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, relive 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 2015 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 Idiakez (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 Laurenzo (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.

REFERENCES

Comisión Europea. (2020). *Tercer informe de la Comisión al Parlamento Europeo y al Consejo*. Oficina de Publicaciones de la Unión Europea.

Comisión Europea. (2021, 14 de abril). *Comunicación de la Comisión al Parlamento Europeo, al Consejo, al Comité Económico y Social Europeo y al Comité de las Regiones sobre la Estrategia de la UE para Combatir la Trata de Seres Humanos (2021-2025)* (COM/2021/171 final). https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX:52021DC0171

Consejo de Europa. (2005, 16 de mayo). *Convenio del Consejo de Europa sobre la lucha contra la trata de seres humanos* (Serie de Tratados del Consejo de Europa - núm. 197). https://www.boe.es/buscar/doc.php?id=BOE-A-2009-14443

Consejo de la Unión Europea. (2004). *Directiva 2004/81/CE del Consejo, de 29 de abril de 2004, relativa a la expedición de un permiso de residencia a nacionales de terceros países que son víctimas de la trata de seres humanos o han sido objeto de una acción de ayuda a la inmigración ilegal que cooperen con las autoridades competentes. Diario Oficial de la Unión Europea*, L 261, 19-23. http://data.europa.eu/eli/dir/2004/81/oj

Daunis Rodríguez, A. (2020). El modelo español de protección penal frente a comportamientos de odio. En M. C. Gorjón Barranco (Dir.) y R. Guzmán Ordaz & A. B. Nieto Librero (coords.), *Políticas públicas en defensa de la inclusión, la diversidad y el género* (pp. 1061-1074). Ediciones Universidad de Salamanca.

Didoune Andrieu, S. (2024). *Un análisis jurisprudencial de la aplicación del artículo 318 bis del Código Penal: ¿Un mecanismo creado para criminalizar la solidaridad en el mar Mediterráneo?* [Trabajo de Fin de Grado, Universidad Pompeu Fabra]. Repositorio Institucional UPF. https://repositori.upf.edu/handle/10230/XXXXX

Echevarría Salinero, S. (2013). La nueva agravante penal de discriminación: Hate crimes.

Revista de Derecho de la Pontificia Universidad Católica de Valparaíso (41), 263-296. https://doi.org/10.4067/S0718-68512013000200008

Foro para la Integración Social de los Inmigrantes. (2023). *Situación de migrantes y refugiados en España: Informe anual 2022. La situación de la población inmigrante en 2022 y las propuestas para su integración*. Ministerio de Inclusión, Seguridad Social y Migraciones. https://www.inclusion.gob.es/foro-integracion-social-inmigrantes/informes

Fundación Serra Schönthal. (s. f.). *Las víctimas de trata siguen siendo criminalizadas por delitos cometidos bajo explotación a pesar del principio de no criminalización*. Día Mundial contra la Trata. https://www.fundacionserraschontal.org/noticias/dia-mundial-contra-la-trata-no-criminalizacion-de-victimas-de-trata/

García Álvarez, P. (2021). La agravante de discriminación: cuestiones problemáticas y su aplicabilidad en los "delitos de opinión", como "delito de odio". En A. L. de Pablo Serrano (coord.), *Delitos de opinión y libertad de expresión: un análisis interdisciplinar: cuestiones de la parte general de los delitos de opinión* (pp. 151-195). Thomson Reuters Aranzadi.

Gil Nobajas, M. S. (2022). Mujer y tráfico de drogas: La aplicación del estado de necesidad y de la excusa absoluta por víctima de trata a las mujeres mulas. *Cuadernos Deusto de Derechos Humanos* (110), 87-114.

Laurenzo Copello, P. (2019). La manipulación de crímenes de odio. En F. Velázquez Velázquez & G. Portilla Contreras (Dirs.) y E. Pomares Cintas & J. L. Fuentes Osorio (coords.), *Un juez para la democracia: Libro homenaje a Perfecto Andrés Ibáñez* (pp. 453-468). Dykinson.

Ley Orgánica 19/1994, de 23 de diciembre, *de protección a testigos y peritos en causas criminales. Boletín Oficial del Estado*, núm. 307, de 24 de diciembre de 1994, pp. 38750-38752. https://www.boe.es/eli/es/lo/1994/12/23/19

Ley Orgánica 4/2000, de 11 de enero, *sobre derechos y libertades de los extranjeros en España y su integración social. Boletín Oficial del Estado*, núm. 10, de 12 de enero de 2000, pp. 1139-1150. https://www.boe.es/eli/es/lo/2000/01/11/4

Ley Orgánica 13/2007, de 19 de noviembre, *de reforma de la Ley de Enjuiciamiento Criminal en materia de derechos de las víctimas de delitos violentos y contra la libertad sexual*. (2007, 19 de noviembre). *Boletín Oficial del Estado*, núm. 277, pp. 47172-47175. https://www.boe.es/eli/es/lo/2007/11/19/13

Ley Orgánica 5/2010, de 22 de junio, *por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Boletín Oficial del Estado*, núm. 152, de 23 de junio de 2010, pp. 54811-54896. https://www.boe.es/eli/es/lo/2010/06/22/5

López Rodríguez, J., & Arrieta Idiakez, F. J. (2019). Trata de personas con fines de explotación laboral en la legislación española. *Icade. Revista cuatrimestral de las Facultades de Derecho y Ciencias Económicas y Empresariales* (107), 1-27. https://doi.org/10.14422/icade.i107.y2019.004

Machado Ruiz, D. (2002). *La discriminación en el ámbito de los servicios públicos: análisis del art. 511 CP*. Tirant lo Blanch.

Martínez-Escamilla, M. (2019). La criminalización de la solidaridad. *Crítica penal y poder: una publicación del Observatorio del Sistema Penal y los Derechos Humanos* (18), 8-18. https://raco.cat/index.php/CPyP/article/view/363292

Ministerio de Igualdad. (2022). *Anteproyecto de Ley Orgánica integral contra la trata y la explotación de seres humanos*. Gobierno de España. Aprobado por el Consejo de Ministros el 8 de marzo de 2024.

Ministerio del Interior. (2021). *Plan Estratégico Nacional contra la Trata y la Explotación de Seres Humanos (PENTRA) 2021-2023*. Secretaría de Estado de Seguridad.

Ministerio del Interior. (2023). *Balance estadístico de trata y explotación de seres humanos en España (2018-2022)*. Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO).

Naciones Unidas. (2000, 15 de noviembre). *Protocolo para prevenir, reprimir y castigar la trata de personas, especialmente mujeres y niños, que complementa la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional*. https://www.ohchr.org/es/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons

Parlamento Europeo y Consejo de la Unión Europea. (2011). *Directiva 2011/92/UE del Parlamento Europeo y del Consejo, de 13 de diciembre de 2011, relativa a la lucha contra los abusos sexuales y la explotación sexual de los menores y la pornografía infantil, por la que se sustituye la Decisión marco 2004/68/JAI del Consejo*. *Diario Oficial de la Unión Europea*, L 335, 1-14. http://data.europa.eu/eli/dir/2011/92/oj

Parlamento Europeo y Consejo de la Unión Europea. (2012). *Directiva 2012/29/UE del Parlamento Europeo y del Consejo, de 25 de octubre de 2012, por la que se establecen normas mínimas sobre los derechos, el apoyo y la protección de las víctimas de delitos, y por la que se sustituye la Decisión marco 2001/220/JAI del Consejo*. *Diario Oficial de la Unión Europea*, L 315, 57-73. http://data.europa.eu/eli/dir/2012/29/oj

Real Decreto 557/2011, de 20 de abril, *por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009. Boletín Oficial del Estado*, núm. 103, de 30 de abril de 2011, pp. 43821-44084. https://www.boe.es/eli/es/rd/2011/04/20/557

Tapia Ballesteros, P. (2021). Discurso de odio en el art. 510.1.a) del Código Penal español: la ideología como caballo de Troya entre las circunstancias sospechosas de discriminación. *Política criminal*, *16*(31), 282-317. https://doi.org/10.4067/S0718-33992021000100284

Tribunal Constitucional. (1994, 28 de febrero). *Sentencia 64/1994* (ECLI:ES:TC:1994:64). *Boletín Oficial del Estado*, núm. 71, de 24 de marzo de 1994. https://www.boe.es/eli/es/stc/1994/02/28/64

Tribunal Constitucional. (2013, 14 de marzo). *Sentencia 65/2013* (ECLI:ES:TC:2013:65). *Boletín Oficial del Estado*, núm. 86, de 10 de abril de 2013. https://www.boe.es/eli/es/stc/2013/03/14/65

Tribunal Europeo de Derechos Humanos. (1989, 20 de noviembre). *Caso Kostovski v. Países Bajos* (Demanda n.º 11454/85). https://hudoc.echr.coe.int/eng?i=001-57615

Tribunal Europeo de Derechos Humanos. (1990, 27 de septiembre). *Caso Windisch v. Austria* (Demanda n.º 12489/86). https://hudoc.echr.coe.int/eng?i=001-57650

Tribunal Supremo (Sala de lo Penal). (2009, 16 de abril). *Sentencia n.º 395/2009* (ECLI:ES:TS:2009:2189). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2010, 18 de junio). *Sentencia n.º 649/2010* (ECLI:ES:TS:2010:3824). Recurso de Casación n.º 3824/1998. https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2012, 19 de junio). *Sentencia n.º 525/2012* (ECLI:ES:TS:2012:4784). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2015, 9 de abril). *Sentencia n.º 191/2015* (ECLI:ES:TS:2015:1502). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2016, 5 de abril). *Sentencia n.º 270/2016* (ECLI:ES:TS:2016:1553). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2016, 5 de mayo). *Sentencia n.º 384/2016* (ECLI:ES:TS:2016:1941). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2016, 26 de julio). *Sentencia n.º 3920/2016* (ECLI:ES:TS:2016:3920). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2017, 29 de marzo). *Sentencia n.º 214/2017* (ECLI:ES:TS:2017:1229). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2017, 17 de mayo). *Sentencia n.º 348/2017* (ECLI:ES:TS:2017:1908). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2017, 28 de septiembre). *Sentencia n.º 639/2017* (ECLI:ES:TS:2017:3389). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2018, 22 de marzo). *Sentencia n.º 144/2018* (ECLI:ES:TS:2018:1020). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2019, 3 de octubre). *Sentencia n.º 447/2019* (ECLI:ES:TS:2019:3023). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2020, 23 de septiembre). *Sentencia n.º 468/2020* (ECLI:ES:TS:2020:2987). Recurso de Casación n.º 4103/2018. https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2000, 19 de octubre). *Sentencia n.º 1165/2000* (ECLI:ES:TS:2000:7545). Recurso de Casación n.º 2152/1998. https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2023, 25 de enero). *Sentencia n.º 59/2023* (ECLI:ES:TS:2023:375). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2023, 21 de diciembre). *Sentencia n.º 960/2023* (ECLI:ES:TS:2023:6008). https://www.poderjudicial.es/search/index.jsp

Tribunal Supremo (Sala de lo Penal). (2025, 28 de febrero). *Sentencia n.º 191/2025* (ECLI:ES:TS:2025:857). https://www.poderjudicial.es/search/index.jsp

Villacampa Estiarte, C. (2013). La trata de personas como manifestación del crimen organizado: Referencia especial a la ley positiva española. En C. Villacampa Estiarte (coord.), *La delincuencia organizada: Un reto a la política criminal actual* (p. 116). Thomson Reuters Aranzadi.

Villacampa Estiarte, C. (2022). El principio de no punición o no penalización de las víctimas de trata de seres humanos: reconocimiento normativo y aplicación. *Diario La Ley* (10101), 1-25.

M.ª Belén Morata García de la Puerta
Giorgia Bulli
Ana M.ª Huesca González
(editors)

HUMAN MOBILITY AND SOCIAL PROTECTION IN EUROPE

Comparative studies and professional practices

GRANADA, 2025

H2020 - MSCA-RISE - GA-872209

This publication has been produced within the framework of the European Project "Global social work and human mobility: comparative studies on local government and good social work practices in the Euro-Mediterranean region (2022-2025)" (Project ID: 872209) Work Package 6: Research dissemination of good practices in Social Work and Human Mobility.

Required citation: Morata García de la Puerta, M. B., Bulli, G., & Huesca González, A. M. (eds.) (2025). *Human mobility and social protection in Europe: Comparative studies and professional practices.* Editorial de la Universidad de Granada.

Partners of the Global-ANSWER Project: University of Granada (Granada, Spain), Comillas Pontifical University of Madrid (Madrid, Spain), Red Acoge (Madrid, Spain), Bayt Al-Thaqafa (Barcelona, Spain), Diversidades (Vigo, Spain), Rioja Acolle (La Rioja, Spain), City Council of Granada (Granada, Spain), University of Palermo (Palermo, Italy), City Council of Palermo (Palermo, Italy), University of Florence (Florence, Italy), Oxfam Italia (Florence, Italy), FNAS- Fondazione Nazionale Assistenti Sociali (Rome, Italy), University of Lund (Lund, Sweden), University of Linnaeus (Kalmar and Växjö, Sweden), Agape@S:t Thomas (Lund, Sweden).

Principle Investigator, Global-ANSWER Project: Belén Morata García de la Puerta, University of Granada.

This publication has received funding from the European Union´s Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 872209. The Agency and the Commission are not responsible for any use that may be made of the information it contains.

M.ª Belén Morata García de la Puerta
Giorgia Bulli
Ana M.ª Huesca González
(editors)

Human mobility and social protection in Europe

Comparative studies and professional practices

eug