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The power of mayors and the crime of exploitation of prostitution: the cases of Italy, France and Germany

Valerio Di Stefano
University of Tuscia,
Department of Economics and Business,
Viterbo, Italy.
E.mailv.distefano@unitus.it

Velia Olini
CREA - Council for research in agriculture and the analysis of the agricultural economy,
Rome, Italy.
E.mail velia.olini@crea.gov.it.

Abstract

Prostitution is today one of the main problems in Italy and in Europe. This phenomenon produces important repercussions on various levels: criminal, economic and administrative. If from a criminal point of view, in most European countries, prostitution, and its various declinations and forms, is considered a crime, from an administrative point of view there are conflicting positions in doctrine and jurisprudence, which have given life to important clashes and problems.

The situation in Italy is critical: despite the COVID-19 pandemic, the rate of prostitution has not decreased, and the number of violence and exploitation of women has also increased. The same goes for the main European countries including France and Germany, where prostitution is a growing phenomenon.

The present work aims to analyze the legislation on prostitution in Italy, from the penal conception to the administrative one, focusing in particular on the administrative tools and on the powers of the mayors aimed at repression of this phenomenon.

Keywords: ordinances, mayors, prostitution, crimes

Introduction

Prostitution is undoubtedly a sad social phenomenon not only for the various implications underlying this multifaceted and multi-faceted activity, but also because the legal framework alone is quite complex[1]. This is not a unique phenomenon but a very diversified case both in terms of the work contexts in which it takes place and the type of people who dedicate themselves to this activity and their relative customers.

In a nutshell, it evokes two fundamental principles corresponding on the one hand to human dignity and on the other to the freedom of the individual to self-determine. The same personal dignity, however, is based on the need to ensure a fair balance between the freedom of choice that allows the commodification of one's body and the right to self-determination which needs not to be bound to particular social and economic conditions.

[1]F. Villa, *La prostituzione come problemastoriografico*, Torino, 2021

This activity involves additional rules of primary rank[2]represented by the right to health (physical and mental, individual and collective) and to public order. Without any doubt, however, it can be affirmed that it constitutes at the same time one of the major sources of any illicit activity (consumption and trafficking of drugs, alcoholism, implications of various kinds with cases of irregular immigration, organized crime and trafficking in human beings)[3].

Since the approaches with which this activity can be observed are extremely diversified, also its legal framework and its regulation has been made under different aspects, starting from the criminal and tax law and, finally, reaching the civil law one, depending on the context and of the specific asset that the legislator, from time to time, intended to protect.

At the international level, the various countries have regulated the matter in different ways, some placing the accent on the more purely prohibitive aspect and therefore on the discipline of sanctions, of an almost exclusively criminal nature, to be imposed on the subjects involved in various capacities, others considering it like any other service provision activity for an agreed price.

The aim of this work is not to make a complete examination of all the legal aspects involved but to dwell fully on the civil aspects, in order to analyze, in a country like ours with a prohibitionist approach, the evolution of the instruments used by the directors in the discipline of this phenomenon.

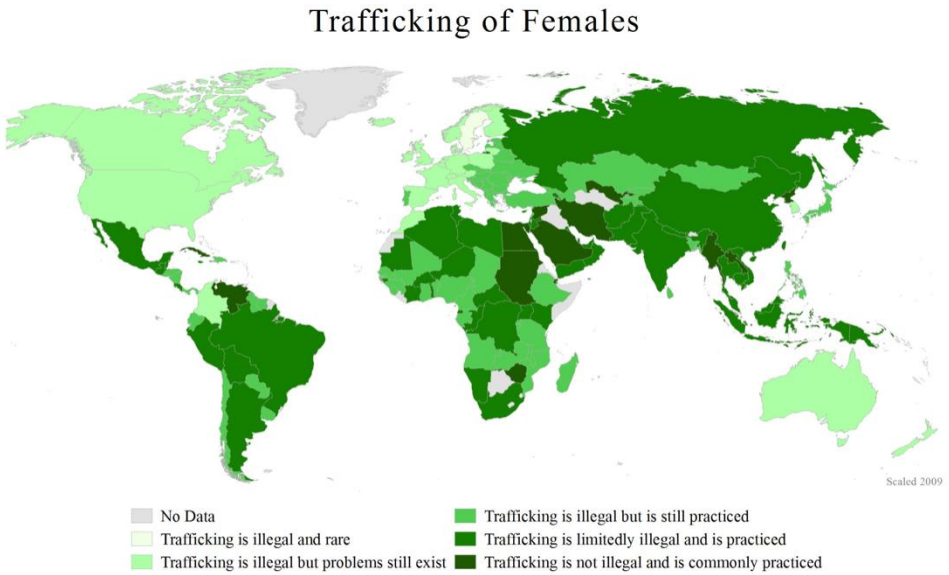

Figure 1: Trafficking in women around the world

Economic aspects of prostitution in Italy

The prostitution market in Italy records an annual turnover of 3.9 billion euros. What is less known is that during the years of the economic crisis that began in 2009, the sector has grown significantly, also thanks to the boom in prostitution on the web. From the survey carried out by Codacons[4] it emerges that there are about 90,000 sex workers in Italy, for a number of customers that reaches 3 million citizens.

In the period of the economic crisis (2007-2014) the turnover of prostitution increased by 25.8% while the number of subjects engaged in prostitution increased by 28.5% (+20,000). In recent years (2015-2020) there has been a progressive reduction in the number of prostitutes working on the street, the percentage of which still represents the largest share, equal to 60% of the total. There is also a strong growth in the number of prostitutes who decide to work at home or other non-outdoor facilities (40%).

[2]The sources are distinguished in those of primary rank (formally and substantially normative acts, e.g. state laws, regional laws, decree laws, legislative decrees) and in those of secondary rank (formally administrative acts, but substantially normative, e.g. government regulations, regional, etc.).
[3]F. Antolisei, *Manuale di Dirittopenale*, Milano, 2016, pag. 769.
[4] The Coordination of associations for the defense of the environment and the rights of users and consumers, commonly known as Codacons is a non-profit association, founded in 1986 in defense of consumers and the environment, as heir to previous campaigns dating back to to the so-called "war on the SIP" of 1976.

Of the totality of prostitutes operating in our country, 10% are minors, while 55% are foreign girls, mainly from Eastern European countries (Romania, Bulgaria, Ukraine) and Africa (Nigeria in the lead). There is also a very strong growth of Chinese prostitutes, who mainly carry out their business indoors (homes, massage centers, etc.) prostitution on average, the cost of regular customers is 110 euros per month.

However, it should be noted that the costs of the services are very different depending on the service rendered: for an escort, for example, you can even pay 500 euros for a few hours of performance, since the service is wider and also includes the role of escort (parties, events, restaurant, etc.). Costs that go down to 30 euros in the case of quick services consumed on the street (street prostitution).

But the real boom concerns web prostitution: the offer has moved more and more from the streets to PC screens, through private sites, web pages, portals with specialized advertisements, etc., where escorts and prostitutes advertise their services reaching an increasingly large catchment area. Within this context there is a phenomenon that has literally exploded following the economic crisis: that of cam girls, that is girls, generally under the age of 40, who, while not practicing prostitution through physical contact with customers, show their naked body through a web cam. Prostitution via the web today involves around 18,000 female workers, that is 20% of the total[5].

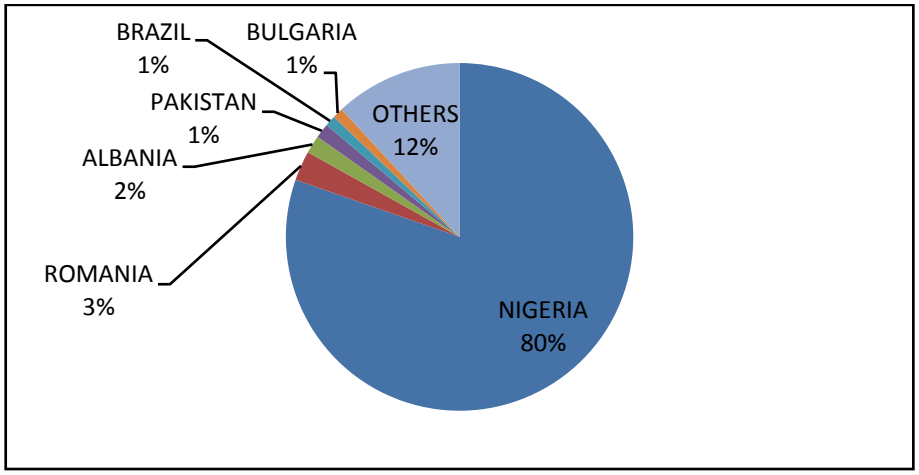

Figure 2: Nationality of prostitutes

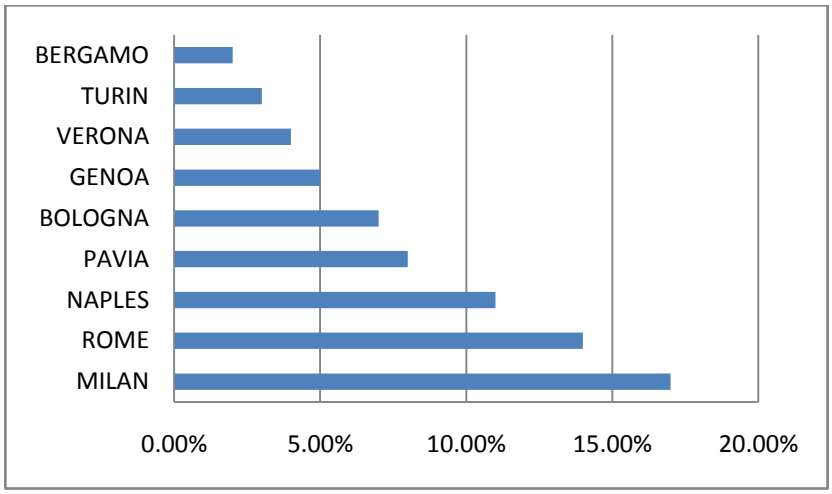

Figure 3: Italian cities with more prostitution

[5] Source: https://codacons.it/la-prostituzione-italia-vale-39-miliardi-euro-3-milioni-clienti-90-000-le-operatrici-del-sesso-10-minorenne/ And www.sestopoter.com

Prevention and repression of the exploitation of prostitution: administrative interventions

In the Italian legal system, situations parallel to the phenomenon of prostitution and the possibility of liberalization of prostitution are penalized, considering it as an expression of the principle of freedom of self-determination in the sexual field of the human person, attributable to the inviolable rights of man referred to in art. 2 of the Constitution[6]it has never been taken into consideration by the Constitutional Court which, on the other hand, decided to leave intact the regulatory framework referred to in law no. 75 of 1958[7].

The Court does not even agree on the fact that the indictment of the conducts of aiding prostitution actually undermines the freedom of private economic initiative sanctioned by art. 41 of the Constitution[8] also, which should be "free to the same extent that free is the primal source of this initiative".

In a mild way, that is, in the search for the protected legal good[9], the contrast between the various criminal offenses and the principle of offensiveness, which can be deduced from Articles 13, 25 c. 1 and 27 of the Constitution, as well as non-existent for the reasons set out above, the discrepancy between the sole case of aiding prostitution and the principle of legality enshrined in art. 25 of the Constitution[10].

The situation represented by the national legislator on the criminal level seems to have remained firm at the historical moment of the Merlin law, despite the social, economic and technological evolution that has taken place over the years of the phenomenon of prostitution[11].

In consideration of these changes, the national legislator, not wanting to affirm the right to self-determination of one's own sexuality, has tried to regulate prostitution and related activities from an administrative point of view[12].

In the following paragraphs the emphasis will be placed on the most important administrative measures that have been undertaken from time to time by the subjects who can intervene in the matter for various reasons.

The 2008 safety package

In 2008, to regulate the phenomenon of immigration, the so-called security package was approved by the Council of Ministers, consisting of the decree-law no. 92 containing “Urgent measures relating to public safety” converted into law no. 15 and by the legislative decree n. 160 of 3 June 2008, with which the legislation on family reunification was innovated. Subsequently with the law n. 94 of 15 July 2009, the law "Provisions on public safety" known as the 2009 safety package was approved.

The decree-law introduced numerous innovations on the subject, including those relating to the expulsions of foreigners, illegal rents, road safety and mafia crimes.

What we intend to focus on here is the fact that the decree-law in question amends art. 54 of the Consolidated Law on Local Authorities (TUEL)[13], containing rules on the "Attributions of the mayor in the functions of state competence", in the part in which the power of ordinance of the Mayor is governed.

[6] Art. 2: The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality takes place, and requires the fulfillment of the mandatory duties of political, economic and social solidarity.

[7]Cd Merlin Law, “Abolition of the regulation of prostitution and fight against the exploitation of the prostitution of others”.

[8]Art. 41: Private economic initiative is free. It cannot take place in conflict with social utility or in a way that could damage security, freedom, human dignity. The law determines the appropriate programs and controls so that public and private economic activity can be directed and coordinated for social purposes.

[9]P. Monzini, *Il mercatodelledonne, prostituzione, tratta e sfruttamento*, 2002.

[10]Art. 25: Nobody can be deterred from the natural judge pre-established by law. No one can be punished except by virtue of a law that came into force before the fact committed. No one can be subjected to security measures except in the cases provided for by law.

[11] A. Cadoppi, *L'incostituzionalità di alcuneipotesidellalegge Merlin e irimediinterpretativiipotizzabili, Dirittopenalecontemporaneo*, 2018

[12] A. Cadoppi, *Dignità, prostituzione e dirittopenale. Per unariaffermazione del bene giuridicodellalibertà di autodeterminazionesessualeneireatidellalegge Merlin*, Archivio Penale, 2019.

[13]The legislative decree 18 August 2000, n. 267 is a legal rule of the Italian Republic which establishes the principles and provisions on the legal system of Italian local authorities.

Specifically, art. 6 of ln 125 of 24 July 2008[14], which amends Legislative Decree 92/2008, assigns, in paragraph 4, new powers to mayors who, as Government officials, in order to prevent and eliminate situations of serious danger to public safety and urban security, may adopt ordinances "also"contingent and urgent. These measures must be communicated, in advance, to the prefect to allow them to implement the tools necessary to implement the measures provided for by the ordinance.

Paragraph 4 bis[15] finally establishes that the scope of application of the provisions must be regulated by decree of the Minister of the Interior, also providing a definition of public safety and urban security.

With the decree of 5 August 2008 containing "Public safety and urban security: definition and areas of application" it is established that public safety means "the physical integrity of the population" and urban security "a public good to be protected" through various activities aimed at improving liveability in urban centers, civil coexistence and social cohesion.

The art. 2 lists the fields of application of the aforementioned rule that can be found in all those situations of degradation that favor, among other things, the occurrence of criminal phenomena such as drug dealing, the exploitation of prostitution, begging, or in all those behaviors such as street prostitution or harassing begging can offend public decency. The mayor can also exercise the power of ordinance even when the behaviors implemented cause damage to public or private assets, or in cases in which said behaviors lead to negligence, degradation or illegal occupation of properties[16].

With the rule, the legislator wanted to strengthen the powers of the mayor with respect to the provisions of the previous legislation even if on the other hand, as if to compensate for the extension of said powers, it was established that the aforementioned ordinances must be communicated to the prefect who in turn can arrange inspections to ensure that they are running smoothly and can replace the mayor in the event of inaction.

The Minniti decree

With the decree-law of 20 February 2017, n. 14 containing "Urgent provisions on city safety", published in the Official Gazette no. 93 of 21 April 2017 together with the conversion law of 18 April 2017, n. 48, more commonly known as *the safety decree*, a package of measures was approved, the aim of which is to combat urban decay by strengthening the coordination and set of interventions by the various institutional subjects operating in the area. To this end, the concepts of integrated security and urban security are introduced.

The first represents the set of interventions ensured by all the territorial bodies, each within the scope of their own competences and responsibilities, in order to achieve the promotion and implementation of a unitary and integrated safety system for the well-being of the communities.

Urban security is defined as the public good relating to the livability and decorum of the cities, to be pursued also through the joint contribution of the local authorities having as object thereredevelopment and recovery of the most degraded areas or sites, the elimination of the factors of marginality and social exclusion, the prevention of crime, the promotion of respect for legality and, finally, through greater levels of social cohesion and civil coexistence.

The law also modifies the consolidated text of the laws on the organization of local authorities (Legislative Decree no. territory or to the detriment of urban decor and liveability also in order to protect the tranquility of citizens or specific regulations on the matter.

[14]Art. 6, c.4: The mayor, as an official of the Government, ((adopts measures, including contingent and urgent measures in compliance with the general principles of the legal system,) in order to prevent and eliminate serious dangers that threaten public safety and urban security. The measures referred to in this paragraph are ((in advance)) communicated to the prefect also for the purpose of preparing the tools deemed necessary for their implementation.

[15]Art. 6 c. 4-bis: the scope of application of the provisions referred to in paragraphs 1 and 4 is regulated by decree of the Minister of the Interior, also with reference to the definitions relating to public safety and urban security.

[16]G. Foti, *Il potere di ordinanza del sindaco*, www.ildirittoamministrativo.it.

The mayor, as an official of the Government, pursuant to art. 54[17] TU Local authorities, may also adopt contingent and urgent ordinances, aimed at preventing and contrasting situations that favor the onset of criminal or illegal phenomena, such as drug dealing, exploitation of prostitution, begging with the use of minors and disabled people, or phenomena of unauthorized use, such as the illegal occupation of public spaces, or violence, also linked to the abuse of alcohol or the use of drugs[18].

The power of ordinance of the Statutory Auditors

The art. 50 of Legislative Decree 18 August 2000 n. 267 (Consolidated Law on Local Authorities), in the first paragraph states that the mayor is the body responsible for the administration of the municipality, exercises the functions assigned to him by the laws, the statute and regulations and all the other attributed to him, as authority local, in the matters envisaged by specific legal provisions. In particular, paragraph 5[19] of the same article identifies the situations in which the Mayor can issue said ordinances.

In the analysis carried out above, however, it was seen how the latest interventions in the field of urban security aimed at increasing the power of intervention of the mayors through the ordinances that represent those tools that allow the administrative authority, in a situation of necessity and urgency, to make provisions for the protection of a given public interest.

The fundamental characteristic of the ordinances is that of being acts with atypical content that can be adopted, based on specific rules, including those contained in art. 54 of the Tuel, to deal with exceptional situations, in compliance with the Constitution and the general principles of the legal system, also in derogation from the primary legislation.

The major criticalities of the rules introduced in 2008 can be found in the formula used by the legislator according to which the mayor can issue orders "also contingent and urgent". The introduction of the conjunction "also" meant that the Mayors were given the power to issue not only contingent and urgent ordinances, but also ordinary ordinances for the protection of public safety and urban security requirements[20].

This contradiction was highlighted by the Constitutional Court as early as 2009with sentence no. 196, even if the problems connected to this question had not been highlighted.The Constitutional Court intervened again on it, which with sentence no. 115 of 04/04/2011 declared the constitutional illegitimacy[21]of the art. 54, paragraph 4, of the legislative decree 18 August 2000, n. 267 (Consolidated text

[17]Art. 55 c. 4 TUEL: "The mayor, as an official of the Government, adopts, with a reasoned deed, measures, [also] contingent and urgent in compliance with the general principles of the legal system, in order to prevent and eliminate serious dangers that threaten public safety and urban security. The measures referred to in this paragraph are communicated in advance to the prefect also for the purpose of preparing the tools deemed necessary for their implementation ".

[18]A. Lorenzetti, S. Rossi, *Le ordinanzesindacali in materia di incolumitàpubblica e sicurezzaurbana. Origini, contenuti, limiti*, 2009.

[19]Art. 50 c. 5 TUEL "In particular, in the event of health or public hygiene emergencies of an exclusively local nature, contingent and urgent ordinances are adopted by the mayor, as representative of the local community. The same ordinances are adopted by the mayor, as representative of the local community, in relation to the urgent need for interventions aimed at overcoming situations of serious neglect or degradation of the territory, environment and cultural heritage or damage to urban decor and livability, with particular reference to the needs of safeguarding the tranquility and rest of residents, also intervening in the matter of sales hours, including for take-out, and the administration of alcoholic and spirits. In othercases, the adoption of measures

[20]SeeL. Vandelli, *Ordinanzepubbliche per la sicurezza: uno strumento utile, ma ancora da affinare, in Amministrazione civile, n. 4-5/2008*, p. 130 ss.

[21]The Court notes, first of all, that art. 54, paragraph four of the TUEL, as amended in 2008, while not recognizing the ordinary administration trade union ordinances any power to derogate from the laws or regulations in force, confers a discretion practically without any limit, other than the finalistic one generally identified by the legislator in the requirement to prevent and eliminate serious dangers that threaten public safety and urban security. He then notes that undoubtedly the trade union ordinances pursuant to art. 54 affect by the nature of their purposes and for their recipients on the sphere of freedom of individuals and administered communities.

The Court recalls that it has repeatedly reiterated, in its jurisprudence, the unavoidable need for the principle of substantial legality to be observed in any conferral of administrative powers, which does not allow "the absolute indeterminacy" of the power conferred by law on an administrative authority and that the Italian Constitution, inspired by the fundamental principles of legality and democracy, requires that no personal or patrimonial performance can be imposed except on the basis of the law (Article 23).

of the laws on the organization of local authorities), as replaced by art. 6 of the decree-law of 23 May 2008, n. 92 (Urgent measures relating to public safety), converted, with amendments, by art.1, paragraph 1, of the law of 24 July 2008, n. 125, in the part in which it includes the phrase "also" before the words "contingent and urgent".

The sentence in question was issued following the appeal brought before the Regional Administrative Court[22] of Veneto, by an anti-racist association, which wanted the annulment of an ordinance of the Mayor which ordered administrative sanctions for those who violated the ban on begging in large areas of the municipal territory.

The request for cancellation was based on the non-existence of the contingency and urgency conditions pursuant to art. 54, co. 4, TUEL, however, the respondent administration claimed the legitimacy of the work of the Prime citizen, as well as the power of the same to adopt ordinances aimed at regulating non-transitory or exceptional situations, following the news of 2008.

The Administrative Court, on the one hand, considered the position of the Municipality to be substantially correct in light of the changes made to art. 54 TUEL, on the other hand, highlighted the critical issues inherent in the aforementioned rule, as it attributes a general and abstract power having value over the entire municipal territory and for an indefinite period also in derogation from the laws in force with consequent violation of the constitutional principles of equality (art. 3 Constitution), of unity and indivisibility of the Republic (art. 5 97, 117 of the Constitution and the division of the administrative functions referred to in Article 118 of the Constitution).

The vastness and indeterminacy of the powers assigned to the Mayors would also affect the division of powers within the Municipality and would be contrary to the provisions of Articles 24 and 113 of the Constitution according to which everyone can take legal action to protect their rights and legitimate interests against acts of the public administration[23].

The municipal authority has excluded the normative value of ordinary ordinances as they are subject to the general principles of the legal system and to the provisions of the decree of 5 August 2008 which establishes the obligation of motivation and prior communication to the prefect, as is the case for extra-ordinary measures[24], that is having the character of extraordinary nature. While the Veneto Regional Administrative Court denies that the provision in question has attributed to the Mayors the power to derogate from the regulations in force, the State Attorney's Office expresses an opinion in the opposite direction and the Constitutional Court on the one hand rejects the normative value of the ordinances on the other defines howadministrative acts endowed with a single finalistic discretion and therefore contrary to the principle of substantial legality, which establishes that the activity of the administration must also be defined in the means, especially when it is capable of infringing the freedoms or fundamental rights of individuals.

Although the Ministerial Decree of 5 August 2008 (Public safety and urban security: definition and areas of application) intervened in the matter in question, it cannot fulfill the function of directing the action of the mayor, since the administrative nature of the power of the Minister cannot satisfy the legal reserve, as it is an act that is not suitable for circumscribing administrative discretion in relations with citizens. Therefore, the contested provision in providing for an ordinance power of the statutory auditors not limited to contingent and urgent cases - while not attributing to them the power to derogate, in an ordinary and temporally unspecified way, in the name of primary and secondary statutory auditors in force - violates the statutory reserve relative referred to in art. 23 of the Constitution, as it does not provide for any delimitation of administrative discretion in an area, that of the imposition of conduct, which falls within the general sphere of freedom of the associates. The latter are obliged, according to a supreme principle of the rule of law, to submit only to the obligations to do, not to do or to give in general by law.

The Court also notes the violation of art. 97 of the Constitution which establishes a legal reserve in order to ensure the impartiality of the public administration; the observance of this limit must be concretely verifiable in the judicial control, therefore the absence of limits, which are not generically finalistic, does not allow the impartiality of administrative action to find, in a general and preventive way, an effective basis although not detailed in the law.

[22]A regional administrative court is, in the legal system of the Italian Republic, an organ of administrative jurisdiction. The TAR is competent to judge appeals, brought against administrative acts, by subjects who consider themselves harmed in their own legitimate interest.

[23]SeeV. Italia, *L'ingorgonormativoapre la strada al contenzioso*, in Guida aglientilocali, Il Sole 24 Ore, 32/2008; ID., *Un potereampio con troppeincertezze*, in Guida aglientilocali, Il Sole 24 Ore, 38/2008; ID, *La sicurezzaurbana. Le ordinanzedeisindaci e gliosservatorivolontari*, Milano, Giuffrè, 2010.

[24] G. Morbidelli, *Delle ordinanzelibere a natura normativa*, in Dirittoamministrativo, fasc. 1- 2/2016, pp. 33-73 e C. Della Giustina, *Le ordinanze extra ordinemdurantel'emergenza Covid-19*, AmbienteDiritto.

The Court then highlights the contrast between art. 54, co. 4, TUEL and art. 23 of the Constitution because, with said power of ordinance, the Mayors circumvent the constitutional provision that reserves the right to the law to impose personal and / or patrimonial services, thus introducing prohibitions and obligations without having to resort to a legislative act. In the same way, the violation of Article 97 of the Constitution is found as the rule in question allows, in the various Municipalities, the application of different prescriptions for the same behavior, contrary to the principle of impartiality and good performance of the public administration.

For the aforementioned reasons, the Court declared the constitutional illegitimacy of art. 54, co. 4, TUEL, in the part in which it includes the conjunction "also" before the words "contingent and urgent", with the consequences that the trade union power of ordinance must be limited only to the issuing of "contingent and urgent" ordinances which, despite having temporary effects, are capable of derogating from the ordinary law. Therefore, an intervention by the legislator is necessary to address the contradictions found by the judge of the laws.

The German approach

In 2002 Germany passed the law, with which it recognized legalized sex work and recognized "prostitution as a job like any other" and therefore those who engage in this activity have the same rights as any other worker from a welfare, social security and insurance point of view and as regards the possibility of exercising legal actions if their rights are not respected by the employer. on the other hand, they are required to pay taxes.

The state did not want to impose limitations on sexual practices and only banned proxies[25].In this matter, however, regional legislation prevails and in some Länder these rights are not recognized[26].Local authorities decide the areas where prostitution can be practiced and where brothels can be opened.

Workers can carry on their business both as self-employed workers and as employees, the relationship between prostitute and client is regulated by law and is not considered immoral and like all other employment relationships the person engaged in prostitution can sue the customer who does not pay for the service received[27].

On the other hand, child prostitution and the exploitation of prostitution are considered illegal, while trafficking for prostitution purposes is considered illegal and is punished with imprisonment ranging from six months to ten years.

The French legislation

On 6 April 2016, the French National Assembly[28] adopted the law proposal, which entered into force on 13 April 2016, aimed at Strengthening the Fight against the Prostitution System and Providing Assistance to Prostituted Persons.The law modifies several articles of the Criminal Code (articles 222-3, 222-8, 222-10, 222-12 et 222-225-12-1, 225-20,13, 611-1,) and the code of procedure French penal (articles 2-22, 306, adding article 706-40-1)

The law introduces further changes to the Labor Code, the Code of Social Action and Families and the Construction and Housing Code.

Further changes are made to the code of entry and stay of foreigners and the right of asylum and the code of social security.

The law introduces a general and absolute prohibition into French law on the purchase of sexual acts, including those performed between consenting adults and in a private place and provides for specific measures to combat trafficking in human beings, sexual exploitation and aiding and abetting of prostitution.

[25] AA.VV., *Prostitution in Germany - A Comprehensive Analysis of Complex Challenges*, Berlin, 2014
[26] M. Von Galen, *Prostitution and the Law in Germany*, 1996
[27] AA.VV.,*Prostitution and Trafficking in Nine Countries*, Journal of Trauma Practice, 2004.
[28] The National Assembly is a branch of the French parliament. In the French bicameral system, it is the most important chamber and the one in which the government needs a majority. It is so called from the fact that on June 17, 1789, the Third Estate, meeting in Versailles, proclaimed itself "National Assembly".

Programs are put in place that help prostitutes to undertake escape routes by providing them with the availability of housing, social and professional reintegration, health care, access to the cancellation of tax debts that operate at a local level (like the provincial one). The law provides for the abrogation of the crime of solicitation and considers prostitution a form of violence and a victim of those who prostitute themselves[29].

Against this law the ConseilConstitutionnel was brought before the Conseild'État, which raised a priority question of constitutionality concerning some provisions of law[30] no. 2016-444 of 13 April 2016 and with sentence no. 2018-761 QPC decided in the session of January 31, 2019, and made known on February 1, 2019, sanctioned the constitutionality of the French law of 2016[31].

In particular, the articles 611-1 and 225-12-1 of the Criminal Code, as well as the 9th bis of art. 131-16 and the 9th of paragraph I of art.225-20 of the same Code.

According to the applicants, in fact, the new rules violate the freedom of those who sell and buy sexual acts, which results in a violation of the right to respect for private life, personal autonomy and self-determination in the sexual sphere. The freedom of enterprise and contractual freedom and the legal principles of the adequacy and proportionality of penalties would be infringed due to the penalties provided for[32].

Finally, according to the applicants, the law aggravated the general conditions and risks associated with that activity for those who prostitute themselves.

The ConseilConstitutionnel[33]however, it declared the conformity of the new rules to the Constitution and defended the work of the legislator, arguing that they have the objective of fighting the exploitation of prostitution and the trafficking of human beings for the same purposes. The ultimate aim of the law is to safeguard human dignity and to pursue the constitutional goal of protecting public order and preventing crimes, as people engaged in prostitution are victims of trafficking and exploitation of prostitution and that real sayings would not be consumed if there were no requests for paid sexual services.In the same way, the law does not violate the freedom of enterprise and contractual freedom because the constitutional values of the protection of human dignity, the safeguarding of public order and the prevention of crimes are safeguarded.

Conclusions

In Italy, as seen in the previous paragraphs, the Merlin law is in force and prostitution is not a crime but represents the expression of the individual's freedom of self-determination[34]protected and guaranteed by the Constitution. On the contrary, conducts aimed at inducing and facilitating prostitution are punishable.

In the rest of Europe, we find situations similar to the Italian one and, others, totally different. Given this, it is clear that prostitution represents a primary problem, to be settled quickly. In fact, a precise regulation of the entire sector would be necessary which, in affirming the full freedom of people who intend to dedicate themselves to this activity, regulates the various aspects, still not regulated today.

In addition to the above, it should be noted that over the years Italy and the European Union have been tightening up the sanctions for these crimes even more with the aim of repressing this phenomenon.

[29]AA.VV.,*Prostitution and Trafficking in Nine Countries*, cit.

[30]The new law overturns the logic: prostitutes are no longer punishable while the customer can be punished with fines of 1,500 euros that can double in case of recidivism (initially for repeat offenders the text provided for a sentence of up to six months in prison and a fine of 7,500 euros; now the maximum fine was set at 3,750 euros). Clients will also have to participate in a series of awareness-raising meetings on the model of those dedicated to road safety and drugs, with the aim of "making them more aware of the consequences of their actions".

[31] G. Allwood, *Prostitution debates in France*, Contemporary Politics, 2004.

[32] L. Mathieu, N*eighbors 'anxieties against prostitutes' fears: Ambivalence and repression in the policing of street prostitution in France*, Emotion, Space and Society, 2011.

[33] The Constitutional Council is a French institution provided for in the 1958 Constitution. This body performs, among other things, the function of checking the legitimacy of the constitution and is regulated in the Constitution in Title VII.

[34]W. Hassemer, *Argumentation with fundamental concepts. The example of human dignity*, in Arsinterpretandi, n. 12, 2007

Furthermore, the Italian legal system has introduced important tools for Mayors, aimed at guaranteeing public order and safety, limiting and sanctioning all conducts aimed at favoring prostitution in the municipal territories.

With respect to this last point, it is emphasized that doctrine and jurisprudence are somewhat divided on the legitimacy of the aforementioned administrative instruments and, to avoid the arising of legal conflicts, it would be appropriate for the legislator to establish a single line of interpretation.