it is often forgotten that two territories in Africa are also under Spanish sovereignty and therefore integral parts of the European Union: Ceuta, separated from Gibraltar by a short stretch of sea, and Melilla, located 400 km further east along the Moroccan coast.

The legacies of centuries of resistances, occupations, conquests and rejections mean that Ceuta and Melilla, with their status that many consider anachronistic, raise specific questions within the context of migration and mobility studies. It is not therefore surprising that a volume reflecting on the reception and asylum experiences between Italy and Spain, interrogates these places of ‘double borders’ —Spain-Morocco and the European Union-Morocco— which present specific characteristics to be investigated from multiple angles.

Often paired and mistakenly considered an inseparable duo, the two exclaves are quite different from each other, even in terms of their physical appearance: Melilla, a fortress surrounded by high walls, is second only to Barcelona in terms of its modernist architecture; Ceuta, on the other hand, is more protruding and open towards the sea. A common feature they share though is the presence of high fences designed to separate these two Spanish outposts from the surrounding Moroccan territory. The *vallas* in Melilla and Ceuta are highly visible barriers that mark a border of a physical, political, economic, social and symbolic nature.

It is interesting to briefly trace its evolution. In the case of Melilla, the first barrier separating the city from Moroccan territory was erected in 1971 to contain a cholera epidemic. However, it was not until the

government led by José María Aznar in 1998 that the fence took on its current form. It was progressively enlarged and reinforced during each ‘migration crisis’, until it reached its current length of 12 km and height of 6 meters. An internal road runs through the fence to allow patrol and emergency vehicles to pass through if necessary.

Construction of the Ceuta fence began in 1993 with a 2.5-meter-high fence stretching 8.4 kilometres. Its height was soon increased to discourage people from climbing over it. Today, as in Melilla, the fence is 6 meters high and has very similar features. All these features are designed to patrol the border using the most advanced technology and to discourage illegal crossings.

The mere existence of the ‘*valla*’ transforms ‘Fortress Europe’ from a rhetorical concept often employed by politicians into a deliberate and vivid decision to establish a clear division between those ‘within’ and those ‘outside’. However, these increasingly militarized and technologically impenetrable barriers do not eliminate interaction between the two sides, but they certainly determine how goods and people can move, depending on the current political and diplomatic situation. This management increasingly hinders the exchanges and complementarity that have characterized these territories with multiple identities for centuries, especially in the wake of the pandemic crisis (Border Forensic, 2024).

In the context of transnational mobility, the migration route between Morocco and Spain remains one of the most dangerous.

Before reporting on some of the ‘good practices’ that we learned about during our visits to Melilla in February 2024 and Ceuta in June of the same year, it is important to briefly mention the evolution of the Moroccan and Spanish regulatory framework regarding migration policies, asylum rights, and the fight against irregular immigration. Although Morocco is not part of the European Union, of which Spain has been a full member since 1986, the two countries’ approaches are similar and have followed a partly parallel evolution, particularly over the last decade. The reasons for this convergence remain in the background and will not be investigated in depth here, but they constitute an underlying factor to be taken into consideration.

## 1. LEGISLATION ON THE PROTECTION OF MIGRANTS AND MOROCCO’S MIGRATION POLICIES

From a legislative point of view, Morocco has acceded to the 1951 Geneva Convention on the Status of Refugees and its 1967 Additional

Protocol, albeit with some limitations on their full implementation. It also signed the United Nations Convention against Transnational Organized Crime in 2002 and the Palermo Protocol against Trafficking in Persons in 2011. In addition, a series of bilateral agreements with Spain and France, initiated in 2012, has helped to establish a framework for operational cooperation on combating illicit smuggling.

Domestically, Law No. 2 of 2003 on immigration is the main national legal instrument in this area, punishing illegal entry and aiding and abetting the smuggling of migrants with severe penalties. At the same time, it introduces forms of protection for vulnerable groups, such as pregnant women, minors, refugees and asylum seekers, providing safeguards against expulsion and guaranteeing access to essential services (legal assistance, healthcare, diplomatic assistance). An important step was taken in 2014 with the adoption of the National Strategy on Immigration and Asylum, which promoted a comprehensive review of the regulatory system.

Among the legislative proposals approved in 2016 was Law 27-14 against human trafficking, which introduced specific penalties for traffickers and established a national inter-ministerial commission to coordinate countermeasures in 2018. The law also provides protection measures for victims, particularly refugees and asylum seekers. This consolidates the North African country's commitment to incorporating international standards into its domestic legal system.

However, Law 27-14 was drafted without the involvement of civil society organizations, taking a predominantly repressive approach. It focuses on criminalizing trafficking and irregular immigration without providing adequate protection or support for victims. In practice, the only 'protection' mechanism provided for is assisted repatriation, which is managed by the International Organization for Migration.

In Morocco, the Ministry of the Interior coordinates border management and the response to migrant smuggling and trafficking. Since 2019, it has increased land and sea patrols, as well as interception and rescue operations. According to testimonies collected by the Immigration Observatory in 2020, the reduction in the number of irregular arrivals to Spain in 2019 was due precisely to the Moroccan authorities increased repressive and preventive action, particularly along the land borders and Mediterranean coasts. In 2020 alone, 10,316 people were intercepted and rescued along Morocco's northern coast. Furthermore, Moroccan authorities investigated over 60 criminal organizations accused of facilitating irregular migration to and from Morocco in 2019, seizing approximately 3,000 false documents in the process. Around 27,000 irregular migrants were arrested in the same year, reflecting the impact of restrictive policies. In

2018, between 10 % and 30 % of the Moroccan prison population consisted of irregular migrants. In 2020, 3,196 legal proceedings were initiated for migrant smuggling and 307 for human trafficking, indicating a progressive strengthening of the judicial system in this area.

According to the Moroccan authorities, while there is no official, comprehensive data on the nationality, age or gender of people smuggled or trafficked through the country, most migrants intercepted are young men aged 18-35. However, there has been a significant increase in recent years in the number of women and children involved in irregular migration flows. Undocumented migrant women, particularly those from sub-Saharan Africa and South Asia, are especially vulnerable to trafficking while passing through Morocco. A lack of job opportunities and protection leaves them vulnerable to sexual exploitation, forced labour and abuse at the hands of criminal networks and corrupt officials. In some cases, they are even exploited by other migrants who, in similar precarious situations, resort to exploitation to survive. Migrant women face extremely challenging living conditions: many are forced into begging or prostitution to survive, and the risk of sexual exploitation persists even once they arrive in Ceuta and Melilla. In these Spanish exclaves, many women find themselves in an irregular situation without protection and fall victim to trafficking once again.

As early as 2013, Tendayi Achiume, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, expressed particular concern about the conditions of migrant women who are victims of sexual and gender-based violence in Morocco. He emphasized the extreme vulnerability of migrant women in border areas, noting that many of them were at risk of falling into trafficking networks or suffering exploitation and abuse along the migration route before managing to cross the border into Ceuta or Melilla (Achiume, 2013).

The ÖDOS programme, which supports sub-Saharan women at risk of exploitation, found that 77% of the women it assists reported having stayed in wooded areas behind the Moroccan town of Nador prior to arriving in Melilla. They describe extreme abuse, but many avoid providing details for fear of retaliation.

The situation for children and adolescents is not much better: although Morocco has ratified the Convention on the Rights of the Child, the fundamental rights of minors are still not fully guaranteed. Children from sub-Saharan African countries live in extremely precarious conditions. They suffer discrimination when accessing health services, are exposed to violence (including sexual violence) and risk being expelled from the

country. This is despite Article 29 of Law 2/2003 explicitly prohibiting the deportation of minors.

## 2. LEGISLATION ON THE PROTECTION OF MIGRANTS AND MIGRATION POLICIES IN SPAIN

In the period immediately following the constitutional transition, Spain was not a destination country for people seeking international protection due to its historical and political past, and the initial fragility of its democratic and economic structures. Surprisingly, even today, unlike neighbouring southern European countries, the influx of people seeking international protection in Spain remains relatively low. Geographically positioned as it is, with two land borders with Africa in the form of the autonomous cities of Ceuta and Melilla, Spain would in fact be an ideal gateway to the European Union (Iglesias Sánchez, 2016).

The relatively low number of asylum seekers arriving from the southern border is not only the result of closures imposed by the recent pandemic, but also the effect of restrictive measures adopted by successive governments over the years. The complex application process for international protection, the initial discretionary admissibility assessment, the outsourcing of cross-border mobility control through readmission agreements and *rechazo en frontera* (refoulement at the border) have made Ceuta and Melilla difficult to reach and have considerably reduced the number of migrants arriving in these two Spanish exclaves on the African continent.

Over the last 10 years, the number of irregular entries from Moroccan territory into the two exclaves of Ceuta and Melilla has gradually decreased. Although it is not possible to obtain reliable and verified data for the entire decade, by cross-referencing estimates released by the Spanish Ministry of the Interior with data collected by some NGOs present in the two Spanish autonomous cities, it is possible to get some statistics that are very close to reality: while in 2015 there were an estimated total of around 14,000 irregular entries into Ceuta and Melilla, by 2019 this number had fallen to 9,100 and by 2024 it had fallen further to 2,696.

Although the downward trend in arrivals was recorded in both exclaves, it should be noted that, with reference to the years 2023 and 2024, irregular entries into Melilla were considerably lower (137, of which 21 by sea) than those recorded in Ceuta (2,559, of which 28 by sea). The incidence of arrivals in the two territories has therefore reversed compared to previous years: between 2015 and 2022, the estimated number of arrivals in Melilla was approximately double that of Ceuta each year.

One of the reasons that may have led to the reduction in attempts to cross the border around Melilla, compared to Ceuta, is linked to the very serious clashes that took place on 24 June 2022 along the *valla*; on that occasion, violent opposition from Spanish and Moroccan border guards resulted in the deaths of 27 people and probably discouraged further attempts to enter that part of the territory around Melilla. This dramatic event was followed by the forced clearance of informal migrant camps along the slopes of Gourougou, a hill between Nador and Melilla, where until June 2022 hundreds of migrants had been camping for long periods, waiting for an opportunity to cross the fence.

Following its accession to the European Community in 1986 and its entry into the Schengen area in 1991, Spain's asylum policy underwent a profound revision. The consequences were clearly visible in terms of both border management and regulatory production. In an effort to curb irregular immigration to the exclaves of Ceuta and Melilla, Spain has tightened controls along the external borders of the two Spanish cities in North Africa and, since 1993, has bolstered the infrastructure separating the two cities from Morocco with fences, gates, masonry sections, surveillance towers, cameras and metal barriers extending into the waters adjacent to the exclaves (Iglesias Sánchez, 2016).

At a regulatory level, the adoption of Law 9 of 1994 and subsequent related regulations introduced substantial changes compared to previous legislation. Law 9/1994 made it possible to overcome the 'asylum-refugee' dichotomy, which had previously caused confusion and limited the scope of the two principles. According to Article 2 of Law 9/94, however, the right to asylum guaranteed by the Spanish Constitution is equivalent to the protection granted to foreign nationals recognised as refugees. However, the same law introduced a preliminary filter designed to reject asylum applications deemed manifestly unfounded upon first arrival. The broad discretion granted to the police and border personnel to prevent the asylum law from being used to circumvent immigration legislation has inevitably made the Spanish international protection system more rigid (Meyer, Nicolosi & Solano, 2025).

After this, the right to asylum in Spain was regulated by Law 12 of 2009. This law not only covered the right to asylum, but subsidiary protection as well, which had not been provided for in Spanish law previously. Asylum is defined as the protection granted to non-EU citizens or stateless individuals recognised as refugees under Article 3 of this Act, the 1951 Geneva Convention relating to the Status of Refugees, and the 1967 Additional Protocol.

As mentioned above, one of the new provisions introduced by Law 12/2009 concerns subsidiary protection. Thanks to the measures contained in this law, individuals from other countries (or stateless individuals) who do not meet the requirements for asylum or refugee status, but who have well-founded reasons to believe that they would face a real risk of serious harm if they returned to their country of origin, are eligible for subsidiary protection.

Despite the differences in the causes that determine the application of the right to asylum or subsidiary protection, Law 12/2009 establishes a common objective for both asylum and subsidiary protection: to enable beneficiaries to receive protection from risks to their life, physical integrity or freedom that they cannot find in their country of origin.

Once an application for international protection has been submitted, the applicant has the right to be recognised as such. They will therefore be entitled to free legal assistance and interpreting services, support in submitting their application to the UNHCR, and the suspension of any return, expulsion or extradition proceedings that may prejudice them. They will also have access to the content of the proceedings at any time, as well as access to basic healthcare and social benefits.

A foreign national cannot be removed, rejected or expelled once their application has been submitted until a decision has been made on their application for international protection (Meyer, Nicolosi & Solano, 2025).

Furthermore, an analysis of the legislation on freedom of movement shows that applicants for international protection in Spain who have had their applications accepted are entitled to freedom of movement and residence throughout the State's territory. This right is regulated by Article 19 of the Spanish Constitution, which initially established it as a fundamental right of Spanish citizens. Subsequently, Article 5 of the Immigration Act (*Ley Orgánica 4/2000, "sobre derechos y libertades de los extranjeros en España y su integración social"*) recognised the right to free movement within the national territory for foreign nationals who comply with administrative regulations. This is comparable to the authorisation to reside in Spain granted to applicants for international protection who have been admitted to the procedure for examining their application by Article 13.2 of the implementing regulation of the Asylum Law (Leroy, 2024).

In 2002, Spain ratified the United Nations Convention against Transnational Organised Crime and its protocols, including that on the trafficking and smuggling of migrants. As a member state of the European Union, Spain is also bound by the 'facilitators package', consisting of Directive 2002/90/EC and the Council Framework Decision of the same year. These measures strengthen the legal framework against the facilitation

of irregular immigration. Under Spanish domestic law, Article 318bis of the Criminal Code criminalises facilitating the illegal entry, transit or stay of foreign nationals in Spain. Unlike the UN Protocol on trafficking, Spanish law does not require an intention to make a profit for an offence to be established; however, economic or material gain is considered an aggravating circumstance. In Spanish judicial practice, offences most frequently associated with migrant smuggling include manslaughter and human trafficking. The Ministry of the Interior coordinates Spain's enforcement actions, involving various institutional actors including the *Guardia Civil*, the Intelligence Centre for Counterterrorism and Organised Crime (CITCO), and the *Policía Nacional*.

### 3. COOPERATION BETWEEN MOROCCO AND SPAIN ON MIGRATION AND BORDER CONTROL

Border control between the two countries is based on structured bilateral cooperation, reinforced by support from the European Border and Coast Guard Agency (FRONTEX) and funding from the European Union. Within this framework, the Spanish government has invested considerable resources in strengthening control of its land and sea borders, particularly in the North African territories of Ceuta and Melilla.

A notable example of this cooperation is the Readmission Agreement, signed in 1992 and still in force, which enables Spain to return third-country nationals intercepted while attempting to enter Spanish territory via the exclaves of Ceuta and Melilla to Moroccan territory. The militarization of the borders between Ceuta and Melilla and Moroccan territory began shortly after Spain joined the Schengen Agreement, with the first separation barriers being built in 1997. Over the years, these barriers have doubled in number and increased in height. Today, the 10 kilometres of border around Ceuta and the 6 kilometres around Melilla are equipped with surveillance towers, cameras, and motion detectors. On both sides of the barriers, two roads are reserved for joint patrols by the Spanish *Guardia Civil* and the Royal Moroccan Gendarmerie (Iglesias, 2016).

The strengthening of bilateral relations between Morocco and Spain forms part of a broader framework of transnational cooperation in which border control and combatting human trafficking are common priorities for governments on both sides of the Mediterranean. However, these agreements have been heavily criticized by international organizations and civil society, who claim that the so-called externalization of borders often leads to serious human rights violations against migrants and

potential victims of trafficking. Numerous reports have highlighted that European support has contributed to the strengthening of controls and pushback measures without ensuring adequate protection standards or access to asylum. This exposes migrants to the risk of arbitrary detention, abuse, and exploitation during their time in the North African country.

A turning point in bilateral relations occurred in 2004, when political and strategic ties between the two countries were strengthened, directly impacting migration management. Spain heavily relies on the cooperation of the Moroccan government to control irregular migration from Morocco, due to the presence of the Spanish exclaves of Ceuta and Melilla in North Africa. This dependence gives Morocco significant leverage in bilateral relations, transforming migration cooperation into a tool of political influence.

In this context, significant joint operational mechanisms have been developed, including joint patrols formed by the Spanish *Guardia Civil* and the Royal Moroccan Gendarmerie, as well as joint police stations opened on both sides of the Strait of Gibraltar in Algeciras and Tangier. Another key aspect of collaboration between Spain and Morocco is the practice of “hot returns” (*devoluciones en caliente*), whereby foreigners intercepted along the fences of Ceuta and Melilla are immediately rejected without a formal identification procedure being activated or the opportunity to apply for international protection being offered. Although there has been a desk for collecting asylum applications on the Spanish side of the Melilla border crossing since 2015, access to it is only permitted after an initial screening by Moroccan and Spanish police forces. Many NGO operators in Melilla report that the border police operate a selection process based on what appears to be discriminatory criteria. Migrants of sub-Saharan origin are not permitted to cross the border to reach the desk where they can apply for international protection. In contrast, migrants of Arab or Middle Eastern origin are not subject to the same treatment. This is corroborated by data from 2018, which revealed that the most prevalent nationality among those who successfully applied for asylum at the southern border was Syrian, with 3,824 applications (Meyer, Nicolosi & Solano, 2025).

The practice of *devoluciones en caliente* remains by far the most widely used method of the Spanish authorities responsible for guarding the borders of Ceuta and Melilla. This practice has been reinforced by the adoption of Law 4/2015 (known as the Ley Mordaza), which provides legal cover for forced returns. In the name of public security, the law allows foreigners who are intercepted at the border of Ceuta or Melilla while attempting to cross it irregularly to be returned, to prevent their entry into Spain.

They are not given the opportunity to apply for international protection (Zapata-Barrero & Awad, 2023).

However, the law does not allow for exceptions or special consideration for the most vulnerable individuals, such as unaccompanied minors and women who are victims of trafficking. Therefore, this practice infringes the right of every individual to apply for protection, violating the 1951 Geneva Convention and the European Convention on Human Rights. This is particularly due to the lack of protection against collective expulsions and the absence of procedural guarantees for vulnerable persons and potential victims of trafficking. Furthermore, pushbacks at the border prevent the situation of the intercepted foreigners from being assessed on an individual basis, prevent them from defending themselves, and do not provide them with the right to legal assistance, the right to an interpreter and translator, or the right to appeal.

Paradoxically, turning people away at the border without guaranteeing migrants the opportunity to apply for international protection also conflicts with the 1992 Agreement on the Readmission of Foreign Nationals signed by Morocco and Spain: Article 2 of the treaty stipulates that Spain must ensure the repatriation of foreign nationals intercepted along the border to their country of origin, or to a different state if Morocco is not the country of origin (Faggiani, 2023).

Some human rights organizations have criticized the failure to comply with this provision, reporting that many migrants from third countries are transferred to police stations located in various parts of Morocco after being handed over to the Moroccan authorities, only to be released or abandoned at the border with Algeria in order to remove them from the two Spanish exclaves. However, some legal scholars defend the legitimacy of Ley 4/2015 *de Seguridad Ciudadana*. These measures reflect the complexity of Spain's dual approach to managing irregular migration. On the one hand, the country is committed to combatting human trafficking and cooperating internationally to combat criminal networks. On the other hand, it implements border control policies that, in some circumstances, are extremely strict. These policies attract criticism for being incompatible with European regulations on human rights and international protection (Zapata-Barrero & Awad, 2023).

#### 4. ASYLUM SEEKERS IN CEUTA AND MELILLA

Those who manage to evade surveillance along the fence separating the Spanish cities from Moroccan territory can apply for international

protection from the Spanish authorities. However, unlike in the rest of Spain, asylum seekers in Ceuta and Melilla cannot move freely throughout the rest of Spanish territory. The *Comisaría General de Extranjería y Fronteras* (General Directorate for Foreigners and Borders) issues them with a document certifying their status as asylum seekers bearing the words ‘*Válido sólo en Ceuta*’ (Valid in Ceuta only) or ‘*Válido sólo en Melilla*’ (Valid in Melilla only) (Leroy, 2024).

While waiting for their application to be examined, migrants are housed in two *Centros de Estancia Temporal de Inmigrantes* (CETIs), one in Ceuta and one in Melilla. The CETI in Melilla officially has 782 places, while the one in Ceuta has 512. In recent years, however, the average number of people staying in the two facilities has consistently been 30-50 % above official capacity. Consequently, these facilities are often inadequate and overcrowded, forcing guests to live in constant overcrowding with minimal support services. CETIs also provide accommodation for foreign nationals in an irregular situation in Ceuta or Melilla who have not applied for asylum.

The duration of stay in one of the two CETIs for those who do not apply for international protection is approximately six months, prior to their transfer to the Iberian Peninsula. In theory, anyone who enters Spain illegally and does not apply for international protection should be expelled. However, their country of origin will not take them back and there has never been an agreement with Morocco for the readmission of third-country nationals. Therefore, in order to prevent the CETIs in Ceuta and Melilla from becoming overcrowded, the foreign citizens are transferred to another CETI (Carrera & Stefan, 2020).

The duration of stay for individuals seeking protection is subject to considerable variation, with the determination of this period being influenced by several factors. These include the country of origin, the time allotted for the interview(s), the necessity for any medical examinations that may be requested to support the application for protection, the availability of legal assistance or translation services, and the potential requirement to appeal against a negative decision. This multiplicity of factors engenders a considerable degree of uncertainty with regard to the time between the submission of an application for international protection and its acceptance, a factor which is pivotal in determining the possibility of departing the CETI and relocating to other parts of Spain (Leroy, 2024).

The territorial limitation of the validity of the document certifying asylum seeker status aligns with the provisions of the Schengen Agreement ratification Act (Section III, Paragraph 1). The Spanish authorities have introduced a declaration relating to the cities of Ceuta and Melilla,

authorizing identity checks on all passengers (including Spanish nationals) before they embark on sea or air travel to the rest of Spanish territory.

Asylum seekers wishing to travel from Ceuta or Melilla must therefore present their documentation when boarding a plane or ship. Consequently, if an applicant for international protection wishes to travel from one of these two exclaves to any other location on the Spanish peninsula for study, work, or other personal reasons, they will be unable to do so as police officers will not allow them to board the plane or ship when checking their documents. The Spanish authorities decide who, among asylum seekers, can move to the peninsula, when and where. Several Spanish courts have been asked to rule on the legality of this restriction on the freedom of movement of persons who have applied for international protection in Ceuta and Melilla. Some courts and courts of appeal have condemned the Spanish authorities for their actions being contrary to the law when interpreting the applicable legislation.

As early as 2013, the United Nations High Commissioner for Refugees (UNHCR) had already criticized the differential treatment of people applying for international protection in Ceuta and Melilla compared to those who had applied in other Spanish cities, as well as the discriminatory consequences of this. The UNHCR believes that this situation could cause individuals in need of international protection to refrain from seeking asylum, thereby risking their lives to cross the Strait of Gibraltar (Faggiani, 2023).

This severe restriction on freedom of movement, in addition to violating fundamental rights recognized by Spanish law, has in fact produced the distorting effect denounced by UNHCR more than 10 years ago: some of the migrants arriving in Ceuta or Melilla prefer not to apply for international protection in order to avoid the long waiting times required for their applications to be examined (12 to 24 months). Those who do not apply for protection are considered irregular migrants and are subject to an expulsion order; however, if that person comes from a country with which Spain has not signed a readmission agreement, the time frame for their expulsion can be extended indefinitely. In such cases, the Spanish authorities may decide to temporarily transfer them to one of the *Centros de Internamiento de Extranjeros* (CIE) in another Spanish location, in order to reduce the number of guests in the CETIs in Ceuta and Melilla. As a result, those who have not applied for protection can hope to cross the Strait of Gibraltar more quickly and then continue their journey across the European continent, albeit irregularly (Carrera & Stefan, 2020).

In quantitative terms, the number of applications for international protection submitted by migrants arriving in Ceuta and Melilla has fluctuated: in Ceuta, the number rose from 577 applications in 2019 to

3,152 in 2021 and finally to 2,506 in 2024; in Melilla, 4,273 applications were submitted in 2019, 3,277 in 2021 and 1,892 in 2024. These figures do not always correspond to the number of entries recorded for the same years in the two autonomous cities: this discrepancy can be partly explained by the fact that those who submitted applications may have crossed the border in one of the previous years; those asylum seekers would therefore have remained in an irregular situation for one or more years before deciding to apply for international protection to the Spanish authorities. Another reason that may have led to the mismatch between the number of entries and the number of protection applications submitted each year is the partial inaccuracy of data and statistics on irregular entries, as noted above.

That said, the analysis of the number of applications registered in the two Spanish exclaves only takes on full meaning when compared with what happened at other points of entry into Spanish territory: in 2019, the number of applications submitted by migrants arriving in the Canary Islands was 3,095, in the Autonomous Region of Andalusia 10,422 applications were submitted, in the province of Madrid 55,118 and in the whole of Spain over 116,000. In 2021, 5,495 applications were collected in the Canary Islands, 6,902 in Andalusia, 18,295 in Madrid and a total of 63,980 throughout Spain. Finally, 2024 saw an increase in all figures compared to 2021 (except for Ceuta and Melilla): 7,667 in the Canary Islands, 25,538 in Andalusia, 47,439 in Madrid, out of a total of 163,812 in Spain (CEAR, 2024).

## 5. TWO EXAMPLES OF GOOD PRACTICE

The term ‘Frontera Sur’ is often used to refer to Melilla and Ceuta. As we have seen, the Spanish word ‘*frontera*’ can have different meanings depending on the perspective adopted. When planning our visit, we considered it essential to contact people who work in the field in various capacities, to grasp the less immediately recognizable aspects of extremely complex contexts.

It must be said that identifying the various associations present was not easy, and as is often the case in such situations, we relied on the goodwill of those who responded positively to our request for contact. We proceeded with caution initially, aware that we did not want to take up the precious time of busy practitioners. However, our first meeting with a legal operator from the NGO Solidary Wheels (SW), who works in Melilla, made us realize how important it is to understand what happens

on a daily basis in such complex contexts. Fieldwork is essential, but so is talking about this work, reporting the most urgent issues and unresolved problems, and giving a voice to the people who cross the border or live in this highly militarized and suspended space.

The final part of this contribution therefore presents two examples of ‘good practice’, which are significant and can also serve as inspiration for innovative approaches and operational tools.

### *5.1. Solidary Wheels’ activities in Melilla*

As stated on the organization’s website (<https://en.solidarywheels.org/nosotras>): “Solidary Wheels is a non-profit organization made up of a group of independent volunteers who share a common resolve: to challenge European border policies and the constant violation of fundamental human rights that these entail” (*italics in original*). Building on the previous experiences of many of its members, the organization has developed a range of activities and initiatives aimed at addressing the challenges posed by European border policies and the resulting violations of fundamental human rights.

SW is unique in that it is an organization made up mainly of women, where the feminist perspective is intrinsic to the practices carried out by its various units. With a very clear and decidedly critical stance on current European policies on migration issues and border management, SW stands out as an organization that puts the feminist perspective at the heart of its work. The NGO is explicitly non-hierarchical and bases its activities on the work of volunteers, who identify the most urgent needs in the field and plan interventions according to their own skills. Open communication and peer discussion are its guiding principles.

Therefore, it was no coincidence that our meeting with lawyer Mar Soriano Marfà mainly touched on legal issues, given her background and training in law. We had the opportunity to hear her reflections on the critical issues of the current border control system and how these controls have intensified and become more complex and stringent as a result of the Covid-19 pandemic. This has effectively exacerbated the rigidity of a border that has long been transformed from a place of transit and convergence of social, economic, and cultural practices into a rigid, militarized, and highly bureaucratic space. The lawyer confirmed that Moroccan citizens residing in Nador did not previously require a visa for daily entry into the exclave of Melilla. Since 2020, however, they have also been required to obtain a daily visa, which is only granted for work reasons. One of

the paradoxical consequences of tightening border controls has been an immediate increase in the number of irregular ‘migrants’ in the Spanish town. These people are largely Moroccan citizens who previously entered and left Melilla daily and who, since 2020, have decided to remain in the exclave irregularly in order not to lose informal job opportunities. It is estimated that there are around 10,000 ‘irregulars’ in Melilla (out of a total resident population of approximately 85,000).

The most serious effects of this development, as pointed out by Mar Soriano Marfà, are particularly reflected in the many unaccompanied minors who live in precarious situations and who escape the net of an entry management system that is supposed to be comprehensive but which, according to our interlocutor, appears in many ways fragile and inadequate. Due to their invisible status, these minors do not have access to healthcare, education or any other kind of official assistance.

We found the multidimensional approach that characterizes the work of Solidary Wheels particularly interesting. Alongside providing legal and health support, such as care and first aid, they pay particular attention to creating spaces for sharing and listening. These spaces are intended to build relationships of trust and understanding based on everyone’s experiences. This includes people with migration experiences, volunteers from the association and citizens of Melilla, all of whom are involved in the processes of social transformation.

## *5.2. The UGR Campus in Ceuta opens its doors to guests from the CETI*

For several years now, Prof. Beatriz Pedrosa Vico, whom we met in her office at the University of Granada campus in Ceuta, has been running a Participatory Research workshop, during which the “*Recogida y Análisis de la Información en las Investigaciones Participativas*” techniques are analysed. The workshop aims to present the different meanings of socio-critical research, such as action research, participatory research and collaborative research, as well as ways of accessing information and strategies for collecting and analysing it.

To help achieve the workshop’s objectives, students meet and talk to people temporarily staying at the CETI in Ceuta, who are invited to participate in the workshop as experts. This group consists of 10-15 people each year who voluntarily attend the weekly workshop meetings with the help of an interpreter, contributing their experience and point of view.

During the 2023-24 academic year, for example, participants were of Algerian, Moroccan, Sudanese, and Gambian origin. Their presence as

equals helps students formulate a diagnosis and intervention plan, teaching them what questions to ask and how to identify the needs of migrants and people on the move. In the lecturer's opinion, involving external experts in this original way has enabled students to apply theoretical knowledge to real-life situations and propose responses to them over the years. Students have developed a critical, open-minded and interested attitude towards the socio-cultural reality of the contemporary world and gained experience working in an interdisciplinary and intercultural team. For those temporarily residing at CETI, the opportunity to leave the centre and participate in a university project in an active, socially recognized role—where their experiences are valued—is highly significant. This is reflected in their increased self-esteem, in contrast to a system which, in many cases, tends to dehumanize.

Commenting on the value of this experience, Professor Pedrosa Vico emphasized that the project sometimes allows strong bonds of friendship to be formed, fulfilling the social responsibility of the university to engage with society.

## CONCLUSIONS

As historians, when it came to joining the “Horizon Global Answer Project”, which is undoubtedly interesting and highly topical, we wondered what contribution we could make. We were convinced that the most significant findings of the research would emerge primarily from the fieldwork of our sociologist and political science colleagues, as well as from a comparison of the practices and operational tools used by Tuscan and Andalusian institutions and organizations. However, the unusual opportunity to spend a few weeks in Andalusia and Madrid and thus be able to come into direct and relatively prolonged contact with colleagues and operators in Spain, led us to consider visiting Ceuta and Melilla. This would allow us to compare experiences, critical issues and food for thought on the complex questions of transnational mobility, particularly between Africa and Europe. Even in name alone, these exclaves are evocative and have a troubled past that remains unresolved in many respects. Today, they serve as a litmus test of the contradictions and difficulties of ‘managing’ and inhabiting the border.

A few months after visiting Melilla and Ceuta, we began the task of organizing the material gathered during the many informal yet rich and interesting encounters, and of shaping the impressions experienced while crossing the border on foot. As we walked along roads that were fortified

centuries ago and are now dotted, once again, with barbed wire, loopholes, and military sentry boxes, we realized that this is precisely where the contradictions of contemporary migration policies are concentrated.

Ceuta and Melilla are not exempt from the struggles faced by Granada, Madrid, Lampedusa or Florence, as they too grapple with comparable challenges. Yet, the brutal and simplistic logic of ‘Fortress Europe’ assumes a uniquely stark form here, manifested in the *valla*, a symbol whose presence renders its own futility and anachronism all the more painfully visible.

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# part III

## INCLUSIVE PRACTICES ON THE GROUND



## 12. THE WOMEN AND GIRLS SAFE SPACE CASE

MARILENA MACALUSO  
*University of Palermo*

### INTRODUCTION

This contribution is part of research on the feminisation of migration and uses a gender approach. This line of study challenges classical migration theories, which traditionally focus on male migrants, highlighting the active and autonomous role of women and studying their historical presence, not only recent, in migration processes (Donato & Gabaccia, 2015; Roman & Micheletto, 2025). The article proposes an in-depth case study focused on women, avoiding the “male bias in migration research” (Morokvasic, 1984, p. 899) and giving voice to the experiences of participants in different forms of female migration (Catarino & Morokvasic, 2005; Schmol, 2022) with a narrative approach (Bichi, 2002). In particular, the chapter presents the results of field research conducted as part of a case study in Palermo on the Women and Girls Safe Space (WGSS), a service dedicated to women in vulnerable situations, within the framework of the European Horizon 2020 Global Answer project. Its innovative nature and target population made it a particularly interesting service to investigate in depth through exploratory field research. The study employed participant observation by the researcher and semi-structured interviews with the service coordinator, operators and staff members, as well as—following a specific interview guide—with the women attending the WGSS.

### 1. THEORETICAL FRAMEWORK

The literature highlights how the discrimination suffered by women is intersectional, not only linked to their status as migrants, but also to gender, ethnicity and social class (Thompson *et al.*, 2022), and this is also reflected in limitations on access to services (e.g. with regard to healthcare

services, health inequalities and the management of difficulties during pregnancy and childbirth, see Balaam *et al.*, 2017). At the same time, there are different strategies for coping with these difficulties (Bonatti & Parthiban, 2020).

Gender inequality structurally hinders the participation of women and girls in humanitarian contexts, and makes it difficult to access services and the reception system in the area Italian for women and girls with a migrant background (Anderson, 2019). There are various structural barriers to migrant women's access to social and health services. These include linguistic and cultural barriers, due to the lack of cultural mediators and bilingual staff, which are the main obstacles limiting communication, the identification of needs and care by operators. There are also bureaucratic and administrative barriers related to the complexity of application procedures, the need for specific documents and the lack of clear information, which can discourage access to services, particularly for women with irregular legal status. Furthermore, access conditions may vary in contexts characterised by long-standing or new migration traditions, both in terms of the presence of more or fewer dedicated official services and in terms of informal support from migration networks.

Globally, 1 in 3 girls/women has experienced physical or sexual violence in her lifetime. Migrant and refugee women and girls are particularly vulnerable to gender-based violence before, during and after their migration journey. They often leave their country of origin to escape early or forced marriage, domestic violence and genital mutilation, but remain at risk of violence, abuse and exploitation during their journey and even once they reach Italy, especially if they are travelling alone (UNICEF, 2023a).

The response of social services to gender-based violence is therefore particularly important, and migrant women are considered a vulnerable group. Research suggests that an interdisciplinary approach is needed to support women who are victims of violence. This means integrating health, legal and social services to offer comprehensive, non-fragmented support and promote women's empowerment<sup>1</sup>. To prevent and combat violence against women, UNICEF "promotes the expansion throughout

1 "The concept of empowerment suggests both individual determination over one's own life and democratic participation in the life of one's community, including through the mediating structure of social systems. Empowerment conveys both a psychological sense of personal control or influence and a concern with actual social influence, political power and legal rights" (Mazzola, 2023, p. 110).

Italy of the globally recognised model of Safe Spaces for Girls and Women: places created to ensure the physical and emotional protection and safety of women and girls” (UNICEF, 2023a). In Italy, on the initiative of UNICEF, a Community of Practice (COP) was established in 2022, which brings together the sharing of activities promoted in various Italian cities (UNICEF, 2023b).

Some sociologists critically reflect on the concept of safe spaces, questioning whether women-only spaces can be considered genuinely safe, and distinguishing between the notions of “safety from” and “safety to”:

Experiencing public, private and virtual spaces as ‘unsafe’ combined with being (self) silenced may be conceptualised as constituting threats to ‘ontological security’ (Giddens, 1991 developed from Laing) which Dupuis and Thorns (1998) describe as a sense of confidence and trust in the world, a security of being. [...] Scholars of ethnicity, nationalism, and belonging have explored the impact on ‘ontological security’ of ‘banal racism’, that is, ‘the mundane, even routine forms of harassment experienced by migrants’ (Noble, 2005, p. 111). [...] Drawing on this scholarship, we might use this concept to analyse women’s experiences of a culture in which objectification, degradation and silencing of women constitute the ‘wallpaper’ of many spaces. Such experiences may threaten women’s ‘ontological security’, their security of being in contemporary cultural spaces as diverse as schools, nightclubs, town centre, workplaces, virtual spaces, political arenas and homes. Research about the gendered nature of space, routine abuse and harassment, and the use of public and virtual space to ‘police’ behaviours reveals women’s negotiations with safety. While this work has been valuable in identifying what women are not ‘safe from’ and revealing the impacts on their engagements as citizens, the question of ‘safe to’ has been relatively neglected. If women were safe from routine harassment, abuse, and resulting fear, what would they be safe to do? How do they experience that ‘safety to’? What is it about spaces that makes them ‘safe’? (Lewis *et al.*, 2015, p. 3).

It will be interesting to observe how the concept of security is perceived in the experience of the interviewees (users and staff), and what concept of security guides the service of the case study that will be presented in the next paragraph.

## 2. RESEARCH DESIGN OF THE CASE STUDY

Carried out as part of the European Horizon 2020 Global Answer project, which aimed to compare good practices for social inclusion in

Spain, Italy, and Sweden, this research arose from the need to investigate the functioning of the Women and Girls Safe Space (WGSS) in Palermo, which was reported by the Municipality of Palermo as one of the best experiences in the area.

The reference criteria for checking that the service was indeed a good practice were defined as part of the Global Answer project (for further details, see the publication by Gijón Sánchez, Gucciardo & Quesada Herrera, 2023). Based on the four interrelated key components – coherence, awareness, reflexivity, and sustainability (Gijón, Gucciardo & Quesada Herrera, 2023) – and the indicators linked to them, two semi-structured interview outlines were defined, one aimed at operators and the service manager, and one aimed at service users. The key concepts of the Global Answer project were shared among researchers through the drafting of a glossary, a common reference point (edited by Gijón Sánchez & Morata García de la Puerta 2023)<sup>2</sup>.

The participant selection plan followed the scheme shown in the table 1.

TABLE 1  
CHARACTERISTICS OF RESPONDENTS AND DATA COLLECTION TECHNIQUES USED.  
WOMAN AND GIRLS SAFE SPACE (PALERMO, ITALY)

Staff	Techniques	Interviewees		
		M	F	Average age
N. 1 Person in charge	Interview		x	35
N. 2 Operators	Interview		x	
N. 1 Case Manager	Interview	x		
N. 3 Linguistic-cultural mediators	Interview		x	
TOTAL 7				
Users	Techniques		F	Average age
N. 8	Interview		x	35

- 2 “The glossary is based on a collective and concrete definition of good practice developed by the Global-ANSWER Network and published in the “Guide to Conceptual and Methodological Issues in Social Work Research in the Field of Human Mobility”. More than sixty researchers from the Network have contributed to the creation of the terms in this glossary, which does not claim to be exhaustive, but rather the terms on good practice in social work and human mobility point to an ad hoc definition for this research”. (Gijón Sánchez & Morata García de la Puerta, 2023, p. 7).

Interviews were scheduled with the manager and staff, and subsequently, thanks to their assistance, appointments were made with users who were available for interviews. In addition to the scheduled interviews, conversations and interviews were conducted as part of the researcher's participant observation of the service over a period of three days. A total of 15 semi-structured interviews were conducted. The interviews were then transcribed and anonymised, followed by a thematic analysis.

### 3. ANALYSIS OF THE RESULTS

The Women and Girls Safe Space (WGSS) is an experimental initiative supported by the International Rescue Committee (IRC) and UNICEF<sup>3</sup>. In the introduction of the toolkit dedicated to those who need to start a WGSS we read:

Throughout history, oppressive power has been challenged by the strength of the oppressed who have united as a single collective force, creating the space necessary to resist and change the stigma, discrimination and exclusion they face. Understanding the dimensions of power, understood as the different ways in which it expresses its control and influence, the different spaces in which it manifests itself and how power structures are created and sustained, is necessary to create strategies and paths for social change. 1 A specific understanding of the dimensions of power that produce, reinforce and perpetuate gender inequality and violence against women and girls is the “feminist perspective” on which feminist movements and organisations, as well as women's rights movements and organisations, rely to transform unequal power systems. Programming to combat gender-based violence is the means by which feminism is put into practice in humanitarian contexts, including programmes to support women and girls with a migrant background in the reception system or the provision of services to support their primary needs and to promote their inclusion and integration within Italy (UNICEF, 2023c, p. 12).

Within this framework, the Women and Girls Safe Space (WGSS), established in Palermo in 2020 by the Penc Centre<sup>4</sup>, was the first initiative

3 <https://www.unicef.it/minori-migranti-rifugiati/violenza-di-genere/>

4 The Penc Centre focuses on social and healthcare welfare, following the principles of solidarity and offering activities aimed at the most disadvantaged groups, such as unaccompanied foreign minors, single women or women with children who have survived gender-based violence, domestic abuse and trafficking, young victims of torture,

of its kind in Italy. It is a space created to ensure and uphold the physical and emotional safety of women and adolescent girls, while promoting empowerment by enhancing their knowledge, access to information, and skills. The WGSS provides support in accessing services, improves Italian language competencies and psychosocial well-being, and offers activities aimed at fostering the realization of users' rights.

These spaces, and the activists who work there, have helped women recognise their free will and their power to change (internal power), the power to organise themselves to articulate the changes they wanted to make (power to) and to collectively transform the systems that oppressed them (power with) (UNICEF 2023c, p. 14).

These elements contribute to the goal of reducing the risk of violence by creating social networks and listening for signs of help-seeking through various channels. It also provides support for survivors of gender-based violence by ensuring that they have an access point to dedicated specialized services. Finally, it aims to become a Centre that aggregates and gives voice to women's rights, with special attention also given to the sons and daughters of those who attend the space with specific services such as after-school care. Its innovative nature and target audience have made it an interesting service for further study through field research.

The organization of the daily service was the first aspect explored in the interview guides for both groups (users and staff). The WGSS is open from Monday to Saturday. The person in charge of the service outlines that in addition to rules (rules of common sense, such as respect for privacy, not exchanging contact information on social media between operators, trainers, and beneficiaries who may be close in age, and ethics), specific policies are followed and training is provided to all operators and volunteers on issues such as child protection and the prevention of violence against minors (taking a certificate, after an exam, each six months).

While a routine of scheduled activities (tailoring, yoga, Pilates, Italian language classes, case management, etc.) structures the days from Monday to Friday afternoon, Saturday—when the space is open from morning to early afternoon—is devoted to social events and celebrations (birthdays, divorces, first experiences of independent living, etc.), as well as shared cooking for a communal lunch. Equally important to the space are dedicated

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refugees and asylum seekers. Since 2023, it has been collaborating with the “Casa dei diritti” (House of Rights) of the Municipality of Palermo (<https://www.centropenc.org/>).

areas for fixed and self-organized activities, such as hairdressing, makeup, and nail care.

This is also a corner of great sociability and experimentation, because perhaps some girls push the veil aside a little and adjust their hair, then maybe they put it back on. Then there's the corner for coffee and snacks. Because it's a place of sociability. It's as if space were a stable base of sociality, where one can come and also do nothing. You can come to have a chat and speak in your own language, and at the same time, there are activities in which participation is completely free; you do not have to register for the activity. In fact, we do not call them courses, we have a program, because women know, because this is posted in the space, that on Wednesdays, for example, there are IT and digitalization activities, and if they want, they can participate. They can stay half an hour and leave. The tutors know this, so they do not get frustrated (Interview with the Person in charge).

Women talk, they talk a lot especially when they are getting their hair done, when they are together, and from there the fact is that there are also mediators, one of whom is also the coordinator of the space who has eyes and ears and understands if there are situations that require psychological support (Interview with Case Manager).

Projects, services, in my opinion, the strength lies in the fact that we ask the users themselves what activities they would like to do, and there is always a very familiar aspect to it. In my opinion, there is never the impression on the part of the users that they are arriving at a formal place, where someone is observing them for who knows what purpose. Everything is always very calm and informal. People come here, mothers come here even just to do nothing. It's nice that they come here and want to get away from their everyday lives, from home, for a moment. They come here, they braid each other's hair, they do their hair, they braid each other's hair, so this is already a way to stay and relax. In my opinion, this is one of the strengths of this space (Interview with Operator 1).

The mediators also carry out some of the structured activities and describe the activities of the center as follows:

I work as a mediator and I am also a yoga teacher. Our job is delicate [...]. We help women with everything they need, really: from bureaucratic matters, like enrolling or registering children in school, to getting a doctor or paediatrician for children. We take care of the children. [...] Once we cooked Ukrainian food, here in the space. We had a big party last year, in December. Not this December, in 2022. We cooked Ukrainian food. There were many people, from different cultures, we tasted our food and we always shared different cultures. [...]

Then I, as a mediator, and the psychologist, we took this course where I don't remember if there were 10 women. So yes, we did the course with them, among them were Russian and Ukrainian. They also participate together in activities; it is a very important project for everyone (Interview with Mediator 1).

The goal of the whole space is to make you detach a little from the problems of everyday life. I know I don't have a magic wand, we don't solve problems, but the very fact is that during an Italian lesson we laugh, joke, we compare ourselves, we do some singing, have conversations, and also talk about our traditions, especially during the Christmas period. For example, last year we based the entire meeting on our traditions, I would encourage them to speak in Italian, but it's also nice to compare and get to know Sicilian culture (Interview with Mediator 2).

First of all, we present the space to the beneficiaries as a free space, like a family, meaning you take the staff as a family. Because we are all, as I said, foreigners, their difficulties today, I have been here for 26 years, so we mediators have lost it. Why were you almost born here? No, no, no, no, I arrived here when I was twenty (Interview with Mediator 3).

“Coherence” is the first requirement for identifying a good practice (Gijón Sánchez, Gucciardo & Quesada Herrera, 2023). There is a strong interconnection between this and other services offered by the public services and third sectors, from legal assistance to socio-health services with specific support for users, the case manager and mediators enable women to receive support in their language, through a well-established network in the territory. The WGSS operates thanks to the network of contacts and services in the area: the case manager directly handles some cases and directs and accompanies users to external services with mediators for those cases that are already managed by other external organizations, without overlaps. Furthermore, in the WGSS there is deep coherence in the connection between the programming and the implementation of the centre's activities that involve the recipients in the decision-making regarding the design of the activities, redefining them through continuous listening to the users and their needs.

In defining the space, it is important to avoid stigmatization or labeling it as a place for victims or survivors of violence. Rather, it is presented simply as a space for women and girls, which may indirectly allow experiences of violence or situations of risk to emerge. Respect for privacy is essential.

*Furthermore, we have women who we assume are under the control of organized crime, and we have lost women because someone advertised the service, because perhaps they came to conduct interviews. Some of these things*

*we have learned in the field, and it was advertised through Facebook, and we happened to lose women who we suspect were under control (Interview with the Person in charge).*

The main objective of the activities is to “create an opportunity for relationships” (interview with the Person in charge). Maybe there are people who attend more regularly, others less so, a relationship is created with the teacher and a learning process takes place.

Obviously, it goes without saying that a daily routine is created [...] Then it all depends on the abilities of the tutor, who should not only be someone with expertise in that subject or theme, but should also have relational skills. So if the computer science tutor has a little group, it is he (the only male tutor we have) who obviously connects, engages in relationship; if a woman doesn't come and then he sees her in the space, he approaches and asks, ‘Why haven't you come anymore?’ Naturally, there is a fundamental approach aimed at consolidating relationships. [...] Because the goal is precisely to have relationships to bring to light gender-based violence (Interview with the Person in charge).

The users are various; some are women who live in isolation of whom the social services know nothing, others are women who arrived for family reunification, but there are also second-generation girls born in Palermo who are still without citizenship who:

[...]sometimes they live dramas that no one knows about, discrimination, isolation even from their peers, shame, isolation because they come from very low socio-economic situations, therefore they have very small houses, or within the houses there is a very traditional atmosphere where girls struggle and feel ashamed (Interview with the Person in charge).

The after-school activities, for example, involve several girls and children who attend the centre alone or often with their mothers. One staff member says:

From the age of twelve, I help girls aged twelve and above, because there are certain educators with trainees who look after the younger children. I, on the other hand, started doing homework. And so, yes, usually I'm not alone, I mean I can't take care of all of them if there are too many, all at once, so other workers or trainees help me, depending on who is there, if there are volunteers. [...] On Mondays, a volunteer psychologist and I run a group for teenagers, so after homework, at five o'clock, this group starts and we do activities with them... which vary from time to time, so we have discussions, but we also do role-playing games. On topics... first we made a Magic Box, which needs to

be covered, actually it still needs to be decorated, where we had them write down what they would like to do, the topics they would like to discuss (Interview with Operator 1).

The case is different for unaccompanied minors who may live in equally difficult situations, but are nonetheless known to social services. We asked through which channels they know and reach space, the person in charge some users come through word of mouth, but most are referred by cooperatives, services, lawyers. One of the strengths is considered to be the continuity of the Safe Space with the clinical psychotherapy centre: “because this is a place of emergence, but once the situation emerges you have to do something about it” (Interview with Operator 1).

Another factor to consider in the analysis, closely related to the definition of good practice, is the dimension of awareness. Awareness as the ability of practice to “incorporate a non-racist, non-ethnocentric and feminist theoretical and methodological approach that recognises the experiences and needs of migrants and is consistent with ethical principles and rights” (Martín-Estalayo, 2023 quoted in Gijón Sánchez, Gucciardo & Quesada Herrera, 2023, p. 90).

The WGSS method involves the combination of observation to facilitate the emergence of gender-based violence, the building of social relationships among peers and with operators, and if it is necessary psychological intervention (free of charge) and that lead to strengthening women’s empowerment, not only to be safe from, but also ready to be safe to (Lewis *et al.*, 2015), their daily lives. From the analysis of the interviews, we can affirm that there is a full awareness of the method on the part of all the staff who participated in the research. Not only is it practiced with awareness, but it is also continuously analysed reflectively, reinforced through training, and observed from the outside thanks to the support of periodic supervision, ensuring the sustainability of the WGSS project.

For the organization, the space has crucial moments that are team meetings, where everyone meets and discusses the life of the space, the critical issues (also within the team, for example between an intern and a volunteer, or between a volunteer and a mediator). And once a month there is an external supervision with a psychoanalyst who comes from Rome for two hours for the team to work on resonance effects and to prevent burnout, vicarious trauma, etc. The theme is to identify situations of risk or violence, the courses are free (Interview with the Person in charge).

Another dimension considered by the good practice model is the “service reflexivity”:

Both the coherence of practice and its level of awareness require reflexivity. In the Weberian tradition, this can be understood as the ability to question one's own approaches and assumptions of analysis and action. In comparison with other cultures, it may coincide with the ability to grasp cultural diversity and thus reflect on how one's own judgement is conditioned by one's own cultural belonging. Reflexivity is that awareness of one's own assumptions (a reflected awareness) that enables one to see things from points of view other than one's own. It is a condition that, in the Weberian tradition, allows premises to be made explicit, to be open to neutral or, as it were, objective analysis. In our case, a practice that incorporates elements of reflexivity may correspond more closely to the principles of empathy and adherence to the needs emanating from the addressees of the practice itself (Gijón Sánchez, Gucciardo & Quesada Herrera, 2023, pp. 90-91).

The interviews reveal that all the indicators of this dimension are satisfied, which is also evident from the participant observation of the service. In addition to training, psychological support for the team and the users is a very important aspect and ensures continuous reflection. Mediators “adapt” the common method to the cultural differences of their own community:

I would say that everyone has their own method, perhaps because we come from different cultures. I have one method and that of another mediator does not work with my community, as I personally say, I cannot use my method with another nationality (Interview with Mediator 1).

you must always find a way to get closer to them, this is the advice I feel I should give, too, to know their culture, for this I always say that everything I know, I know thanks to the constant comparison I have daily with the three mediators, yes, and this is an added value that really strengthens what the space is (Interview with Operator 2).

The real success of Safe Space, as far as I am concerned, is linked to the mediators who work here, who are effectively community leaders. They become leaders or are already leaders, which is why their word, let's say the message, is spread within the community. They also have groups, WhatsApp, and many women who support each other, inform themselves, or inform others (Interview with Case manager).

Making women autonomous and providing tools for empowerment—specifies the head of the centre— also means taking risks in terms of potential escalation of violence, which must be addressed. According to the mediators, the opportunity to provide support to other women that was not available when they also arrived in Palermo makes the effort of this work worthwhile. As the toolkit of WGSS reports: “Empowerment means

the transformation of structures of subordination, through radical changes in law, in property rights, in control over work and women's bodies, and in the institutions that organize and perpetuate male domination" (Unicef 2023c, p. 12). That view is embedded in the mediators experience and work:

[...]we really manage to empower women, to be, to recognize the potential in her, to recognize her as a woman and not as something useless or as a full-time mother because there are different groups we create for women's empowerment, [...] like empowerment, and we truly manage to make the woman understand the role she must have in a family. A woman's worth is not what we were presented with as children, no, we have so much more. So a woman who ultimately manages to understand her role as a mother, as a woman, or in society, feels complete. This mechanism that completes her, where did she acquire it, how. So when a woman gives such a testimony, you first hope that she can help others who are still in the unknown, both in society and... I believe that a woman who cannot fully understand who she is, everything she touches, goes wrong. If you don't know who you are, you don't even know how to be a mother, how to be a wife or how to we really manage to educate women, to be, to recognize their potential, to recognize them as women and not as something useless or just as a mother, but also as a worker. Whatever they do, they are always... Disoriented. They don't know where they are, who they are, what place they have in the land where they live. So I believe that in Africa we have many problems as women because no one educates us. No one makes us fully understand what role we have, except that okay, you don't study because at 13 or 15 years old you get married and start being a woman, and that's it. So here, with this mentality in Africa, when we come here, we continue with this mentality that we are not good enough to do anything. So even for the girls, this is a pressure for adolescents who may be more alert and much more established, but most of them are second generation, born here. So they have other problems, perhaps? Exactly, but not exactly the same as what we had our time in Africa, those teenagers here, more or less the problems they have, let's say, discrimination, in addition to those a new (Interview with Mediator 3).

And in their pathway to change:

As a positive aspect, we really brought many women, because our issue here is based on gender violence. So it's about understanding what gender violence means. Because recognizing it is already difficult, understanding what... In fact, as a mediator, having studied in my country, I am also an anthropologist [...] I didn't know that some things we call traditions are considered violence here. Certainly. But when I arrived here, evaluating things, I understood that... Perspectives on

what is considered normal change, maybe not... To take an example, for me, forced marriage was a normal thing at 18 years (Interview with Mediator 2).

The interviewed users were all enthusiastic about the activities and the space that describe as “free”.

And then this is a free space. Yes. It’s a free space because according to you... more than knowing how to work, they know how to do all their work well, they are better, better than everyone. Better than the community, what differences are there between this place and the community? They are a bit willing. Differences? Yes. Well, this is better. Yes, if then you can relax a bit, in the community you can’t. Because they are on top of you, they monitor you. They do children’s activities, but they make you organize well for yourself and your children, they do better for you (Interview with User 1).

They also appreciate the familial welcome, the financial support of the free ticket to allow them to reach the centre using public transport, and the regenerating power; a beneficiary describes it as a “shower for the soul”:

It’s a shower, for his soul ah how beautiful this word is, it’s a whole word that means for the soul yes, it’s like showers, yes, yes beautiful, a place for the soul I hope this is not the first moment of this crisis. And it’s me. From the first meeting, from the first acquaintance, all the people I’ve met here have become like family to me. Good. Come by bus, use the service, the free tickets. You come from afar. Yes, you are appreciated (Interview with User 2).

Another appreciates having been given the opportunity to change perspective without being judged:

No, I’ve been coming here for two years, I’ve been in (Palermo) for twenty years... Ah, so twenty years. Yes, but when you come here you don’t start going to school and think first about working. Of course. That’s why later you realize that you made a mistake. It’s true that you’ve earned money, but some things hold you back. And so was it important to come here to change things? Oh, yes, yes. To care more about oneself. Yes. Nice. So it has this aspect, let’s say, nice this service to change the perspective. Yes, yes. And they help you, they don’t judge you (Interview with User 3).

And the opportunity to learn together, mothers and daughters:

First of all, when I came here, I was surprised by the love, the spirit of fun, and the collaboration they have, and this made me very happy. Beautiful! As immigrants, we miss our family, and my family is indeed the first feeling I had was love for them, so like a family. Yes. The first feeling I had was love for them, so I want to learn. So I want to learn the language here with them. I don't know what services they offer, what other services they offer. But the most important thing for me is to learn. And also, for my daughter (Interview with User 7).

## CONCLUSIONS

Considering the identified dimensions, we can indeed trace the WGSS among the good practices for the coherence, awareness, reflectivity, and sustainability of the service. Furthermore, referring to Lewis *et al.*, (2015, p. 9) “Our analysis reveals that, in the conditions of safety provided by a feminist women-only space, women experienced cognitive and emotional freedom that enabled exploration of their potential as human beings”. We can consider both from the perspective of the staff and that of the users who frequent it, this as a free space that gives voice back to women, relieving them for some hours from childcare responsibilities, allowing them to start again from themselves and their own potential, increasing their social participation and their power recognizing and abandoning asymmetrical relationships of violence that diminish them.

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## 13. INTERCULTURAL MEDIATION AS A COMPLEX TOOL

### The 'case study' in the social and healthcare field by Oxfam Italia

LORENZO LUATTI  
GIOVANNA TIZZI  
CATERINA CASAMENTI  
*Oxfam Italia*<sup>1</sup>

#### INTRODUCTION

Cultural, intercultural, linguistic, or linguistic-cultural mediation refers to a particular type of intervention system that is part of social and territorial contexts characterized by the presence of migrant populations, where people who do not share the same language and cultural affiliations come into contact (Luatti, 2006; Luatti & Torre, 2012; Russo, 2014; Machetti & Siebetcheu, 2017).

Mediation inspired by the reality of migration is one of the many existing forms of cultural/intercultural mediation (Baraldi, 2015). It is perhaps one of the most recent in chronological order. It should be understood 'as a dimension of all integration policies', according to an effective expression by the National Council for Economics and Labor (CNEL-ONC, 2009). This type of mediation has existed as a concrete, cultural, social, and historical phenomenon in Italy for at least twenty years and in many other European countries for even longer.

Mediation is a system of intervention, not just a professional figure. In mediation interventions, the mediator is one of the transformative resources to be activated. Mediation is an intervention tool that contributes to the construction of the relationship, rather than focusing on the individual mediator.

Producing mediation interventions means first and foremost building devices (spaces, places, teams, relationships, dynamics, additional time) so that communication can flow between different subjects who bring with them different logics, experiences, and often different powers. Mediators

1 Paragraphs 1, 2, and 4 are attributed to Lorenzo Luatti, while paragraph 3 is attributed to Caterina Casamenti and Giovanna Tizzi.

are well aware that it is difficult to carry out satisfactory mediation interventions in complex situations without collegiality. Insisting solely on the role of the mediator as a “bridge” between cultures reinforces the idea that the entire weight of the mediated relationship falls on a single individual and leads the mediator to think of their work as something detached and separate from that of others.

If we want to describe the mediator’s activity more effectively, rather than using the metaphor of a “bridge” between social actors and migrants, we should prefer the image of a “ford”, that is, a passage characterized by mobility, which requires coming and going, non-linear and non-predefined crossings: “the ford is that area of shallow water, usually found in a riverbed. Comparing crossing a bridge with crossing a ford, the greater physical effort required is absolutely evident” (Lavanco & Di Giovanni 2009, pp. 32-33; Beneduce, 2003). Intercultural mediation is a profession focused on linguistic and relational skills, carried out by a professional specially trained in mediated communication: the intercultural mediator.

The mediator’s intervention has as its central objective the overcoming of linguistic and cultural barriers that may arise in interaction with migrants, in the awareness and knowledge of the important aspects that constitute the ‘migrant identity’ (migration project, family reunification, acculturation process, cultural changes, etc.) (Lazzarini & Stobbione, 2017). The mediator not only provides linguistic and cultural interpretation, but also performs a socio-cultural role of accompanying and facilitating relationships; However, they are not experts in “cultures”, nor are they experts in intercultural studies: they are “athletes” of encounters and mediated communication, “agents” of recognition of the other as a person—of their history, cultural references, and rights—and through their intervention, they allow us to open spaces and passages for more conscious participation.

The presence of an intercultural mediator is already a sign of awareness on the part of the host country and the organization/service of the needs, specificities, and cultural, linguistic, religious, etc. differences expressed by individuals, families, and minority groups. In fact, the demand for services expressed by migrants is often complex and multifaceted, concealing a need for wide-ranging assistance concerning a variety of interconnected aspects (health, social, relational, professional) (Luatti, 2011; Bricchese & Tonioli, 2017).

Mediation is a ‘service within a service’ and, in order to emerge from the invisibility to which it seems inexorably confined and to legitimize itself in the eyes of participants and institutions, it needs a clear and solid methodology capable of guiding action effectively and with potential

effects of change. Because of this “fragile” position, mediators suffer from a lack of public recognition compared to other figures with whom they share physical and relational spaces at work (Greco, 2019).

At the European level, the role of intercultural mediator is not yet clearly defined in all countries, with a profile recognized by national legislation, and does not yet have a defined and adequate place in local services (Casadei & Franceschini, 2009). The fragmented and undefined nature of directives and regulations at the national level has corresponded to a marked heterogeneity and differentiation of provisions at the regional and local levels, in terms of access requirements, training courses, mandates, and locations in relation to the structure of services. However, the presence of a university perspective on intercultural mediation (in training and research) is proving to be an important element of renewal and cross-fertilization.

The perspectives of (and on) mediation have therefore multiplied and intertwined in recent years, and the fields of research are also undergoing important changes, favored by the fact that mediation is a frontier profession that uses and enriches different knowledge and experiences.

The silent work in services, in the reception system, and, finally, the extraordinary contribution made during the months of the Covid-19 pandemic must emerge from invisibility and silence (Luatti, 2021). But a relaunch of intercultural mediation must start from a twofold awareness. There can be no relaunch of the service without a real revival of integration policies in Italy, which have remained stagnant for countless years. This requires political will backed by economic resources, and resources require the growth and development of the country. The issue of social and territorial cohesion and integration, as a factor in the development of local communities, must return to the national political agenda. The future of mediation fits into this broader picture. Thirty years of experience also teaches us that a relaunch of intercultural mediation necessarily involves a ‘bottom-up’ mobilization, fueled by ideas and proposals, of mediators called upon to express themselves once again on issues of integration and their professional future.

## **1. MIGRANTS AND HEALTH SERVICES: THE ROLE, TASKS, AND INTERVENTION PLAN OF THE INTERCULTURAL MEDIATOR**

In the complex landscape of relations between migrants and the local service system, social and health care remains one of the most sensitive areas precisely because it is marked by multiple contradictions and

difficulties. These are primarily critical issues related to cultural factors, the sensitivity and anxiety that often accompany the use of such services, and different approaches to health and preventive care. In other words, language barriers and cultural differences, which normally complicate and sometimes hinder foreigners' access to the system of services in the area, become particularly relevant and problematic in the case of health services. In fact, since the relationship between the user and the service is often influenced by aspects and feelings that are deeply personal, intimate, and closely connected to the culture of origin, it is necessary to remember that concepts such as illness, health, symptoms, prevention, and the perception of one's own well-being are not universal but are also influenced by the fact that they originate from a specific cultural universe (Villano & Riccio, 2008).

From this point of view, the role of the intercultural mediator appears to be fundamental in decoding needs, providing information on rights and duties, and facilitating communication between two cultural worlds that would otherwise close in on themselves, giving rise to stereotypes and prejudices about the other and effectively fueling conflict.

Cultural mediation gradually emerged in Italy in the early 1990s as a necessity for recognizing and guaranteeing the rights of migrants, including the right to diversity, and for promoting citizenship pathways. The healthcare sector was the first to express the need to facilitate communication between the diverse world of immigration, which was gradually establishing itself and stabilizing throughout the country, and local services (Castiglioni, 2006 & 2007; Morrone & Sannella, 2007; Baraldi, Barberi & Giarelli, 2008). Healthcare is an area in which the presence of cultural mediators is particularly sensitive because it involves the doctor-patient relationship, where the results of treatment and care are strongly influenced by trust and cooperation between the parties. Communication is essential in this field, and mediators can only play an important role if they are recognized and accepted by both parties involved in communication (Baraldi, 2008; Baraldi & Gavioli, 2019).

It should not be underestimated that in this field, cultural mediators are dealing with people (patients) who are already at a disadvantage simply because they are foreigners and, moreover, are extremely fragile because they have health problems (Pellegrini, 2007). This professional figure is, therefore, extremely important in ensuring that patients of foreign origin do not find themselves in a position of isolation and marginalization.

Among the many difficulties that foreigners face in their relationship with health services, the first stems from the fact that the local health system operates according to codes and languages that are different from

those they are used to in their country of origin. In order to be treated as an equal patient alongside native citizens, migrants need the help of someone who can guide them through the complex procedures and workings of the National Health Service, explain the role and capabilities of the doctor and the treatments they prescribe, and make them feel at ease during a visit so that they can accurately explain their symptoms, the nature of their illness, to reconstruct their personal medical history and, more generally, to enable them to be aware of their rights. This is precisely the main role played by the linguistic-cultural mediator (Barberi, 2008; Baraldi, 2012).

Intercultural mediation in healthcare can be aimed at all members of the immigrant population (women, men, children, adolescents, families) or at specific categories of service users: pregnant women, immigrant alcoholics and drug addicts, foreigners with mental health issues, foreign prisoners, etc. but it is also aimed at healthcare and nursing staff, social workers, and psychologists in social and healthcare facilities and services. In fact, the mediator's task is not only to support patients, but also healthcare professionals themselves, who very often clearly express their difficulty/inability to respond adequately to the needs of foreign patients. Healthcare workers need mediators to ensure that they have acquired all the information necessary to make a diagnosis and to be certain that immigrants have fully understood the timing and rules of the recommended treatment.

The mediator's task is often primarily to identify and understand the elements of fear and discomfort that the foreign patient experiences in their relationship with the healthcare system, especially in the initial phase, at first contact, or when the relationship focuses on aspects that are intimate or sensitive from a cultural point of view. Here it is clear how the experience and migratory background of the foreign mediator sometimes becomes essential, both in analyzing the difficulties and in overcoming them.

The mediator must also reassure the immigrant patient that everything said and done during the medical examination is covered by professional secrecy and confidentiality. This is an essential condition for creating a climate of trust between doctor, patient, and mediator. Confidentiality must be guaranteed to the patient in a clear and unambiguous manner and must be expressly stated at the beginning of the visit or interview. It may happen that the mediator knows the foreign patient, in which case the question arises of informing the healthcare professional and deciding together whether it is appropriate to participate in the visit-interview. This decision must be taken with care because, in some cases, direct knowledge

can be a problem as the patient may feel ashamed, distrustful, judged, and fear the disapproval of the mediator and, indirectly, of their fellow countrymen. More generally, in certain, albeit limited, circumstances, clear identification with the immigrant patient's culture of origin can create distance and some form of discomfort.

Within social and health services, the intercultural mediator can perform various activities and can help improve the relationship between the foreign patient and the social and health worker on several levels. Where access to services is somewhat limited, either due to a lack of knowledge of the opportunities available or due to the forms of mistrust referred to above, the mediator may also have the task of promoting the service externally and raising awareness among the immigrant community (through street activities, attendance at community meetings and celebrations, etc.) of what the local area has to offer. This activity often includes, using action research methodology, the analysis of unmet needs and the reasons for not using services, with the aim of promoting actions to remove the obstacles identified (which often include opening hours that are inaccessible to foreign workers). It is clear that the activities and, in part, the role of the cultural mediator also vary depending on the type of social and health service in which the mediator operates. The services that have perhaps made the most use of intercultural mediators in recent years have been family planning clinics (and all services working on women's health) and STP clinics (which deal with undocumented foreign patients who, due to illness and/or injury, need urgent and essential care, including ongoing care until recovery), but there are also significant experiences in hospitals, SerD (Addiction Services), mental health services, health services within prisons, and social policy planning offices.

TABLE 1  
INTERVENTION PLANS OF THE INTERCULTURAL MEDIATOR

- *Guidance and information plan*
  - Information for migrants: guidance on services (knowledge of services, opening hours, how to access them); guidance on the local area (knowledge of key locations, transport, etc.)
  - Information for social and health workers on the contexts of origin of foreigners (cultural, social, educational, health organizations, etc.)
  - Guidance and support for social and health services
  - Accompaniment of foreign nationals to other services
  - Collaboration in the creation of multilingual information materials on services and regulations
  - Facilitation of relations between services and recipients, especially with regard to initial contact
  - Information on legislation

<ul style="list-style-type: none"> <li>• <i>Language and communication plan</i> <ul style="list-style-type: none"> <li>– Oral and written translation (notices, forms, brochures on initiatives, regulations, etc.)</li> <li>– Explanation and decoding of verbal and nonverbal messages</li> <li>– Language support for registering with the National Health Service and requesting specific services</li> <li>– Information for social and healthcare workers on the behavioral patterns and communication codes adopted by the recipients</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <i>Physical and psychological health promotion plan</i> <ul style="list-style-type: none"> <li>– Understanding and defining the expectations and needs of service recipients. In carrying out this action, the mediator in a health service must be able to collect and record the expressed request, but also to interpret the unexpressed or poorly phrased request</li> <li>– Prevention and health protection measures through the dissemination of information and accompaniment to health services</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <i>Cultural and intercultural plan</i> <ul style="list-style-type: none"> <li>– Information on contexts of origin</li> <li>– Design and implementation of intercultural workshops on health and traditional medicine</li> <li>– Participation in prenatal and women’s health courses</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <i>Relational plan</i> <ul style="list-style-type: none"> <li>– Attention to relationships</li> <li>– Prevention of misunderstandings</li> <li>– Collaboration in the search for answers and solutions</li> <li>– Participation in team meetings on service organization and individual cases</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <i>Action research plan</i> <ul style="list-style-type: none"> <li>– Reading of the territorial, social, and cultural contexts of reference for the services (national groups present, types of families, housing conditions, working conditions, etc.)</li> <li>– Constant monitoring and evaluation of the service, especially in terms of its impact on the recipients</li> <li>– Participation in the planning and remodeling of interventions, to better calibrate them to the realities observed during the mediation action</li> </ul> </li> </ul>

Another important issue concerns the attitude that the intercultural mediator must adopt in the relationship between healthcare professionals and patient. Here, as far as possible, it is important for the mediator to maintain a ‘neutral’ position (Castiglioni, 2007). In fact, excessive identification (complicity) with the migrant risks excluding the operator, nor should the mediator risk being identified by the patient as a mere spokesperson for the healthcare system, overly concerned with imposing rules and less willing to understand the hardships and difficulties experienced. In certain situations, the mediator risks leaning towards one side or the other if they believe that this may contribute to greater

understanding between the parties involved. In any case, the mediator must always ensure that both parties agree to their presence before the medical examination or interview.

This makes it clear that, in order to carry out their task, intercultural mediators must be able to gain the trust of the patient, the healthcare professional and, more generally, the team associated with that service or facility. Translation is one aspect of this. If the healthcare professional does not trust the mediator's translation, they will feel that they are losing contact with the patient or that they are not fully informed of what is being said. It is important to establish a climate of trust between the mediator and the user, allowing the latter to reduce the anxiety caused by the doubt of not being understood or of misunderstanding.

Another delicate issue is that the interpreter is not only at the center of the conversation but is also the only one of the various parties involved who understand everything that is being said. Despite this, the interpreter is not the protagonist of communication and does not lead the dialogue between the parties. Maintaining this position is very difficult because, in their translation work, mediators must consider both the explicit content (what is being communicated) and the implicit content (the nonverbal aspects of communication, i.e., gestures, silences, tone of voice, looks, etc.).

At the root of misunderstandings and communication difficulties (Luatti, 2018) are almost always rules, behaviors, values, and ways of doing things that are perceived differently by one person and another. So-called 'cultural implicit' are sets of values, norms, behavior patterns, habits, moral and legal concepts, and religious beliefs that human beings acquire as members of a society. They are the basis of how groups function, unspoken messages that unite the members of a community and are based on social consensus.

The difficulty of the intercultural mediator's role also lies in the fact that they must decide the best way to translate what is said. If there is no term in the language into which they are translating that corresponds exactly to the concept to be translated, the mediator must translate not literally or, in other cases, must decide to summarize the message because it is too long, complex, or perhaps extremely rich in medical terms that would be difficult for the user to understand. In both cases, it is essential that the speaker is not offended and that the content is communicated faithfully so that the communicator does not feel misrepresented or censored. The parties involved in the relationship must be aware that translation is not only a matter of moving from one language to another, but also from one "culture" to another.

Finally, the mediator must always perform their role and must not be tempted to overstep their remit by trying to replace, even in part, the healthcare staff, nor can the doctor expect to delegate to the mediator a responsibility that does not fall within their remit. The latter case may occur when the doctor asks the mediator to communicate a diagnosis, assigning them not only the responsibility of choosing the content of the message—which may not be correct as a mediator does not have the same training as a doctor—but also an active role in communication as the creator of their own message.

The complexity and, above all, the high sensitivity that characterizes the relationship between migrants and the social and healthcare system highlights the need for intercultural mediators working in this field to have an equally complex and multidimensional set of skills and abilities, and for these skills to be used in a responsible and ethically attentive manner.

In relation to professional ethics, one of the fundamental and essential characteristics of an intercultural mediator, precisely because of their central position between two complex realities, is their absolute neutrality with regard to the cultural values present in both cultures. It is also important to emphasize that the intercultural mediator has no decision-making power and essentially plays a supporting role for both parties in the service provision/use phase.

Respect for the individual obliges the mediator to maintain professional secrecy in relation to sensitive situations, even though, at the same time, they must try to create a climate of confidence and trust that is essential for the success of the mediation process.

TABLE 2  
INTERCULTURAL MEDIATION IN THE SOCIAL AND HEALTH CARE SECTOR SUMMARY TABLE

Who	Qualified intercultural mediators Women and men with migration experience Individual mediators or mediators associated with third sector organizations
Where	STP clinics (Temporarily Present Foreigners) Hospitals Counseling centers Emergency rooms Mental health services SerD (Addiction Services) Prison social and health services Reception services Offices for social policy planning

How	<p>Social worker          Member of voluntary associations          Member of ethnic associations</p>
Functions	<p>Welcoming and guiding foreign users and facilitating communication during interviews and visits          Advising and clarifying cultural aspects of the country of origin to healthcare personnel          Assists in the medical history analysis phase          Assists the operator in interpreting the symptoms and needs expressed          Providing the doctor with information about social habits, behaviors, and living conditions in the country of origin          Clarifies misunderstandings related to the identification of symptoms, influenced by the cultural model of belonging and different conceptions of the body          In addition to facilitating communication, the mediator: informs and guides users on how to register with the National Health Service, supports users in bureaucratic and administrative procedures, and helps them identify and choose a primary care physician          Collaborates in the promotion and implementation of information and awareness campaigns on prevention and health education          Guides and accompany users to facilities          Reads the needs of foreign communities to guide the planning of activities and service projects          Helps foreign users understand the structure of health services and the Western nature of the doctor/patient relationship, guides them to other health services          Explains how to take medication, the nature of healthcare pathways, prescriptions, therapies, and the importance of <i>follow-up</i>, ensuring that patients have understood the information provided on the therapies to be followed</p>
Results	<p>Greater access to social and health services for the foreign population          Better understanding of the social and healthcare needs of immigrant citizens          More appropriate responses to social and health needs          Improvement in physical and psychological health conditions.          Changes in the organization of social and health services (opening hours, access methods, etc.)          Greater understanding of the regulations and organization of services by foreign citizens</p>

In order for mediators to perform their duties in the best possible way, in addition to being familiar with the migration phenomena and dynamics present in the context in which they operate, they must first and foremost have a good knowledge of the healthcare system, the facilities available in the area, and the procedures within them. They must also be

informed about immigration regulations and health legislation, how to access a general practitioner, and topics related to preventive medicine, counseling centers, drug addiction services, and mental health services. Finally, they must have strong interpersonal and communication skills and a basic knowledge of the psychology of male/female and parent/child relationships.

More generally, they must have the following skills:

- the ability to convey clear and comprehensive messages and information to the parties, inviting both parties, in case of doubt, to provide further information necessary for complete understanding.
- know how to collaborate in defining strategies for disseminating information, considering the impact on specific cultural areas.
- know how to translate accurately and precisely, clarifying cultural assumptions and any stereotypes that emerge in the interaction.
- being able to rephrase, where necessary, any sentence that has not been understood by one of the two interlocutors.
- be familiar with national and regional legislation on immigration and the service in which they work.
- in cases of illegality, discrimination, or injustice, the mediator has the right to withdraw and reserve the right to seek legal protection.

Basic and specialized training for intercultural mediators in the social and health care sector, as in other sectors, requires continuous theoretical and practical updating and constant comparison with similar experiences.

## 2. CASE STUDY: THE EXPERIENCE OF OXFAM ITALIA<sup>2</sup>

*The importance of intercultural mediation is twofold, both from the point of view of inclusion and for the medical-legal safety of our healthcare workers.*  
(S.M., healthcare service representative)

The right to health, understood not only as a statement but also as effective usability, is not only one of the fundamental rights of the individual recognized by the Constitution, in the interest of the community itself (Art. 32 Italian Constitution), is a key factor in the process of socio-

<sup>2</sup> In drafting this paragraph, we drew on Oxfam Italia's internal monitoring report on intercultural mediation and seven semi-structured interviews with healthcare professionals from the South-East Tuscany Local Health Authority.

economic inclusion of an individual. Health inequalities are the result not only of a multitude of economic, environmental, and lifestyle factors, but also of problems related to access to healthcare services.

The issue of accessibility, particularly to healthcare services, is an important aspect of the process of inclusion of third-country nationals for Oxfam Italia. As highlighted by sector studies, many obstacles may be due to poor *health literacy*, i.e., a reduced ability to process and understand information about health and healthcare services in order to make appropriate decisions about one's health (Nutbeam, 2000).

In order for the formal right (accessibility) guaranteed by law to become a real right (usability of services), an effective local health policy is essential, which includes intercultural mediation services among its actions. The Region of Tuscany guarantees this through the 'Linguistic and cultural mediation and integrated mediation service for companies/bodies in the Tuscany Region Healthcare System', i.e. through a European tender procedure aimed at entering into agreements with the third sector. The service is provided throughout the region, both within hospitals and in the community.

For over 10 years, Oxfam Italia Intercultura has been working in the field of intercultural mediation to combat inequality and guarantee healthcare protection through a staff of over 40 mediators<sup>3</sup>, a medical anthropologist, and two coordinators. Specifically, the service is active within the Azienda USL Toscana Sud Est (Southeast Tuscany Local Health Authority) and therefore covers the provinces of Arezzo, Siena, and Grosseto.

Between 2021 and 2024, there were more than 23,000 requests for mediation services. There are three types of mediation: mediation on set days, on-call mediation, and remote mediation on set days<sup>4</sup>.

As regards intercultural mediation on pre-set days, this is activated in the province of Arezzo within the maternal and child health area. Over time, there has been a shift from simply translating the operator's message to a more complex tool for understanding the specific characteristics of the foreign person and their behavior within the framework of their culture of origin and migration project, as highlighted by the head of the Arezzo Counseling Center:

3 In addition to English and French, the service covers a wide range of languages: Urdu, Hindi, Punjabi, Bengali, Arabic, Albanian, Romanian, Chinese, etc.

4 This type of service was discontinued in March 2024.

I was fortunate in Arezzo to find a beautiful, strong idea of indispensability, of having to share with our healthcare workers the new figure of the linguistic-cultural mediator, previously relegated to translation, and then understand that it helped us to know and understand the person in front of us. (A.M., head of the Consultancy).

The presence of permanent mediators has facilitated the development of the relationship between healthcare professionals and mediators, as can be seen from the same testimony:

The waiting room becomes, must become, a place for sharing. Institutionalizing it at certain times is essential for any need. And the connection with the community, knowledge of the area, the networks that exist, is fundamental for us. (A.M., clinic manager).

Reflection on intercultural mediation has led to it being considered an intervention tool and not just a single professional figure. “In mediation interventions, the mediator is one of the transformative resources to be activated: it is mediation as an intervention tool that contributes to building the relationship, not the individual mediator” (Luatti, 2021).

The mediation tool is built through various elements: adequate spaces, teamwork, relationships of trust with operators, and additional time for exchange between different professionals.

Having a somewhat institutionalized service also allows you to grow in terms of content. And to establish a pact of trust between all the colleagues at the counseling center, including the mediators. We have created a service charter, I don't know if you noticed it when you came in, where you can see the faces of the team and the mediators. (A.M., head of the counseling center).

The on-call service is available in all three provinces. In this case, the request for activation is made by the competent Health Authority using an activation form that specifies the health service and the languages required.

*Over the years, there has been a change within the Health Authority that has led to a new awareness of the use of mediation. Those who use mediation are mostly services that are familiar with it, that have understood its value and, above all, that can no longer do without it. Google Translate is no longer used.* (S.M., health service representative).

The last type, remote intercultural mediation, arose following the outbreak of the pandemic, more precisely in the province of Grosseto,

with the aim of guaranteeing the service even in an emergency situation in a geographically vast area. This type of service has been discontinued, but it is interesting to note that the requests concerned two macro areas: on the one hand, the issue of COVID-19 (requests for help in booking vaccines, general information on the various types of vaccines, rules on travel, green passes, etc.), and on the other hand, welfare measures (citizenship income, single family allowance, various bonuses).

[...] Other calls also began to come in, regarding residence permits, rent, all kinds of questions. (K.E., intercultural mediator).

Over the years, mediation has become widespread practice, but it is not yet stable and systematic in all health services in the area where Oxfam works. Despite the progress made by the Tuscany Region<sup>5</sup> in recognizing the new professional figure with a profile more suited to the current migration context, professional legitimacy and recognition still need further steps forward. In addition, it should not be forgotten that this profession has been affected more than others by the radical social changes of recent decades and now needs to rethink its profile. It needs to rethink and reinvent itself in new conditions and on a different scale. In this context, the *Community Health Educator Model* is a good practice promoted by Oxfam. The experiment, with adaptations, from the British experience promoted by Dr. Lai Fong Chiu<sup>6</sup>, consists of community health educators, adults (men or women) of foreign origin, who perform 'mediation' roles and functions in close contact and according to forms of collaboration shared and monitored with health services and operators. Community health educators' approach, accompany, and promote the participation and access to health services of their fellow countrymen inside

5 Regional Decree No. 17375 of October 31, 2018, approved the new professional role.

6 I recall the projects carried out in Tuscany (the 'Artemis' project, 2006) by the Cesena Local Health Authority in 2006, and more recently by the Tuscany Global Health Center (the 'Escapes. Community Health Educators for Appropriate and Equitable Access to Health Services", 2016), see the final publication of the same name <http://www.centrosaluteglobale.eu/progetti-corsi/escapes>. A quick web search allows you to download the materials produced in the other experiences mentioned here. Of the various experiences carried out in Tuscany by Oxfam using the Community Health Educator model, two involved refugees and asylum seekers: the Sprint 2 project through the health literacy program and the SAMEDI (Mental Health Addictions) project - Able to treat in a network, beyond cultural barriers (insert the name in English in brackets) - led by the Health Authority of the Amiata Grossetana, Colline Metallifere and Grossetana areas and partners Azienda Usl Toscana Sud-Est and the University of Siena (Department of Social, Political and Cognitive Sciences).

and outside the health facility, reaching users at home, in neighborhoods, in meeting places, during holidays and celebrations, where health care workers alone cannot reach them. She works through *peer education and community empowerment* aimed at promoting health-promoting behaviors and healthy lifestyles or achieving a specific health goal for which there is a problem and a specific national group and the service itself that is unable to ‘engage’ the users of that group.

This active model bases its potential for effectiveness on building personal and collective capacities in the field of health protection. The *Community Health Educator Model* is developed in three phases:

- 1) Needs analysis and research: this investigative phase is an important part of the process, as it allows interventions to be contextualized and the issues addressed to be explored in depth, both in terms of health needs and the characteristics of the local area.
- 2) Training: the program takes into account both future community health educators and social and health workers. The training curriculum is tailored to the needs identified in the local areas. The training includes modules dedicated solely to health educators, others solely to health workers, and others to both.
- 3) Implementation: starting with training, health educators begin their work within their own communities. The first activity involves the creation of information material for the target migrant population, followed by *outreach*, i.e., the set of activities carried out by educators in collaboration with public health institutions, aimed at ensuring access to prevention and treatment opportunities through active provision directly in people’s living environments.

With the Consultori di Arezzo and San Giovanni Valdarno, Oxfam has experimented with the role of Community Health Educator (ESC) to promote proper access to maternal and child services and to work on health education and healthy lifestyles. The role of community health educator has therefore become part of the healthcare team, and together a work plan has been developed based on a reflection on the issues to be addressed, how to involve the population, and the language to be used in order to avoid prejudice and stigmatization. The complementarity of skills that bring together scientific evidence and knowledge of other cultures is essential to enable effective action that is assertive but takes into account the cultural background and beliefs of each person.

This methodology was used to work in particular with groups of women from India in Valdarno (province of Arezzo) and with a group of women

from Bangladesh and Pakistan in Arezzo. The main topics addressed were the prevention of chronic diseases and healthy lifestyles (diabetes is a very sensitive issue, as a large part of the population from Asia living in the province of Arezzo is affected by it), newborn care, and access to local health services.

The initial information session took place in community meeting places: the Sikh temple, the Hindu temple, and the mosque, as well as outside schools and neighborhood markets. Community health educators went to these places to provide information on the topics covered and to invite women to ad hoc meetings. We then organized ad hoc meetings (divided by nationality) with educators and health personnel to allow women to ask questions and obtain information without shame or filters. These actions have led to greater effectiveness of the health message and h, reducing the distance between women and the public service and building relationships of trust that go beyond the sometimes cold and distant doctor/patient relationship.

From these brief and partial notes, from these examples and experiences, we can see that the heterogeneous field of action of “mediation” takes on aspects and connotations that inevitably refer to mediated “proximity” work, i.e., the work of weaving and maintaining bonds inside and outside the services.

All this is part of the work that Oxfam Italia carries out and defines as ‘integrated mediation’: a mechanism that allows for decisive intervention on issues and promotes equity not only through the presence of an intercultural mediator within the relevant healthcare facilities, but also through the involvement of community health educators, ethnoclinical and anthropological supervision, and a broader reflection than just the healthcare dimension.

For example, it is within the adult and child mental health departments that the service has expanded to include ethnopsychology and medical anthropology, as reported by two doctors:

Specific measures have been put in place as clinical activities, including ethnopsychology, anthropology, and intercultural mediation, as well as service operators, because in mental health you are dealing with sensitivity and people’s suffering. (E. F., doctor).

Mediation of this kind, if I compare it to internal medicine, is like an MRI scan, in the sense that in certain situations it is necessary to develop an appropriate plan. Using ethnoclinical mediation allows you to identify the problem clearly. (M. C., doctor).

In general, reflection on intercultural mediation has led to it being considered an intervention tool and not just a single professional figure. It is a profession that, more than others, has been affected by the radical social changes of recent decades, and the process of systematization and recognition carried out by the Region of Tuscany, while representing an important milestone, does not appear to be sufficient. In light of the considerations that have emerged, community centers offer a possible space for a reversal of the trend towards a health service oriented towards health promotion, and it is precisely within two community centers (Le Piagge in Florence and San Giovanni Valdarno in the province of Arezzo) that Oxfam is conducting a pilot experiment that needs to be monitored and analyzed.

### 3. INDICATORS OF GOOD PRACTICE

It is crucial to identify good work so that it can be recognized and valued, in order to learn and be able to do well more often. Experience tells us that the intercultural mediator has sometimes proved to be the person who ‘invents’, finds, and identifies the answers within the services. This seems to highlight, in addition to a situation of service delegation and ‘loneliness’ of the mediator, that good practices can also develop where the service system is disorganized, lacking in resources, and poorly managed. But this is the exception, not the norm.

Starting from the indicators identified as central to mediation interventions and services, we can build observational tools for work and self-reflection that allow mediators themselves and other operators involved to review and modify the forms and content of their actions from time to time and to ‘adjust their aim’ (Di Rosa, Gijón Sánchez & Gucciardo, 2023).

Many years of experience in intercultural mediation allow us to highlight some ‘indicators’ of good practice that are useful for mediators, mediation agencies, institutions, and services (Morandi, 2010). A very early indicator refers to the active involvement of various local actors (local authorities, services, associations, etc.), which makes it possible to design and then deliver a mediation service that is better tailored to the needs and expectations of migrants and services. This ‘participatory’ approach should be periodically reactivated, using different and flexible methods, in order to reassess mediation needs, which change over time, and, if necessary, reorient the service.

We can then consider the following as indicators of good practice:

1. *institutional and organizational clarity* regarding the role of the intercultural mediator (with regard to their role, functions, duties, working methods, monitoring activities, etc.);
2. the inclusion of the mediator as a *figure within the system, especially in essential personal services (continuity of intervention) and their stable involvement in multidisciplinary teams;*
3. the presence of *joint and continuous training* methods for mediation subjects (training and self-training);
4. the *documentation* of mediation interventions;
5. the presence of *assessment and verification* tools (ongoing and final).

The first two indicators refer to the organizational and operational methods of integration; the third indicator refers to training; the fourth and fifth refer to assessment methods and tools. For each proposed indicator, the following table identifies some verification “measures”. We then read Oxfam Italia’s concrete experience in light of these indicators and measures.

TABLE 3  
GOOD PRACTICES IN INTERCULTURAL MEDIATION: SOME INDICATORS AND MEASURES

Indicators	Measures	Oxfam
1. Institutional and organizational clarity	<ul style="list-style-type: none"> <li>– The intercultural mediator’s intervention is carried out according to a specific mechanism, which defines the functions and ethical rules governing interaction between operators and the service organization.</li> <li>– There are operational protocols shared with the institution, which document the procedures and methods for activating the mediation service, the tasks, monitoring and evaluation activities, the contractual relationship, etc.</li> <li>– Information and awareness-raising on the functions and activities of the intercultural mediator are constantly provided by the parties involved (multilingual brochures and notices, information meetings, training, etc.).</li> <li>– There is a physical space for intercultural mediators, so that their presence is visible to users and service operators.</li> </ul>	<ul style="list-style-type: none"> <li>– There is a code of ethics shared with the institutions and services</li> <li>– Procedures for activating mediation with various institutions/services and activation and monitoring forms</li> <li>– Badges and visual signs (in the counseling center).</li> <li>– Presence of the mediator in the service charter of the various institutions (Consulting Room).</li> <li>– Physical space for mediators in community homes</li> </ul>
2. System figure	<ul style="list-style-type: none"> <li>– There is a structured and stable integration of the intercultural mediator in activities and/or in ongoing planning projects in the area.</li> <li>– The intercultural mediator supports service operators in carrying out their activities, participating in the planning, design, implementation, and evaluation of interventions.</li> <li>– The intercultural mediator works in multidisciplinary professional teams to which they can refer and which provide support and professional solidarity.</li> </ul>	<ul style="list-style-type: none"> <li>– System figure in counseling centers</li> <li>– part of multi-professional teams in the maternal and child health sector and in the area of mental health</li> </ul>

Indicators	Measures	Oxfam
3. Training (joint and on-going)	<ul style="list-style-type: none"> <li>– Initial assessments are carried out using specific tools to identify the skills already possessed by the trainee and those that need to be developed (training needs).</li> <li>– The training path for intercultural mediators is continuous, even after obtaining the relevant qualification.</li> <li>– Joint training between mediators and service operators is planned and encouraged.</li> <li>– Training involves the active participation of experienced intercultural mediators.</li> <li>– There are figures and moments of supervision with mediators (both individual and collective).</li> <li>– There is investment in the continuous intercultural training of service operators, to improve their approach and reception of foreign nationals and to make the best use of mediation resources.</li> </ul>	<ul style="list-style-type: none"> <li>– Training package every time a new candidate enters mediation</li> <li>– Support from an experienced mediator (<i>on-the-job</i> training)</li> <li>– Ongoing supervision by an anthropologist and senior trainer</li> <li>– Joint training with healthcare professionals (specific projects)</li> <li>– Training days on specific topics and aspects</li> </ul>
4. Documentation of mediation interventions	<ul style="list-style-type: none"> <li>– Mediation interventions are documented using specific, structured tools: forms (attendance, intervention request, mediation completed, complaints/ suggestions, etc.), notebooks, grids, diaries, etc. These tools vary depending on the type and scope of the intervention and are intended for use by the mediator and the service operator.</li> <li>– Practices of observational and/or self-observational documentation of the intervention are widespread, requiring reworking and synthesis, which are particularly effective for developing and strengthening reflective and introspective skills.</li> </ul>	<ul style="list-style-type: none"> <li>– Intervention forms that feed into the monitoring system</li> <li>– observation through anthropology</li> </ul>
5. Evaluation and verification	<ul style="list-style-type: none"> <li>– Constant verification of mediation interventions (ongoing and final) is provided for, through specific assessment tools and methodologies (questionnaires, forms, focus groups, etc.).</li> <li>– Meetings will be organized with operators and/or representatives of the requesting party.</li> <li>– The evaluation process takes the user's point of view into account.</li> <li>– The tools, methodologies, and results of the evaluation activity are made public and easily accessible/consultable.</li> <li>– The results of the evaluation activity contribute to providing the content for supervision and training meetings with individual mediators, with the group of mediators, and with mediators and service operators.</li> </ul>	<ul style="list-style-type: none"> <li>– Access forms (hours worked, service, type of mediation, language, location, gender, etc.)</li> <li>– Annual monitoring report</li> <li>– Feedback sessions on the mediation service with commissioning bodies</li> <li>– Interviews with mediators, operators, and representatives of mediation services and companies</li> </ul>

The research could help to identify the characteristics of good practices (and thus legitimize this profession). In turn, the analysis of the practices of intercultural mediators could highlight the specificity and originality of their skills, offering guidance for their training and for a working methodology that complements that of service professionals.

Finally, work should be done on the effectiveness of the mediation process and interventions, i.e., the changes produced or triggered in terms of results, transformation of knowledge, working methods, and quality of relationships.

## CONCLUSIONS

Over thirty years of linguistic and cultural mediation practices in institutions and services in Italy, and more than twenty years of experience with Oxfam Italy, have led to significant changes—sometimes subtle, sometimes profound—in people, services, and communities. These are transformations, however, that have yet to be thoroughly investigated and reflected upon. Yet this is not a marginal issue: at stake are professional awareness, the visibility of mediation practices, and the opportunity to build inclusion policies that recognize mediation as a central intervention tool.

For this reason, we want to dedicate the final part of this contribution to bringing to light, through the voices of some key actors in the field of mediation, the learnings gained and the changes that have occurred over time, both in mediators and in services. We have, therefore, asked mediators and service operators, during training sessions held across different parts of Italy, what they have learned after many years of mediation practice. These learnings and awarenesses are not limited to work with migrants, but also involve the services themselves, as mediation is, in every sense, a transformative practice.

Asking these questions means, first of all, reflecting on oneself, on the skills built through experience, and on those that still need further development; it also means questioning how and to what extent services and mediation itself have changed. These reflections have often been shared with all the actors involved, based on the belief that it is essential to build common representations and projects together, valuing differences and identifying shared elements. It is from this process that the following considerations emerge.

Linguistic and cultural mediators report that, through daily practice, they have learned to give time to situations and people, to suspend

judgment, and to observe before acting. Listening thus becomes an essential starting point, along with ensuring effective communication, because nothing is—or almost never is—what it seems at first glance. In the relationship with the migrant person, nothing can be taken for granted. Mediation teaches to be more attentive and flexible, to cultivate patience, and to read situations with greater depth: “mediation is a delicate lighthouse”, says one mediator, “that helps see things in a particular light”.

A central point is the ability to put oneself in another’s shoes, to enter the experience of others in order to understand their thoughts and emotions, finding common elements even beyond profound differences. This is a fundamental exercise of intercultural competence, which also involves decentralization: to better understand oneself and others means recognizing that attitudes, behaviors, and gestures are shaped by specific values and cultural frameworks, often mistakenly perceived as universal.

Mediators also emphasize the importance of kindness and delicacy in relationships, not as accessory traits but as real tools for the job: “kindness is a powerful tool”. From this stems greater empathy, an attention to listening, the suspension of prejudices, and respect for the thoughts and emotions of the user, which can never be treated superficially.

Another important learning comes from the interaction with service operators and collaborative work. At the same time, there is still widespread lack of awareness about what linguistic-cultural mediation truly is, hence the need to work towards building a real “system” of mediation. Mediators stress that there is not just one mediation, but many “mediations”, and that the growing experience of mediators makes the practice increasingly effective.

Over time, mediators have learned the specialized languages of services, their functioning, and the most appropriate ways to interact with them; they have acquired tools to manage interviews in various contexts, honing techniques like “filtering” and summarization, improving the initial phase of mediation, and learning to approach complex topics calmly and clearly. They have gained a strong sense of professional responsibility, along with the ability to recognize its limits: knowing what responsibilities fall to the mediator and which do not, leaving personal problems outside of work and not taking on the problems of others. Alongside all this, there are also more everyday and personal learnings: navigating the city, orienting oneself in services, but also learning to see mediation as a resource and, in some ways, enjoying life.

Services, institutions, and their operators have also undergone a true process of learning and transformation over time. From their perspective, the practice of mediation has helped develop a “different” perspective,

capable of grasping the complexity of situations and understanding people's needs in a less simplified way. This new perspective has opened up reflections and viewpoints that were previously hard to emerge, allowing for the overcoming of more rigid or standardized approaches. The mediator has thus become a key figure in understanding the culture of beneficiaries and facilitating relationships and interactions. In many contexts, this has also led to a reduction in conflicts and an improvement in the quality of relationships. In some experiences, services and communities, mediation is no longer just an episodic or emergency intervention, but has gradually consolidated as a structural and stable practice. The presence of the intercultural mediator has thus helped strengthen the local network, facilitating the connection between services, institutions, and communities, and making relationships between the various involved actors more fluid.

It is particularly significant to focus on mediators' perspectives regarding the learnings gained by services. According to the mediators, operators have learned, through mediation, to listen more carefully to users and give them the necessary time to express themselves, recognizing the value of their narratives. They have developed a greater capacity to understand complex issues, especially those related to cultural dimensions, and have developed attitudes based on deeper, more conscious respect. Attention to the user's voice has grown, no longer considered an accessory element, but a fundamental source of knowledge and understanding, which the mediator helps to bring out and explore. In this process, operators have also come to recognize the specific importance of the mediator's contribution, understanding that they are not just "translators", but professionals capable of interpreting contexts, meanings, and relationships. From this arises a greater trust in the mediator's opinion, words, and actions, and a more complex, "colored" view of the world, capable of embracing the plurality of experiences and perspectives.

Associations and cooperatives that manage mediation services also highlight significant learning. They emphasize that they have learned to better value the feedback provided by intercultural mediators, engaging in discussions about it and dedicating more space to listening, through structured moments of reflection and exchange within teams. A deeper awareness of the complexity of mediation as a profession has matured, characterized by uncertainties, unforeseen circumstances, and continuous negotiations, as well as the difficulties inherent in working in intercultural contexts. In this context, the idea that collaboration is key to effective teamwork has been reinforced: a process that involves the ability to build relationships based on mutual trust, learning not only to give trust but also to receive it.

In this perspective, we believe that the present and, even more so, the future of mediation cannot disregard full public awareness of these elements and contributions, which are still largely silenced and rendered invisible. They confirm that mediation is crucial not only in the fundamental processes of inclusion and citizenship-building, but also in enriching and improving services for the entire community.

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## 14. THE RELEASE OF THE MERIDIANO 13 IN PALERMO

### A gradual transition to autonomy

GAETANO GUCCIARDO  
*University of Palermo*

#### INTRODUCTION

Children who migrate alone often do so because of factors related to war, persecution, poverty. Theirs is a migratory project that is almost always a family project and their motivation to carry on the enterprise in the country of arrival is particularly strong (Menjívar & Perreira, 2019).

In Italy, the reception and integration system for unaccompanied foreign minors is mainly regulated by Law 47 of 2017 (the so-called Zampa Law), which introduced important measures in terms of rights protection. It provides that every unaccompanied foreign minor is received in appropriate facilities and can receive health care, education and legal support.

#### 1. THE STAGES OF RECEPTION

The reception of lone migrant minors includes a first reception phase, entrusted to governmental structures, and a second integration phase. On arrival, the minor is identified and sent to the reception facility. Here the second reception begins. It is important to specify that the foreign minor is put on the same footing as an Italian minor, therefore, he or she is received in facilities for minors that also receive Italian minors (Ministero dell'Interno, 2022).

When the minor turns eighteen, he or she loses the status of minor and the right to a residence permit, but not the vulnerability related to age.

One of the measures designed to cushion the impact of this transition is “autonomy flats”. In this article we examine an experiment that is taking place in Sicily and in particular in the city of Palermo.

## 2. THE PALERMO EXPERIENCE OF MERIDIANO 13

The release flat called Meridiano 13 of the Waldensian Institute's 'La Noce' diaconal centre is a project of the Reception and Integration System of the municipality of Palermo. It can host up to five people who have just reached the age of majority and come out of the reception system for minors. The persons accommodated are indicated by the SAI, which has assessed their knowledge of Italian and their ability and willingness to embark on a path of autonomy. They can stay there from six to twelve months and, during this period, they are followed by a staff that carries out periodic visits, individual interviews, group meetings and focus groups to encourage the acquisition of autonomy in household management but also in the areas in which they are involved, in particular school, training and work.

The Meridiano 13 experience is relatively young, having started in November 2022. The first placements took place in May 2023, so the project had been operational for less than a year at the time of the interviews. Until then, it had housed four young people, one of whom had completed the path to autonomy and left the flat.

A testimony by a person in charge of the municipality of Palermo allows us to grasp the meaning of this project:

The adult SAI... does not allow you to work on autonomy... [it is] disempowering for the boys because they don't pay bills, they don't do the cleaning, they don't have to cook, their bed is made and... the house is washed... [Instead] what this flat guarantees... is to make the boys responsible and ready and then to be autonomous when they leave a reception system. (Interview with Person in charge, municipality of Palermo).

Let us see how, in concrete terms, this accompaniment to autonomy was implemented.

### 2.1. *Housing integration*

In addition to a home, the release flat offers young people the support they need to acquire the appropriate documents and time to consolidate their position and learn how to manage a tenancy. This helps to create the conditions for independent living.

As one of the workers told us:

[...]often... the boys were thrown out of the houses, they came into conflict with the tenants, because they had practically never lived in houses with others. (Interview with CC).

They had to learn how to read household utility bills and contracts, repair household devices or contact the right technicians. For the management of household chores, the children discussed and agreed on the division of tasks, gaining experience in shared space management.

Or, among other things that condominium life can entail, they had to learn that bicycles and scooters should not be left in the building's hallway.

## *2.2. Job placement*

When they have to provide for themselves economically, the extreme vulnerability of these young people emerges, exposed as they are to particularly severe forms of exploitation.

We have often seen very dramatic situations of young people who... end up in jobs where they are exploited, even for 12, 13 hours a day. Night work, without contracts, risking their health... It means that they do not have contracts that allow them to find suitable housing. It means that the time comes to renew their residence permit but they do not have a residence, they do not have a job, they are totally invisible, they end up in the middle of nowhere... In Palermo we were confronted with the exploitation of the stables... We had two or three who orbited in this world with clogs on their faces, broken teeth... Very hard work because they woke up at 5 or 6 o'clock and in half an hour they had to be there, clean, saddle the horses, stay there all day to return in the evening. Very distant places where they were given a fictitious contract, let's say, of sports association, a ridiculous contract. (Interview with CC).

When it comes to finding employment, there is a very high risk that young people will find jobs without contracts, with wages that are insufficient to cover food and rent expenses, and in situations of severe exploitation. In the case that came to Meridiano 13, the support provided was to help the young person complete an internship that enabled him to find a more lucrative job in the north.

## *2.3. School integration*

For children attending school, the integration worker maintains contact with the teachers, monitors school progress and intervenes in

the event of difficulties, contributes to the creation of paths to reconcile work and school times, directing them towards evening school but also interceding with employers to agree on times compatible with school attendance hours.

### 3. CRITICAL ISSUES

The length of stay (6-12 months) can be an obstacle to building effective autonomy. As an operator told us

Precisely because I come from the social housing experience, I have seen that there are people who are able to get out at six months and people who need more time... And so to me this thing of six months and a year generates anxiety. (Interview with CC).

In relation to the resources that can be activated, from the testimonies we have collected, there emerges a work in progress to build a network with organisations, institutions, services that allows for more effective integration actions.

Everything is under construction. Also because the Casa dei Diritti office was understaffed... It is clear that at the moment the situation with schools is “yes and no”, on the subject of work as well, but we have started to focus, we are doing specific focuses, thematically on work (Interview with PC).

Therefore, the network, especially between schools and employers’ organisations, should be strengthened to make the system mature and strengthen the support to optimally meet the needs of the project.

### 4. THE RELEASE FLAT AS SEEN BY THE GUESTS

The guests we interviewed basically confirm what emerged from the discussion with the operators but add valuable details from below. A young man working as an assistant cook and waiter at a diner:

I am very happy here, there is no one shouting. I manage my life. (Interview with I1).

I had job offers, one was in Venice but for me it was far away and I didn’t know anyone so I turned it down. Another was in a butcher shop but I didn’t like it. I turned it down. I feel free to talk to the operators if there are things that don’t convince me. (Interview with I1).

### Another boy makes a comparison with a previous experience

Before I was in a juvenile community ... I worked in a restaurant ... I did an internship ... for six months. I did another job, another restaurant ... I did the internship for 6 months, after those 6 months I did another one for 6 months, in total a year. And they wouldn't do the contract. I confronted the operators here...they told me straight away to speak to the principal. I say all this because I don't want to speak ill of the other community or say they are not good but they don't have the time to explain, they never explained to me how to do the apprenticeship, they never listened to me. (Interview with I2).

Here it is different... When you talk to Safa and say you have a difficulty she says "come to the office, come to the office" and we solve it. (Interview with I2).

In the community... I didn't have my family, I was so scared, I didn't know how to make appointments. But when I got here everything changed and now I can manage quite well on my own. There I had no friends, people smoked and drank. I can't make friends with someone who drinks, then it becomes a problem. People were drinking, using drugs, I don't agree. (Interview with I2).

Another boy supports his mother and siblings in Côte d'Ivoire, goes to school and dreams of enrolling in electronic engineering:

[...]when I was in the community... of minors we couldn't make decisions. But here I feel autonomous. And I am learning a lot. I know that there are things I have to do and some I don't, that I have to take care of myself, pay my own expenses. So even with work I think it will be easy to be independent. (Interview with I3).

## CONCLUSIONS

Meridiano 13 is an effective space to accompany young migrants towards autonomy, combining educational support, respect for rules and personal freedom. It is an experience that can be translated into a replicable model and thus extended to other contexts in a perspective that promises to be effective in the key of insertion and integration.

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## 15. VOLUNTARY GUARDIANS OF UNACCOMPANIED FOREIGN MINORS IN ITALY

### Analysis of a reference point for social and labour insertion

RAQUEL VIDA FERNÁNDEZ  
*University of Granada*

#### INTRODUCTION

As in other southern European countries, the arrival of migrants is a historical reality in Italy, with a certain increase in recent years. This reality translates into a particularly dramatic challenge in relation to the need to activate mechanisms to protect migrant minors who arrive in the European Union unaccompanied by a responsible adult. Obviously, these children without support or family network are migrants who present a special vulnerability, both physical and psychological, and who pose a great challenge for Italian institutions and social services.

Specifically in Italy, in the last three years the arrival of this profile of migrants has increased. According to the data provided by the Directorate-General for Immigration and Integration Policies (Administration responsible for registering the data of unaccompanied foreign minors in the control base established in accordance with art. 4 of Prime Ministerial Decree 535/1999 after a certain decrease in arrivals in 2020 (due to the Covid pandemic), the evolution has been towards an increase.

Specifically, as of 31 October 2023, there were 23,798 foreign unaccompanied minors (FUMs) officially registered (we will never know, given that there is a margin of “unregistered”), which meant an increase in the registration of migrant minors of 26% compared to the same date in 2022 (18,876 FUMs registered, many of them arrived from Ukraine as a result of the war), and even more so compared to 2021 (when 10,327 FUMs were registered, although this was due to the pandemic).

As of 31 October 2024, there has been a slight stabilization, with a slight decrease, with a total of 19,215 unaccompanied minors currently officially in Italy<sup>3</sup>. Compared to 2017 (the year in which the Law for the Protection of Unaccompanied Foreign Minors in Italy was approved), which as of December 31 had 18,303 registered foreign minors, we can conclude

that we are not facing an “emergency” in this matter, but a reality that has continuity over time.

In view of this reality, there is an indisputable need to implement improvements in the reception systems of the countries of the Union, which guarantee respect for the fundamental rights of these people who have a double factor of vulnerability: the condition of migrants, and the condition of minors unaccompanied by adults.

Specifically in Italy, the ordinary Reception and Integration System (SAI), dependent on the municipalities, is often overwhelmed (Giovannetti, 2023). The places and measures for the reception of minors must have special characteristics, and today it is necessary to develop a system that does not treat the issue as a problem in charge of the scarce resources of the social policies of the City Councils, but a quality structure, supported in terms of resources from the State.

Currently, the migration policy of the European Union, and in particular the Italian one, is not only not providing a sufficient response to these pressing needs, but is also drifting towards an outsourcing policy and deterrence at borders, and restricting the rights of migrants in general, but also of minors (especially those close to adulthood, in particular). The so-called Decree Cutro (Legislative Decree No. 20/2023), converted into Law N.º 50/2023 —whose main objective is not to protect, but to prevent small boat landings—, contemplates among its measures, in relation to unaccompanied minors, measures of decentralization of reception, so that not all will be welcomed in specialized centers, being able to be referred to adult centers for periods of up to 90 days, in cases of lack of space in facilities for minors. In addition, a system of accelerated identification and expulsion is established, and the elimination of special protection, all of which potentially toughens the treatment of migrant minors.

Despite everything, the Italian legal system has, since 2017, a regulation that was pioneering in terms of the protection of unaccompanied migrant minors, and an instrument for improving the guarantee of the protection and well-being of the rights of these minors, implemented, evolving but already consolidated, and pioneering at the level of the European Union: Volunteer tutors.

We will examine the role of volunteer tutors, which should be a benchmark for other countries in the European Union where nothing similar exists, and which could potentially be regulated in a desirable specific Directive for the protection of unaccompanied minor foreigners in EU territory. Specifically, the regulation, configuration, benefits, weaknesses and possible elements for improvement will be analysed.

## 1. REGULATION OF THE FIGURE OF THE “VOLUNTARY GUARDIAN” IN ITALY

### 1.1. *The right to guardianship of unaccompanied immigrant minors: references of international regulations and immediate antecedents of current Italian regulations*

The regulation of the protection of foreign unaccompanied minors (FUMS) in Europe varies from country to country, due to different state regulations, however there are common standards that derive from international instruments and European Union regulation, which obviously conditions Italian regulation in this area. This international regulation conditions and to a certain extent harmonize state regulations in terms of guarantees of protection of the rights of minors, but even so there are different levels of protection.

Therefore, the Convention on the Rights of the Child (United Nations, 1989) is an unavoidable reference, which in its article 20 refers to the special protection of minors deprived of their family environment, protection by guardian, and enshrines the principle of non-discrimination and the legal concept of “*the best interests of the child*” (art. 3.1).

All unaccompanied foreign minors shall have the rights recognized under Convention No.89 protected, regardless of the migration policy pursued by the governments in power in the different Member States of the Union.

These rights that foreign minors have, and must be respected, in a schematic way, are: the right to have decent reception conditions; the right to registration and protection in the National Health Service; the right to facilitate the process of social, educational and labor integration without any type of discrimination; the right to be informed about one’s own rights and obligations, and the right to express one’s will and needs; the right to participate actively in proceedings affecting him or her and to be heard; the right to an investigation and family reunification procedure; the right to obtain regularization of their legal situation; the right to receive help with the transition to adulthood.

### 1.2. *The existing regulation at the European Union level on the protection of unaccompanied migrant minors*

Although it would be necessary, Europe does not currently have a specific Directive that harmonises the regulation and protection of unaccompanied migrant minors.

However, the Charter of Fundamental Rights of the Union reinforces the rights to the protection of minors (in terms of non-discrimination, art. 21), and requires measures for the care of minors in vulnerable situations, making express reference to the “guardianship” of unaccompanied minors in article 24, always in accordance with the fundamental principles of non-discrimination and respect for fundamental rights. The European Convention on Human Rights expresses itself in the same sense.

On the other hand, there is particular regulation on specific aspects, the main rules being:

Directive 2013/32/EU on common procedures for granting or withdrawing international protection status (which guarantees the existence of special procedures for asylum applications by FUMS, and the obligation to assign legal guardians to them for assistance, and the adaptation of interviews and assessments to their specific needs, art. 25).

The EU Directive (Directive 2013/33/EU), which approves the rules for the reception of applicants for international protection, requires, in accordance with the Convention on the Rights of the Child, the assignment of a guardian or representative to ensure the protection of the interests of unaccompanied minors, entry into age-appropriate facilities (different from those of adult migrants), as well as the right to health care, education, housing, and fair asylum procedures.

The Return Directive (2008/115/EU) prohibits the expulsion of unaccompanied minors if their safe reintegration in the country of origin is not guaranteed, in addition to obliging States to prioritise alternatives to detention and ensuring that the child is under the supervision of the authorities.

The so-called Dublin III Regulation (604/2013), of 26 June 2013, on criteria and mechanisms for the examination by member states of applications for international protection, recognises and gives priority to the concept of “*best interests of the child*”, guaranteeing assistance to minors who need to request international protection (art. 6), and prioritize the family reunification of minors with their family (the State responsible for the migrant minor will be the one where family members are present, and if there are no relatives, the best interests of the child will be prioritized). Likewise, Article 7.3 Directive 2013/32/EU, provides that: “*member States shall ensure that the child has the right to make an application for international protection either on his or her own behalf, if he or she has legal capacity to act in proceedings under the law of the Member State concerned, or through his or her parents or other adult relatives, or through an adult responsible for him/her, under the national law or customs of the Member State concerned, or through a representative*”.

The problem is the dispersion, the absence of a solid and clear rule with standardized mechanisms of reception and protection by the Member States, which currently have different regulations in this area, which excessively delay the processes of assigning guardians, and reunification procedures and that in some cases exceed the use of medical tests to determine age, questioned for their invasive nature and their large margins of error.

## 2. THE REGULATION IN ITALY ON THE PROTECTION OF THE RIGHTS OF MIGRANT MINORS

Before the approval of Law 47/2017, the systems of reception and guardianship of minors were included in scattered and poorly systematized regulatory texts, which were summarized in: the General Law on Immigration (called “single text”, no. 286/1998, arts. 32 and 33, and its Action Decree 394/1999); the Decree on the Functioning of the Committee for Foreign Minors (D.P.C.M. 535/1999), which was later transferred to the Directorate-General for Immigration of the Ministry of Labour and Social Policies; also the references in general civil laws (Civil Code and special laws such as the one granting guardianship of minors (no. 184/1983); in specific reference unaccompanied minors D.Lgs. 25/2008, DLgs 251/2007, and Law 142/2015, which contains provisions relating to refugees (Lomgobardi, 2016).

Also, at a practical level, different problems were detected in their specific action. In fact, the processes of assigning guardians to unaccompanied minors were excessively slow (an average of eleven months), for this reason the European Commission opened an infringement procedure against the Italian State in 2014. In addition, the Commission denounced that the figure of the guardian was articulated in an excessively bureaucratized manner and inappropriate to the purposes of protection and insertion (specifically, guardianship is assigned to the mayors of the localities where the minors were, who in turn delegate to the social welfare workers the performance of their tasks as such, considering the institutions of the Union that this is not a formula that guarantees the effective function expected of a guardian of minors).

With Law No. 47/2017 (Zampa Law), Italy becomes the first European country to legislate a comprehensive framework for unaccompanied immigrant minors. Human rights organizations participated in the drafting of this standard, contributing their experience in this field and the correct application of international principles on the rights of children and adolescents.

The main value of this regulation is not so much the creation of new instruments in the field of protection of FUMS, its value was to achieve a key advance in regulation: the systematization, organization and development of what existed but in a more systematized way and in accordance with the international principles of protection of migrant minors and adolescents. Although practice, logically, did not change overnight, there was an improvement at the institutional level, although reality always has its shortcomings, and challenges for improvement.

In terms of novelty, it is worth highlighting the notable improvement in the implementation of pioneering measures linked to guardianship, such as “voluntary guardians”, which is the subject that will be analysed in the following sections.

The law was hailed as an excellent starting point, among others, by the United Nations Children’s Fund (UNICEF) and Save the Children, although in 2024 we can say that the drift of the migration policy of the Italian government led by Prime Minister Meloni, although it does not repeal the law, decimates part of its content.

### *2.1. Law 47/2017 (Zampa Law), of 7 April 2017, regulating protection measures for unaccompanied foreign minors in Italy (including the “Voluntary Guardian”)*

Law No. 47/2017, known as the “Zampa Law” (6 May 2017), broke with the dispersion and legal uncertainty existing in relation to “unaccompanied foreign minors”, and incorporated in a single normative instrument reinforced measures on the reception and protection of the rights of immigrant minors arriving in Italy, establishing specific instructions for their reception and integration.

This law, which is prominent at the European level in terms of the protection of minors, recognises these people’s rights as particularly vulnerable subjects, regardless of their status as migrants.

Among the measures contained in Law 47/2017 are: the prohibition of expulsion of unaccompanied immigrant minors (regardless of their immigration status); establishes non-invasive identification systems (in cases of doubt), and immediate assistance, mainly in the areas of health, education, psychological assistance and legal advice; reception system in specific facilities, avoiding ordinary detention centres (an aspect currently affected by the latest legislative reforms); the assignment of a legal guardian who represents minors and guarantees the protection of their rights, prioritizing the figure of the individualized guardian, and

introduces the new figure of the voluntary guardian, in an attempt to humanize and debureaucratize the protection of these minors.

As stated in the first “guidelines” for the selection, training and creation of lists of guardians: the creation of lists of voluntary guardians to make them available to the judicial authority requires an effort and a cultural leap. The voluntary guardian embodies a new idea of legal guardianship, an expression of social paternity and active citizenship. A guardian not only for legal representation but also attentive to the relationship with the ward, interpreter of their needs and problems.

## 2.2. *The legal concept of “unaccompanied minor”*

First of all, it is necessary to specify who the beneficiaries of this new institution are, that is, who are the beneficiaries of Law 47/2017.

Article 2 of the Zampa Law considers “*unaccompanied foreign minors*” to be those minors who are in the territory of the Italian State, or “otherwise subject to Italian jurisdiction”, and who do not have Italian citizenship or citizenship of any country of the European Union, and are “*without the assistance and representation of the parents or adult guardians legally responsible for them*” in accordance with Italian law.

Thus, minors who are in Italy with their parents, even if they are foreigners in an irregular situation, will not be considered as such; on the other hand, unaccompanied minors will be those who live in Italy with adults other than their parents or legally recognised guardians, and who, therefore, cannot exercise their legal representation.

With regard to the concept of “unaccompanied minor”, article 3.2 of Law 47/17 seems to add a nuance when it refers to the legal amendments in relation to the prohibition of expulsion of minors regulated in the Italian law on foreigners (“*testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero*”): Legislative Decree of 25 July 1998, No. 286 (art. 19), since it excludes from the concept of “unaccompanied minor” those who are with at least one of the parents, but also those who are with relatives up to the fourth degree.

Minors who are irregularly present but accompanied in Italy will be represented in the management of their rights by their parents, relatives or guardians (they could be third parties who have formally taken them in). The irregular situation of the parents will not affect their basic rights (mainly education, health), but the fact of being a minor does not imply the automatic regularization of the minor and/or his parents (although there is the possibility of requesting temporary “*soggiorno*” leave for the assistance of minors by their relatives, art. 31 Testo Único, D. Lg. 286/1998).

### 2.3. Legal concept of “voluntary guardian” of unaccompanied minors

Article 11 of Law 47/2017 introduced this figure which, until then, did not exist in Italy. This precept is complemented, as we have anticipated, with various regulations that are applicable to the figure, in a general way but also at the regional or local level—which means that there are nuances and different practices depending on the region in the way of managing the figure of volunteer tutors—.

Before detailing the formal requirements and conditions legally required to be appointed guardian of minors, and the way in which they are appointed, we will give a basic concept of what they are and what is expected of them.

Guardians are those adults who are nationals or residents of Italy, ordinary citizens, who apply as such to the authorities and who are formally designated as the person responsible for protecting the interests and rights of unaccompanied minors who are in Italian territory, helping them as guides for their integration and insertion into Italian society. They respond to the fundamental right of the minor to have protection and guardianship, and to an obligation of the State, therefore if there is no possibility of appointing a voluntary guardian, the minor will be protected by the person in charge of the reception centre in which he or she is admitted due to his or her status as an unaccompanied minor.

Legally, the concept given to them (art. 11.1 Law 47/17) is that of those “*private citizens*”, who voluntarily apply to register and appear on the lists of “voluntary guardians” that are created in the Juvenile Courts, before the “*regional guarantor*” administration for children and adolescents, and of the autonomous provinces of Trento and Bolzano”.

You can be the guardian of one minor or more than one (no more than three, except in exceptional cases, such as the case of siblings, but it will always be an exception and will have to be expressly authorized and supervised by the judicial authority, aspect modification of art. 11 of Law 47 of 2017, by Legislative Decree 220/2017, art. 3 ).

In the first year of its entry into operation, 3029 voluntary guardians were registered in the Juvenile Courts as of 31 December 2018, according to the first report issued by the Guarantor Authority for Children and Adolescents. In 2021/2022 it reached the number of 3,457 tutors. Currently, we are waiting for the last report of 2024, but the approximate number seems close to four thousand tutors, although there is concern about a certain stagnation in the recruitment of volunteers, and the enormous imbalance between the number of tutors and the number of minors who need this support instrument.

### 3. CONDITIONS AND OPERATION OF THE “VOLUNTEER TUTOR”

#### 3.1. *Conditions for being a voluntary guardian of an unaccompanied minor*

Article 11 of Law 47/17 does not go into detail about the specific requirements and the administrative process to manage the appointment of voluntary guardians of FUMS, although there is a complementary regulation, and instructions provided by the Guarantor Authority for Children and Adolescents.

This regulation is found in the following provisions: Civil Code, referred directly to in art. 11.2, which refers to Book One, Title IX, on general aspects of guardianship, arts. 343-354; Legislative Decree 142/2015 regulating the procedures for the reception of applicants and international protection and unaccompanied minors, which establishes the procedure for the appointment of guardians by the Juvenile Courts and defines the obligations of local authorities to guarantee the protection of minors; the guidelines of the National Guarantor for Children and Adolescents (it has rules, recommendations and procedures to ensure compliance with standards of training, suitability and commitment of tutors); Ministerial Circulars on ways of accrediting criminal records, or times and forms in the presentation of documentation; and regional and local regulations).

The requirements to be able to apply as a “voluntary guardian” in Italy are to be over 25 years of age, to have a national or legal resident in Italy, and with a sufficient knowledge of the Italian language, and to be the holder of ordinary civil and political rights.

In addition, the guardian cannot have criminal convictions, nor have pending criminal proceedings, for this purpose he will be asked for a certificate of not having a criminal record (*Casellario Giudiziale*), and of not having pending judicial proceedings (*Certificato dei Carichi Pendenti*), a requirement to be able to be part of the lists of guardians. Nor can he be in situations that prevent his status as guardian, as provided for in Article 350 of the Italian Civil Code.

The verification of these requirements is part of the selection process, together with a statement of ethical commitment, interview to assess their emotional and psychological suitability and motivations, in addition to the training that will be provided by the corresponding Guarantor Authority.

The guardian does not usually reside with the child who mainly lives in foster care (or semi-independent housing programs in the case of adolescents close to the age of majority), but is required that his or her habitual residence is in the same region or province as the child to be assigned to him/her, in order to guarantee real proximity.

The role played by a “voluntary guardian of unaccompanied minor immigrants” is not as broad in terms of responsibilities as that played by an ordinary guardian, given that these minors are under the general guardianship of public institutions, although their work has components of social, legal and cultural integration that an ordinary guardian does not have.

Part 2 of article 17 establishes the application to this type of “guardians” of Title IX, book one, of the Civil Code (“*On the responsibility of parents and the rights and duties of the child*”, arts. 315 to 337).

The activity of the tutors is a charitable work (art. 379. co.1 Italian Civil Code), without prejudice to certain compensations. When it was approved in 2017, there was no financial aid for the tutor linked to this activity. By Decree of 8 August 2022, for the first time, the possibility of reimbursement of expenses incurred for the work of a volunteer tutor was approved. In addition, in some regions there is aid for possible expenses incurred by tutoring work (as a reimbursement of justified expenses, as well as civil liability insurance coverage), and tax deductions linked to the expenses generated in their activity as a tutor, but it is ensured that it continues to be a voluntary and non-profit activity. There may be recognition of the work carried out as a tutor, as an honorific or as a value in terms of social collaboration.

The role of guardian cannot be unilaterally waived in any case. Certainly, circumstances may arise that lead the guardian to resign for supervening causes, but it must be formally recorded before the appropriate Juvenile Court, which will order the end of the guardianship and make a new call or assignment of the minor to another guardian. While the process lasts, the status of guardian must be maintained, so as not to leave the minor unprotected at any time. On the other hand, the Court can also revoke the status of guardian due to circumstances that make it advisable to do so (conflicts, dereliction of functions or any irregularity of which the Court is aware).

In cases where the child disappears from the reception centre where he or she resides, the guardian is obliged to inform the Juvenile Court of this circumstance, and it will normally be represented by the Juvenile Court. Just as it is true that the well-developed figure of the guardian can be an incentive to prevent the escape of minors, it is also true that the relativity in the responsibility of the guardian entails an easier disengagement of the minor than an ordinary guardian, which makes it impossible to follow up to prevent them from falling into the hands of mafias (Tassinari, 2019).

In this sense, the absence of harmonized regulation at the European Union level on NTMs also prevents the existence of a true network of

representation, cooperation and control between the different States, which is essential to fight against mafias and exploitation of migrant minors and young people. As is well known, the EU's migration policy is not only not advancing along this harmonised and protective path, which is so much in demand politically, socially and doctrinally, but quite the opposite. In fact, the new "Pact on Migration and Asylum", approved in April 2024, strengthens controls, closes centres near borders to speed up returns, modifies the recognition system, extends the minimum age for collecting fingerprints from children to 6 years of age (previously from 14 years old); reduces guarantees of the right to asylum, and reinforces border externalization policies.

#### **a. Process for setting up guardian lists and assigning the child**

Citizens who meet the aforementioned requirements, who wish to apply as volunteer guardians, must do so by processing the application through public calls issued by the regional or local Guarantor for Children and Adolescents. These calls are published periodically. Applicants must complete an application and prove personal requirements.

Schematically, the selection procedure consists of three phases: pre-selection (review of the qualifications of the applicant tutor); training of applicants as pre-selected tutors; and validation of their registration on the list of guardians, before the Juvenile Court.

Therefore, the selected persons must complete a mandatory training course that guarantees and allows them the proper development of their responsibilities and once completed they will be registered in the "Register of Voluntary Guardians" in the Juvenile Court and it is, from then on, when they can be assigned to a minor who needs assistance.

These mandatory training courses for tutors have common basic content in accordance with the guidelines to harmonize that basic content, issued by the Guarantor Authority. It is delivered by the State Guarantor Authority itself or the regional Guarantor Authorities (depending on the region). However, depending on the regions and institutions that teach it, we can find nuances.

The content of the training should focus on the regulations on foreigners and the rights of unaccompanied minors (Law 47/2017 itself, but also on the Single Text, etc...), international protection and asylum procedures, the reception system (SAI), coordination with health, social, educational services, the legal status of minors, intercultural competences to facilitate the understanding of their origin and facilitate integration

into Italian society, also to know how to relate to the minor, knowing the basic concepts about the psychology of trauma and emotional well-being, communication and interpersonal skills. The training received must be evaluated, to guarantee its usefulness.

The training must be continuous; therefore the first courses will be followed by others called “complementary”. However, the level and intensity of complementary training depend on each region and locality. This training is provided with the collaboration of regional and local authorities (Comuni), in collaboration with social services, also third sector entities and universities.

Once the compulsory training has been completed, the guardian will be admitted to the List of Guardians in the Juvenile Court, being called from that moment on when their intervention is necessary.

The main advantage of the guardian list system is that it streamlines the process of assigning a guardian to represent the minor migrant. In this way, assistance is guaranteed in the identification procedure, and for the management of the process of applying for international protection.

In any case, the volunteer tutors are assisted by the administrations in the exercise of their guardianship function. The greater or lesser effectiveness of this accompaniment will depend in part on the way in which this activity is carried out by each regional administration.

## **b. Main actions and responsibilities of the volunteer tutor and support mechanisms for their work**

### **i. Main actions and responsibilities of the volunteer tutor**

Guardians are, first and foremost, but not only, the legal representatives of minors with regard to the processing and claiming of their rights, taking into account the best interests of the minor, and guaranteeing the absence of discrimination. Children usually reside in foster care or with foster families, but this is independent of the fact that a guardian is assigned.

Thus, the guardians will be the ones who represent them in all legal, administrative and civil proceedings that affect them, in addition to other important insertion activities, although the first and main actions of the guardian must be:

The application for the child’s residence permit and/or renewal (application for asylum or other forms of international protection for the child, depending on the child’s circumstances) and/or its administrative

follow-up (given that in many cases these procedures are initiated before the child and the guardian appointed by him or her come into contact).

Manage your general request for personal documentation (identity card, passport, etc.) and be the administrator of your assets (except in exceptional circumstances, which will require the authorization of the Juvenile Court).

If this is the case, he will manage the family reunification process, provided that this is the best option for the best interests of the child, and he agrees with this measure (art. 6 Law 47/2017). In fact, family research is the responsibility of the tutor —with the help of social services, and other third sector organizations—.

It will supervise the process of identifying the child (art. 5 Law 47/2017) and must react to decisions that the institutions adopt that it considers abusive or that do not respect the benefit of the child (court, social services). The age assignment itself may appeal with the help of the guardian. Logically, this aspect is the most problematic in relation to adolescent minors, who are precisely the most numerous in Italy (according to an October 2024 report by the Ministry of the Interior, 23.75% registered in Italy are between 16 and 18 years old).

In the event that the minor has been a victim of trafficking (labour or sexual exploitation), the guardian must request the application of specific programs for the protection of the child. In the event of any indication in this regard, the police must be contacted to ensure the adequate protection of the minor (art. 17 Law 47/2017).

It will manage their registration in the National Health System to guarantee their health care, their schooling and will collaborate with these institutions to ensure their physical and mental health (art. 14 Law 24/2017). The guardian is the child's "signature" on all important decisions regarding education, health, or housing. You must check that the conditions in which the child lives in the reception centre are adequate (make sure that they are provided with clothing, adequate food, language teaching...). If the guardian finds that there is any irregularity, they may report the situation to social services or to the shelter itself, as well as, in general, any violation of their rights or situations of risk that affect them.

When the minor is approaching the age of majority, the guardian must help to go through this change, first of all to guarantee his or her residence permit according to the particular circumstances of each minor (leave linked to studies, paid work, self-employment, or other of the circumstances that enable the permit, if they do not have international protection), which will be requested from the Directorate General of Immigration Policies.

The labor insertion of minors is one of the most important actions in which the tutor can collaborate. In Italy, the working age begins at 16 years of age, so there will be minors who can begin to provide services as employees, although it will depend on the type of permit they have, and it is required as requirements to have completed compulsory basic education and to have previously registered with the Employment Centre.

In the event that the minor enters the world of work, the guardian must ensure that the particularities of his or her employment contract are respected (limitation of hours, guarantees of minimum breaks, special measures such as information and training and prohibited activities in the field of safety at work...). In the event of a violation, the guardian must represent the minor in reporting the situation to the authorities, and where appropriate, the exercise of legal actions.

In addition to the above, it should be noted that, given the characteristics and special needs of these minors, the role expected of the guardian goes far beyond the strictly legal one. Wait of the guardians who are a real support instrument of cultural, social, emotional integration for the child —and in fact this is how they experience it in most cases—. In order to properly carry out this complex activity, tutors receive support from professionals, and at the same time they must collaborate with social services, educators and any other professional who is considered necessary for the care of the child (it will depend on the profile and personal circumstances of the child to be protected).

In short, the activity of the guardian must be characterized by being independent and impartial (inspired only by the best interests of the child), they must have quality and suitability (that is why the requirement of specific initial training is key and should also be continuous training); they must be subject to control and accountability (they must report regularly to the Juvenile Court on the situation of the minor, and they must be evaluated), and they must be aware of the need to respect the guarantee of participation of the minor (which is in fact a fundamental right of the minor).

In fact, the Juvenile Court may remove the guardian from his or her duties if he or she becomes aware of any circumstance involving the violation, neglect of the guardian's duties, or in the event of abuses of the powers he or she exercises to the detriment of the minor (in this sense, art. 330.1 of the Italian Civil Code). Information on situations that motivate the revocation of the appointment as guardian reaches the Courts, mainly by the social workers of the municipality, and by those responsible for the second reception centers —who are the ones who have

the most contact with both the minor and the guardians and are the ones who detect irregularities—.

It is important to always take into account the right of the minor to a hearing and active participation in the proceedings in which he or she is the protagonist, which is recognized as a fundamental right in the Convention on the Rights of the Child (1989). The Zampa Law formally introduced this right: the minor must be heard and taken into consideration in administrative and judicial proceedings that affect them, in addition to the right to free legal assistance.

With regard to responsibilities for the actions of the minor, logically the guardian will not have criminal liability (since this type of liability is personal, art. 27 of the Italian Constitution), and civil liability for damages arising from any action of the minor is limited (it will only proceed if there is cohabitation, and there is direct control of the guardian over the minor's acts, that is, it would be imputable under the title of "culpa in vigilando", art. 2048.co.1 and 3 of the Civil Code); However, even in these cases, it may be proven that it is impossible to avoid the minor's act, in order to avoid such responsibility. In relation to responsibilities, the guardian could be civilly liable in the event that his or her action (or omission) affects any of the minor's rights, i.e. that his or her activity as guardian has some negative consequence on the minor.

## **ii. The role of the Guarantor Authority for Children and Adolescents and other entities in supporting the activity of the voluntary guardian**

There are several public entities that collaborate with the figure of volunteer tutors. Obviously, the Juvenile Courts, which are the main authority in direct relation to minor guardians, and the social services of the provinces stand out, although I will focus in this case on the role of the "Guarantor Authority", as it is a key element in the control of this figure.

The Guarantor Authority for Children and Adolescents is an independent body created by Law No. 112 of 12 July 2011, with the incumbent ("the authority"), which is appointed by consensus among the speakers of the Houses of Parliament and has a four-year term.

Its main function is to guarantee the implementation of the UN Convention on the Rights of the Child (1989), and other international and national regulations for the protection of minors. Its action focuses on actions to supervise and promote rights, similar to the "ombudsman for minors" in Spain; legal advice providing reports to the executive and parliament for the development of standards; studies and recommendations

and international collaboration (representing Italy in international networks and forums related to child protection).

In terms of voluntary guardians of minors, it carries out promotion and regulation functions: it organises campaigns to encourage participation as guardians; it designs and supervises and delivers mandatory training programs for tutors; it collaborates with regions and local authorities to ensure uniform training of guardians, and also intervenes in the event of conflicts in the exercise of guardianship, as a mediator (Lelliott, 2018).

However, perhaps the most important activity it carries out is the supervision and guarantee that the tutors fulfill their functions, in addition to monitoring the institution, making annual reports on the general functioning of the tutors. To this end, they have a specific website for information, support, dissemination and publication of the results of their activity in relation to the voluntary guardianship of unaccompanied minors (<https://tutelavolontaria.garanteinfanzia.org/rapporti-di-monitoraggio>).

At the regional level there are also “guarantor authorities”, which perform functions similar to the national one but adapted to the context of each region. They are organized and governed by territory-specific rules but work in collaboration with the national Guarantor Authority. These entities are the ones that receive complaints of possible violations of children’s rights, promote local policies and projects in favor of minors, and implement measures to help families and guardians.

The role of social service workers in City Councils is key in supporting and controlling the role of guardians. However, in most local entities the number of these professionals in relation to the minors under guardianship to be cared for is absolutely insufficient.

The work of Italian social workers in relation to tutors is key to their success. They carry out an assessment of the needs and profile of the minor to be supervised that serves to allow the guardian to know the needs of the child in relation to his or her personal situation (health, educational level, psychological support needs), social and family situation. They help in the training of tutors, and in many cases, they provide support and specific training programs (they address issues such as immigration regulations, management of complex emotional situations, cultural diversity, etc.).

But undoubtedly the most important work is that of coordination and mediation between guardians and institutions that manage the protection of minors (Juvenile Court, shelters, health services...). Italian social workers monitor the progress of minors and ensure that their educational, social and psychological needs are respected. In fact, these professionals can request the revocation of the functions of guardian before the Juvenile Court if they detect irregularities or dereliction of functions. In addition,

they manage relationships with local and national authorities (such as police, immigration services) and other public services, to ensure that children have access to the services they need.

When the child approaches or reaches the age of majority, social services help to promote their autonomy and personal development. They ensure that minors have access to education programs, vocational training and any service that helps them with their independence and professional insertion.

On the other hand, there are associations for the self-help of volunteer tutors, which existed even before the approval of the Zampa Law (given that in some regions of northern Italy, such as in the Veneto, there was a project similar to that of the volunteer tutor). In 2021, a total of 6 associations were created at the provincial level (Syracuse, Ferrara, Palermo), and other regional ones (Tuscany, Basilica, Abruzzo), and in 2022 they amount to 11 (Sardinia, Piedmont, Val d'Aosta, Friuli-Venezia Giulia, Lazio, Messina), in addition to informal support groups (Catania, Calabria, Como, Liguria, Emilia Romagna).

At the national level, there is a second-level association, “network tutors”, created in 2023, which has legal and administrative advisors, who help informal groups of tutors to configure themselves as formal associations, and as support for the exchange of experiences, good practices among tutor associations throughout the country. This national network has its origins in the Never Alone Foundation, created in Italy in 2015 and is part of the European EPIM program Never Alone-Building our future with children and young people arriving in Europe. The project is made up of nine foundations for the protection and support of the protection of foreign minors arriving in Italy, and has a specific programs of support for voluntary guardians. From this project emerged, as mentioned above, the “tutori in red” project, which in turn supports various regional and provincial associations of volunteer tutors.

Logically, third sector entities are an important instrument of information and help, to highlight a few: UNHCR provides through its project “Welcome. Working for the integration of refugees”, a page of support and specific information; Juma Services for Refugees (map services), is an initiative created by ARCI (Italian Cultural and Recreational Association), and UNHCR Italy, which provides an online platform with an interactive map with information on services, asylum seekers, migrants in general in Italy; Save The Children actively participates with guides and useful information for tutors for the development of their activity; Caritas Italy also stands out as a collaborating entity with immigrants of all kinds.

#### 4. PROJECT TO MONITOR THE OPERATION OF THE VOLUNTARY PROTECTION OF UNACCOMPANIED FOREIGN MINORS

The Guarantor Authority for Children and Adolescents (AGIA), as has been mentioned, assumes responsibility for monitoring the status of application and development of the provisions on the guardianship of unaccompanied minors and adolescents.

The original text of Article 11 of the Zampa Law was amended by Legislative Decree No. 220 of 2017, which in its Article 2.3 attributed to the Guarantor Authority (AGIA) the responsibility of monitoring the status of implementation of the provisions on the voluntary protection of minors, with the aim of periodically reporting on the effectiveness and evolution and thus detecting points of improvement in the MNS protection system.

The Project for “*Monitoring the Guardianship of Unaccompanied Foreign Minors*” in application of this article, complies with the provisions of Article 11 of Law 47/2017, and has been financed with European funds, approved by the Authority responsible for the Asylum, Migration and Integration Fund (FAMI) –funds managed for various actions related to migration, by the Italian Ministry of the Interior. The purpose of the project funded by the AMIF is to obtain quantitative and qualitative data to support, improve and promote the Guardianship System of Minor. Since the first report at the end of 2018, there have been a total of seven monitoring reports that can be consulted in open access on the AGIA website.

In June 2024, the FAMI fund (2021/2027) refines a monitoring program managed by the Guarantor Authority. Its purpose goes beyond mere monitoring: to promote the role and improve the functioning of volunteer guardians in the exercise of their guardianship; promote networking between tutors’ associations, informal tutors’ groups and local and regional support institutions; development of awareness campaigns and promotion of the figure of volunteer tutors. Monitoring is carried out through the collection of data and the preparation of quantitative and qualitative monitoring reports on the degree of implementation, received from different territorial structures.

The content of the latest monitoring report (2024) – like the previous ones – includes the following content:

Information on the number of unaccompanied minors arriving in Italy in 2024, amounting to 20,206 children and adolescents (and the percentage in contrast to previous years, currently observing a slight decrease compared to 2023); percentage by sex of unaccompanied foreign minors who have arrived in Italy in the period of time analysed (87% of boys, compared to 12% of girls); ages of the minors (most between 16 and

18 years old, 84.2% of them); regions where there are more minors (the southern, island and northeastern regions stand out); in 2022, due to the war, the countries of origin of the minors were Ukraine, Egypt, Tunisia, Albania, Pakistan (currently this figure has changed, with those arriving from Ukraine drastically decreasing, and those of Asian origin and African countries increasing).

The report also provides data on tutors, and on the courses taught by the AGIA to volunteer tutors (between 2017 and 2022 110 courses had been taught), also analysing the level of attendance by tutors (almost 100% of the minimum attendance).

In relation to the data on the socio-demographic profile of the volunteer tutors, 77% of them are women, with a medium-high level of training (59.37% graduates), all of them employed (77.86%) or retired (7.63%). The age is over 46 years old in 69.72% and over 60 years old in 20.26% of them. This data have been repeated, roughly speaking, since the first report of 2018.

The total number of voluntary guardians, who, according to this report, were registered on the lists established in the Juvenile Courts as of 30 June 2024 is 4,273 (insufficient compared to the 20,206 minors who arrived in 2,024 alone...). The cities of Turin, Rome, Milan, Bologna, Palermo, are the ones with the most registered tutors.

In 2024 there was an increase in the number of tutors compared to previous years, which was assessed as a sustained increase in the control report, but uneven between regions (with more tutors being more numerous in the northern and western regions of Italy).

The priority criterion for making the proposal, as indicated by the Juvenile Courts, is the geographical proximity between the guardian's home and the centre in which the minor is housed. On the other hand, the non-acceptance of guardianship by the guardians is due, in the first place, to the existence of excessive distance from the home to the child's residence, health reasons of the guardian, work problems, and lack of personal resources.

Resignations, once guardianship has begun, are a problem that has improved a little (in 2021 they were 69%), but it still exists, the reasons being: distance from the child's home from the guardian (sometimes there are transfers of minors to other centers and they move away from the guardian's home excessively); consideration that the role of guardian entails excessive and unexpected responsibilities; problems in having a work permit for the procedures to be carried out with the minor and lack of personal resources.

With regard to the termination of guardianships by the Juvenile Courts, most of them occurred due to the return of the minor to his or her country of origin; for family reunification with relatives residing in Italy; if the minor reaches the age of 18, and for voluntary removal of the minor from Italy. Although they exist revocations for deficient or poor performance of the functions as a guardian, these are not noteworthy at all.

## CONCLUSIONS

After more than seven years of operation of the figure of voluntary guardians of unaccompanied foreign minors, the assessment of the figure is very positive. Social workers and children's shelters perceive that minors who, due to lack of voluntary guardians, are under the guardianship of the institutions ask and complain why they do not have volunteer guardians, and that is undoubtedly the best proof of the positive assessment to which I refer.

Regarding the regulation, a certain dispersion is perceived in relation to some aspects that are a consequence of the competences of the regions in relation to the execution of this issue. More comprehensive regulation at the central level would lead to safer and more homogeneous operation throughout Italy.

In any case, the main benefits detected in the exercise of guardianship of foreign minors by Italian private citizens are:

- a) They provide legal and administrative support, managing all the necessary legal procedures to meet the interests of the minor in relation to access to residence permits, health, educational and social services. They supervise that the exercise of the rights of the minor are properly fulfilled, claiming on behalf of the minor in the event of any incident, and authorizing on behalf of the minor when required by the administrations (authorization for surgical intervention, for example).
- b) They help the social and cultural integration of the child (facilitation of understanding of rules, help with language learning, social adaptation).
- c) They provide crucial emotional and psychological support for children to cope with overcoming traumas, fears and loneliness in their new life in Italy.

- d) It helps with the process of locating and managing the reunification of the child with family members residing somewhere in the European Union, if applicable, or the return if the child wishes.
- e) The attention of the guardian can be a key instrument to prevent the child from being exposed to situations of labor or sexual exploitation, or any form of abuse.
- f) Promotion of the most appropriate path for the child in terms of training, since they help to choose training itineraries more appropriate to the child's profile and needs, and therefore also to the subsequent or contemporaneous insertion into the labour market. The existence of the support of a tutor in this sense acts during minority, but it also tends to last once they reach the age of 18, this element being a key factor in terms of success, due to the guidance component, but also of support and awareness of the importance of training for these young people.

Guardians, in short, play an essential role in the protection, integration and development of unaccompanied foreign minors, improving their quality of life, and contributing to a better social inclusion of new Italian citizens.

In relation to the difficulties and points of improvement in the functioning of the volunteer tutors, it is advisable to start from the information received from the evaluation reports periodically carried out by the Guarantor Authority. These reports show that the resignations of voluntary guardians in the guardianship process usually occur mainly due to the geographical distance from the child's reception centre, the perception of "unexpected" difficulty in the process, and the impossibility of having work permits to carry out their activity as a guardian.

Although in some regions there is a diversity of means of support, associations, and similar means, the truth is that some of the points of improvement (or empowerment since some of these measures exist but can be improved) can be deduced from this information, which would serve to avoid the failure of the tutor's activity, and to reinforce a better exercise of the tutor's work:

- If the appointment of the guardian cannot be made taking into account the geographical proximity between the guardian and the child, it would be advisable to arrange for the child to be transferred to reception centres close to the guardian's home. Also avoid the sudden displacement of minors to centers far from the guardian's residence.

- Strengthen support for tutors in the performance of their tutoring activity: greater staffing of social workers to coordinate and supervise tutors, and to attend to this work on a more continuous basis. Support on the development of their own role, but also support, including psychological support, is necessary to avoid the “burnout” of the tutors.

In relation to the above, it would be wise for the administrations to carry out specific information programs on the key aspects they must address, psychological support, the promotion of tutors’ associations in the different provinces, and to provide resources that facilitate the work and provide agile information (such as an app, digital platforms, direct contact telephone numbers, or similar means).

It is also important to improve the coordination and supervision of tutors. Constant evaluation would facilitate feedback to assess the needs of guardians and minors, as well as to control and avoid problematic situations.

- Approval of specific and generalized paid work permits for voluntary tutors, so that they can meet their obligations without having an impact on the tutor at work or financially (it should be borne in mind that this is one of the reasons given as a reason for resignation by the tutors).
- Tax deductions and financial aid more complete than those currently existing (there are only reimbursements of expenses and some specific aid for particularly complex cases, and not in all regions), which facilitate and encourage the exercise of the tutoring activity. In this sense, Enrico Sbriglia himself, Regional Guarantor of Human Rights, values the need to approve some economic recognition for these voluntary guardians, in order to avoid the demotivation of those who are already volunteers, and the disincentive of those who could be (“... *Even civic generosity has limits*”).

Another element to be promoted would be the recognition and social valuation of this work. Measures such as awards, certificates, non-economic incentives such as access to cultural events, public appreciation events, can be an element of reinforcement of the work of tutors, both at an individual level and in terms of social awareness of the importance of this valuable social work.

In relation to training, it is a problem recognized by the Italian institutions linked to social services, the need for an improvement in the training activities that tutors receive. In addition to initial training,

they should have a continuous and specialized training program in different aspects they have to face (information on the cultural adaptation of the child, pedagogical techniques to manage cultural diversity, training on psychology of minors and adolescents with trauma, effective communication). The content of the training must have a basic common part (as it has been until now), but also a part that will depend on the profile and needs of the minor to be protected. In addition, it is necessary for the tutor to be aware of the role he or she must play as such, to avoid both situations of excess, as well as the absence of presence and dedication.

Finally, in order to promote the figure of “tutoring” itself, awareness and promotion campaigns are essential. In fact, this is one of the activities that are financed by the AMIF, and its success has been demonstrated, although it is necessary to continue with these dissemination mechanisms given that growth is maintained but does not increase substantially, and there are regions with few applications for tutors, and others in which a clear stagnation is detected.

In short, the figure of “voluntary tutors” is an accredited and consolidated “good practice” of social insertion and protection of the rights of NTMs that should be transferred to a more than desirable and demanded harmonizing regulation at the level of the European Union. A Directive that would guarantee the rights and mechanisms of protection and integration for unaccompanied foreign minors, this possibility of guardianship being one of the best options to guarantee respect for the best interests of these especially vulnerable minors.

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## 16. FILLING THE VACUUM OF THE MULTITUDE

### How NGOs Work for Integration

VINCENZO SCALIA  
*University of Florence*

#### INTRODUCTION

A peculiar contradiction characterized contemporary societies. On the one hand, the growing integration of production, exchange and consumption, makes globalization (Giddens, 1994) dominant. On the other hand, an asymmetric approach turns the mobility of people into a major problem, to be faced through the implementation of restrictive policies.

The contradiction between restriction to human mobility and free circulation of capitals and goods causes a plurality of problems in relation to human rights. Firstly, migrants who are denied legal access are victims of smuggling and trafficking (Becucci, 2024), as they arrive in Europe after risky journeys and enduring inhuman treatment on their way to the chosen destination. Secondly, the difficult path towards the obtainment of legal status results into precarious and marginal life conditions. Thirdly, a vicious circle creates, as illegality engenders new illegalities. Newly arrived migrants and refugees are forced to live in desperate conditions in such places as abandoned industrial plants, shantytowns, decaying buildings, and either forced to accept underpaid jobs or to work in the illegal market, as well as committing street crimes. Fourthly, migrants who live under inhuman, marginal conditions, end up committing crimes of *self-victimization* (Ruggiero, 2004), such as assaults, brawls, use of drugs. Finally, the marginality of migrants and refugees fuels the moral panic (Cohen, 1971) of the local population, making ways for the rise of those moral entrepreneurs (Becker, 1963), such as the media and politicians that both promote and enforce restrictive policies, as well as persuading a part of public opinion that migration is the main problem of contemporary societies.

Besides the restrictive mindset and attitudes towards the migrants, there exists within European and North American society a widespread

network that actively promotes the integration of migrants and refugees, accepting the challenges that a multi-cultural society poses and trying to contrast the growing xenophobic mood and the border-addiction some authors point at (Mezzadra, 2004). Far from the dominating narratives, migration is a manifold, complex social phenomenon. This chapter will analyse the complexity of migration, following the concept of *multitude* as developed by Antonio Negri and Michael Hardt (2001). After focusing on the peculiarity of contemporary migration, the public engagement of independent groups, NGOs, local administrations in Italy and Spain will be unfolded, outlining the importance of a network action that would resolve many of the immigration related problems. It will be argued that the reinforcement of such an alternative network, both forms above and from below, has the potential of boosting and making the processes of integration easier. The role of NGOs will be discussed in relation to the discrimination against youths with illegal status face on the streets, by police forces, within the contest of growing xenophobia. The cases discussed in this chapter mainly concern youths with illegal status. In the Italian case, references to the use of substances will be made.

The chapter will rely on the use of qualitative material (Corbetta, 1999), such as in-depth interviews to lawyers, activists, police officers and migrants in Italy and Spain. The names of the participants, who gave their consent under the advice and support of the structure they were in, are imaginary, and used to grant their anonymity. By focusing on criminalization and police abuse, it will be possible to emphasize the dynamics of discrimination and resistance.

I have informed the participants that interviews would have been used as material to draft a scientific piece of work.

## 1. MULTITUDE AND THE GOVERNMENT OF THE SURPLUS MASS

The dynamics of migration are better understood within the transformations contemporary capitalism has undergone to, both under the aspects related to production, and within the world division of labour (Wallerstein, 1974; Arrighi, 2007). Since middle 1970s, the Keynesian economic pattern that had shaped production for almost fifty years, declined. Stagflation, overproduction crisis, oil shock, demand for higher wages under more problematic life conditions, resulted in a major crisis of sovereign States as the main actors of economic growth (O'Connor, 1976). Mass production fueling mass consumption gave way to lean

production, that is post-fordism (Ash, 1973). Post-fordist production is demand-oriented, so that the flow of production is not continuous and labour is increasingly precarious, flexible, and without much protection.

Post-fordism also affects the international division of labour, under three main aspects. First, the demand for unskilled, underpaid, attracts millions of people from outside the north-western hemisphere to the more economically advanced areas. Migrations, in the last fifty years, have marched hand in glove with such a structural transformation (Dal Lago, 1998; Pugliese, 1999). Secondly, the outsourcing of production, that is the delocalization of manufacturing plants outside their original locations, moves the production of goods in areas who were not industrialized in the past, so that production takes advantage of cheap labour, reduced contract protection, lower taxes. A process that, rather than creating economic development, makes life conditions in such areas as Asia, Africa and America Latina even worse. This is because corporations choose to move their productive sites abroad in change of the above-mentioned conditions. This process, thirdly, reduces the amount of public resources States can use to satisfy the basic needs of the population. Moreover, investments also concern the possibility for corporations to exploit the natural resources of the areas they invest in, often causing the deterioration of life conditions, impoverishment, local community destruction, thus fueling migrations. Fourthly, lean post-fordist production is based on the principle of just in time, or the possibility to deliver a good in the least possible time. For this purpose, technologies have got a boost. The development of IT follows the need to organize and control production in the shortest time possible, in order to bridge the distance between remote places. Moreover, technology also serves the purpose of creating demand through communication. World has become more and more the global village Mashall Mc Luhan (1965) tells us about, also making lifestyle and expectations more similar across the world (Melossi, 2003). Like in the most economically advanced areas of the world, we are dealing with a *multitude* (Negri-Hardt, 2001, cit.), or an articulated mass of people who aim at fulfilling their desires, ambitions and projects. Whereas the working class of the industrial era (Marx, 1971; Thompson, 1973; Balibar, 1992) was cultural and economically homogeneous, the concept of multitude includes a plurality of individual and social groups who, on the one hand have a diverse social, educational and cultural background, on the other hand share the same expectations and are unified by the *desire* (Deleuze, 1982). Moreover, the multitude shares the same precarious existence as shaped by the neo-liberal, biopolitical frame (Foucault, 2007).

Migrants make up an important part of the multitude, insofar as they are a product of contemporary globalization, and their migration relates not only to the need for jobs, housing and other basic means of survival, but also to the aspiration to enjoy the products of global consumerism (Baumann, 2006). Such a demand clashes with the neo-liberal dominating pattern, based on a binary society (Young, 2008) that, rather the integration of the many (Dahrendorf, 1992) aims at excluding those who are unfit to participate to global competition. A society relying on the dialectic between in and out, regulated by competition, considers those who haven't got enough material and symbolic resources to compete as a *surplus* to be monitored and removed using repression (De Giorgi, 2001; Wacquant, 2007). Poverty, class differences, social marginality cease to be problems to solve and become a problem of risk management (Beck, 1992).

The reduction of Welfare state marches hand in glove both with the enactment of restrictive policies and with the expansion of the penal sphere (Wacquant, 2011). Petty offenses are increasingly sentenced with long term imprisonment, and migrants swell the ranks of inmates, as figures shows ([www.associazioneantigone.it](http://www.associazioneantigone.it)). In Italy, for example, one third of the prisoners are not Italian. Despite some authors have argued that the over-representation of migrants in the penal system is a consequence of their objective deviant attitudes (Barbagli, 1998), one might consider the lack of resources they endure in the penal system. Firstly, they are more detectable than other social groups, because of their countenance, that becomes a stigmatizing aspect (Goffman, 1960). Secondly, they don't always speak fluently. Thirdly, migrants cannot afford a defender that accepts to follow their case. Once in prison, it is difficult for them to obtain alternative measures, as they are devoid of a solid relational network (family, friends) that can help them find a job or proper accommodation.

The visibility of migrants by the penal system is also purported by the abuses they regularly suffer from police forces, as they are regularly stopped and searched more than any other social groups and end up enduring physical abuses, or even killings, like in the case of Britain (Whyte, 2015; Clement, 2016). Activists and NGOs, as well as making up for the vacuums in public welfare, often provide a relational network that marches in the direction of setting up an alternative social fabric, inspired by solidarity and aiming at producing alternative values and aims to neo-liberal society. The following sections of this chapter will deal with these aspects more in depth.

## 2. ON THE ROAD. BETWEEN POLICE DISCRETION AND SOCIAL SUPPORT

This section will discuss the discriminatory practices of Spanish police forces enacted against the youth who hang around a centre for migrants set up by an independent Spanish NGO that has been active in the support of young illegal migrants in the last 10 years. Illegal foreign young people make up an important part of migrants and refugees. Their migratory project, or the choice to leave their country of origin to move to Europe, is manifold, inspired by many reasons. Under the label of a “better life” one can find manifold definitions, that span from a better, well-paid job to the desire to access mass consumerism:

I went to school back in Morocco. But my cousins in Italy told me that jobs are better paid than at home. So I decided to move. What to do after school? Being a mason in Italy or a peasant labourer in Spain is better than being unemployed or underpaid at home... [H., 19 years old].

Although young migrants are aware that their migratory project is fraught with difficulties, they prefer to take their chance and endure the risks of the journey. The support of NGOs once they reach the northern side of the sea provides them with some basic help and support to fit into the new reality. Not all the youths can get such support, because of different reasons:

Our resources are limited, and the restrictive migratory policies enforced by our governments make it difficult to look after most of the young illegal people who come here. Moreover, not all of them come across us. Some make their journey hidden in lorries or cars, some others find more adventurous ways to reach Europe. Finally, once the initial stage of rescue and support is over, some of them just go astray, looking for friends or relatives living in the country, or just trying out their luck on their own. That means the beginning of a wandering life... [Spanish NGO operator].

The lack of material and relational resources is soon to turn out to be an handicap that matches the widespread xenophobia and the consequent political response to it, as local administrators, sooner or later, will enact evictions or raids to quench the moral panic about youths:

Yes, it is true, they often lead a precarious life, living in hardships. So, they join those who live in abandoned buildings or premises, thus provoking the protests of the residents, that politicians will take up to

reduce the risk of losing electoral consent. It is not a matter of right and left, but just the need of not lose votes. The point is that nobody cares about how such evictions or raids are carried out [Spanish NGO operator].

Migrants are *non-persons* (Dal Lago, 1998, cit.). Local public opinion deems them as dangerous individuals and groups (Chevallier, 1977), not entitled to any rights, as they are mainly a problem for an increasingly securitarian public opinion, which sees in migration the reflection (Sayad, 1996) of their problems and fears. By this token, all the exceptional laws are welcome and justified, and, as they are mainly considered as a matter of public order, the way the police operate is hardly scrutinized or monitored:

You go to the evictions, to the raids, to check if something goes wrong. Call lawyers and other activists to try to provide minimal support, but you are immediately targeted and insulted by the local population: they are just scums! -they say. Dirty, noisy, drug users and pushers, they threaten both our and our children's lives! They need to learn a lesson! Why don't you humanitarians understand it? Some of us, very often, also face insults and physical aggression by the residents. They call us accomplices of crime. And the police officers consider us as intruders, asking to back off. This is the context we operate in. [Spanish NGO operator].

Police forces consider the repression of migrants as their mission (Reiner, 1985), insofar as they both reflect the dominating common sense and reinforce their professional culture through their experience on the field that makes them a street-level bureaucracy (Lipsky, 1968) that needs to make a fast and efficient decision to solve a specific case they deal with:

They don't speak the language, don't know the rules. Or, if they know them, they just do their way. And people are raging. We need to send them a message across. And it must be as strong as possible. Or they will just wreck the city. Not that we beat them, but some "energetic" intervention is necessary for them to understand they must behave. This is not their home, they are guests, often uninvited guests. They want women to go to Morocco to wear scarves and cover their heads. Aren't we entitled to ask them to respect our rules when they come here? [Spanish police officer].

Young people facing these hostile attitudes are often victimized by the police forces, who target them because of their higher visibility, as well as for their difficulties speaking the native language and their precarious social conditions, as well as for the lack of legal status. There

are multifaceted stigmas (Goffmann, 1960, cit.) that work as a selective and discriminatory criteria by the police forces. A practice that is in line with the ethnic profiling (Weber & Bowling, 2015) that in other countries, such as in the UK, has been defined as the expression of institutional racism by police forces. Stop and search practice concerns, in most cases, young people belonging to ethnic minorities. Things are the same in Spain and Italy. As far as Spain is concerned, a solicitor working for an NGO explains:

This is one of the main movida roads of our city. Young people often stay out on the street. They work for us in our flea market, collecting and ordering the stuff we receive by donations. We regularly have a police officer raid outside our premises, because they need a warrant to enter. Youths are stopped and searched, even in their private parts, using aggressive attitudes and abusive language. Sometimes physical abuse, such as pushing, slapping, holding up, are included. I have been around a couple of times when these episodes occurred, and police officers stopped soon after I qualified myself as a lawyer. But I cannot be here every day... [NGO operator, Spain]

Stop and search is only a part of the discriminatory practices enacted by police. Unmotivated discretionary arrests are also to be evidenced. Youths are stopped, searched, then taken to the nearest police station to be questioned. After that, they are kept at police stations for a couple of days, then released:

*We are now used to that. I come on Friday, and our centre is packed with youths, hanging around for a meal, lending their hands to work. Then, every Saturday and Sunday, nobody is around. Youth come back on Mondays, with sleepless faces and bruises.* [NGO activist, Spain].

Young victims tell more in depth what they regularly go through:

You are outside, on the street, smoking a cigarette, chatting. Then they bust with their motrocycles and cars. They ask you for documents, but they know we don't have any. So, they take you, handcuffed, to the police station. The first thing they do is to get hold of your mobile. They give it back on Monday, but you are cut off from the rest of the world for three days. For the rest, it depends on the cops. Someone handcuffs you to the chair for a couple of hours. They all swear and insult you. The most Rambo like of them slap you in the face or punch you if you are "unrespectful". Then you are taken to the cell's downstairs, you are given a bowl to use as a toilet. Some water, coffee, and bread during the day. On Monday the gate opens and you are released. Every one of us here has gone through all this. [M., 20 years old].

We are dealing, in this case, with a peculiar kind of street bureaucracy. Stopped migrants have no legal status but cannot be charged of anything but being without documents. At the same time, they are not committing any crime. The answer that police forces provide to the moral panic against accompanied young people consists of removing them from the movida areas during the weekend, to reassure both shopkeepers and users. It is an intimidatory strategy, as not all the youths are arrested, as it would be difficult to host them all either in prisons or in police stations. Police officers, consequently, decide to adopt a discretionary strategy, with an intimidating purpose. It is enough to arrest a few accompanied young people to force the others to hide to avoid undergoing a similar treatment.

In this case, the independent NGO I was in touch with provides young people with minimum support. Housing, food, training, Spanish classes are the core of this organization. Most of the activities are articulated in two different contexts: the shop where flea market and canteen activities are organized and an independent commune, outside the city, where many youths followed by the organization, after a few weeks of their arrival in the city, are housed:

We cannot host them all. Unfortunately, we must be selective. There is no room for everyone in the commune, and we are short of money to build another structure, although we are working on it. Moreover, for many of them, it is easier to live along with their friends, in abandoned houses or factories. We would like to take over these premises, but, again, we haven't enough resources. Local administrations regard us as wild, irregular people. Our reputation outside is low...ordinary people, as well as other organizations, tell that our commune and our canteen are unhealthy because of untidiness, but this is not true. We try to teach the youths to look after themselves, but we cannot do everything alone. We are part of the local third sector network, but we are like the last wheel of the cart... [Spanish NGO president].

Such last remark encourages an important reflection about the relation between the institutional and the social level. On the one hand, a network to support migrants in their integration process exists. On the other hand, being part of such a network is not relevant. What matters more is to comply with the values and the aims of the actors' providing resources, namely the local administrators. Those who pursue a different perspective of integration are marginalized, or just keep dealing with extreme cases, while a negative reputation is built around them. Looks like NGOs account increasingly as the social, humanitarian side of the Empire (Negri and Hardt, 2001, cit.). The multitude exists, but it is better to keep

aside some parts of it. An increasingly plural, multicultural society rejects the perspective of un-conventional lifestyle, like in the case of the use of substances and the harm reduction strategies related to it that will be discussed in the next session.

### 3. HARM REDUCTION VERSUS DISCRIMINATION. AN ITALIAN CASE

Italy has been experiencing a rising wave of moral panic about youth crime these late years (Scalia, ed., 2025). Young people have been increasingly targeted as the new dangerous class of contemporary society. Their deviant or criminal behaviours, since the Covid pandemic, have been repeatedly highlighted on the media. The peak of such a securitarian attitude has been the approval of the so-called Caivano decree by the centre-right government in September 2023, that has caused a dramatic rise in the number of young people being sent to jail ([www.associazioneantigone.it](http://www.associazioneantigone.it)), because of the repealing of probation for such crime as drug pushing.

The issue of youth crime strongly relates to that of migration. Firstly, because most of the targeted youths are either second or third generation youngsters, born and brought up in Italy, but devoid of citizenship because the Italian naturalization laws are based on the *ius sanguinis* principle, so that one can get Italian citizenship if one of his greatgrandparents was Italian. On the contrary, those who are born and brought up in Italy are considered as foreigners if their parents haven't got Italian citizenship. Secondly, a good part of youths who are deemed as deviants comes from the ranks of young people with illegal status. Despite the Act n.47/2017, or *Legge Zampa*, having introduced support on the territory for this social group, such as residential units and adoption by families belonging to the states they come from (*affido omoculturale*), the public expenditure cuts of recent years have indeed dismantled the possibilities of enforcing this law. Consequently, many young people live under a state of homelessness, with no chance of attending school or training courses. This is what a street unit worker in a Central Italian big city argues:

Run-down premises, the central station, the backstreets of the city centre, are full of these young people without any prospect. Public dormitories are full; charity organizations do not have enough place for them. So, you see them hanging around in the street, without any long-term perspective. Police officers stop and search them, but they cannot do anything else but letting them go after that, if they are not

committing a crime. So, a good chunk of it ends up sleeping and living in the big park outside the city centre... [S., Italian street unit operator].

Clandestine young people, without support, end up committing street crimes for sake of survival, or into the drug consumer groups:

They must survive and forget the terrible living conditions at the same time. And they need not to be alone, to be part of a group. So, the junkies in the park provide them with a little community... [L., Italian street unit operator].

A parallel society, making up for lack of the official one, is set up because of marginalization, with its own culture, rules and values. Despite the widespread use of psychotropic substances, among which crack is the most dangerous, such groups of youths with illegal status don't lose their contact with life. Street units operate to relieve, at least in part, their condition of marginality. Teams of psychologists, psychiatrists, social workers, social care, nurses and animators, try to establish a contact, both to reduce the harm caused using substances, and to reinforce their positive attitudes:

We try to understand the way they talk, they live, what they aim at. We involve them in entertainment initiatives. Painting, music, dance, street activities...all done by them. And we find out they are not destructive at all. They are quite good, for example, at composing and singing rap and trap music. If they had a legal status, they would be a resource for us...I really mean it. [S., Italian street unit operator].

The use of drugs, though, has negative consequences on these groups of young people with illegal status, insofar as it causes conflicts and diseases:

We are there with street units, trying to help. But what happens when we are not there? They'd need a fully-fledged support, to learn Italian, get a decent housing and health assistance. We tell them about a responsible use of drugs, but this is hard for them to understand. Most of them are frustrated, raging for marginalization and discrimination. Sometimes we face aggression and assaults. We can cope with a piece of the path, not with everything... [G., Italian street unit operator].

Like in the Spanish case, Italian street unit managed to operate within the context of marginality in a peculiar way, as they try to be level with the youths they work with. Street units are aware of the complexity of the needs of the multitude:

They are not very different for our youths, really. Clothes, music, football, lifestyles, are pretty the same. Our children use substances too, but, unlike youths with illegal status, they can rely on social control of families, school and peer groups. Whereas the youths who live in the park all share the same condition of illegal status and marginality. It is necessary to change our attitude since the outset [L., Italian street unit operator].

Like in the case of any public policy, the support for youths with illegal status cannot be delegated to a fragmented, partial kind of intervention. Especially in the case of a particularly vulnerable category like that of youths. Legal status, education, housing must be part of an integrated policy of support that requires the use of public resources. Unfortunately, in these late years, due the reduction in resources allocated to social welfare has matched the securitarian attitude prevailing in society, engendering a vicious circle of marginality and deviance:

It's not just the political characteristics of a government. Cuts have been made also by the centre left, and by the technical governments ruling this country these late years. And if you cut funds and resources to local administration, social welfare is the first thing to be wrecked, and there is not much you can do about it. [S., president of an Italian NGO].

A multitude expresses a plurality of demands for social integration. Moreover, youths' demands are even more articulated, as they concern the satisfaction of the needs of a vulnerable category that, at the same time, has more long-term expectations than the others. If the answer to these plural demands is that of restriction and repression, there are very few chances for the different interests to meet.

## CONCLUSIONS

NGOs are a crucial actor in the policies of migrants' integration. Their work combines professional expertise with commitment and empathy. It is crucial to support migrants and to understand their needs. Their work, though, needs to be included within a wider context of public policies oriented by an inclusive logic. This aspect must not be taken for granted, as it faces two massive obstacles. The first one is that of public expenditure cuts affecting the contemporary dynamics of neoliberal economics. This is a trend that also reflects restrictive laws, not only in the direction of legal status of migrants, but also in respect to laws concerning the rights of

workers and the access to welfare states. Housing, public health, education, become increasingly restrictive, and their access is regulated by more strict criteria. Besides this aspect, punitivist attitudes by an increasingly fragmented and insecure society inspire and catalyse policies that see migrants and refugees as a problem than as a resource for our societies. More than this, they are not seen as people, entitled to human rights. The match between restriction and repression serves the purpose of those who need a powerless, precarious, marginal labour force to be exploited more easily, to contain the costs of production, boosting competition and shrinking the room for solidarity and cooperation. The outcome of this mortal symbiosis, as Loic Wacquant (2011, cit.) calls it, is the triggering of a vicious circle that, at the end of the day, result in the deterioration of the social fabric of contemporary society. Restriction and repression end up creating sharp inequalities and extreme marginalities, out of which more acute conflicts and social problems arise. The ideas of managing the risk and simplifying complexities at the bottom of contemporary neoliberal society have been proving to be flaky, as the only outcome they obtain is that of fuelling the demand of increased repression, fueling intolerance and xenophobic attitudes. NGOs, within this context, can just attenuate the negative consequences, but cannot be the engine of a deeper, radical social change, oriented towards inclusion and integration. The work of NGOs can make sense only within a wider institutional, academic, social intervention-based network, oriented towards a social inclusion that draws its energy from the plural demands of multitudes. It is difficult, but all the other strategies, up to now, have not been successful.

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## Sitiography

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# 17. THE REQUIREMENT FOR A COORDINATED AND PROTOCOLISED SOCIAL RESPONSE TO GENDER-BASED VIOLENCE EXPERIENCED BY MIGRANT WOMEN IN ANDALUSIA

MARÍA ENCARNACIÓN QUESADA HERRERA  
*University of Granada*

## INTRODUCTION

Migration is often accompanied by a lack of legal and social protection, which exposes migrants to various risks, especially women due to their gender, including trafficking and other forms of gender-based violence. These situations of greater vulnerability make it easier for trafficking networks to exploit migrants by taking advantage of their precarious situation and the lack of adequate mechanisms to guarantee their rights and safety, thus perpetuating cycles of abuse and exploitation of those who are most vulnerable, namely women.

The intersection between migration, gender, and violence is complex and requires a multidimensional analysis and an approach based on a feminist, transcultural, and intersectional perspective, as well as a collaborative network between entities that contribute to the creation of stable coordination and a protocol to support it.

Bearing in mind the incidence of gender-based violence against migrant women, as well as their exposure to it at all stages of the migration process, it has become necessary to write this chapter, especially in relation to social intervention.

The idea of sharing this chapter stems from the European Global Answer Programme, which aims to share good practices in the field of social work.

This proposal arises from the need to take advantage of the synergies between the different agencies that intervene with victims of gender-based violence by establishing networks of collaboration and/or coordination aimed at effective and comprehensive support towards a life free of violence and which also prevents revictimization and institutional abuse.

Much has been written and said about the importance of coordination between professionals when carrying out social intervention, but there

is a clear need for coordination between social work professionals from different organisations, who sometimes have different political and methodological positions and ways of intervening, but who share the same objective, which in this case is to welcome and support migrant women. In contrast to this proposal, what we find is biased interventions, professionally skewed support, a lack of supervision and follow-up, and a disconnect between the resources that share the same territory.

Firstly, it is necessary to conceptualise gender-based violence. We base our definition on the highest current European regulatory standard, in light of which the Spanish State, during its last two legislatures, has made great efforts to adapt its regulations, namely the Council of Europe's Istanbul Convention (2011) on Preventing and Combating Violence against Women and Domestic Violence, ratified by Spain in 2014.

Article 3 of the Istanbul Convention defines violence against women as follows: a violation of human rights and a form of discrimination against women, and designates all acts of gender-based violence that involve or may involve physical, sexual, psychological or economic harm or suffering to women, including threats to commit such acts, coercion or arbitrary deprivation of liberty, in public or private life, and in the rest of its articles it expressly mentions acts such as forced marriage (Article 37), female genital mutilation (Article 38) and forced abortion and sterilisation (Article 39).

This definition must be implemented with the concept of intersectionality, since gender intersects with other categories such as origin, race, ethnicity or class, complicating the discrimination suffered, as well as highlighting vulnerabilities in relation to sexual orientation and other gender identities (Gijón Sánchez *et al.*, 2023).

Below, we present an overview of the reality of victims of gender-based violence based on data from Andalusia, in order to delve into the entire gender architecture in relation to protocols and coordination strategies that guarantee their rights to social assistance. We can say in advance that the result is that although Andalusia has an optimal institutional framework, this is not reflected in the guarantee of rights, for which a political reinterpretation of resources, spaces and models of social intervention is necessary.

## 1. STATE OF THE ART

### *1.1. What institutional data do we find on victims of gender-based violence among migrants in Andalusia?*

According to the Andalusian Institute of Statistics and Cartography (IECA), as of 1 January 2023, the registered population of foreign origin in Andalusia was 810,737, representing 9.5% of the total population of Andalusia, of which 402,766 are women, representing 49.79%. The places of origin are mainly the rest of Europe, followed by Africa and Latin America (IECA, 2025).

The statistical portal of the Government Delegation against Gender Violence (indicators since 2013) allows us, through its analysis indicators, to know the number of women and children murdered as victims of gender violence and, with analysis variables, the autonomous community in which the murder was committed and whether the victims were foreign nationals, when this data began to be processed. We thus know that since that year, 272 women have been murdered in Andalusia, of whom 29.5% were foreign nationals, and 98 children, of whom 36.7% were children of foreign women (Delegación del Gobierno contra la Violencia de Género, 2025).

Another indicator that provides us with information is the number of temporary residence and work<sup>1</sup> permits granted to foreign women who were in an irregular situation in Spain at the time of their recognition as victims of gender-based violence<sup>2</sup>, by year and by autonomous community. The autonomous communities of Andalusia and Murcia are the only ones that guaranteed this right in the first year of its introduction, with only

1 This right for victims of gender-based violence is recognised for the first time in Article 31.bis of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, in Article 31bis, which has been amended by Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom, to include victims of sexual violence, as well as the minor children of both figures, minors under guardianship and adults who cannot provide for their own needs, and is developed by Royal Decree 1155/2024, of 19 November, approving the Regulations of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration.

2 Recognition of the status of victim of gender-based violence is established in Article 23 of LO 1/2004, which in all cases is a protection order, a report from the Public Prosecutor's Office or the qualifying title, which will be explained later. In these cases, the application for a temporary residence and work permit will be made through a provisional application during the criminal proceedings, becoming definitive when there is a final decision through a conviction as a victim of gender-based violence.

one permit being granted in both cases, and in the rest of the autonomous communities from 2006 or 2007 onwards. In Andalusia, 1,113 permits were granted in 2024, and the cumulative figure is 6,336 permits granted (Delegación del Gobierno contra la Violencia de Género, 2025).

However, in the rest of the analysis indicators related to both the use of support and protection resources, we did not find in this official source the segregated variables that would allow us to know the quantitative reality of migrant women, such as the number of complaints filed, those murdered outside the context of a relationship, the use of the 016 telephone line to support victims of gender-based violence, victims who have telematic protection resources, those who are in the VIOGEN comprehensive case monitoring system, those who have protection orders, or those receiving labour rights such as bonuses or substitutions or economic rights such as the financial assistance provided for in Article 27 of Organic Law 1/2004 on comprehensive protection measures against gender-based violence (hereinafter LO 1/2004) or change of residence or the current unemployment benefit for victims of gender-based violence (Royal decree-law 2/2024).

The 17th Annual Report of the State Observatory on Violence against Women for the year 2023 (Observatorio Estatal de Violencia Contra la Mujer, 2025) does show data on migrant women, although not by autonomous community, but it does make multiple references to them. For example, in 2023, 63.5% of cases of victims of gender-based violence born in Spain were active in the VIOGEN comprehensive case monitoring system, as were '56.8% of cases of women born in another country, which means that these percentages required police protection' (2025, p. 109).

Among the references made to foreign women and autonomous communities, we find that in Andalusia in 2023, 'almost 90% of subsidised contracts for victims of gender-based violence belonged to victims of gender-based violence born in Spain' (2025, p.225).

We found no publication, study or research by the Government Delegation against Gender Violence dedicated to gender violence against migrant women, except for a macro study on trafficking entitled: Trafficking, sexual exploitation and prostitution of women: a quantitative approach (2024) and three Macro surveys on violence against women (2011, 2015, 2019), in which a single section is devoted to foreign victims of gender-based violence.

For its part, the Andalusian government, through the Regional Ministry of Social Inclusion, Youth, Families and Equality, has been producing an annual report on gender-based violence since 2021, the last one being published in 2023: Annual Report on Gender-Based Violence in the

Autonomous Community of Andalusia (Consejería de Inclusión Social, Juventud Familias e Igualdad. Junta de Andalucía, 2023). Like the state reports, it includes statistical data on victims of gender-based violence and shows segregated data only for some analysis variables, but it also includes measures and actions carried out in the areas of care and guarantee of victims' rights, research, prevention, awareness-raising and coordination; and projects and programmes financed by the State Pact against Gender Violence Fund (Royal decree-law 9/2018).

The following table shows the analysis variables and segregated data regarding foreign women victims of gender violence in Andalusia:

TABLE 1  
FOREIGN VICTIMS OF GENDER VIOLENCE IN ANDALUSIA

Variable	Born in Andalusia	Foreign
Victims gender violence	29,951	9,453
Exemption from obligation not to declare	1,498	700
Requests for protection orders	6,593	2,197
With protection order	125	71
Care in provincial or municipal women's care centres	27,584	5,750

SOURCE: own elaboration.

This report also presents the projects and resources subsidised for all types of gender-based violence and victim profiles, ranging from research to residential resources. The sources of funding are diverse, as are the entities that.

The following table shows the organisations and projects or programmes that have been funded exclusively for the migrant population.

TABLE 2  
PROJECTS AND PROGRAMMES AIMED AT MIGRANT VICTIMS OF GENDER-BASED VIOLENCE BY THE REGIONAL MINISTRY OF SOCIAL INCLUSION, YOUTH, FAMILIES AND EQUALITY

Entities	Projects or programmes
European Union Migrants Federation	Centre for prevention and early intervention in Andalusia for women victims of sexual crimes and violence against women
	Prevention and eradication of human trafficking and sexual exploitation
Nuevo Hogar Betania	Residential unit for immigrant women victims of gender-based violence and their children (Cadiz, Malaga, Seville)

Entities	Projects or programmes
Asoc In Genero (Interculturality and Gender)	Sorority: Comprehensive care for migrant women who are victims of gender-based violence migrant women who are victims of prostitution
Oblatas Del Santísimo Redentor de Sevilla	Comprehensive care for women who are victims of sexual exploitation (Cádiz and Seville)
Solidaridad Amaranta	Comprehensive support for the social and community integration of women in contexts of prostitution and victims of trafficking (Cadiz and Granada)
Data unknown	Gender-based violence How do you see it? How do they see it? Intercultural analysis of the perception and impact of public policies on gender-based violence on migrant women in Andalusia

SOURCE: own elaboration.

In addition, the same report contains the publications and training activities carried out during 2023 in relation to migrant victims:

- Booklets on the rights of migrant victims of gender-based violence.
- Training for professionals: Migration, Gender, Prostitution and Human Trafficking Contexts by the Directorate-General for Migration Policies, attached to the Regional Ministry of Social Inclusion, Youth, Families and Equality.

## 1.2. *The social diagnosis of migrant victims of gender-based violence through non-governmental organisations in Andalusia*

We have two qualitative studies on the situation of migrant victims of gender-based violence in Andalusia.

### 1.2.1. *Diagnosis of the situation of gender-based violence against migrant women on the southern border (Benito, 2021).*

This study was funded by the Ministry of Inclusion, Social Security and Migration, co-funded by the Asylum, Migration and Integration Fund, edited by the Andalucía Acoge Foundation and published in 2021.

It includes 42 interviews with migrant women residing in Andalusia, Ceuta and Melilla.

The objective is:

To improve the prevention and tackling of violence from a gender, intercultural and community perspective, through the coordination of actions aimed, on the one hand, at migrant women who are potential victims of gender violence and, on the other hand, at specific agents (Benito, 2021, p. 9).

The profile of the women interviewed is mainly from Morocco, between the ages of 35 and 49, single, with a basic level of education and either single or married with a son or daughter.

This reality coincides quantitatively with the data shown at the national level.

The interview was divided into the following sections:

- Analysis of their situation of vulnerability.
- Perception of gender-based violence.
- Knowledge of gender-based violence.

With regard to their situation of vulnerability, we found that four of them had filed complaints as victims of gender-based violence, and very few of them had sought social resources. They are not part of any groups where they interact with other women, nor do they have a family support network. One element shared by almost all of them is that they identify that they have emotional problems (Benito, 2021).

Given this situation of vulnerability, we should explore the data on those who have not reported a situation of gender-based violence, those who identify some elements of gender-based violence in their partner, and those who avoid talking about it. For this reason, we cannot be certain that four of them are victims of gender-based violence.

In fact, the rest have stated that they have either suffered gender-based violence without taking any action, except to mention it to a friend, or witnessed gender-based violence both at home and in the workplace (Benito, 2021).

The social participation of women, especially among women's networks, is essential to prevent different situations of vulnerability.

The first section on gender-based violence aimed to analyse their perceptions and what acts they identified as part of it.

The results show that they perfectly identify gender-based violence in terms of physical and sexual violence, but not the accompanying control

mechanisms or the indicators of the beginning of the relationship that are essential for preventing it (Benito, 2021).

These data, in which more subtle violence is not perceived, although physical or sexual violence is, coincide with another national study that also evaluates perceptions of gender-based violence in a sample of 496 migrant women through a survey:

The behaviours and/or actions that are least perceived as violence are “your partner or ex-partner considering it your duty to take care of the house and/or the children”, with 18% believing that this is not violence and 26% not knowing, meaning that 45% of the women surveyed do not consider it gender-based violence. In second place, we find that “your partner or ex-partner does not speak to you and ignores you for hours or days because they are angry”; 17% believe that this is not violence and 25% do not know, indicating that 41% do not explicitly consider it gender-based violence. Thirdly, “your partner or ex-partner giving their opinion and deciding on the religious practices you should follow” is considered by 20% to not be violence and 21% do not know. Also noteworthy is the question “your partner or ex-partner insists on and takes charge of managing all the household money”, where 16% believe that it is not violence and 24% do not know, which represents a total of 40% of the women surveyed (Movimiento por la Paz, 2024, p.47).

The women interviewed argue that the motivation for being victims of gender-based violence stems from the fact that they are women and from their places of origin (Benito, 2021).

This self-perception is interesting, as they identify themselves as being in a situation of inequality, recognising our macho culture and patriarchal system, as well as the intersectionality with regard to their places of origin. No further data is available in this regard, but it is obvious that the fact that they come from places other than where they currently live means that their support networks, social networks, and possible autonomy remained in those places, keeping them in a situation of greater vulnerability. This fact is related to the possible ways out that they identify towards a life free of violence.

With regard to escaping gender-based violence, the interviews revealed that they prioritise family support over legal measures:

[...]this may be due to legal uncertainty, the emotional cost of the process, and the social and family pressure to which they are subjected (...) although they would like the professionals who assist them to help them meet their needs, find alternatives, listen to them, and understand their situation (Benito, 2021, p. 34).

We are faced with an expectation of the need for intervention from the environment, but not from the judicial system, so we can conclude that their need for intervention is from the social sphere.

This diagnosis offers us a preliminary approach to the possible situation of migrant victims of gender-based violence, however, there are still many questions to be answered and more realities to be explored.

### 1.2.2. Reinterpreting gender-based violence in migrant women from the experience of the body-territory (Ramos-Pasquel *et al.*, 2023).

This is a study funded by the Regional Ministry of Social Inclusion, Youth, Families and Equality of the Regional Government of Andalusia with funds from the State Pact against Gender-Based Violence, edited by Territories and published in 2023.

This study used qualitative visual techniques such as drawings, narratives and conversations with 38 migrant women in Andalusia, specifically in the cities of Seville, Cadiz and Huelva.

The women were mainly from Latin America and the Caribbean, with nine from Africa and one from Europe. Their ages ranged from 36 to 64, and 90% were members of an association.

The aim of this study was to identify different forms of gender-based violence, the discomfort they caused and the emotions they provoked in a specific context, with an emphasis on the body and territory:

[...] it is a contextual study that allows us to understand and highlight gender-based violence among migrant women living in Seville, Cadiz and Huelva. It explores how this violence is intertwined with other forms of global and local oppression, such as political, economic, social and cultural factors (Ramos-Pasquel *et al.*, 2023, p. 22).

While the previous study placed the community gender perspective at the centre of epistemology, this study does so from a decolonial feminist perspective, gender-based violence intersects with identity, class and race, as well as other forms of oppression 'such as racism and colonialism' (Ramos-Pasquel *et al.*, 2023, p.21).

It coincides with the previous study in terms of the vulnerability to gender-based violence experienced by women in Andalusia, referring specifically to isolation, the loss of social and emotional networks, lack of knowledge of resources, economic and job insecurity, to which is added the influence of break-ups, changes in family structures and knowledge of their rights.

Another shared issue has been the identification of emotional wounds marked by discrimination and violence, manifested 'through fear, loneliness and sadness' (Ramos-Pasquel *et al.*, 2023, p.107).

Their voices construct common narratives, collectivising their past and/or present emotional experiences linked to power relations and social inequalities, as well as their capacity for political agency to confront them (*Ibidem*, p. 83).

Other results are related to the fact that they have suffered gender violence both in their countries of origin and in Andalusia. The types of violence they have reported are violence in the context of the couple, at work, symbolic violence, institutional violence and transnational motherhood.

Transnational motherhood refers to those mothers (biological, legal or social) who decide to migrate to another country without their children (at least one of them), but continue to exercise their parental duties, rights and obligations from a distance, through family practices that allow them to maintain links or relationships with their children (Zapata, 2020, p.12).

This fact is crucial in women's bodies, on the one hand because of how they emotionally experience the absence of their children, and on the other hand, the social pressure of exercising non-normative motherhood, which generates feelings of guilt and prejudice towards them. To this must be added the cases in which there is a regulatory agreement between both parents with parental measures without the possibility of claiming non-compliance due to the absence of bilateral agreements (Ramos-Pasquel *et al.*, 2023).

In the previous study, we analysed how access to social resources was scarce but, on the other hand, there was a favourable expectation of them. On this occasion, we found a negative expectation of them, with the interviewees identifying institutional abuse or unsafe spaces, especially in: "the immigration office, the town hall, medical centres, educational centres and the police" (Ramos-Pasquel *et al.*, 2023, p. 93).

Among the conclusions of the study, three are particularly significant for this research: the fact that migrant women identify violent acts in the context of gender-based violence, although not in its more subtle forms; the experience of institutional violence; and the need to repoliticise emotions by generating community, accompanying each other, self-organising and, ultimately, creating spaces for collective well-being and resistance.

As we can see, this latest study, although it shares many similarities with the previous one, sheds new light on our understanding of the situation of migrant women in Andalusia who are victims of gender-based violence. One of the differences between the population interviewed for each study was their social and political participation in their environment, with those in the second study participating extensively in associations. This fact may be crucial for the creation of those spaces of collective well-being and resistance that cushion their situations of vulnerability, heal emotional wounds and prevent gender-based violence.

## 2. INTERVENTION STRATEGIES, PROTOCOLS AND COORDINATION WITH MIGRANT VICTIMS OF GENDER-BASED VIOLENCE

### 2.1. *The right to intervention for migrant victims of gender-based violence*

The right of migrant victims of gender-based violence to intervention, both in terms of access to information and social, psychological and legal advice, is enshrined in both state and regional legislation.

Article 17.1 of Organic Law 1/2004 recognises the rights of foreign women, both regular and irregular, equating them to victims who are Spanish nationals.

Law 13/2007, of 26 November, on comprehensive prevention and protection measures against gender-based violence in Andalusia, already announces in its Preliminary Title the need to guarantee access to their rights for the most vulnerable population, with specific mention of migrant women in Article 39.1.b. Article 45 states that the Andalusian Regional Government must enforce these rights, especially for the most vulnerable women, through specialised centres.

The provincial centres of the Andalusian Institute for Women are responsible for providing specialised care to victims of gender-based violence, women and their children, as well as its entire network of Municipal Women's Information Centres, which operate at the local level through a collaboration agreement between the Andalusian Institute for Women and local entities.

The Andalusian Women's Institute was created in 1988 (Law 10/1988), but it was not until Law 13/2007 of 26 November on comprehensive prevention and protection measures against gender-based violence in

Andalusia that it was formally assigned the powers of care and intervention with victims of gender-based violence.

These powers, in addition to those relating to the prevention of gender-based violence, have been extended with regard to the recognition of the status of victims of gender-based violence through the Enabling Title (Instruction 1/2021) with the aim of improving access to recognised rights for victims who do not have a conviction or a report from the Public Prosecutor's Office, through Royal Decree-Law 9/2018, of 3 August, on urgent measures for the development of the State Pact against Gender Violence, which modifies Article 23 of Organic Law 1/2004, as follows:

Situations of gender violence that give rise to the recognition of the rights regulated in this chapter shall be accredited by means of a conviction for a crime of gender violence, a protection order or any other judicial decision that agrees to a precautionary measure in favour of the victim, or by a report from the Public Prosecutor's Office indicating the existence of evidence that the complainant is a victim of gender violence. Situations of gender-based violence may also be proven by a report from social services, specialised services, or shelter services for victims of gender-based violence provided by the competent public administration; or by any other means, provided that this is provided for in the sectoral regulations governing access to each of the rights and resources.

Following this Royal Decree, the State announced the Resolution of 2 December 2021, of the Secretary of State for Equality and against Gender Violence, publishing the Agreement of the Sectoral Conference on Equality, of 11 November 2021, relating to the accreditation of situations of gender-based violence, in which, in the case of Andalusia, it specifically grants the Andalusian Institute for Women the competence for such accreditation.

Although the Andalusian Institute for Women has jurisdiction over the care and intervention for victims of gender-based violence, it does not have exclusive jurisdiction. In fact, Decree 375/2011, of 30 December, regulating the Victim Assistance Service in Andalusia, announces that this service is responsible for the prevention and assistance of victims of gender-based violence, as do the Women and Family Care Teams of the Andalusian Health Service.

There are also other organisations dedicated to the prevention and care of these victims in Andalusia, such as Cáritas, the Red Cross, Amaranta, and specific associations that care for victims of gender-based violence or migrant women who are also victims of gender-based violence.

As we can see, we have resources for assisting victims of gender-based violence, which incorporate the right of migrant victims to receive

assistance. In recent years, we have only found one guide: The rights of foreign women victims of gender-based violence (Consejería de Igualdad, Política Social e Inclusión. Junta de Andalucía, 2019).

## *2.2. Protocols for the care and coordination of migrant women who are victims of gender-based violence*

The protocols for the care and/or coordination of victims of gender-based violence are a guide that sets out the guidelines, competences and tools for such functions, based on inspiring principles. We can also find protocols for care or coordination only.

The protocols with the greatest impact on victims of gender-based violence in Andalusia are as follows:

1. The Institutes of Legal Medicine of Andalusia for the development of the second additional provision of LO 1/2004 create the Comprehensive Assessment Units for Victims of Gender-Based Violence:

The Government and the Autonomous Communities, which have assumed competences in the field of justice, shall organise forensic services within their respective spheres of competence so that they have comprehensive forensic assessment units responsible for designing comprehensive and integrated protocols for action in cases of gender-based violence.

This is a pioneering project in Andalusia to support the judicial system with jurisdiction over gender-based violence, and its function is to establish expert reports on the assessment of victims and perpetrators of gender-based violence. Its actions are guided by the following protocols:

- Medical examiner in cases of violence in intimate relationships.
  - Medical examiner for the identification of the aggressor in cases of gender-based violence.
  - Medical examiner for violence against minors (Consejería de Justicia, 2025).
2. The Protocol for action and coordination between state security forces and lawyers in cases of gender-based violence (Ministerio de Igualdad, 2007) regulated by Organic Law 1/2004, aims to:

[...] guarantee and standardise legal assistance in the formulation and presentation of complaints and requests for protection orders; improve police services to victims and the formulation of police reports; and establish general guidelines for information and assistance to victims, both in terms of legal aspects and possible social benefits and measures, in compliance with the Agreement of the Council of Ministers of 22 June 2007 (p. 2).

This protocol guarantees Article 20 of Organic Law 1/2004 on access to immediate and specialised legal defence, which is free of charge if the victim lacks the means to litigate.

It contains three sections:

- I. Provision of immediate and specialised legal assistance by bar associations. It provides guidelines for the management of a specialised service on gender-based violence through the legal aid service of professional bar associations and establishes the measures to be followed in legal and procedural support.
  - II. Coordination between the State Security Forces and Corps and the Bar Associations. It establishes the channels of coordination between the two bodies, as well as the procedure to be followed by the State Security Forces and Corps in informing and accompanying the victim to receive this right.
  - III. Information for victims of gender-based violence by the State Security Forces and Corps. This reflects the type of information that must be provided to the victim and how it is conveyed, including, among other things, details of specialised support services.
3. The so-called Zero Protocol, from Instruction 5/2021, of the Secretary of State for Security (Secretaría de Estado de Seguridad, 2021) which establishes the protocol for initial police contact with victims of gender-based violence in situations of vulnerability, represents a major advance in the protection of victims who express their desire not to report crimes constituting gender-based violence, as they are treated in the same way as other victims in the Viogen system.

This protocol sets out the police and documentary guidelines to be followed, as well as safety recommendations. It also includes instructions for staff training.

An important consequence of this protocol is the establishment of information for victims on the resources available to them and the relevant

coordination between the State Security Forces and the specialised care services.

4. Protocol for coordination between the gender-based violence care services of the justice administration and the Andalusian Institute for Women (Consejería de Inclusión Social, Juventud, Familias e Igualdad. Junta de Andalucía, 2023). This necessary protocol was created with the intention of improving the care provided to victims of gender-based violence in two institutions with the competence to guarantee the right to information, care and support for victims. The protocol includes important points related to the types of gender-based violence to be addressed, the services available at each institution, the proposed intervention model, the care pathway, coordination strategies and the tools for this purpose.

Of the protocols presented so far, it is the only one that mentions the specific gender-based violence suffered by women who are victims of gender-based violence, such as trafficking for sexual and labour exploitation.

5. Protocol for assessing the risk of gender-based violence in the context of a relationship or former relationship for the specialised services of the Andalusian Institute for Women, Consejería de Inclusión Social, Juventud, Familias e Igualdad. Junta de Andalucía, 2023). This protocol is not yet being implemented by these services and offers a procedure for assessing the risk to victims using the Lenore Tool, which is based on indicators that assign a numerical metric in relation to the danger value of each of the indicators. and although in theory it argues for the need for an intersectional approach to victims, there is no specific indicator that takes into account migrant women who are victims of gender-based violence.
6. The Protocol on Gender-Based Violence in the Community Social Services (Consejería de Inclusión Social, Juventud, Familias e Igualdad. Junta de Andalucía, 2023) aims to:

[...]provide staff at Community Social Services Centres with a tool that enables them to prevent cases of gender-based violence both among users who attend the Centres and among the staff who work there; detect gender-based violence and prevent revictimisation or secondary victimisation; refer cases to specialised resources; and follow up to

coordinate with them the social resources they can offer women according to their needs (p. 14).

It covers the prevention of gender-based violence and secondary victimisation, detection indicators and guidelines for referral to specialised services, including follow-up and case coordination.

The only mention of migrant women appears in the coordination of cases with organisations and institutions related to the migrant population. It defines gender-based violence as trafficking for sexual exploitation and presents the Detection and Rescue Service for Victims of Trafficking.

7. Finally, we present the Protocol for Early Intervention in Gender-Based Violence of the Andalusian Public Health System (Consejería de Salud y Consumo. Junta de Andalucía, 2025).

This protocol presents a series of tools based on questionnaires for each of the phases of detection of violence, assessment/action and follow-up.

It also offers guidelines for drawing up an action plan depending on the stage of gender-based violence the victim is at and the prognosis of danger. There is no mention of migrant women.

However, the Andalusian Protocol for Healthcare Action against Gender Violence of the Regional Ministry of Health and Families of 2019 proposes situations of special alert for professionals when they are in consultation with migrant women who they suspect may be victims of gender violence, such as lacking a support network and being totally dependent on the aggressor, coming from environments with marked sexist roles and being in a situation of particular economic or administrative vulnerability or vulnerability in terms of access to resources, refusing to be treated by men and public institutions. It recommends treating their life story as a unique narrative and the need for coordination with other organisations in the territory.

It also includes guidelines for cases of suspected or known female genital mutilation, trafficking for sexual exploitation and prostitution.

As we can see, migrant women are sometimes invisible in the protocols for detection, care or coordination in cases of gender-based violence, while in other cases they were visible but only temporarily, and in most cases, once again, they are expected to assimilate into the guidelines, use of tools and guiding principles with women born in Andalusia.

### *2.3. Coordination in the care of migrant women victims of gender-based violence*

National legislation on gender-based violence, both LO 1/2004 and the State Pact Against Gender-Based Violence (Royal decree-law 9/2018) include measures related to institutional coordination.

Decree 465/2019, of 14 May, regulates the Andalusian Institutional Commission for the coordination and monitoring of actions to eradicate gender-based violence. This Commission reports to the Regional Ministry of the Presidency and includes both political and social actors. It does not perform coordination functions in the care of victims of gender violence, but it does carry out studies, evaluations, propose initiatives, raise awareness, analyse resources, etc. It mentions migrant women among its objectives in terms of the need to promote the dissemination of research on their special situation in order to inform and raise awareness among the general population.

The Standing Committee of the General Council of the Judiciary (Comisión Permanente del Consejo General del Poder Judicial, 2018), in a session held on 25 July 2018, approved the Protocol for the creation of provincial coordination commissions against violence against women to improve the institutional response to victims of gender-based violence.

Between that same year and 2019, the Provincial Judicial Coordination Commission against Violence against Women was established in the eight Andalusian provinces, with Granada and Almería being the most prolific in holding annual sessions. They are composed of different areas of the judicial system, state security forces and bodies, public institutions, professional associations and lack social organisations. Their main functions are based on improving the quality of judicial proceedings for victims and providing them with support.

Andalusia has a Coordination Point for Protection Orders against Domestic and Gender Violence (Junta de Andalucía, 2025), managed by its Directorate-General for Gender Violence. It establishes channels of communication between a judge who imposes a protection order and advisory and intervention services such as the Victim Support Service and the Andalusian Institute for Women for contact with the victim in order to guarantee their protection and other rights.

In terms of coordination strategies, we can argue that those that have the most direct impact on victims are the local commissions against gender violence, as the local level is closest to the victim and can share all the specific characteristics of the area.

In compliance with Article 32<sup>3</sup> of Organic Law 1/2004, the Regional Government of Andalusia signed the Agreement of 3 June 2013 (Junta de Andalucía, 2013), approving the procedure for institutional coordination and cooperation to improve action against gender-based violence, which led to the Regulation on the creation and functioning of local commissions against gender-based violence.

The document establishes the guidelines for their constitution, organisational structure and operation, although the main indication is that it is a sufficiently broad and flexible regulatory framework to allow each territory to articulate these guidelines according to its own realities and thus provide a specific response and protection to victims in its municipality, taking into account the characteristics of the municipality, the victims and the exercise of violence, as well as the need to provide training for all the bodies that form part of it.

Article 2 sets out the composition of the local coordination committee, involving the political and technical agents operating in the same territory, from provincial police forces and bodies security forces, those responsible for the Equality Plan in Educational Centres, city councillors, community social services and specialised services.

Article 3 sets out the powers of action relating to prevention, intervention, monitoring and coordination.

Article 4 refers to the technical committees made up of professionals from the technical commission appointed to monitor active cases in the municipality with the aim of establishing an individualised coordinated care and protection plan, thus addressing the specific characteristics of the victim and the violence perpetrated.

Article 6 encourages the coordination committee to draw up its own protocol for the prevention and coordination of gender-based violence, urging all social, labour and economic agents in the territory to participate.

In Andalusia, there has been a proliferation of these coordination strategies, which mean that victims do not feel lost or abandoned in the face of an institutional framework that they often perceive as rejecting, incomprehensible or institutionally violent.

Once again, we are faced with the invisibility of migrant women who are victims of gender-based violence and their assimilation into the rest of the victims born in Andalusia.

3 Public authorities shall draw up collaboration plans to ensure the coordination of their actions in the prevention, assistance and prosecution of acts of gender-based violence, which shall involve the Health Administration, the Justice Administration, the Security Forces and Corps, and the Social Services and Equality Bodies.

### 3. RESULTS

There is an invisibility of migrant women who are victims of gender-based violence, and when they are visible, it is usually in relation to trafficking for sexual exploitation.

With regard to the data collected from official Spanish sources, we did not find adequate segregation of data that would allow us to make a quantitative assessment of the situation of migrant women victims of gender-based violence, and in many cases this data does not allow us to do much more than make conjectures. In addition to the importance of having data, it is necessary to apply a corporeality, a territory and a social construction to that data. Giving voice to this data means taking into account a whole intersectional, intercultural and transcultural network across all spaces, both those that their bodies have passed through and those that they have not.

The data has shown us that when the bodies of victims of gender-based violence have gone through resources that are the result of going through a judicial process, we find a great similarity between migrants and non-migrants, for example, those shown in relation to those who were active in the VIOGEN monitoring system during 2023, with a percentage difference of less than 10%. However, in the case of assistance resources that victims must take the initiative to access, the percentage of migrant victims who do not access these resources skyrockets, as shown in Table 1.

As we have seen, one of the guidelines in the protocols related to the justice system and the State security forces is to provide victims with information on social resources, as well as to recognise these resources in coordination strategies. In the case of migrant victims, it is essential to reinforce this issue by also creating joint spaces for assistance in the social, legal and protection spheres.

It is clear that migrant victims are reluctant to turn to social care services, and even more so to specialised services. Since the 1990s in particular, the message of the State's advertising campaigns on gender-based violence has been directed at victims with the slogan "report it". This message placed the responsibility for escaping gender-based violence solely on the victims, without any framework of protection or accompanying social response. In some ways, this message continues to permeate society, where victims find themselves trapped in this reporting dilemma, feeling misunderstood and afraid to face an unfamiliar system, a dehumanised machinery and a path from which it is impossible to see the horizon.

It is necessary to improve their access to social resources, but this must be done by reviewing our interventions and the hegemonic model of intervention, questioning the principles of neutrality and objectivity of the observer, which has a major impact on the intervention model and the methodological cycle (Quesada-Herrera, 2024).

From the above, we can also deduce that, as with data, protocols and coordination strategies, in social intervention we apply the same approaches, tools, meanings and procedures to migrant women who are victims of gender-based violence as to those who are not migrants, through a process of assimilation of one group onto the other, which is why we find resources specific to gender-based violence but not specialised in migrant women, or resources specialised in migrant women but not in gender-based violence. This idea of homogenisation results in the failure to recognise victims as unique, physical beings with specific, contextualised wounds, which is why migrant women also identify emotional distress in themselves.

Transnational motherhood is an example of this, as it does not conform to a socially accepted model of motherhood and, in social intervention, can be a cause of prejudice and therefore of discrimination and institutional abuse.

Andalusia has a whole gender architecture in place for assisting victims of gender-based violence, including regulations, coordination strategies, action protocols, prevention and awareness-raising actions, and the production of materials, but it needs to improve migrant victims' access to resources and ensure their specialisation.

Intervention with victims of gender-based violence must respond to social, psychological, educational, legal, health and social participation criteria, which means that it requires coordinated intervention.

In a study conducted with 25 interviews with professionals who care for victims of gender-based violence in Andalusia, one of the most conclusive results was the need for protocols and a coordination strategy, as this would allow for greater effectiveness in both prevention and action with victims (Sánchez-González *et al.*, 2022).

We understand coordination to mean a structured, regulated intervention in which the various agents share the same scenario for action, so it is important to differentiate between coordination, which is institutional in nature, and referral between professionals. The latter is the most commonly used practice, where professionals use their discretion to establish informal relationships in the professional sphere with professionals from other institutions in order to refer users, and

in the best cases, specific follow-ups or information exchanges are also established if deficiencies are observed in the referral report.

Institutional coordination leads to the implementation of inter-institutional professional practice with a series of obligations, tasks and competences, generally accompanied by shared tools for action and a theoretical and regulatory framework that guides the practice of coordination, also requiring a firm institutional and political commitment.

Why do we really have so few coordination strategies? Why are they defined as fundamental to intervention, but we do not work for and towards coordination?

One possible answer can be found in Johanna Madrigal Calderón (2010), who points to the formulation of public policies themselves as the source of this weakness. In order to control its exercise, each policy develops a series of programmes, projects and resources that it carries out through its specific institution, and through this institution it controls its policy and therefore its power.

Establishing institutional coordination involves a decentralisation of power, where power is exercised but positioned at the centre of the intervention. Therefore, there is no hierarchical power, and control must guarantee the full autonomy of each of the institutions and organisations that form part of it and be relegated to compliance with the agreements and guiding principles of the actions.

A good practice, as defined by the European Global Answer Programme that hosts this chapter, could be the creation of local coordination committees on gender-based violence, as this would comply with the four pillars of its proposal: coherence, awareness, reflexivity and sustainability (Gijón, Gucciardo & Quesada, 2023).

Coherence refers to its relevance, and sustainability refers to its ability to guarantee its permanence and is aimed at social transformation. It would be necessary to monitor awareness and reflexivity, as it assumes that all those participating in these commissions would have a high degree of social and gender awareness, and, on the other hand, reflective and dialogical dialogue, which is easy to maintain with a good team, although it requires constant questioning of ourselves.

## CONCLUSIONS

We are dealing with a very complex issue that requires in-depth quantitative and qualitative studies that allow for intersectional, cross-

cultural and community-based argumentation from a gender perspective, which must have an impact on social intervention models.

In this way, it is possible to intervene with migrant women who suffer gender-based violence in a more comprehensive manner, respecting women's decision-making processes, promoting their autonomy, empowerment and self-care, encouraging the creation of mutual support networks and strengthening existing ones (Benito, 2021, p.7).

There needs to be a clear, realistic and empowering proposal for coordination between all actors in the territory for the detection, care and intervention with victims of gender-based violence, as well as a protocol for action that sets the guidelines for coordination using participatory methodologies and where migrant women are at the centre of it.

Repoliticising the care spaces occupied by social resources is essential to guarantee the right of migrant women victims of gender-based violence to access them, since their layout, architecture and presence are ethnocentric in nature. They must be meaningful and significant spaces converted into safe spaces, which is why their aseptic and neutral appearance in terms of the political positioning of social intervention must be eliminated.

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