

APPROACHES TO MIGRANTS: BETWEEN INCRIMINATION AND NEED TO PROTECTION

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ABSTRACT

This contribution aims at suggesting a particular interpretation concerned two of the main criminal manifestations of migratory phenomenon: the *Smuggling of Migrants* and the *Trafficking of Human Beings*. Within a broader frame of reference represented by the illicit trafficking of people and goods which, particularly, affects the Mediterranean area, it is possible to observe the opportunity to face, through a double track argumentative path, some problematic issues that affect the protagonists, regulatory acts and interests at stake. By focusing attention on the aspects relating to the issue of mobility of people and starting from the general framework of the phenomena of *Smuggling of Migrants* and *Trafficking of Human Beings* in the context of international and European legislation, it will be possible to focus on the way in which the theoretical scheme that emerges from the sources is inserted within the Italian system and - especially with regard to *Smuggling* - in that one of some of the main European countries. The focal point in the incrimination of Smuggling is the dual role of irregular migrants who, if they are sometimes treated by law as subjects worthy of protection against traffickers, on the other hand they can actually be perpetrators of the crime of irregular immigration. The double perspective relating to the vision of the migrant is also repeated in the discipline of *Trafficking* where, however, the concept of the migrant as a victim of criminal conduct prevails. For argumentative completeness, reference will also be made to what is considered a third integrated perspective, the so-called "Holistic vision", which represents a synthesis of some of the typical aspects of both approaches just mentioned. In relation to this last aspect, the second part of the analysis aims at marking the centrality of the concept of the victim and his protection tools, in a regulatory landscape grafted onto multiple regulatory levels. In the background there is the need of different countries to conform their criminal response to cases that certainly require an approach as prudent and balanced as possible - especially when in the dynamics of the individual case come into play profiles that are difficult to classify, such as that of "vulnerability" - so that the concrete application of legal remedies does not excessively damage the rights of victims, risking to favor the occurrence of hypotheses of secondary victimization.