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V REPORT OF THE *LABORATORY* ON LABOUR EXPLOITATION AND THE PROTECTION OF ITS VICTIMS

***Inter-University Centre "L'altro diritto"* in cooperation with the Placido Rizzotto Foundation**

1. The work of the *Laboratory* on labour exploitation and the protection of its victims: methodological premise

The *Laboratory on labour exploitation and the protection of its victims*, created in 2018 by the inter-university research centre L'Altro diritto (ADIR) in collaboration with the FLAI CGIL, which has been succeeded by the Placido Rizzotto Observatory since 2020, as its name makes clear, aims to examine the emergence of the vast and pervasive phenomenon of labour exploitation by focusing on the gradual definition of instruments capable of protecting the victims of this phenomenon. In particular, the *Laboratory* was created to analyse the capacity of law 199 to bring labour exploitation to light and to configure effective instruments to protect victims. The conviction from which it takes its cue is, in fact, that underlying labour exploitation is a worker's "state of need" of which the exploiter takes advantage, as also clarified by the new Article 603-*bis* of the criminal code[1]. Contrary to what normally happens in sexual exploitation, where it is the exploiters who seek out their victims, forcing them to suffer exploitation by deception, threat and violence, in most cases of labour exploitation it is the workers themselves who seek employment and accept whatever conditions are offered to them precisely because of their state of need.

From a structural point of view it is clear that, if these are the characteristics of the criminal phenomenon to be countered, without instruments capable of bringing its victims out of their state of need any form of repression is, at the level of systematic impact, almost irrelevant. Proof of this is the fact that, when no forms of protection are offered to overcome the state of need, it is very likely that the workers identified in an investigation as victims of exploitation, once the business that had exploited them has been seized and closed down, go to be exploited somewhere else, sometimes in worse conditions.

On the one hand, law 199 has extended the "special social protection" provided for by art. 18 Legislative Decree 286/1998 (Consolidated Immigration Act, henceforth TUI) to the victims of exploitation aggravated by the use of threats or violence (so-called "serious exploitation" referred to in para. 2, art. 603-*bis* of the Criminal Code). On the other hand, it has provided for a new and promising interim measure for the protection of victims: the judicial supervision of the business (Art. 3 L. 199/2016) which allows the regularisation of their employment without forcing them to look for a new job.

From the outset, the *Laboratory* set out to analyse not so much the case law on the new offence – a subject on which there are numerous (useful) analyses by criminal law experts – but above all the investigative activity of the public prosecutor's offices, which is not normally the subject of systematic analysis, not only for this offence. This choice is dictated by two precise methodological convictions. Firstly, long before the judgements, it is the investigations that define at the level of the perception of public opinion, of social workers and, in a sort of hermeneutic spiral, of the control and investigative bodies, what is 'exploitation' and what can be defined as a 'state of need'[2]. Secondly, it is at the time of the adoption of interim measures or, even earlier, during investigations that the protection of victims of labour exploitation is decided. When the judgement arrives, the workers, if they have not quickly managed to embark on a path of socio-labour integration that has led them to a worthy job, i.e. one that complies with Article 36 of the Constitution, have gone to be exploited somewhere else. The possible conviction has little relevance in their eyes: given the provision of Article 316 of the Code of Criminal Procedure, in fact, the exploited workers can hardly hope to obtain any benefit from the conviction. The aforementioned provision allows the public prosecutor to request the precautionary seizure only to cover the "costs of the proceedings and any other sum due

[1] Article 603-*bis* was introduced into the Criminal Code by Law Decree No. 138 of 13 August 2011, converted into Law No. 148 of 14 September 2011.

[2] On the level of the sociological theory of deviance, this approach is of course grounded in the labelling theory, but in fact it is central to linguistic theories that see the relationship between signified and signifier as constructed through a continuous work that slowly leads to the social construction of word meanings (the reference is of course the studies of ethnomethodologists) and their 'entrenchment', a notion we owe to Nelson Goodman's famous *Fact, Fiction and Forecast*.

to the State Treasury"[3]. On the other hand, the public prosecutor is not entitled to request this interim measure to protect the interests of the victim nor to guarantee the compensation obligations in favour of the State. The victims can request the precautionary seizure directly only when they bring civil lawsuit in the criminal trial, i.e. when the "dispersion" of the guarantees of civil obligations arising from the crime is no longer a well-founded fear but a certainty. This is perhaps the main reason why exploited workers do not perceive a real interest in cooperating with investigations.

Naturally, the analysis of the investigative activity presents a first fundamental obstacle: the collection of the materials to be studied, i.e. the interim measures, indictments, the decisions of the GIP, as well as the requests for residence permits pursuant to Articles 18 and 22 of the TUI. To solve this problem, the *Laboratory* has divided its activity into three phases: a first phase of researching cases of exploitation throughout the national territory through the press and the reports from the FLAI CGIL; a second phase of interlocution with the public prosecutor's offices, to which the reports of exploitation falling within their jurisdiction are submitted, in order to cross-reference the cases identified with the court documents; finally, a third phase of study and processing of the data collected, which periodically flows into the updating of a General Table – our database where all cases of labour exploitation identified and/or reported at national level are collected[4] – and into the drafting of reports, published on the *Laboratory* website[5]. Thanks to the participation of numerous public prosecutor's offices – to date 66 out of 140 – an accurate study of the legal configuration of the exploitation phenomenon is possible through the acquisition of court documents.

What has been said requires us to state two caveats about the data that our *Report* presents and discusses. The *Laboratory*'s activity is the subject of continuous consolidation, as the number of cooperating prosecutor's offices increases year by year, a sign that the previous reports have had some diffusion and have proven useful and that the research and transmission of trial briefs, which allows us to work directly on the legal data and provide much more accurate analyses, is considered a worthwhile effort. This attention to our requests enriches not only the analysis of the judicial construction of labour exploitation and worker protection for the year covered by the new *Report*, but also that of previous years, because every time a public prosecutor's office expresses its willingness to cooperate, our interest is not limited to retrieving the documents relating to the year just ended, but also those relating to all the exploitation proceedings within its jurisdiction, about which we have gathered media reports. Thus, each *Report* not only contains data and analysis relating to the year just ended but also reviews data and analysis relating to previous years, allowing us to refine the definition of trends. A similar retrospective impact on the reports results from the circumstance that the communications of the public prosecutor's offices are subject to the physiological limitation of the investigative secrecy that concerns proceedings still at the preliminary investigation stage and does not allow the dissemination of any news before a certain lapse of time[6]: this circumstance postpones the analysis of the documents relating to investigations by several months compared to the news of the crime conveyed by the media. In this respect, each *Report* contains, in addition to the data for the year under analysis, in this case 2023, a significant adjustment of the data for at least the previous year (in this *Report*, a significant adjustment of the data for 2021-22 has been made).

The data we are presenting therefore give a partial picture, firstly, because more than half of the Italian public prosecutor's offices have not sent us the documents we requested, and secondly, because the data we are presenting are constantly being updated.

[3] Paragraph 1, Article 316 of the Code of Criminal Procedure as amended by Article 14 of Legislative Decree no. 150/2022 (the so-called Cartabia Reform) which excluded the applicability of precautionary seizure to guarantee the payment of the pecuniary penalty. Paragraph 3 of the article provides that the seizure, if ordered, shall benefit "also the civil party", but this provision certainly does not seem to allow taking into account the damages suffered by the "possible" civil parties at the time the seizure is ordered.

[4] The Table is available at: https://www.adir.unifi.it/laboratorio/tabella.htm.

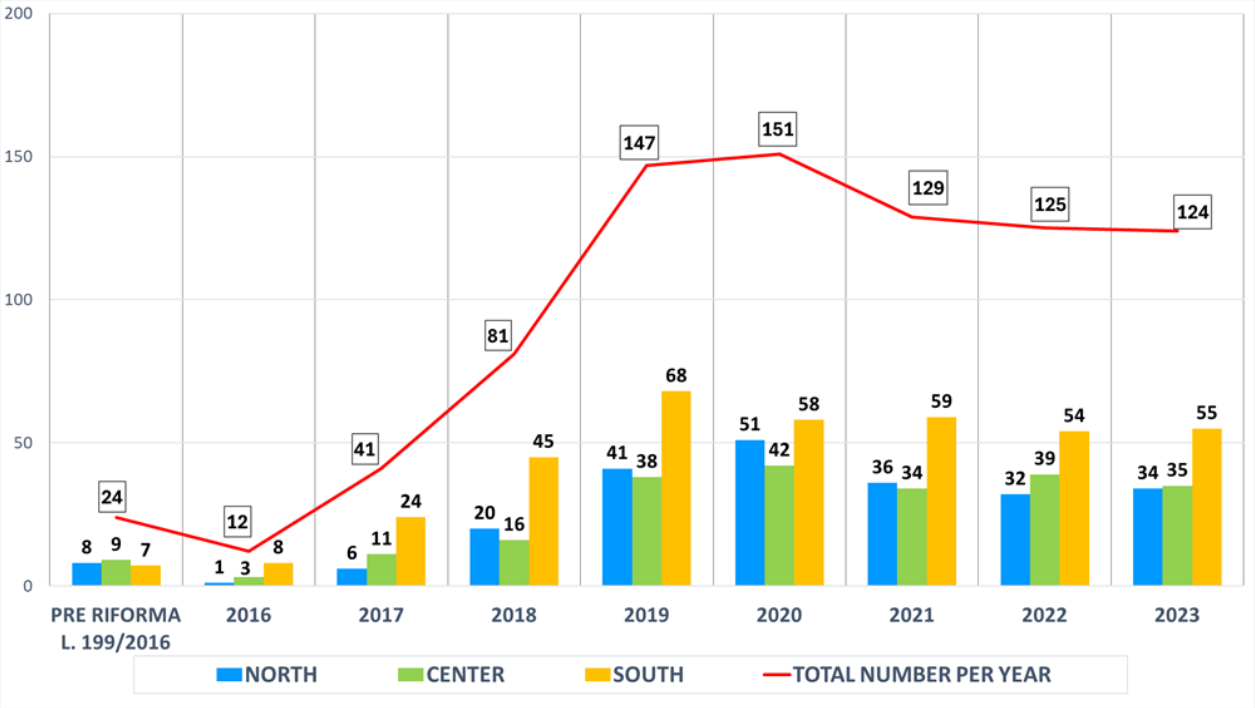
[5] The Reports are available at https://www.adir.unifi.it/laboratorio/.

[6] Pursuant to Article 407 of the Code of Criminal Procedure, the investigation secrecy is imposed during the pendency of the proceedings in the preliminary investigation phase, which tends to last one year, but which can fluctuate within a period ranging from six months (if proceeding for a misdemeanour) to one and a half years when proceeding for one of the most serious offences indicated in Article 407(2) of the Code of Criminal Procedure.

2. The trend of investigations (their distribution geographically and among economic sectors) and victims' complaints

Compared to the data of the last *Report*[7] in which we reported 458 cases of exploitation intercepted, this one accounts for a total of 834 cases of exploitation identified by the *Laboratory*[8]. The continuous search for court documents led to the identification of 376 new cases of exploitation, of which 249 cases related to the period 2022-2023 and 127 cases related to the previous reporting years (Fig. 1).

Fig. 1) Geographical variation of labour exploitation cases over time



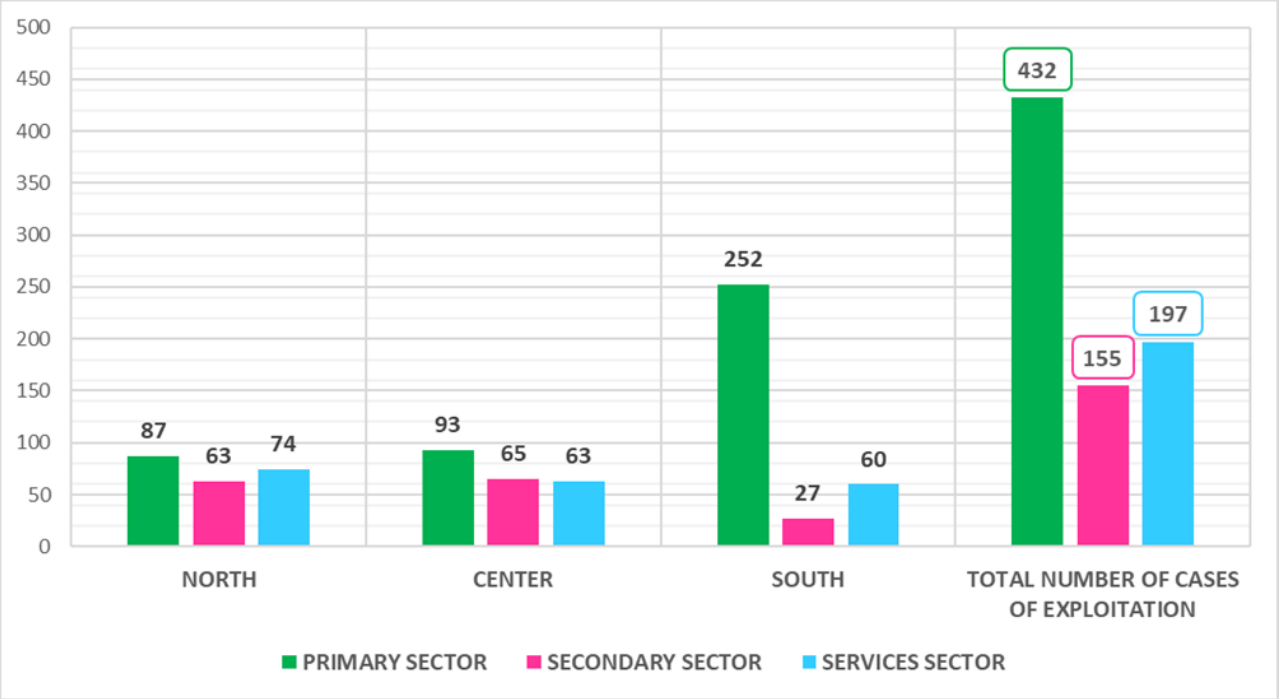
The critical mass of the investigations detected clearly shows that, beyond the role of the individual public prosecutor's offices in making it more or less relevant in some sectors rather than in others, labour exploitation is distributed throughout the country, affects all economic sectors and is widespread in almost all production sectors. Out of a total of 834 reports of exploitation, it was possible to trace the economic sector in no less than 784 cases, distributed as follows: 432 cases in the primary sector, 197 in the tertiary sector and 155 in the secondary sector[9]. These cases will be the subject of in-depth analysis for each production sector later (Fig. 2).

Fig. 2) Distribution of exploitation in the three economic sectors

[7] See *IV Rapporto del Laboratorio "Altro Diritto"/FLAI-CGIL sullo sfruttamento lavorativo e sulla protezione delle sue vittime*, updated to December 2021, available at: https://www.adir.unifi.it/laboratorio/quarto-rapporto-sfruttamento-lavorativo.pdf.

[8] The data are up to the end of December 2023. To this figure 12 further investigations must be added whose overall story could not be reconstructed with sufficient accuracy, including even their temporal location, which is why they were not considered in the data processing. These investigations can be found in the General Table, which lists all the exploitation cases intercepted in the country, divided by province, for a total of 846 cases (see footnote 2).

[9] The primary sector includes agriculture, animal breeding, fishing and related activities; the secondary sector includes industry, construction and handicrafts; finally, the tertiary sector encompasses the whole range of services.



Looking at the geographical distribution in individual sectors, it emerges that in some production sectors exploitation investigations are concentrated in certain geographical areas: whereas the primary sector has the highest number of cases in the South, with 252 out of 432 cases detected nationwide (approximately 58.3%), in the secondary sector, especially in manufacturing, exploitation is concentrated in the Centre, with 65 out of 155 (approximately 41%), while in the service sector the North stands out, with 74 out of 197 cases overall (approximately 38%). Given our object of investigation, this distribution gives indications, more than on the distribution of exploitation in the national territory, on the attention of the investigating bodies in the different geographical areas.

The data in the first column of the table below (Fig. 3) show an exponential growth, year by year, of cases of labour exploitation detected up to 2020, which seems to stop from 2021 onwards. However, for the reasons mentioned, the data relating to the last three years are to be considered in a settling phase, since the identification of individual cases of exploitation for which criminal proceedings have been opened, is affected by a significantly variable timeframe, due to both the secrecy of investigations and the time required for reporting. Confirming this consideration is the fact that, if we compare the data in the table below with those of the previous *Report*, we can see that we now record 99 more intercepted cases relating to the 2011-2020 period and 28 more cases relating to 2021, and the increase is almost entirely due to reports of criminal proceedings initiated (98 between 2011 and 2020, 26 in 2021) of which we were unaware.

Fig. 3) Investigations identified year by year, with indication of criminal proceedings initiated and complaints by the exploited in relation to criminal proceedings[10]

[10] It should be noted that the column "whose criminal proceedings initiated" also considers those criminal proceedings initiated of which it was not possible to trace with sufficient clarity the offence being charged. For this reason, the figure differs by 29 proceedings from the table on charged offences (Fig. 16), which we will analyse later on, in which only those criminal proceedings for which it was possible to identify the charged offence with sufficient precision were taken into account.

YEARS	ALL ECONOMIC SECTORS		
	Total number of cases of exploitation	whose criminal proceedings initiated	whose on workers' complaints
2011-2015	24	22	4
2016	12	12	2
2017	41	40	2
2018	81	78	6
2019	147	139	13
2020	151	127	12
2021	129	107	14
2022	125	97	18
2023	124	89	11
Total	**834**	**709**	**82**

It is interesting to analyse the trend of exploited workers' complaints because they can be seen as an indicator of the extent to which victims of exploitation feel supported and perceive a way out of the tunnel of exploitation. We found 33 more complaints than in the last *Report*: only 3 of them add to the data for the years up to 2021 (against 124 new criminal cases intercepted), while no fewer than 29 relate to the last two years. Considering the physiological incompleteness of the data relating to the period 2022-23, one can speak of a decidedly upward trend in workers' complaints. If we look at the percentage figure, we can see that until Law 199 came into force there were very few workers' complaints, then between 2016 and 2020 there were less than 10% of criminal proceedings intercepted, which rose decisively in 2021 (over 13%) and in 2022 (over 18%), while the figure for 2023, which, as mentioned, is certainly the most significantly underestimated, is already over 13%.

Fig. 4) Agricultural sector investigations compared to all sectors

YEARS	ALL ECONOMIC SECTORS			AGRICULTURE		
	Total number of exploitation cases	whose criminal proceedings initiated	whose on workers' complaints	Total number of cases of exploitation	whose criminal proceedings initiated	whose on workers' complaints
2011-2015	24	22	4	11	10	1
2016	12	12	2	10	10	1
2017	41	40	2	28	26	1
2018	81	78	6	61	49	2
2019	147	139	13	83	74	7
2020	151	127	12	76	65	8
2021	129	107	14	68	59	6
2022	125	97	18	52	35	7
2023	124	89	11	43	34	10
Total	**834**	**709**	**82**	**432**	**362**	**43**

In the following table (Fig. 5), the complaints are, on the one hand, broken down by geographical macro-areas and, on the other, the part of them relating to cases of exploitation in the agricultural sector is focused on. The geographical breakdown shows that workers' complaints are overall more numerous in the South, a trend that has been evident year after year since Law 199 came into force. It also appears significant that more than half of the proceedings (43 out of 82) in which a workers' complaint is found are related to the agricultural sector and that, in this sector, the criminal proceedings involving workers' complaints are found mainly in the South (22 out of the 43 proceedings involving a complaint) in contrast to a more uniform geographical distribution in the other sectors: if, in fact, those in the agricultural sector are subtracted from the total number of cases in which a complaint has been made, we find that in the other production sectors there are 15 cases in the North, 14 in the Centre and 9 in the South in which criminal proceedings are initiated following the complaint of exploited workers

Fig. 5) Complaints by geographical area: comparison all sectors and agriculture

YEARS	ALL ECONOMIC SECTORS-COMPLAINTS				AGRICULTURE-COMPLAINTS			
	TOTAL	NOTHERN ITALY	CENTRAL ITALY	SOUTHERN ITALY	TOTAL	NOTHERN ITALY	CENTRAL ITALY	SOUTHERN ITALY
2011-2015	4	2	1	1	1	1	0	0
2016	2	0	1	1	1	0	0	1
2017	2	0	0	2	1	0	0	1
2018	6	2	1	3	2	0	1	1
2019	13	2	6	5	7	0	2	5
2020	12	3	4	5	8	3	2	3
2021	14	7	4	3	6	1	2	3
2022	18	5	6	7	7	2	2	3
2023	11	4	2	5	10	3	2	5
Total	**82**	**25**	**25**	**32**	**43**	**10**	**11**	**22**

In the last *Report* we noted how the measures in which workers' complaints are found are concentrated in territories where there are systems of collaboration between the public prosecutor's office and other actors or bodies in the territory that, very often, have intercepted problematic situations

and channelled workers' reports. The accompaniment of the victims by social actors seems to be crucial in the promotion of complaints because it gives workers a concrete prospect of protection and socio-occupational integration, which, as pointed out, is the mainspring capable of prompting them to tell of the prevarications they have suffered. In the last *Report* we mentioned the emblematic cases of the provinces of Foggia and Prato, in which in 2021 workers' complaints were found respectively in 4 out of 14 proceedings initiated and even in 3 out of 4 proceedings initiated following cooperation agreements between public prosecutors, private social workers, trade unions and, in Prato, also the municipality.

We also underlined how, starting from 2019, the methods of intervention of the police bodies had started to change: they were being organised to act with taskforces operating at a provincial or inter-regional level and involving the National Labour Inspectorate (within which the staff of the Carabinieri Labour Protection Command operates), the other departments of the Carabinieri Corps, inspection forces of the Guardia di Finanza, variously combined judicial police services and, finally, the staff of the local health authorities. We point out in this respect the importance of the multi-agency taskforces activated with the projects *Su.pr.eme*[11], *A.L.T. Caporalato!*, both running between 2019 and 2022, followed by *A.L.T. Caporalato D.U.E.* (2022-2024) which see NLI inspectors working side by side with IOM cultural mediators and operating in close contact with anti-trafficking bodies[12].

In early May 2024, IOM[13] published a *Briefing* with data on the results of the taskforces activated in these two projects for the period from May 2020 to April 2024. IOM and the *Laboratory* collected different data. The IOM *Briefing* provides the number of victims intercepted, their legal status and nationality, how many of them filed a complaint and how many of them were put into protection. The *Laboratory*'s data, on the other hand, refer to the number of investigations, noting those in which workers' complaints were reported. The data on the status and nationality of the victims, too, do not relate to individual exploited workers but to the investigations, i.e. in how many investigations there were EU, Italian or third-country workers and, with regard to the latter, in how many investigations there were legally resident workers, international protection seekers (to whom we have equated humanitarian protection holders) and those without residence permits. An investigation naturally has a different number of victims (from one to many dozens) who may be of different nationalities and have different legal statuses, and in each investigation a variable number of victims may decide to file a complaint. The data are therefore not perfectly comparable, but comparing them seems to us useful to corroborate the trend lines that the two inquiries reveal or to prompt reflection on them. It is important, in making this comparison, to bear in mind that the data provided by the IOM *Briefing* are, we can say, in "real time" – as shown by the fact that, although they were published at the beginning of May 2024, they also cover the month of April – because they are provided by the same IOM operators who assisted the victims. The *Laboratory*'s data, on the other hand, accumulate, as mentioned, in (much) longer time because they are provided by the prosecutor's offices once the investigative secrecy has been lifted.

Firstly, the IOM data confirm the importance of the system of accompanying victims to emerge from exploitation and of taking charge of them to encourage them to file a complaint. According to the *Briefing* data, out of 1000 third-country assisted workers who were victims of labour exploitation, 896 (90%) filed a complaint. The table below (Fig. 6) shows quite clearly that as the number of IOM-assisted victims, who overwhelmingly denounce exploitation, increases, so does the number of criminal proceedings in which exploited workers report their cases. If the interpretation of the trend is correct, the figure will become much more evident in future editions of the *Report* as we receive information from the public prosecutor's offices. In this *Report*, in fact, there are no data from the

[11] Proving that, as the labelling theory points out, it is the control activity that creates the statistical dimension of the phenomena, the development of this project, dedicated to the agricultural sector, as the IOM *Briefing* emphasises, can explain why among the victims identified by them, those found in the agricultural sector are significantly prevalent and also why, according to the data collected by the *Laboratory* in the investigations relating to this sector, complaints are much more frequent.

[12] It is worth mentioning that these projects have been reported as good practices of multilevel cooperation in the fight against trafficking and labour exploitation in Italy by the *Group of Experts on Action against Trafficking in Human Beings* (GRETA). GRETA was established by the Council of Europe Convention on Action against Trafficking in Human Beings of the European Parliament and Council (Warsaw Convention) of 2005 as an independent monitoring body, responsible for monitoring the proper implementation of the Convention by the signatory states.

[13] IOM, *Briefing*. *Vittime di sfruttamento lavorativo assistite nell'ambito del partenariato tra OIM e INL. Profilo dei lavoratori e meccanismi di tutela attivati*, 2024, available at: https://www.integrazionemigranti.gov.it/AnteprimaPDF.aspx?id=6145.

Laboratory for 2024, while those for 2022 and, above all, 2023 are to be considered in a settling phase for the aforementioned reasons and are likely to increase in the future.

Fig. 6) Comparison of complaints/victims trend from the *Laboratory* and IOM *Briefing*

YEARS	Cases of exploitation detected by Laboratorio	Criminal proceedings detected by Laboratorio	Criminal proceedings initiated on workers' complaints, with percentage incidence (%) on total	Number of workers victims of exploitation (OIM-INL data)
2020	151	127	12 (10%)	85
2021	129	107	14 (13%)	290
2022	125	97	18 (19%)	261
2023	124	89	11 (11%)	296
Total	**529**	**420**	**55 (13%)**	**932**

The IOM data also allow us to have a picture of the protection granted that does not result from the public prosecutor's office files: of the 896 victims who were supported in filing a complaint, 272 were referred to a protection agency (anti-trafficking/SAI system) and 192 were granted a residence permit ex art. 18 or 22 TUI. Considering the fact that the IOM document under review shows that the 104 victims of exploitation who did not file a complaint were also referred to protection agencies, for an overall total of 376 "Referrals to protection agencies (Anti-trafficking/SAI)", it would be very interesting to understand what kind of protection the exploited were able to access[14].
Compared to the last *Report*, another source of data is now available, at least for the three-year period 2020-2022, concerning all inspections carried out by NLI[15]. These data are not only not comparable with those collected by the *Laboratory* but it is also difficult to argue that they are comparable with them. They do, however, provide a useful framework for weighting the data we have collected (Fig. 7).

Fig. 7) *Laboratory* data weighted in the light of NLI surveys and inspections

YEARS	Irregular inspections (INL data)	Reports number of undeclared workers (INL data)	Reports number of workers victims of caporalato/exploitation (INL data)	Cases of exploitation detected by Laboratorio	Criminal proceedings detected by Laboratorio	Number of workers victims of exploitation (OIM-INL data)
2020	40.705	17.788	1.490	151	127	85
2021	39.052	15.150	1.352	129	107	290
2022	41.533	14.906	1.051	125	97	261
Total	**121.290**	**47844**	**3893**	**405**	**331**	**636**

The table above shows that the gradual decrease over the three-year period of cases of exploitation detected by the *Laboratory* corresponds to a gradual decrease of both undeclared workers and exploited workers intercepted by the NLI. This datum, on the one hand, validates, at least as far as macro-trends are concerned, our partial and artisanal survey; on the other hand, it confirms that the increase in the number of complaints is linked not so much to the intensification of inspections as to the support that the victims receive, in particular thanks to the support of the IOM mediators: in

[14] They may have been granted a permit under the social pathway of art. 18 TUI if a criminal investigation has not been opened on the case, or a residence permit under art. 19 TUI which also entitles them to reception in SAI, or they may have been the subject of a simple social taking charge if they did not need to regularise their position in the national territory.
[15] It should be noted that the IOM *Briefing* only reports data from inspections carried out with the participation of mediators provided by the Organisation.

fact, complaints are increasing even and despite the decrease in the number of inspections and controls.

3. Victims of labour exploitation: nationality, legal status and means of protection

In the *Briefing* that has just been made public, IOM reports that at the time of the first contact with the mediator, 743 exploited workers out of 1,000 assisted, i.e. 74%, were legally present in the territory. In more detail, out of the total number of assisted persons, 22% (224) had a residence permit for asylum, 13% (126) held a residence permit for subordinate work and 7% (69) were holders of international protection. Commenting on these data, IOM notes that "although irregularity of legal status undoubtedly aggravates the condition of vulnerability, these data suggest that even holders of residence permits commonly considered 'protective' or 'stable' are not exempt from the risk of falling into situations of labour exploitation. In fact, more than 50 victims with long-term residence permits and about 40 with special protection appear in this list". Only a quarter of the supported victims (exactly 257, almost 26%) were without a residence permit: and we imagine that this group includes the 192 workers victims of exploitation who, thanks to IOM's assistance, were granted residence permits ex art. 18 or 22 TUI.

The data collected by the *Laboratory* manage to give an account of the origin of the victims of exploitation identified in 634 investigations and of the legal status of foreign workers in 338 investigations. On the other hand, no data were collected on the requests/applications issued by the public prosecutor's office for the recognition of permits ex art. 18 or 22 TUI (nor on permits ex art. 18 issued by the police headquarters at the end of the so-called "social path"). Before analysing these data, however, it is worth taking a quick look at the permits ex art. 18 (whose extension to the victims of "serious exploitation" was made, as mentioned, by Law 199) and 22 TUI which, together with the judicial administration introduced in 2016, again by Law 199, represent, as mentioned, the main instruments for the protection of victims.

The social protection permit was introduced into our legal system in 1998 precisely with Article 18 of the TUI: this provision, aimed at offering protection to victims of "violence and serious exploitation" in serious danger of their safety, has always been considered to be exceptionally innovative worldwide. It is made so especially by the fact that, at a time when protection routes for victims of serious exploitation were rare and in any case subordinated to judicial cooperation, as Article 27 of Presidential Decree no. 394 of 31 August 1999[16], which regulates the protection procedure in concrete terms, provides for what has been called a "social pathway", i.e. a protection of victims without the need for them to cooperate with the courts.

Since 2000, programmes for taking on victims of "violence and serious exploitation" have been financed through special calls for proposals by the Department for Equal Opportunities of the Presidency of the Council. Although the text of Article 18 identifies victims (whose safety is in danger), as well as victims of the exploitation of prostitution, of "violence and serious exploitation" resulting from any crime for which arrest in flagrante delicto is mandatory, as the group of persons entitled to protection, the calls for applications have for a long time only financed protection programmes aimed exclusively at "victims of trafficking for the purpose of sexual exploitation" (Article 4 of the 2000 call for applications). When law 199 included labour exploitation carried out with violence or threats (Article 603-*bis*, para. 2, Criminal Code) among the crimes for which arrest in flagrante delicto is provided for, it was immediately considered that its victims were worthy of protection: in fact, the calls for proposals of the Department for Equal Opportunities from 2018 onwards provide that "the proposals should be oriented in formulating more projects relevant" to the topic of law 199. To date there is no similar provision for victims of other crimes for which mandatory arrest in flagrante delicto is foreseen (we will come back to this point).

The residence permit provided for by Article 22 of the TUI only for foreigners without a residence permit who are victims of "particular labour exploitation" has a different genesis: originally this provision, in paragraph 12, defined the crime of employing foreigners without a residence permit but did not provide any protection. The Legislative Decree 109/2012, which transposed the "Directive 2009/52/EC laying down minimum standards on sanctions and measures against employers who employ illegally staying third-country nationals", inserted paragraph 12-*quater* in Article 22 of the TUI, providing a specific residence permit for irregular migrants subjected to conditions of "particular exploitation" (defined by paragraph 12-*bis* of the same article) on condition that they report or

[16] *Regulation laying down rules for the implementation of the Consolidated Text of Provisions concerning the regulation of immigration and rules on the status of foreigners*.

cooperate in the criminal proceedings initiated against the employer. This permit, like the one ex art. 18 TUI, is designed to provide a stable path of social integration. Although, in fact, it seems to be configured at first glance as a permit for reasons of justice, as paragraph 12-*quinquies* states that it "may be renewed for one year or for the longer period necessary for the definition of criminal proceedings", paragraph 12-*sexies* clarifies that it "allows the performance of work activities and may be converted, upon expiry, into a residence permit for subordinate or autonomous work". This permit therefore also makes it possible to start a path of stable socio-occupational integration. Moreover, Decree-Law 113/2018, converted by Law 132/2018, has provided that this type of permit is also accompanied by material support, similar to that provided for asylum seekers, in order to foster the path of social integration.

The fact that the legal provisions protecting victims of labour exploitation are placed in the Consolidated Immigration Act is indicative. In the second paragraph of Article 1 of the TUI, the legislator recalls, in fact, that the same TUI "does not apply to citizens of European Union Member States". Therefore *only* non-EU citizens in 1998 were and, according to the regulatory framework – although with a confusing concession of social protection under Article 18 TUI to EU citizens (on which we will return shortly below) – in essence still today are, considered by our legislator as possible 'victims' of labour exploitation. The heading of Article 18, "Stay for social protection reasons", then indicates that, in fact, the legislative text assumes only irregularly staying non-EU citizens as plausible 'victims'. An exploited legally residing non-EU citizen probably needs a "social assistance and integration programme", but not guarantees for his or her stay, which are instead the subject of the heading and the pivot of the provision. The idea that exploitation presupposes the lack of a residence permit is asserted in 2012 by the introduction of a specific permit for irregularly staying exploited foreigners (we will discuss later the problem of the relationship between the offence configured by Article 603-*bis* of the Criminal Code and the one arising from paragraphs 12 and 12-*bis* letter c) of Article 22 of the TUI).

This confinement of the victims to be protected to foreigners without residence permits gives rise to the optimistic view that persons with the entire basket of rights (political, civil and social) such as Italian and EU citizens, but also persons who are granted a more restricted portion of these rights, such as legally resident foreigners, have instruments that enable them not to fall victim to labour exploitation.

This irenic vision began to be implicitly superseded by Law no. 17 of 26 February 2007 which, converting one of those decree-laws (Decree-Law no. 300 of 28 December 2006) that extend a multitude of terms on the most varied subjects every year-end, by its Article 6(4) introduced Paragraph 6-*bis* into Article 18. By virtue of this paragraph, the provisions of Article 18 "shall also apply, mutatis mutandis, to citizens of European Union Member States who are in a situation of serious and actual danger". Its introduction is symptomatic of the increasingly widespread perception, following the accession of Bulgaria and Romania to the European Union (which took place on 1 January 2007, that is, three days after the presentation of the decree-law and just under two months before its conversion), that even subjects with a basket of rights similar in many ways to that of Italian citizens, except for the right to vote in national elections, can be victims of exploitation in our country. The circumstance that five years later a permit was introduced for irregularly residing foreigners who are victims of labour exploitation, makes it clear that, when introducing paragraph 6-*bis* in Article 18 of the TUI, the legislator had in mind only sexual exploitation, the victims of which, as we have seen, until 2018 were the only recipients of protection programmes financed by the Equal Opportunities Department.

The emergence in 2014 of the exploitation of Romanian women in greenhouses in the Ragusa region and the media clamour that followed[17], showed how EU citizens can also be victims of odious forms of labour exploitation[18]. In 2015, the tragic death of Paola Clemente, while working in the fields of Andria for two euros an hour[19], reminded us that even Italians, with all their rights, can be victims of labour exploitation and die because of it. Fortunately, Italian citizens are also EU citizens and can

[17] See in particular the two articles published respectively in *L'Espresso* by Antonello Mangano in late 2014 and in *The Guardian* by Kelly in 2017

[18] Cf. A. Sciurba, *La cura servile, la cura che serve*, Quaderni de L'altro diritto, Pacini, Pisa 2015; L. Palumbo, A. Sciurba, *The vulnerability of women migrant workers in agriculture and the EU: the need for a Human Rights and Gender based approach*, Study for the FEMM committee, European Parliament, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604966/IPOL_STU(2018)604966_EN.pdf.

[19] See the Report on the investigation, established on 8 September 2015 by the Senate Parliamentary Commission of Inquiry into the phenomenon of accidents at work and occupational diseases, into the death of Paola Clemente, on 13.07.2015 in Andria (BA), http://www.amblav.it/download/RelazioneDefinitivaCaporalato.pdf

therefore appeal, unless we want to practice an absurd 'reverse' discrimination, to paragraph 6-*bis* of Article 18 to enjoy the same protection as foreigners against exploitation[20]. It deserves to be emphasised that the Paola Clemente affair and the Senate enquiry commission set up on it gave a decisive push to the approval of law 199, which thus stemmed from the death of an Italian citizen due to labour exploitation. In spite of these events, all the funds allocated since then for the protection of victims of exploitation, including those of the aforementioned projects in which IOM's work is carried out, are reserved for the protection of "third-country nationals".

The data provided by IOM, according to which three quarters of the assisted foreign victims of labour exploitation are regularly resident, and often – one fifth of them – under 'protective' residence permits, show the obsolescence of the prerequisites of the main protection measures provided for by our legal system: they must make us reflect on how the permits ex art. 18 and 22 TUI very often act as a sort of eye of the needle through which social workers, starting with those of the anti-trafficking agencies, and trade unions have to work to get victims of exploitation through.

Although, as mentioned, the data collected by the *Laboratory* do not allow the same analyticity in examining the protection measures, since they do not concern individual exploited workers but investigations, they strongly confirm the mismatch between a significant part of the victims identified in the exploitation investigations and the 'ideological' framework underlying the protection measures, which often makes it complex to construct socio-labour integration paths for the actual group of exploited workers.

As shown in the table below (Fig. 8), the *Laboratory* was able to trace the geographical origin of the victims in just over three quarters of the investigations detected (634 out of 834). In 461 investigations, slightly more than 70% of those in which it was possible to identify the origin of the exploited workers, the victims were only third-country nationals, in 79 they were both foreign and EU citizens, and in 94 investigations only EU citizens: thus, in more than a quarter of the investigations in which it was possible to identify the origin of the victims (173 out of 634), EU workers were involved. In 88 of the 156 investigations where the exploited workers are EU nationals, the victims include Italian nationals, i.e. in 14% of the investigations where the nationality of the victims can be identified.

Fig. 8) Table on the origin of the victims

[20] In fact, in the explanatory report of the Legislative Decree 24/2014, which introduces paragraph 3-*bis* in Article 18, the Government states that this provision aims to rationalise the protection system "by providing a single programme of emersion, assistance and social integration that does not have an innovative content with respect to the programmes already provided for by the provisions in force, but only aims to unify them, so as to make the management of the aforementioned programmes more effective and efficient, ultimately improving the protection of victims, as required by Directive 2011/36/EU [...]. Naturally, Italian citizens who are victims of trafficking are excluded from the single programme of emersion, assistance and social integration, since only the assistance programme referred to in Article 13, paragraph I, of Law No. 228 of 2003 applies to them". This thesis, which seems to be dictated, even reading the government's argumentation, by purely economic reasons, appears absolutely illegitimate and discriminatory: once the protection of Article 18 has been extended to EU citizens, it cannot be argued that it excludes Italian citizens. Moreover, in confirmation of the usability of Article 18 for Italian citizens and the need for this protection, the available data of SIRIT (Sistema Informatizzato per la raccolta di informazioni sulla tratta) record, in the period 2013-2014, 12 persons of Italian nationality who have benefited from social protection projects for victims of trafficking and exploitation: 4 persons of the protection ex art. 13 Law 228/2003 and 8 of the protection ex. 18, http://www.unar.it/unar/portal/wp-content/uploads/2015/07/Allegato-3-dati-emersione-2013-e-2014.pdf.

YEARS	ALL ECONOMIC SECTORS					
	Total number of cases	Total cases where it was possible to trace the origin of the victims	Non-EU foreign nationals only	Both European and non-EU citizens	European citizens only	Only or also Italians
2011-2015	24	19	14	1	4	3
2016	12	10	8	1	1	1
2017	41	33	23	4	6	4
2018	81	68	48	4	17	12
2019	147	116	83	11	24	16
2020	151	123	84	9	19	18
2021	129	101	75	13	18	14
2022	125	83	66	17	0	9
2023	124	81	60	19	5	11
Total	**834**	**634**	**461**	**79**	**94**	**88**

If we restrict the analysis to the agricultural sector alone, we see that it was possible to reconstruct the origin of the victims in 346 out of 432 investigations (approximately eighty per cent of the cases, a slightly higher percentage than for all sectors) (Fig. 9). In 257 of these investigations the exploited workers are only third-country nationals, in 48 investigations EU citizens are involved together with non-EU citizens, while in 41 investigations they are the only identified victims. Thus, EU nationals are involved in a quarter of the investigations (89 out of 346) in which it is possible to identify the nationality of the victims: a percentage similar to that for investigations in all sectors, while the percentage of investigations, 32 out of 346 (9%), in which Italian nationals are among the victims is much lower.

Fig. 9) Table on victim origin: all sectors and agriculture compared

YEARS	ALL ECONOMIC SECTORS						AGRICULTURE					
	Total number of exploitation cases	Total cases where it was possible to trace the origin of the victims	Non-EU foreign nationals only	Both European and non-EU citizens	European citizens only	Only or also Italians	Total number of exploitation cases	Total cases where it was possible to trace the origin of the victims	Non-EU foreign nationals only	Both European and non-EU citizens	European citizens only	Only or also Italians
2011-2015	24	19	14	1	4	3	11	8	6	1	1	0
2016	12	10	8	1	1	1	10	9	7	1	1	1
2017	41	33	23	4	6	4	28	21	13	3	5	2
2018	81	68	48	4	17	12	61	50	44	3	3	3
2019	147	116	83	11	24	16	83	60	40	6	14	4
2020	151	123	84	9	19	18	76	66	48	8	10	8
2021	129	101	75	13	18	14	68	53	40	8	5	6
2022	125	83	66	17	0	9	52	44	30	14	0	6
2023	124	81	60	19	5	11	43	35	29	4	2	2
Total	**834**	**634**	**461**	**79**	**94**	**88**	**432**	**346**	**257**	**48**	**41**	**32**

The *Laboratory*, as mentioned, was also able to reconstruct the legal status of foreign workers who were victims of exploitation in 338 investigations out of 540 (461 with only foreign workers as victims and 79 in which both foreign and EU workers were victims) in which third-country nationals were involved (Fig. 10). In 116 of these 338 investigations (i.e. in more than a third) the exploitation involved *only* regular workers in the territory, while in 151 both regular and irregular foreign workers were employed: thus, in almost 79% (267 out of 338) of the investigations in which the victims are third-country workers whose status we were able to reconstruct, there are holders of some kind of residence permit.

Fig. 9) Table of legal status of victims, with details on 'refugeeisation', covering all sectors

YEARS	ALL ECONOMIC SECTORS					
	Cases in which only or also foreign nationals are victims of exploitation	Cases in which it was possible to trace the legal *status* of the victims	Cases with only foreign with and without residence permits as victims	Cases with only foreigners with residence permits as victims	Cases with only or also asylum seekers or humanitarian protection holders as victims	Cases with only foreign without residence permits as victims
2011-2015	15	13	6	2	7	6
2016	9	9	5	3	3	2
2017	27	16	6	10	10	0
2018	51	43	11	24	23	8
2019	92	65	17	35	29	13
2020	104	70	38	22	22	10
2021	83	39	25	3	6	11
2022	83	36	13	6	6	16
2023	76	47	30	11	8	6
Total	**540**	**338**	**151**	**116**	**114**	**72**

All exploited workers with a residence permit are not eligible for protection under Article 22 TUI (reserved for foreigners without a residence permit) and, in theory[21], are not interested in protection under Article 18. This type of permit concerns the victims of the 72 investigations in which *only* workers without residence permits were employed in the territory and part of the victims of the 151 investigations in which both legally resident and irregularly resident foreigners were involved. They are certainly not few, so these types of protection are important. *It is, however, evident that the* Laboratory*'s data, like IOM's, highlight a problematic mismatch between the target of the main instruments of protection, i.e. foreigners without residence permits, and the majority of exploited de facto workers, i.e. third-country nationals with some kind of residence permit (to which must be added EU citizens, also without residence permits).*

There is another relevant datum: of the 267 investigations in which the victims are third-country nationals with a residence permit, 114 (42%) involve foreign citizens whose permit is for international protection or issued for humanitarian reasons (in most cases on the basis of Art. 5 paragraph 6 TUI). If we relate this figure to all 338 investigations in which it was possible to identify the status of the victims, we realise that the phenomenon concerns one third of the investigations. This figure confirms the trend towards what has been called in the literature[22] the 'refugeeisation' of labour exploitation, which we had already noted in the previous *Report*, in the wake of the

[21] This aside is due to the fact that, as we will immediately say, a significant proportion of investigations involve foreign asylum seekers, therefore with the residence permit envisaged for those undergoing this procedure: this permit, which is renewable until the end of the procedure, lasts six months like the permit ex art. 18 TUI, which is also renewable, but unlike the second one is not convertible into a work permit. Therefore, some foreign asylum seekers could still be interested in the permit ex art. 18 TUI even though they are regularly present on the territory.

[22] Cf. M. Omizzolo, "Sfruttamento lavorativo e caporalato in Italia: la profughizzazione del lavoro in agricoltura e il caso dei braccianti indiani dell'Agro Pontino", *Costituzionalismo.it*, 2, 2020; essays by D. Di Sanzo and G. Ferrarese and J.R. Bilongo in Osservatorio Placido Rizzotto FLAI-CGIL, *V Rapporto Agromafie e caporalato*, Rome, Ediesse Futura, 2020; J.R. Bilongo and M. Omizzolo, "La crescente 'profughizzazione' del lavoro agricolo in Italia", in D. Di Sanzo (ed.), *Italia-Rifugio. Storia, rappresentazioni e condizioni dei richiedenti asilo e dei rifugiati a trent'anni dalla morte di Jerry Essan Masslo*, Brienza, Edizioni Le Penseur, 2019; N. Dines and E. Rigo, "Postcolonial Citizenships and the 'Refugeeization' of the Workforce: Migrant Agricultural Labor in the Italian Mezzogiorno", in S. Ponzanesi, G. Colpani (eds.), *Postcolonial Transitions in Europe: Contexts, Practices and Politics*, London, Rowman and Littlefield, 2015.

supranational reports[23]. Based on data indicating the gradual emergence of this phenomenon, "L'altro diritto", as part of a project of the Region of Tuscany to combat labour exploitation, created a desk at the Specialised Sections of the Court of Florence to which judges send asylum seekers who report having been victims of exploitation episodes during the hearing. Confirming the relevance of the phenomenon (and the usefulness of the initiative), between March 2023 and March 2024 the desk conducted 34 interviews and in 32 of them found the existence of the indicators of exploitation provided for by 603-*bis* of the criminal code and sent a report to the judge before whom the case was pending, who always took it into account in his decision.

The relevant 'refugeeisation' of exploitation also highlights the limits of the forms of protection provided for by Articles 18 and 22 of the TUI: in fact, it indicates that a massive number of asylum seekers, despite having or being able to have food, accommodation and a small daily sum ('pocket money'), feel a condition of need that drives them to be exploited, *rectius* makes them perceive that they have no other option but to submit to exploitation. Since the offence of labour exploitation presupposes, as an essential condition, the exploitation of the "state of need of the workers", judges could even exclude the configurability of the offence in cases where there is a taking charge in the reception system, in the CAS or in the SAI, and the possibility of using the services they provide. The datum of the investigations that see, among the exploited, workers whose status is linked to the pathway to international protection shows that the public prosecutor's offices and the case law have not followed this path[24].

The phenomenon of the 'progression' of exploitation shows that the state of need that pushes people to accept exploitation is not primarily linked to the individual material needs of migrants on our territory, which the reception of asylum seekers meets, but to the need to send 400/500 euro to the family in the country of origin that has often invested all its savings in the migration route. It is this fact that makes the pathways offered by Art. 18 and 22 of the TUI insufficient. *To asylum seekers, who do not feel threatened and forcibly forced to accept exploitation but still go in search of exploited labour, those programmes, in fact, do not offer conditions that are, in their eyes, very different from those in which they find themselves or which, if anything, they have abandoned to pursue exploited labour.* In other words, the datum on the 'refugeeisation' of exploitation shows that *any protection programme that does not put the migrant in a position to 'donate' 400 or 500 euros per month (this figure represents what exploited migrants usually say they send) to their family remaining in their country of origin will not be able to free them from what could be called 'gift bondage', i.e. the social constraint created by the enormous gift received*[25].

The vulnerability of applicants for international protection is then heavily affected – given that the economic support provided for applicants for international protection is not designed to cope with the "haunting"[26] need to provide for the needs of family members remaining in the country of origin – by the provisions, probably illegitimate because they are not provided for in Directive 2013/33/EU, "Rules concerning the reception of applicants for international protection", on the withdrawal of reception. According to the provisions of Legislative Decree No. 142 of 18 August 2015, "Implementation of Directive 2013/33/EU", anyone whose income exceeds the annual amount of the social allowance, i.e. EUR 5,953.87, must be removed from reception. This situation creates a short-circuit in which the asylum seeker does not receive economic support to provide for his family and, at the same time, cannot meet his family's needs by working regularly, otherwise he will lose his reception. This short-circuit creates an ideal situation for exploitation: exploiter and exploited both have an interest in hiding it.

If we focus on the agricultural sector, we can see that the percentage of investigations in which the victims include third-country nationals whose status could be identified is lower: 135 out of 305, just over a third, compared to 62% in all sectors. Of these, those with exclusively irregular victims are just over a third, 47 out of 135, while 88 are those in which the victims include foreigners with

[23] UNODC, *Global report on trafficking in persons*, 2016, p. 17; at https://www.unodc.org/unodc/data-and-analysis/glotip.html; ICAT (2017), *Trafficking in Persons and Refugee Status*, p. 2. http://icat.network/sites/default/files/publications/documents/ICAT-IB-03-V.2.pdf

[24] On the contrary, in case law there are increasingly frequent interpretative guidelines according to which not only the condition of irregularity, but also the holding of an unstable permit, such as the one given to applicants for international protection that must be renewed every six months, are considered by default to connote a condition of vulnerability/need.

[25] See E. Santoro, "La protezione delle vittime di sfruttamento lavorativo: una pratica sovversiva di alcuni capisaldi della nostra cultura giuridico-politica", in *Sociologia del diritto*, 3, 2021.

[26] We have chosen this term because it is not infrequently used by the Supreme Court to characterise 'the state of need' as a condition distinct from the condition of vulnerability, as we will discuss below.

residence permits. The figure is slightly lower (65% vs. 70%) than that for investigations in all production sectors, but not so divergent that it could be argued that the data on agriculture allow us to make a different discourse on the number of exploited workers who fall outside the scope of protection ex art. 18 and 22 TUI.

Fig. 10) Table of legal status of victims, with details on 'refugeeisation': all sectors and agriculture compared

YEARS	ALL ECONOMIC SECTORS						AGRICULTURE					
	Cases in which only or also foreign nationals are victims of exploitation	Cases in which it was possible to trace the legal status of the victims	Cases with only foreign with and without residence permits as victims	Cases with only foreigners with residence permits as victims	Cases with only or also asylum seekers or humanitarian protection holders as victims	Cases with only foreign without residence permits as victims	Cases in which only or also foreign nationals are victims of exploitation	Cases in which it was possible to trace the legal status of the victims	Cases with only foreign with and without residence permits as victims	Cases with only foreigners with residence permits as victims	Cases with only or also asylum seekers or humanitarian protection holders as victims	Cases with only foreign without residence permits as victims
2011-2015	15	13	6	2	7	6	7	0	0	0	2	0
2016	9	9	5	3	3	2	8	4	1	1	2	2
2017	27	16	6	10	10	0	16	1	1	0	5	0
2018	51	43	11	24	23	8	47	22	9	5	18	8
2019	92	65	17	35	29	13	46	23	4	10	15	9
2020	104	70	38	22	22	10	56	27	7	15	11	5
2021	83	39	25	3	6	11	48	21	5	9	1	7
2022	83	36	13	6	6	16	44	21	6	5	5	10
2023	76	47	30	11	8	6	33	16	2	8	6	6
Total	**540**	**338**	**151**	**116**	**114**	**72**	**305**	**135**	**35**	**53**	**65**	**47**

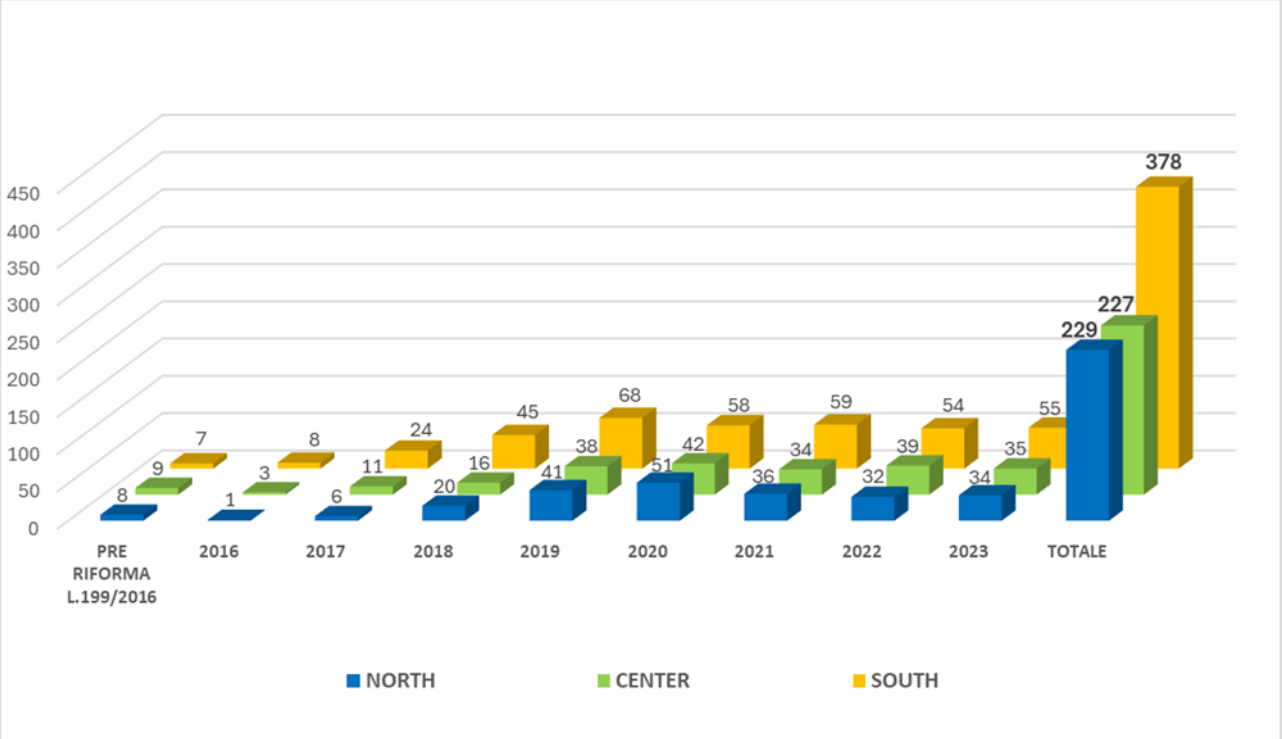
The phenomenon of the 'refugeeisation' of exploitation appears slightly more pronounced in agriculture than in other productive sectors: as mentioned, asylum seekers and holders of humanitarian protection were among the victims in 42% of the investigations. In agriculture, workers with such residence permits are found in 65 out of 135 investigations involving workers with residence permits, i.e. in 48% of cases.

4. Mapping exploitation across the country: the geographical distribution of exploitation cases over the years

The cases of exploitation detected concern the entire national territory but their geographical distribution between the North, the Centre and the South[27] is not uniform: the South records the highest number of cases of labour exploitation detected at national level, confirming that it is an area particularly exposed to the phenomenon: the graph below (Fig. 11) shows the aggregate figure of cases of exploitation detected over time (from 2010 to 2023), with a total of 229 cases in the North, 227 cases in the Centre and 378 cases in the South.

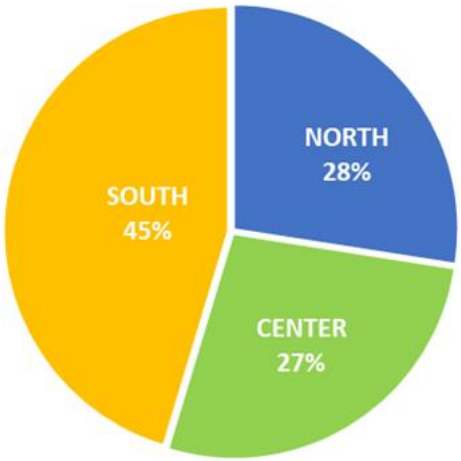
[27] It should be noted that with respect to the ISTAT subdivision of the areas North, Centre and South Italy, we have considered the regions Emilia-Romagna and Abruzzo as part of the Centre, and the Islands as part of the South.

Fig. 11) Distribution of exploitation by geographical areas



Analysing the data diachronically (Fig. 11), it is interesting to note a progressive narrowing of the gap between the cases in the North and the Centre and those in the South of Italy (at least since 2020) with a reversal of the trend recorded in recent years compared to the past, when the sum of the cases of exploitation in the North and the Centre barely reached the total of cases in the South alone: if, for example, in 2017 the total exploitation cases detected in the Centre and North (17 cases) were even lower than the cases detected in the South alone (24 cases), in 2020 the aggregate of data from the North and Centre (93 cases) far exceeds those from the South (58 cases). The trend is also confirmed in 2023, where out of 124 cases of exploitation detected by the *Laboratory*, the Central and Northern regions total 69 cases of exploitation, exceeding the 55 cases of exploitation recorded in the South.

Fig. 12) Percentage distribution of exploitation cases by geographical areas



The data for 2022, which bring the number of investigations detected in the South to 54 compared to 39 in the Centre and 32 in the North, and the data for 2023, with 55 investigations in the South, 35 in the Centre and 34 in the North, confirm this trend. Considering the data so far exposed in percentage points, to date the distribution of exploitation on the national territory is concentrated 28% in the North, 27% in the Centre and 45% in the South (Fig. 12).

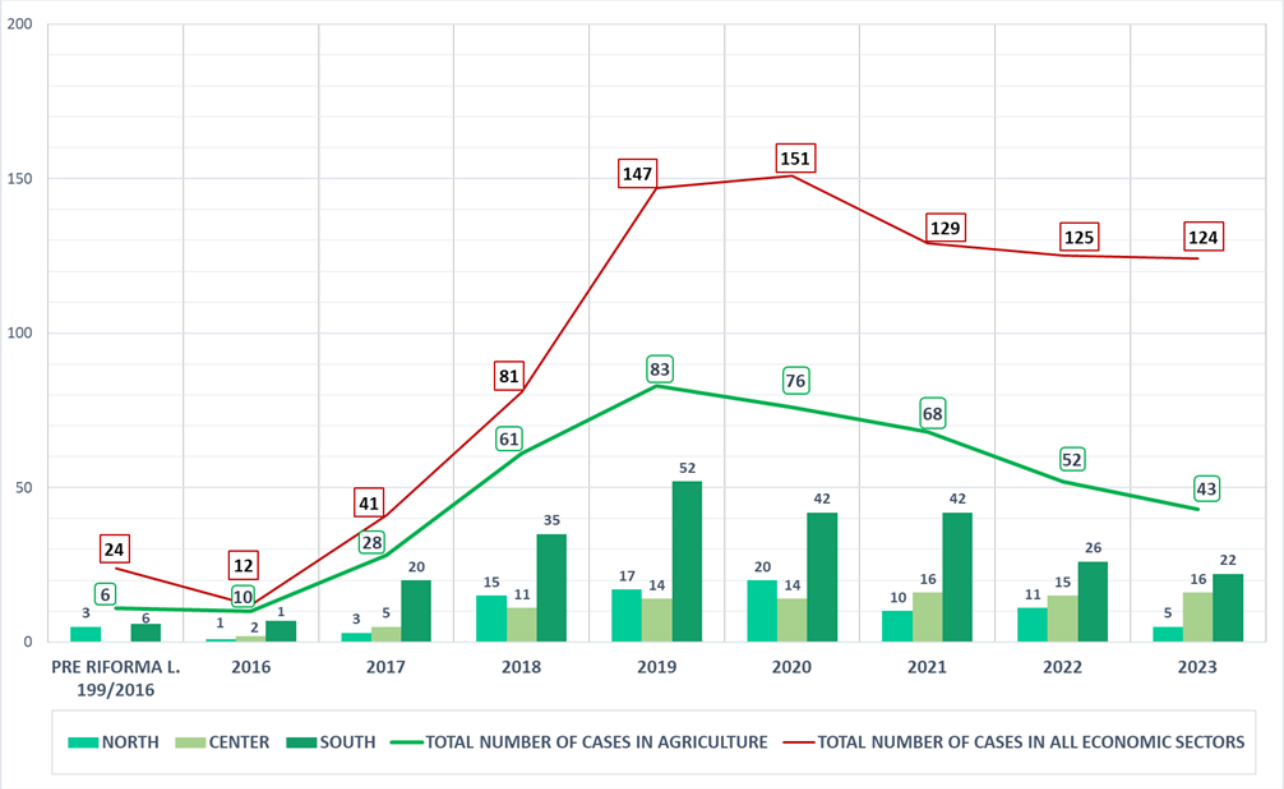
In line with the approach that characterises the *Report*, according to which it is the control that creates the statistical data, we think we should consider the gradual decrease in the Centre-North and South divide, not so much as a change in the geographical distribution of labour exploitation on the national territory, but rather as the result of a more uniform distribution of attention to the phenomenon by the investigative bodies throughout the country. When attention to labour exploitation was born, it was perceived as a phenomenon related to the agricultural sector in southern Italy. Then, especially thanks to the reformulation of Article 603-*bis* of the Criminal Code in 2016, there was slowly a 'change of pace' of

investigators and inspection bodies in their approach to exploitation, which was gradually seen as a productive practice no longer strictly related to the southern agricultural sector, but widespread in all economic sectors in all regions of the country.

5. Exploitation in agriculture: analysis of investigations

Agriculture is confirmed, as mentioned, as the production sector with the highest number of exploitation cases detected by the *Laboratory*. As shown in the graph below (Fig. 13), however, the gap between the curve of investigations relating to all sectors and those relating to the agricultural sector since 2019 has been gradually widening, testifying to the fact that the attention of the public prosecutor's offices is also being extended to sectors other than agriculture where labour exploitation has come to the attention of the media but also of the legislator, as demonstrated by the fact that Law 199, while containing the reform of art. 603-*bis* of the Criminal Code and the restructuring of the entire criminal structure of the offence of exploitation, is called "Provisions on combating the phenomena of undeclared work, labour exploitation in agriculture and wage realignment in the agricultural sector".

Fig. 13) The incidence and distribution of labour exploitation cases in the agricultural sector



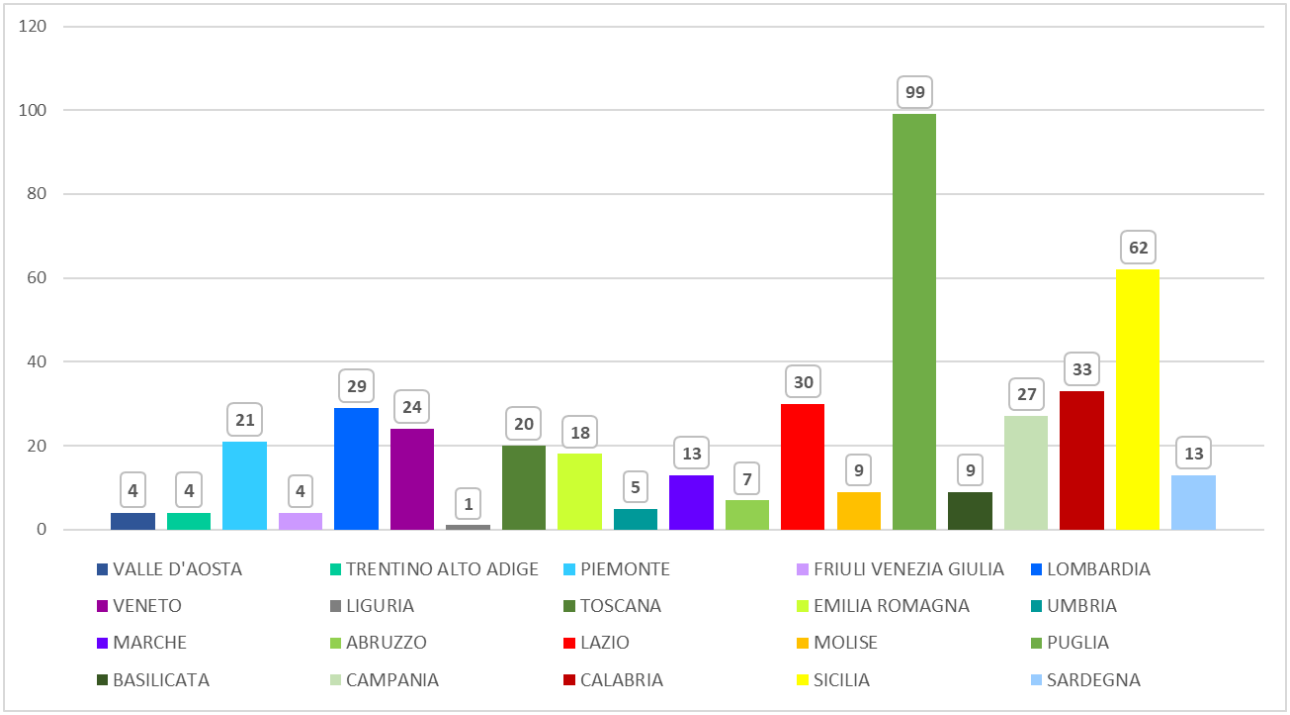
Compared to the last *Report*, the number of investigations detected has almost doubled from 220 to 432. Of these 252, i.e. 52%, are in the South, 93 in the Centre and 87 in the North. The high incidence of cases of agricultural exploitation in southern Italy is certainly consistent with the southern economic-productive context, where, according to the latest ISTAT surveys, the largest number of farms in the country is concentrated[28]. However, we reiterate that the gap between the number of investigations detected in agriculture compared to the other production sectors seems to us to be due, in no small part, to the fact that controls are mainly concentrated in this sector for reasons of media relevance as well as socio-economic ones, so that in sectors other than agriculture labour exploitation is less likely to emerge.

The data on the regional distribution of investigations (Fig. 14) seem once again to indicate that investigations are highly dependent on the investigative specialisations in each area. In the North,

[28] See ISTAT, *7° Censimento generale dell'agricoltura: primi risultati*, 28 June 2022, p. 6, available at: https://www.istat.it/it/files//2022/06/REPORT-CENSIAGRI_2021-def.pdf. According to the most recent ISTAT data, farms are concentrated in the South and Islands, with a total of 652,392, followed by the North, with 301,401 farms (North-East + North-West) and the Centre, with 179,230 farms active in the sector.

Lombardy has the highest concentration of cases (29), two-thirds of which are concentrated in the provinces of Mantua – which is generally the area with the highest number of labour exploitation investigations in the North – where there are 15 investigations in agriculture, and Brescia (4 cases); followed by Veneto and Piedmont, with 24 and 21 cases respectively.
In central Italy, Lazio is the region where the exploitation of agricultural labour counts the highest number of cases (30), more than half of which concern the province of Latina (17), followed by Tuscany (20) and Emilia Romagna (18). Of these, we would like to mention the *Job Tax* operation, coordinated by the Latina public prosecutor's office, in which an Italian agricultural entrepreneur and a foreign *caporale* are accused of criminal conspiracy, exploitation of foreign labour, extortion and the illegal use of unauthorised plant protection products, to the detriment of as many as 157 foreign workers employed in radish harvesting, under threat of corporal punishment and economic retaliation. The case, together with three other proceedings in the public prosecutor's offices of Cuneo, Ragusa and Lecce, sheds light on the rampant illegal use of plant protection products in agricultural crops, too often overlooked by investigators as an indication of a real risk to the health of labourers[29].

Fig. 14) Distribution of exploitation cases in agriculture within individual regions



With respect to the situation in Tuscany, one notices the emergence on the investigative level of exploitation in the agricultural sector, which the trade unions have been investigating for some time in the area, denouncing a high rate of exploitation and irregularities, particularly with respect to olive and grape cultivation, in the Florentine Chianti area and in the Livorno area[30]. To confirm this, we report that the Livorno public prosecutor's office records the highest number of proceedings for exploitation in agriculture (with 5 proceedings out of a total of 20), half of which were detected between 2022 and 2023. In this regard, we report a proceeding in which, thanks to the cooperation of trade associations, the owners of some farms specialising in the cultivation of PDO vegetables, located in the Maremma area, were investigated for the crime under Article 603-*bis* of the Italian Criminal Code against about one hundred labourers (Italians and foreigners) who were employed without a contract for 15-16 hours a day and paid EUR 2.50 per hour, without the right to any holiday or weekly rest period: many of the workers, mostly foreigners, were housed in an illegal cottage

[29] In this regard, the collaborative enquiry *#PesticidesAtWork*, on the health consequences for farmers and workers using pesticides, should be noted: https://www.leggiscomodo.org/pesticidi-lavoro-mani-nude/.
[30] See Osservatorio Placido Rizzotto FLAI-CGIL, *V Rapporto Agromafie e caporalato*, "Toscana. Il caso di Livorno", 2020, pp. 257 ff.

adjacent to the same land of the farms, in precarious sanitary conditions, whose rent was deducted from their pay.
Finally, in the South, the Puglia region stands out, with 99 cases of exploitation, 67 of which in the province of Foggia; followed by Sicily (62)[31] and Calabria (33). With regard to the composition of the exploited labour force, the analysis of the data shows that the South has the highest number of proceedings involving asylum seekers (with a total of 25 out of 65 proceedings), but the high use of Italian agricultural labour in exploitative conditions also stands out: out of a total of 32 cases identified in the agricultural sector that include Italian citizens or only Italian citizens among the victims, 23 cases are in the South, 6 in the Centre and only 3 in the North. The figure, though low, is significant in that it shows that indigenous labour is not immune to exploitation: after all, as recalled, it was precisely the death of an Italian labourer, Paola Clemente, that in 2015 led to the start of parliamentary work to reform Article 603-*bis* of the criminal code and to raise public awareness of the fact that labour exploitation involves not only foreign labour, but also Italian citizens who are holders of "the entire basket of rights (political, civil and social)"[32].
Significant on this issue is a criminal case initiated by the Trapani public prosecutor's office against eleven people, including six owners of farms in Alcamo, for the crimes of criminal association aimed at labour exploitation perpetrated against some foreign minors and Italian pensioners: according to the GIP, seniority and the need to supplement the modest economic income from their pensions placed the pensioners in a situation such that "they [had] no choice but to carry out burdensome work accepting degraded working conditions" and suitable to integrate the state of need required by art. 603-*bis* c.p.
If we focus our attention on the victims, it is worth highlighting the forms that the phenomenon of the 'refugeeisation' of labour in agriculture takes in the North, where a total of 20 out of 65 proceedings for exploitation against asylum seekers in agriculture are recorded. In most of the investigations for exploitation in Lombardy, asylum seekers are involved, very often recruited by the bosses directly in the reception centres (CAS) – sometimes with the complicity of the managers of the structures themselves – and employed as labourers in the local wineries. Particularly significant in this regard are two proceedings pending in the public prosecutor's office of Brescia, the *Demetra* operation, in which both the employers (two Brescian agricultural entrepreneurs) and the three foreign *caporali* are charged for the labour exploitation of more than one hundred asylum seekers in the grape harvest in the vineyards of Franciacorta, and Operation *Green Gold*, where the Guardia di Finanza broke up an organised system of exploitation of more than two hundred labourers, mostly asylum seekers, recruited directly from reception facilities and employed under exploitative conditions in wineries in the area and beyond, in a network well branched throughout northern Italy. In these areas, moreover, there is a tendency for many foreign entrepreneurs to take advantage of the state of need of other foreign workers (often fellow countrymen), leveraging the migratory network of a specific ethnic group in the area, to find cheap labour, and/or the precarious economic conditions of asylum seekers. The most striking data is found in the Mantua area, where in 8 out of 15 proceedings the agricultural entrepreneurs are foreign nationals (mainly Bengali) and employ exclusively foreign labour, both regularly and irregularly present in the territory. Significantly, there is an investigation under the jurisdiction of the Pordenone public prosecutor's office, in which two Pakistani nationals are being prosecuted for the crimes of labour exploitation, extortion and violation of the Consolidated Security Act (Legislative Decree 81/2008) against fourteen compatriots, all asylum seekers who had come to Italy via the 'Balkan route', employed as labourers in the vineyards of Friuli Venezia Giulia and Veneto: the workers had been recruited with the false promise of a well-paid job and of quickly obtaining a residence permit for work purposes, only to then discover the deception and be forced to work in exploitative conditions, in daily shifts of up to 12 hours against an hourly wage of 5/6 euro, which was mostly extorted from them by the bosses as a "reimbursement" to support the non-existent expenses for the paperwork related to their residence permits. The case is also worth mentioning because the investigative activity was initiated following the complaint of the workers – thanks to the help of the CGIL and third sector operators – in favour of about thirty of whom residence permits were issued, mainly (two thirds) ex art. 22 and ex art. 18

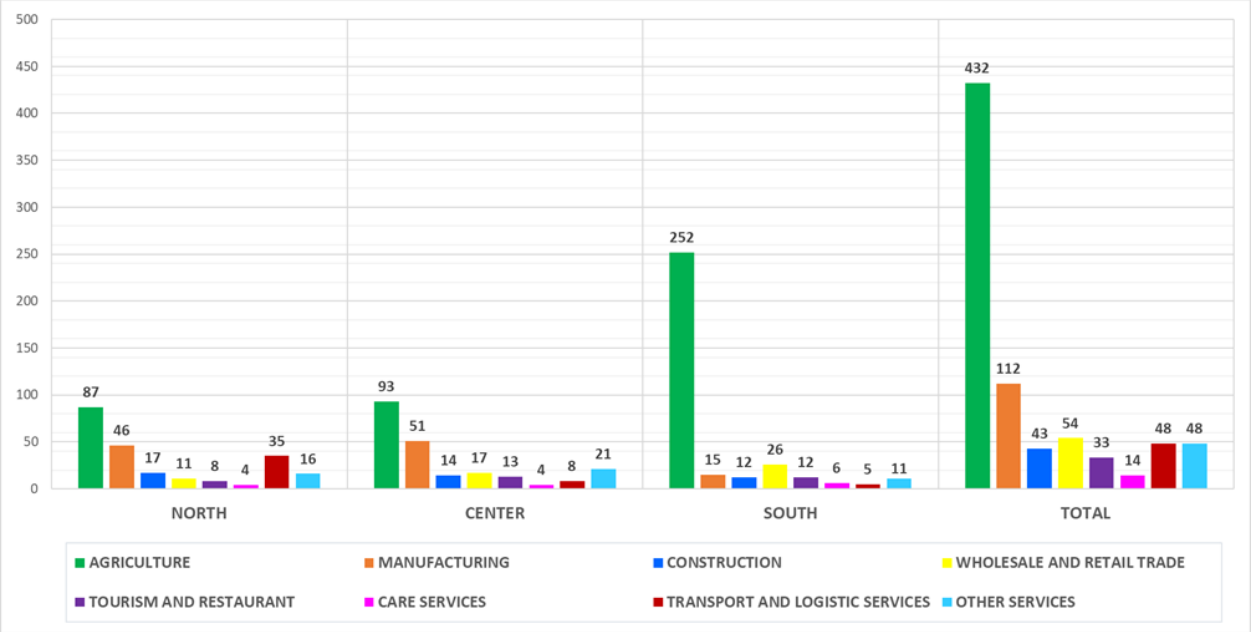
[31] The number of intercepted investigations relating to the Province of Foggia and Sicily has certainly been influenced by the fact that, as part of the Di.Agr.A.M.M.I. Sud project, we have carried out specific research on the investigations of the Foggia and Ragusa public prosecutor's offices, so that for these two prosecutor's offices, the data of the investigations detected should coincide with those formally undertaken.
[32] D. Genovese, E. Santoro, "L'art 18 (t.u. immigrazione) e il contrasto allo sfruttamento lavorativo: la fantasia del giurista tra libertà e dignità", in *Giornale di diritto del lavoro e di relazioni industriali*, 3, 2018, p. 546.

TUI. This last figure acquires particular importance in relation to the territory, if we consider that the North has the highest number of cases in which the denunciation of the employer for exploitation is followed by the denunciation of the same worker for the initiation of practices for expulsion, instead of those for the issuance of a residence permit and insertion in protected paths specifically provided for the victims of labour exploitation (precisely, ex art. 18 or art. 22-*quater* TUI)[33]. This bad practice has the effect of discouraging reporting for fear of the authorities, contributing to increasing the 'undeclared' economy and feeding the spiral of exploitation itself.

6. Exploitation in economic sectors other than agriculture

To put labour exploitation in agriculture into context, it is worth taking a quick look at what the surveys on exploitation in other economic sectors show. In the following graph (Fig. 15), investigations in sectors other than the primary one are distinguished analytically (and not in an aggregated manner as in Fig. 2). Of the 784 exploitation reports in which it was possible to identify the production sector there are 112 cases in the manufacturing sector, 43 cases in the construction sector, 54 cases in the commercial activities, 33 cases in the tourism and catering sector, 14 cases in the care and personal assistance services, 48 cases in the transport and storage services and, finally, 48 cases in other services in the tertiary sector[34].

Fig. 15) Production sectors most affected by labour exploitation



6.1. The manufacturing sector

Manufacturing is the second largest production sector in terms of the number of cases of exploitation intercepted, with a total of 112 cases, mainly concentrated in the Centre (51 cases), followed by the North (46 cases) and, finally, the South, with only 15 cases of exploitation detected (Fig. 15). In particular, in the North, the territory most affected by the phenomenon is the province of Mantua, where the *Laboratory* has intercepted no less than 11 cases of exploitation, i.e. approximately 24% of the total number of cases in the North in the sector. In the last few months, two investigations by the Milan public prosecutor's office for labour exploitation against two well-known Made in Italy brands that outsourced the production of some small leather goods (such as belts and wallets) to Chinese-run companies made the news. Against both of them, the Milan public prosecutor's office ordered the judicial administration under Article 34 of Legislative Decree no. 159/2011 for having facilitated the exploitative conduct of Chinese subcontractors to the detriment of their employees, by failing to control their production chain. We will return later to the use of this measure.

[33] This judicial practice is mainly found in the public prosecutor's offices of Mantua, Padua and Bergamo.
[34] Heterogeneous tertiary activities are classified under the label "other services", including leafleting, call centres, car washes, babysitting and services related to security systems (e.g. vigilantes) and nightclub surveillance.

In the Centre, exploitation in the sector emerges in particular in the Prato district, in Tuscany, with 16 investigations for exploitation (around 31% of the total number of cases in Central Italy) concerning mainly Chinese-run textile companies, employing workers of Chinese and/or Pakistani nationality. The low number of investigations in this sector in southern Italy is surprising.

6.2. Logistics and transport

Another production sector in which a clear inequality in the geographical distribution of exploitation cases across the territory can be seen is the services sector, in relation to transport and logistics activities, where out of a total of 48 cases detected by the *Laboratory*, as many as 35 are concentrated in the North, i.e. around 72% of the total cases (Fig. 15).

In particular, the area with the highest concentration of investigations for exploitation is Lombardy, where the province of Milan has the highest number of investigations for labour exploitation in the sector[35]. After the *CEVA Logistics* and *Uber Eats Italy s.r.l.* cases[36], between 2021 and 2022, the Milan public prosecutor's office investigated some leading companies in the sector (the Italian chains of DHL, Schenker and the two giants Bartolini and Geodis), from which a real system of 'logistics caporalato' emerged. According to what has been reconstructed by the investigators, in at least three cases (DHL, Bartolini and Geodis), a fictitious system of service contracts was used, behind which the mere supply of labour was concealed[37]: labour relations with the commissioning companies were in some cases shielded by 'filter' companies, which in turn used several cooperative companies (so-called 'tank' companies) for the supply of labour, while in other cases relations were maintained directly with the cooperative companies, which alternated over time, transferring labour from time to time and systematically failing to regularise their relations. In these cases, the non-genuine nature of the contract made it possible to proceed directly against the principals: in the *Mantide* operation, the top management of the Italian branch of the DHL giant was prosecuted for offences pursuant to Legislative Decree no. 231/2001, together with the offence of unlawful intermediation and exploitation of labour and other tax offences; while in the Bartolini and Geodis case, prosecution was initially only for tax offences and for unlawful supply of labour, and later, in January 2023, the public prosecutor's office also charged the offence of unlawful intermediation and exploitation of labour.

We dwell on these cases because they are particularly significant in that they signal a change in the investigators' viewpoint in extending the investigations also to the commissioning companies, through the reconstruction of the entire production chain following that of the workforce, in order to overcome the legal screens (intermediary companies and fictitious cooperatives) used to conceal sometimes a direct management power of the workforce by the commissioning companies, sometimes the latter's awareness of the exploitative conditions imposed on the workers by intermediary companies. As mentioned in the previous *Report*, Article 603-*bis* of the Criminal Code makes it possible to proceed directly against the employer who employs, uses or hires labour in exploitative conditions, taking advantage of the workers' state of need, but in cases where there is a split between the formal ownership of the labour relationship and the actual use of the labour service – as in the labour law rules on labour outsourcing (interposition, administration, contracting and posting of workers) – it is very difficult for investigators to prove the co-responsibility of the principals in the exploitation.

Also worth mentioning is the judicial emergence of the so-called "digital caporalato", in relation to riders and the fraudulent use of digital platforms, especially in the food delivery sector. In particular,

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[35] In the Region, the following have been identified: 1 case under the jurisdiction of the Bergamo public prosecutor's office, 1 case under the jurisdiction of the Busto Arsizio public prosecutor's office, 1 case under the Como public prosecutor's office, 1 case under the Lodi public prosecutor's office, 7 cases managed by the Milan public prosecutor's office, 3 cases under the Pavia public prosecutor's office, 1 case pending at the Varese public prosecutor's office, for a total of 15 cases, slightly less than half of the total.

[36] For a commentary on the two cases, see *IV Rapporto del Laboratorio*, cit., p. 20.

[37] In cases of supply of labour - governed by Article 30 et seq. of Legislative Decree 81/2015 - there is a sort of 'splitting' of the employer's role between formal employer and de facto employer, with a division of employer's powers and obligations between the user and the supplier: the workers are formally employees of the supplier, who holds disciplinary power and is responsible for social security and salary obligations, while the principal is responsible for organising the work performance. In these cases, therefore, there is direct interference by the user in the work performance and, therefore, his conduct can be included among those typified by the second offence of Article 603-*bis*, para. 1, no. 2 of the Criminal Code. In the case of contracting out, on the other hand, the role of employer is legally recognised only in the hands of the contractor, the holder of the power to manage the workforce (Article 29, Legislative Decree 276/2003) and is distinguished from the supply of labour on the basis of whether or not the third party can issue directives to the workforce: the principal may not exercise managerial powers or any employer prerogative in respect of the workforce.

in March 2023, a wide-ranging operation was carried out throughout the country, resulting in a series of checks in all provincial capitals, which revealed that the work position of about 12% of the riders checked was irregular, resulting in the opening of no less than 36 proceedings under Article 603-*bis* of the Criminal Code[38]. This was the first time that the phenomenon was massively probed by the investigators, considering that until 2022 there was no record of any crime for digital labour exploitation, apart from the *Uber Eats Italy s.r.l.* case.

6.3. Other services and trade

We have also recorded numerous cases of exploitation related to the employment of female workers in leafleting activities (17 investigations, with 8 cases in the North, 9 in the Centre and 2 in the South), at car washes (7 proceedings, mainly concentrated in the North and the Centre), or as security guards (so-called 'vigilantes') in shops, shopping centres or nightclubs (in 6 proceedings equally distributed in the North, the Centre and the South). With regard to the latter, in 2023 the Milan public prosecutor's office opened two labour exploitation proceedings against two major security companies in the area (one of which provided security services for the Court of Milan itself), with thousands of employees who were allegedly employed in excessive shifts (over 10 hours a day) without being able to interrupt their service to take a lunch break or to attend to their physiological needs, for low pay (5-6 euro per hour) and threatened with dismissal following protests by some vigilantes about the conditions imposed on them.

The survey also shows an increase in cases of exploitation of workers employed in the 'Trade' sector as shop assistants and sales staff, with a total of 54 cases (Fig. 15), concentrated mainly in the South (26) and in the Centre (17), where exploitation is often disguised by formal employment contracts that show working conditions that differ from those actually practised (part-time contracts against actual full-time shifts), but there are also cases where the workforce is employed completely 'off the books'.

6.4. The "sectors of undeclared exploitation": the construction, personal care services, catering and tourist accommodation sectors

Compared to the total number of investigations (834), the construction sector has 43 cases of exploitation (around 5%). This number is very small and in stark contrast to what the trade unions in the sector have been pointing out for years, denouncing the spread of a serious situation of illegality (of a fiscal nature, of non-genuine contracts, of undeclared work[39], etc.), which is often the fertile ground for exploitation[40]. Leaving aside for the time being the tragedy in Florence where five workers died and it is not yet known how many workers were illegal ("black" or "grey") and how many were victims of exploitation, the most worrying scenario seems to concern Campania[41], where the practice of employing workers without a contract and a labour recruitment system similar to that in the agricultural sector have become widespread: recruitment in the squares, loading and transporting workers to the building site in vans and the imposition of exploitative conditions in the performance of the service.

All this, however, is not reflected in the data tracked by the *Laboratory*, since the South seems to be the least affected geographical area (only 12 cases), with a greater concentration of exploitation in the North (17 cases), in the shipbuilding industry in Veneto and Liguria. Also in this sector, as in logistics, the exploitation of labour is often carried out through contracting and/or subcontracting agreements, which dematerialise the employer and fragment the production chain into several segments, making it difficult to reconstruct the chain of exploitation. Among the 'old' enquiries for which we have only recently received the documents from the public prosecutor's offices, there is one (dating back to 2019) that is emblematic of these issues: the case of *Gs Painting s.r.l.*, a company

[38] In particular, one of the most widespread modes of exploitation found by the investigators is the practice of illicit account handover, i.e. the registration of accounts – often with false documents – on platforms through an intermediary who then 'sells' the profile to the worker who materially carries out the handover, retaining a percentage of the profit.

[39] According to the most recent ISTAT data, the construction sector is among those with the highest share of undeclared work, with 19.3% and an incidence of irregular work of 13.5%: ISTAT, *Economia non osservata nei conti nazionali*, 2022, p. 6, available at: https://www.istat.it/it/files//2022/10/ECONOMIA-NON-OSSERVATA-NEI-CONTI-NAZIONALI-ANNO-2020.pdf.

[40] V. INAIL, *Sommerso nell'edilizia i sindacati lanciano l'allarme-cantieri*, 2009, available at: https://www.inail.it/cs/internet/comunicazione/news-ed-eventi/news/p1352271403_sommerso_nell_edilizia_i_sin.html.

[41] Particularly significant on this subject is the investigation by S. Errichelli, *Edilizia e sfruttamento, tutti i lati oscuri del settore*, 2023, in https://informareonline.com/inchiesta-edilizia-e-sfruttamento-tutti-i-lati-oscuri-del-settore/.

that contracted out most of the work in the port of La Spezia, whose owners, of Bengali nationality, together with other fellow countrymen, were reported for criminal conspiracy aimed at labour exploitation and self-laundering. The proceedings revealed a situation of exploitation of dozens of Bengali workers, some of them asylum seekers, employed in the construction of luxury yachts: they worked shifts for more than 14 hours a day for less than EUR 5 per hour, without being entitled to holidays or weekly rest periods. The exploitative conditions were imposed by the owner of the company and the bosses, who recruited and supervised the labour force, and threatened the workers with dismissal and physical violence to make them return part (or sometimes all) of their contractual wages. The system of exploitation was also made possible thanks to the cover provided to them by the labour consultant, an Italian, also among the defendants, who took care of concealing the exploitative conditions through the preparation of false pay slips certifying compliance with the contract in terms of working hours, holidays and pay. As evidence of the reported problems in holding the highest levels of the chain accountable for the exploitation taking place at its base, in this case the investigation was not extended to the contracting company's client to verify whether he was aware of the exploitative situation perpetrated against the workers employed by *GS Painting*, despite the fact that the police opened the investigation following an inspection on the worksite, which revealed inconsistencies in a simple comparison between the workers' arrival and departure times of the employees recorded by the worksite and those provided by the contracting company's consultant [42].

Exploitation in the personal care and personal assistance services sector, where emersion is made almost impossible by the domestic walls in which the entire work is carried out, also appears to be strongly underestimated. For years, in fact, scholars[43] and trade unions[44] have been reporting labour exploitation in the sector, especially of female workers from Eastern Europe, which often leads to real cases of human trafficking run by criminal organisations. This serious and paradoxical lack of protection also emerges from our data: on the one hand, the care sector records the lowest number of cases of exploitation detected by the *Laboratory*, with a total of only 14 cases in the country (4 in the North, 4 in the Centre and 6 in the South) (Fig. 15), but on the other hand, one of the two criminal proceedings in which trafficking in persons for the purpose of labour exploitation is charged belongs to this sector. The public prosecutor's office of Potenza is prosecuting five people for the crimes of criminal association for the purpose of trafficking in persons and labour exploitation, who are accused of having recruited more than eighty Moldovan women through advertisements published on social networks. The women were deprived of their documents on arrival in Italy and placed in some housing facilities available to the suspects while they waited to be assigned to a family, where they were employed off the books, in massacring work shifts for a miserable wage, almost all of which went to their tormentors[45].

The 'sectors of undeclared exploitation' should also include catering and tourist accommodation activities: the *Laboratory* has intercepted only 35 cases of exploitation relating to these two sectors, distributed mostly evenly between the North, the Centre and the South (Fig. 15). Here too, as in retail, the greatest difficulty in detecting exploitation can be attributed to the contractual 'cover' under which workers are formally hired, which does not correspond to the working conditions actually imposed on them. Particularly significant is a case known to the chronicle as *Operation Oriental Garden*, which led to criminal proceedings under the jurisdiction of the Rovereto public prosecutor's office for labour exploitation and extortion against two Chinese entrepreneurs who owned several restaurants of a well-known sushi chain: the workers, of Bengali nationality, all legal in the territory and mostly asylum seekers, had been formally hired with a contract of 40-hour a week but were

[42] Some of the defendants were sentenced to 3 years and 2 years and 8 months as a result of plea bargaining; for the other two defendants, the proceedings are proceeding according to the ordinary procedure.

[43] On this topic, please refer to the studies by A. Sciurba, "La cura servile, la cura che serve", Quaderni de L'altro diritto, 2015 and by L. Palumbo, "Grave sfruttamento e tratta nel lavoro domestico e in agricoltura in Italia: un'analisi critica degli strumenti di contrasto, prevenzione e tutela delle vittime", *Global Governance Programme*, TRAFFICKO, 2016, available at: https://cadmus.eui.eu/bitstream/handle/1814/42405/GGP_TRAFFICKO_2016_IT.pdf?sequence=3&isAllowed=y.

[44] https://left.it/2020/06/19/169394/; https://www.gazzettadireggio.it/reggio/cronaca/2023/04/27/news/un-centinaio-di-egiziani-lavora-in-nero-in-edilizia-in-citta-il-caporalato-esiste-1.100292062

[45] In another case under the jurisdiction of the public prosecutor's office in Bologna, whose investigations are known as *Operation Blue Angels*, very similar facts were qualified differently by the investigators, where the administrator of four companies and cooperatives active in the personal care and assistance sector was charged with illegal intermediation and labour exploitation: the carers, approximately three hundred victims, were again recruited through advertisements (on the Internet, in newspapers, or in posters put up near bus stops from where buses leave for Eastern Europe), to be then employed in exploitative conditions with families.

employed for more than 12 hours a day, in extremely harsh conditions, with no right to weekly rest, nor to holidays, nor to sick leave, and were forced to return part of their salary and to sign a blank sheet stating in advance their resignation and waiver of paid leave.

7. The monitoring of repressive strategies and the legal qualification of exploitation

Out of a total of 834 exploitation incidents, the *Laboratory* identified a total of 709 incidents in which exploitation was considered by the investigators to be criminally relevant, giving rise to criminal proceedings[46]: of these, in 682 proceedings we were able to trace precisely the offence charged in the individual exploitation incident.

Fig. 16) Table of total prosecutions and charged offences

OFFENSES CHARGED- ALL ECONOMIC SECTORS	PRE-RIFORMA L.199/2016	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL PER OFFENSES
Art. 603-bis cp	9	7	34	69	101	91	80	59	64	513
Artt. 603-bis cp, 12 TUI	2	0	2	2	2	6	5	7	2	28
Artt. 603-bis cp, 22, co. 12 o 12-bis TUI*	0	1	2	2	6	12	6	6	1	36
Artt. 603-bis cp, 12 TUI e 22, co. 12 o 12-bis TUI*	0	0	0	0	3	0	1	1	1	6
Artt. 603-bis, 601 cp	0	0	0	0	0	0	1	0	0	1
Artt. 603-bis, 629 cp	2	0	2	2	8	6	5	5	2	32
Artt. 603-bis, 600 cp	0	0	0	0	2	1	0	0	0	3
Artt. 603-bis, 600 cp, 601 cp	0	0	0	0	1	0	0	0	0	1
Art. 22 co. 12 o 12 -bis TUI*	4	3	0	1	0	6	2	10	15	41
Art. 12 TUI	0	0	0	0	1	2	2	0	2	7
Art. 601 cp	0	0	0	1	0	0	0	0	0	1
Art. 600 cp	3	0	0	0	0	0	0	0	0	3
Artt. 600 cp., 629 cp	0	1	0	0	0	0	0	0	0	1
Art. 629 cp	2	0	0	1	2	1	2	0	0	8
TOTAL PER YEAR	22	12	40	78	126	125	104	88	87	682

The table above (Fig. 16) shows the criminal offences used by magistrates to crack down on labour exploitation in criminal proceedings[47]: in 623 proceedings Article 603-*bis* of the criminal code was charged, as the only offence in 513 cases, or more than 75%, and in conjunction with other offences in another 16% (110 cases) of the proceedings; in 36 proceedings the offence of employing foreigners illegally present on the territory (art. 22, paras. 12 and 12-*bis* of Legislative Decree 286/1998)[48]; in 28 proceedings aiding and abetting illegal immigration (art. 12, paras. 3-*ter* and 5 of Legislative Decree 286/1998); in 32 proceedings the offence of extortion (Article 629 of the Criminal Code) was charged; finally, in 7 proceedings the facts were classified exclusively or also as the offence of reduction to or maintenance in conditions of slavery or servitude (Article 600 of the Criminal Code)

[46] If we exclude the 27 proceedings for which we have not been able to reconstruct the entire case history, the remaining 88 cases concern cases in which administrative sanctions have been imposed for irregularities relating to the employment of labour, but it is not clear whether these irregularities have also been followed up under criminal law (tot. 68 cases), or constitute reports by trade unions of serious and systematic situations of exploitation, but there is no information on the opening of investigations by the judicial authorities (tot. 20 cases).

[47] A methodological clarification: only the offences used to classify the conduct of labour exploitation are reported, since in many proceedings Article 603-*bis* of the criminal code is charged in conjunction with other offences, such as the offence of injury, the offence of fraud and other tax offences (e.g. failure to pay VAT), which have not been taken into consideration in our analysis because they relate to a conduct other than exploitation. To give an example: in a case under the jurisdiction of the Livorno public prosecutor's office, the crimes of threatening and private violence were charged together with 603-*bis* of the criminal code, since in that case the employer had summoned an employee to his home to force her to make false statements in order to establish an alibi for the trial, threatening her with death if she told what had happened or if she testified against him in the trial. In this case, the proceedings are represented (and analysed) in the Table under the label '603-*bis* c.p.', because the public prosecutor's office classified the conduct relating to exploitation using only this offence.

[48] It should be noted that it was not always possible to identify with sufficient certainty the section being charged between s. 12 (employment of foreigners without residence permits) and s. 12-*bis* (c) (aggravated by exploitation and employment of foreigners without residence permits), which is why we have joined the two sections together.

and in 4 proceedings exclusively or also as the offence of trafficking in persons (Article 601 of the Criminal Code). The table shows the increasing use of the offence of 603-*bis* until 2019. All indications are that the gradual decline in the number of cases in the following years is due to the slowness of the acquisition of documents and does not indicate a decrease in the use of this offence. This thesis is supported by the fact that, if we look, for example, at the proceedings in which only the offence of 603-*bis* was charged, the percentage of the total number of investigations (beyond the physiological variation due to the random arrival of data) remains substantially constant in the face of the decline in absolute numbers: 72% in 2020, 76% in 2021, 73% in 2023.
In the light of the considerations made so far on the circumstance that our repressive apparatus and protection systems are based on the idea that labour exploitation is a phenomenon that mainly, if not exclusively, affects irregularly staying migrants, it is interesting to dwell on the use of the offences provided for in paragraphs 12 and 12-*bis* of art. 22 TUI, which presuppose the irregularity of the recruited worker: their use occurs only in 41 cases as a single charge and in 6 cases in conjunction with 603-*bis* (a total of 7% of cases) and is concentrated in the years 2022 and 2023 (in which there are 25 of the 41 cases in which these offences are charged alone), which suggests that it is likely due to the intervention of the IOM mediators in the NLI inspections, already analysed.

Fig. 17) Table of total prosecutions and charged offences

OFFENSES CHARGED-AGRICULTURE	PRE-RIFORMA L.199/2016	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL PER OFFENSES
Art. 603-bis cp	5	7	24	43	64	56	46	23	28	296
Artt. 603-bis cp, 12 TUI	2	0	2	2	2	2	2	2	2	16
Artt. 603-bis cp, 22, co. 12 o 12-bis TUI*	0	1	2	2	3	5	4	6	2	25
Artt. 603-bis cp, 12 TUI e 22, co. 12 o 12-bis TUI*	0	0	0	1	0	0	0	0	0	1
Artt. 603-bis, 601 cp	0	0	0	0	0	0	0	0	0	0
Artt. 603-bis, 629 cp	2	0	2	2	3	2	2	2	1	16
Artt. 603-bis, 600 cp	0	0	0	0	2	1	0	0	0	3
Artt. 603-bis, 600 cp, 601 cp	0	0	0	0	1	0	0	0	0	1
Art. 22 co. 12 o 12 -bis TUI*	4	2	0	1	0	1	1	3	0	12
Art. 12 TUI	1	0	0	0	0	0	1	0	0	2
Art. 600 cp	2	0	0	0	0	1	0	0	0	3
Artt. 600 cp., 629 cp	0	1	0	0	0	0	0	0	0	1
Art. 601 cp	0	0	0	0	1	0	0	0	0	1
Art. 629 cp	2	0	0	1	2	0	0	0	0	5
TOTAL PER YEAR	18	11	30	52	78	68	56	36	33	382

The above table (Fig. 17) shows the offences used in the 382 investigations relating to agriculture in which it was possible to identify the offence being charged. As can be seen, Article 603-*bis* of the criminal code was charged alone in a similar percentage of investigations as in all sectors (77%, 296 cases out of 382), while in conjunction with other offences in a somewhat smaller percentage: 12% of cases (46 investigations out of 382). Regarding the use of this offence in absolute terms, it can be said that the partiality of the data collected shows a percentage decrease only in 2022, while in 2020 and 2021 the use of the 603-*bis* offence alone is still more frequent than the overall average, reaching 82%, and even 84% in 2023.
As regards the offences provided for in Article 22 TUI these are charged in 9%: they occur in only 37 cases out of 382. In contrast to what happens if one examines the whole of the investigations, in the agricultural sector the cases in which these offences are charged in conjunction with Article 603-*bis* of the criminal code are prevalent, more than twice as many: 25 cases compared to 12. The concentration of the use of the aforementioned 22 TUI offences in the latter is much lower than in all sectors and mainly concerns their use in conjunction with 603-*bis* of the criminal code, whereas if we look at the cases in which they are used alone, we see that in 2023 there are no charges of these offences. Finally, looking at the overall data, it can be seen that two out of the three cases in which

trafficking (Article 601 of the criminal code) for the purpose of labour exploitation has been charged are in agriculture: one as a single offence and the other in conjunction with other offences.

7.1. The role of Article 603-*bis* of the criminal code in combating exploitation and the interpretative guidelines established in judicial practice

The data just presented confirm what has been evident since 2017: the reformed Article 603-*bis* of the Criminal Code has emerged as an essential tool to repress the material conduct of labour exploitation in criminal proceedings. The provision was used in approximately 91% of the intercepted proceedings, with almost the same incidence in the agricultural sector (296 proceedings). It is evident from the latest tables (Fig. 16 and 17) that its use has been increasing since 2017, i.e. since the entry into force of Law 199 (on 4 November 2016), which significantly reshaped its physiognomy by broadening its scope of application.

Seven years after the entry into force of the reformed regulation, it can be said that Article 603-*bis* performs a very complex function. On the one hand, its reform has provided investigative bodies and the judiciary in general with 'the glasses' to see a serious social phenomenon that was pervasive but rarely managed to emerge as criminally relevant. Hence, *without the 'new' 603*-bis *penal code, perhaps today we would continue to talk little or nothing about labour exploitation. At the same time, the use that is made of this offence, which is often accused of being a harbinger of the transformation of civil-administrative irregularities into criminal offences, in reality often seems to perform a function of protecting employers who are guilty of exploitation. In particular, the crime of labour exploitation protects them from more serious charges under which their conduct could be subsumed: trafficking and extortion in the first place.*

The concern that 603-*bis* of the criminal code could turn civil-law administrative irregularities into crimes (the most common example being the failure to display a sign with safety instructions) has been swept away over the years by the use of the offence that has been consolidated ('entrenched' in Goodman's recalled language[49]). It is consistently used only in cases where the dignity of the worker is violated through the imposition of exploitative working conditions in favour of maximising the company's profit, while there are no striking cases of the use of this offence to target 'bagatelle' cases of violation of indicators. Exploitation, that is, is considered by investigators to be criminally relevant when it constitutes *the* production system of the enterprise, which leads to generating illicit profits and polluting the 'healthy' economy, on a par with a real form of economic crime[50].

This can be deduced first of all from practice, given that, as the NLI data cited at the beginning of the *Report* show, there are many inspections that have ended with the imposition of only administrative sanctions against irregularities that could be indicative of exploitation – such as the use of labour without a contract or the violation of certain labour law provisions on health and safety at work – but which, taken individually, have been deemed unsuitable to integrate the criminal offence under Article 603-*bis* of the criminal code, as we shall address in a moment. Secondly, looking at the concrete application of the rule that emerges from the court documents, it can be seen that in the case law, both of merit and of legitimacy, the character of the *systematic* nature of exploitation is emphasised, through the valorisation of the indices of exploitation under the profile of repetition: according to what could be defined as the "material" 603-*bis*, exploitation is criminally relevant in the face of a "depletion of the relationship between the force employed by the worker and the working conditions ensured by the employer, which systematically and repeatedly exceed the limits that the law places as a guarantee of the work performance or put in place situations such that the worker's dignity is degraded by the very working situation to which he is subjected"[51].

7.1.1. Exploitation indices in judicial practice

The definition of exploitation by means of indices[52] has been a legislative choice that has been controversial since the entry into force of the provision, raising concerns as to the compliance of the

[49] See footnote 2.

[50] The Court of Cassation itself has highlighted in this respect the importance of Law 199/2016 in the part in which it extended the applicability of preventive and repressive measures of a patrimonial nature to Article 603-*bis* of the Criminal Code: see Criminal Court of Cassation, Sec. IV, judgement no. 45615/2021.

[51] See Criminal Cass., Sec. IV, judgement no. 19143/2022.

[52] Pursuant to para. 3, Art. 603-*bis* of the criminal code an indication of exploitation is "1) the repeated payment of remuneration in a manner manifestly different from the national or territorial collective agreements entered into by the most representative trade unions at national level, or in any case disproportionate to the quantity and quality of the work performed; 2) the repeated violation of the regulations on working hours, rest periods, weekly rest, compulsory leave, holidays;

new offence with the criminal law principles on the determinacy and typicality of offences, especially after Law 199 partially rewrote paragraph 3 of Article 603-*bis* of the criminal code, lowering the criminal threshold of certain violations[53].

It is clear from the trial documents acquired by the *Laboratory* that such criticisms have been followed up in the courtrooms, with some attempts to censure the rule for breach of paragraph 3 of the principles of enumeration and determinacy that inform our penal system. However, to date, both the case law of merit[54] and of legitimacy have maintained a compact orientation in rejecting such censures and in reaffirming the compatibility of Article 603-*bis* of the criminal code with the principles of criminal law. In particular, the Court of Cassation – which has mostly ruled on the provision in the context of interim measures – has held that the indefiniteness of the offence is averted by the fact that the legislator has set out "symptomatic situations" of exploitation that must be ascertained in concrete terms by the judge, in relation to the specific case, and has quashed some decisions in which this assessment was summary or insufficient[55]. In this sense, a case of exploitation of 2020, but of which we have recently acquired the files, is significant. It involved an agricultural entrepreneur from Matera for the exploitation of some labourers in the harvesting of strawberries, in which the Court of Cosenza revoked the interim measure applied to the entrepreneur. The Court considered that the minimum wage discrepancy (about 3 euros per day), compared to the national collective agreement, and the failure to wear gloves when picking strawberries – which, according to the judges, would at most have created damage to the fruit due to mishandling of the same but not exposed the workers to a serious danger to their health – were insufficient to integrate the conditions of exploitation referred to in art. 603-*bis* of the Criminal Code. The Court of Cassation, ruling on the interim appeal, agreed that the elements put forward by the public prosecutor's office were insufficient to apply the interim measure.

From the judicial practice, as it emerges from the court documents acquired, we can affirm that the judges do indeed carry out an *overall* assessment of the conditions of exploitation, paying particular attention to the indices relating to wage discrepancies, the poor conditions of the workers' accommodation and the pervasive and degrading methods of surveillance. In many of the proceedings monitored, in fact, workers use, for a fee, accommodation made available to them by the employer or the *caporale*, which is often in very poor hygienic and sanitary conditions and located in the place of production or adjacent to it, so that they are immediately available when needed and always under the control of the employers and *caporali*. A case under the jurisdiction of the public prosecutor's office of Ragusa, the facts of which date back to 2018 but the records of which we have recently acquired, is emblematic. Foreign men and women, some of them asylum seekers, were forced to work for eight hours a day, for €3 per hour, and some of them were staying in abusive houses located inside the company's premises, of about 14 square metres, lacking suitable flooring, without windows, with toilets obtained in an adjoining room, also without airways. In another proceeding under the jurisdiction of the public prosecutor's office of Catania, facts 2019, but also in this case a recent acquisition of the files, the workers were employed in exhausting shifts of about 9 consecutive hours, every day, for a salary of about 3 euro per hour, under the close and continuous surveillance of the *caporali*, and were housed in a hut adjacent to the farmland, in extremely precarious conditions, without running water or electricity. In another case followed by the public prosecutor's office of Santa Maria Capua Vetere, some foreign labourers were employed in the production and sale of fruit and vegetables, with work shifts of about 10 hours per day, under close

3) the existence of violations of the regulations on safety and hygiene in the workplace; 4) the subjection of the worker to degrading working conditions, surveillance methods or housing situations". Compared with the previous wording, the first index has been amended in the replacement of the term "repeated" by "systematic", in the addition of the reference to territorial collective agreements, in addition to national ones, and in the indication of the most representative trade union organisations at national level; likewise, the second index has been amended by replacing "repeated" with "systematic" in the breach of working time regulations, while the third index has undergone the most substantial amendment, with the removal of the phrase "such as to expose the worker to danger to his health, safety or personal safety" from the text of the provision.

[53] See for all in doctrine T. Padovani, "Un nuovo intervento per superare i difetti di una riforma zoppa", in *Guida al diritto*, 48, 2016, pp. 50 ff., who argued that even the failure to affix a sign or the omission of a document or any other provision aimed at ensuring regularity or verifiability of labour procedures could constitute an indication of exploitation capable of integrating the criminal offence.

[54] V. Court of Prato, Sec. GIP/GUP, Judgement No. 330/2019, available at the following link: https://www.paciniditore.it/wp-content/uploads/2015/02/Sent.N.-4828_2018R.-G.I.P..pdf.

[55] The most recent rulings in this respect are: Criminal Cassation, section IV, judgement no. 3941/2022; Criminal Cassation, section IV, judgement no. 19143/2022; Criminal Cassation, section IV, judgement no. 7857/2021.

surveillance of the *caporali*, who hit them with rubber belts in case they were sick or rested outside the only hour of rest granted during the day[56].

7.1.2. The definition, role and declination of the state of need

The conditions of exploitation, declined through the indices of exploitation, are relevant for the purposes of the offence referred to in Article 603-*bis* of the criminal code, but are not sufficient in themselves to integrate the offence, if they are not accompanied by the other constituent element of the offence: taking advantage of the state of need. The criminally relevant labour exploitation, therefore, is that carried out by the employer and/or the gangmaster by taking advantage of the worker's state of need. However, unlike the concept of exploitation – which, as seen above, is declined in a series of indices in paragraph 3 – the legislator has not provided a normative definition, either punctually or by means of indices, of the "state of need"[57], essentially leaving to the judiciary the task of defining in the abstract and declining in concrete terms the concept of "taking advantage of the state of need".

From the court documents received by the *Laboratory*, it is possible to note that since the reform of Article 603-*bis* of the criminal code, at least two trends have emerged in the positions of prosecutors and judges. A first trend, a minority one, which tends to consider the exploitation indexes and the state of need as 'two sides of the same coin', deducing the proof of the victim's state of need from the very acceptance of the exploitative conditions. This orientation is mostly to be found in the requests for interim measures and related enforcement orders of the public prosecutor's offices of Livorno[58] and Cosenza[59] and of the Court of Como[60], and finds explicit reference in the request for the application of the personal interim measure issued by the public prosecutor's office of La Spezia against the owner of *Gs Painting s.r.l.* – already mentioned – in which it is stated that the proof of the state of need is to be obtained "*in re ipsa*, since it is evident that only the absolute necessity to earn something in order to guarantee the minimum means of subsistence can induce someone to accept inhumane working conditions such as those found in the present case". In some cases, the element of taking advantage of the state of need is not even mentioned in the reasons of the investigation, as found in two proceedings under the jurisdiction of the public prosecutor's offices of Macerata[61] and of Prato[62].

A second dominant trend emphasises the autonomy of the state of need from the conditions of exploitation and sees the judiciary engaged in reconstructing it by means of evidentiary indices of various kinds. In some cases it has been traced back to the need of foreign workers to work in order

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[56] Court of Santa Maria Capua Vetere, Sec. GIP/GUP, Order of application of personal and real interim measures of 6/05/2021, proc. no. 9322/2017 R.G.N.R., unpublished.

[57] The only document that contains a notional attempt in this regard is the Parliamentary Report accompanying Law No. 199/2016, in which the legislator explains that the state of need is not identified with "the need to work for a living […] but presupposes a state of tendentially irreversible necessity, which, while not absolutely annihilating any freedom of choice, entails a pressing need such as to strongly compromise the contractual freedom of the person". And again: "The notions of exploitation and state of need must therefore be understood in close connection with each other, constituting the situation of vulnerability of the person in a state of need as the prerequisite for the agent's exploitative conduct, through which the exploitation is carried out". This definition, however, turned out to be unclear, both because it defines the state of need by recalling the situation of necessity that the same Reform had eliminated from the previous formulation of the rule, and because it recalls on the one hand the state of need in the matter of usury and on the other refers to the situation of vulnerability in the crimes of trafficking and enslavement (Articles 600 and 601 of the Criminal Code). The report is available at: https://www.camera.it/leg17/410?idSeduta=0693&tipo=stenografico#sed0693.stenografico.tit00020.

[58] In the request for the application of house arrest, issued against a fisherman accused of recruiting asylum seekers and employing them in exploitative conditions in his boat with physical and verbal harassment (2017 proceedings), the Public Prosecutor merely asserts that the suspect took advantage of the victims' state of need, but does not dwell, from an evidentiary point of view, on the factual elements from which to infer that the victims were in such a state. Neither did the GIP of the Court of Livorno carry out such an examination in the grounds of the order of application of the above-mentioned request for interim measures.

[59] In the order for the application of interim measures, in a 2018 case against an Italian entrepreneur accused of employing a number of foreign workers, including asylum seekers, as labourers and workers in illegal and exploitative conditions, the GIP, in explaining the seriousness of the evidence against the suspect, focuses only on the exploitation indexes, without taking into consideration the exploitation of the state of need.

[60] In the grounds of the sentence, issued following the abridged procedure against the owner of a hotel in Canzo, the GIP of the Court of Como considered that the state of need was integrated and proven by the very fact that the workers had accepted to "*carry out their work under the black economy and without any protection at absolutely unfair conditions*".

[61] Proceedings against the owner of a construction company in Pieve Torina, the facts of which date back to 2017.

[62] Proceedings against two Chinese nationals who owned a textile manufacturing company, the facts of which date back to 2018.

to be able to send remittances to their families left behind in their country of origin[63]; in others, it has been considered integrated by the "precarious economic conditions" of the workers[64]; in still others, the state of need has been inferred from the sum of a set of factors, such as nationality, indigence, the absence of support in the territory, the maintenance of dependent families and even the absence of "legal knowledge necessary to be able to know and adequately protect one's rights"[65].
Case law has also placed particular emphasis on the poor housing conditions of workers and their status as irregular foreigners in the territory, as in the case of the public prosecutor's office of Syracuse[66] and the courts of Santa Maria Capua Vetere[67] and Prato[68].
In general, therefore, public prosecutors and judges tend to identify a series of social, legal and economic factors to reconstruct the state of need of Article 603-*bis* of the criminal code in terms of a "pressing economic need" of the victim of exploitation, drawing on the case law on usury.
At first, an orientation that emerged while the old text of Article 603-*bis* was in force, which spoke of the exploitation of the "state of want *or need* of workers", considered this condition to be superimposable on the position of vulnerability defined in the Directive on trafficking in persons (Directive 2011/36/EU)[69] which generates in the victim the representation of exploitation as the only possible alternative to provide for the primary needs of life[70]. This interpretation was also initially endorsed by the Court of Cassation – when it ruled for the first time on the amended provision – which held that the definition of state of need in Article 603-*bis* of the Criminal Code does indeed overlap with the "position of vulnerability" of Directive 2011/36/EU[71].

[63] As shown in the request for the application of the interim measure of detention in prison against an agricultural entrepreneur accused of exploitation of some asylum seekers in the olive harvest, in a 2017 case under the jurisdiction of the Larino public prosecutor's office and in the request for the application of interim measures within the *Capestro* operation of the Urbino public prosecutor's office.
[64] The Como public prosecutor's office, the Agrigento public prosecutor's office and the Civitavecchia public prosecutor's office.
[65] Busto Arsizio public prosecutor's office, request for the application of a personal interim measure against the owner of a transport company, 2017.
[66] As shown in the request for the application of the interim measure of judicial supervision of the farm in a case against a *caporale* and two brothers who owned a farm in 2017.
[67] The GIP, in the grounds of the order for the application of interim measures issued against two *caporali* and an owner of a company active in the retail trade of fruit and vegetable foodstuffs in 2018, exclusively emphasised the victims' clandestinity as evidence from which the state of need could be inferred.
[68] Order for the application of personal interim measures in the proceedings against two Chinese nationals who owned a textile manufacturing company, 2018.
[69] Art. 2, para. 2 Directive 36/2011/EU: "*A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved*".
[70] These are the opinions of the Agrigento public prosecutor's office, in the request for the validation of the arrest and application of an interim measure in a 2018 proceeding in which foreign labourers were involved in the de-stemming of grapes; the Catania public prosecutor's office, in a 2019 proceeding, in the request for the application of an interim measure against two brothers who were agricultural entrepreneurs; the DDA of Catania, in the request for an interim measure in a 2018 proceeding known as '*Boschetari*', to which we will return later; the GIP of Civitavecchia in the seizure order in a 2020 proceeding against a Romanian *caporale* and two Italian entrepreneurs. And again, in several measures, the public prosecutor's office of Prato; the Court of Re-examination of Florence in the context of a 2020 proceeding under the jurisdiction of the public prosecutor's office of Prato, hearing the case as judge of re-examination, in which it dismissed the parties' complaint about the vagueness of the expression "state of need" and the consequent constitutional illegitimacy of Article 603-*bis* of the Criminal Code for violation of Articles 3, 25 and 27 of the Constitution, considering that the formula "state of need" is not 'new' in the legal system; that the case law, over time, has helped to define its meaning depending on the crimes, such as usury, enslavement, trafficking in persons and violation of family assistance obligations; that the formula has a "*commonly understood*" meaning in which is referred to "*a situation of extreme social and economic hardship that leads to a condition of fragility and weakness that compromises any ability to defend oneself or autonomous determination*". Therefore, the meaning defined in the abstract must be "*cast into the individual cases that refer to it with a meaning that may well be enriched as social reality and common sensibilities change*".
[71] Cass, Pen., Sec. I, judgement 19737/2021 and Cass. pen. Sec. V, judgement 49148/2019.

Subsequently, the case law of legitimacy, perhaps also prompted by the analysis of the GIP of Prato[72], changed its orientation with the judgment *Sanitranport*[73], establishing that the state of want consists in "a situation of serious difficulty, even temporary, capable of restricting the will of the victim, inducing the victim to accept particularly disadvantageous conditions", without assuming the gravity of "*a state of need such as to absolutely annihilate any freedom of choice*" inherent in the position of vulnerability, with a view to broadening the scope of the rule and not superimposing it on other offences, such as trafficking (art. 601 of the Criminal Code) and enslavement (Article 600 of the Criminal Code), provisions which expressly mention "taking advantage of the position of vulnerability".
This orientation is still dominant in the case law of legitimacy[74] and is followed by the case law on the merits, which requires the proof of the state of need as a separate element of the acceptance of the exploitative conditions and breaks it down in a series of different socio-economic factors mentioned above (destitution, legal status, the absence of a support network in the territory, the maintenance of a dependent family and the correlated sending of remittances to family members for migrant workers), distinguishing it from the position of vulnerability of the neighbouring crimes, although in many proceedings these conditions continue to be presented, in fact, as causes of vulnerability that make exploitation the *only* possible prospect of meeting the primary living needs of workers[75].

7.2. Problems and prospects in the use of offences other than Article 603-*bis* of the criminal code in the repression of exploitation

As mentioned, it emerges from the data collected that Article 603-*bis* of the criminal code is the most common, but not the only, offence used by the judiciary to repress labour exploitation.
In cases where the workers are irregular foreigners on the territory, the offences of Article 22, paras. 12 or 12-*bis* TUI come to the fore (in 41 proceedings) in relation to the conduct of employing irregular labour on the territory (and in exploitative conditions in para. 12-*bis* TUI).
The use of the aggravated exploitation offence in paragraph 12-*bis* letter c), whose victims, as mentioned, have access to a specific form of protection, deserves particular attention. Paragraph 12-*bis* was introduced by Legislative Decree No. 109/2012, which transposed the already mentioned Directive 2009/52/EC, which asked Member States to discourage the employment of irregularly staying migrants by providing for the introduction of criminal sanctions for employers who hire them, and establishes an increase in punishment (from one-third to one-half) for the conduct of paragraph 12 (the employment of foreigners without residence permits) when carried out to the detriment of more than three workers (lett. a), of minors of non-working age (lett. b) and/or when

[72] The GIP of Prato (Judgment No. 330 of 2019) had expressed itself in the same terms, considering that Article 601 and 603-*bis* of the Criminal Code could not apparently compete with each other precisely on the basis of the different lexical choice made by the legislator in the two offences, between state of need and situation of vulnerability. For a critical comment on the subject see E. Gonnelli, "Tratta di persone e intermediazione illecita di manodopera: due fattispecie per lo stesso crimine?", in *L'Altro Diritto. La Rivista*, 6, 2022, available at the following link: https://www.pacinieditore.it/wp-content/uploads/2022/12/Gonnelli.pdf. The GIP order is published in the same issue of the journal (see no. 54) with an introduction by A. di Martino, "Questioni di legittimità costituzionale sul reato di sfruttamento lavorativo: punti e contrappunti", in *L'Altro Diritto. Rivista*, 6, 2022, available at the following link: https://www.pacinieditore.it/wp-content/uploads/2015/02/di-Martino.pdf.
[73] Cass. Pen., Sec. IV, judgement no. 24441 of 22 June 2021.
[74] Although there are a number of recent rulings that depart from this, in which the state of need continues to be juxtaposed with vulnerability, as a "*different lexical nuance with respect to the taking advantage of the state of need and the conditions of vulnerability referred to in Article 600 of the Penal Code*": see Criminal Court of Cassation, section V, judgement no. 17095/2022, Criminal Court of Cassation, section IV, judgement no. 3554/2022 and Criminal Court of Cassation, section IV, judgement no. 13749/2022.
[75] We cite as an example the judgement no. 1/2022 of the Judge of Preliminary Investigations of the Court of Trapani, of partial conviction and acquittal of *caporali* and employers who had exploited some labourers, including a minor holder of humanitarian protection and two Italian pensioners: the GIP defines the state of need by referring to the judgement no. 24441 of 2021 of the Court of Cassation, but then, after listing the factors from which to concretely deduce it – in the species, the status of non-EU citizens, the need to send remittances to the family, the payment of housing rent, but also the state of health, the seniority and the need to supplement the modest economic income of Italian pensioners – asserts that in this situation the victims "*had no choice but to do hard work accepting worse working conditions*", reconstructing it in terms substantially similar to the situation of vulnerability. The GIP of the Court of Santa Maria Capua Vetere took the same direction and, in the motivations of an order of application of interim measures, inferred the state of need from the clandestinity of the workers and established that "*the only possibility of work that* [the victims] *have is that of agricultural labourer in the modalities and conditions*" of exploitation.

the foreign workers employed are "subjected to other particularly exploitative working conditions referred to in the third paragraph of Article 603-*bis*" (lett. c).
Until the reform of art. 603-*bis* of the criminal code, this was the only case in which the employer who was guilty of exploitation could be prosecuted, but only if the exploited were foreign workers without residence permits. Following law 199, today in our system there are two offences, para. 1, no. 2, art. 603-*bis* of the criminal code and para. 12-*bis*, art. 22 of the TUI, which punish in a significantly different manner those who in fact commit the same conduct of using labour in exploitative conditions, depending on their status and nationality: from 1 to 6 years in Article 603-*bis* of the Criminal Code (basic offence) and from 9 months to 4 years and 6 months in Article 22, para. 12-*bis* TUI (aggravated offence). The issue of the relationship between Article 22, para. 12-*bis* TUI and Article 603-*bis* c.p. has been brought to the attention of the Court of Cassation on several occasions by the employers' advocates under a particular profile: taking the first offence as a reference parameter, the constitutional illegitimacy of Article 603-*bis* c.p. has been put forward for violation of the principle of proportionality and reasonableness of the penalty precisely in relation to the disparity in the penalty treatment. The Court of Cassation, ruling on the interim appeal, rejected the censures on the basis of two arguments. On the one hand, it validated the argument of the protection of a different legal asset in the two regulations, i.e. the protection of human dignity in the exercise of labour activity in Article 603-*bis* of the Criminal Code and the protection of public security in Article 22 TUI.[76] On the other hand, the Court emphasised the omission in para. 12-*bis*, Article 22 of the TUI of the element of "taking advantage of the state of need" of Article 603-*bis* of the Criminal Code, considering that the two rules punish two different types of conduct: the first is the exploitation of irregular labour in the territory without taking advantage of the state of need; the second is exploitation by taking advantage of the state of need of labour "regardless of the legal status of the worker and the legality of his stay in Italy"[77]. Such a reading, in our opinion, raises more problems than it claims to solve. In fact, looking at the case law on the state of need in Article 603-*bis* of the Criminal Code, as already mentioned, the exploited labourer's status as a 'clandestine' is almost unanimously considered to be an element capable of integrating the state of need, which is required as a prerequisite for exploitation[78]. Therefore, given that, by express legislative reference also in Article 22, para. 12-*bis* of the TUI, for there to be exploitation of illegal labour, one of the indicators of Article 603-*bis* of the Criminal Code must be present, if there is exploitation all the constituent elements of the offence of Article 603-*bis* of the Criminal Code are present. Therefore, it seems to us that the most correct use of the offences in question should be in the direction of charging Article 603-*bis* of the Criminal Code in conjunction with paragraph 12 of Article 22 TUI. For, if the provision of the Consolidated Immigration Act is used as a substitute for the crime of labour exploitation, the paradoxical effect would be that a provision introduced to discourage the hiring of foreign workers without residence permits would be transformed into an incentive to their exploitation. The most paradoxical case is the one found in Macerata where a Romanian citizen, the owner of some car washes, was convicted of the crime of employment of irregular labour (Article 22, para. 12 TUI) for employing foreign workers without a residence permit, while the *caporale* was convicted of the crime under Article 603-*bis* of the Criminal Code, so that in the face of the same case of exploitation the employer was punished more lightly than the *caporale*.
Whereas the prosecution of the non-aggravated offence (the aforementioned para. 12, Article 22 TUI) in conjunction with Article 603-*bis* of the criminal code – which, according to our data, takes the form of 36 proceedings in all sectors and 25 proceedings in agriculture (Fig. 16) – does not pose any particular problems, the prosecution of 603-*bis* and the aggravated offence provided for in Article 22(12)(c) TUI, while allowed by the distinction drawn by the Supreme Court, is more problematic: the fact that the aggravated offence requires, as mentioned, the occurrence of the exploitation indexes provided for by art. 603-*bis* of the Criminal Code leads us to consider such concurrence as a (substantial) violation of the principle of *ne bis in idem*.

[76] Cass. Pen., Sec. IV, judgement no. 9473 of 2023.
[77] Cass. Pen., Sec. IV, judgement no. 19143 of 2022.
[78] See Criminal Court of Cassation, Sec. IV, judgement no. 49781 of 2019, which seems to be concerned to exclude that the irregular presence on the territory, given the difficulties it creates in "accessing" work, is considered in itself a sufficient element to constitute the offence referred to in Article 603-*bis* of the Criminal Code. In fact, the judgement affirms the following principle of law: "the mere condition of administrative irregularity of the non-EU citizen in the national territory, even if accompanied by a condition of marginality and of need to get a job, cannot in itself constitute an element valid on its own to integrate the offence provided for in Article 603-*bis* of the criminal code, characterised on the contrary by the exploitation of the worker".

When the victims of exploitation are foreign workers irregularly present in the territory, the crime under Article 12 TUI (aiding and abetting illegal immigration) comes into the picture: in seven proceedings the use of exploited workers recruited abroad was brought under Article 12 TUI in the form aggravated by the purpose of exploitation and unfair profit (para. 3-*ter*) (Fig. 16).
In particular, this occurred in a case under the jurisdiction of the public prosecutor's office of Asti, known as *Operation Sun*, in which one hundred and fourteen people are accused of having managed the recruitment of more than two hundred Macedonian workers, providing them with false Bulgarian documents in order to be able to employ them, under conditions of exploitation, as EU citizens: the public prosecutor's office, in the request for indictment, has charged only the crime of aiding and abetting, aggravated by the fact that the persons recruited were intended to be exploited in order to make a profit (para. 3-*ter* lett. a) and b)). Indeed, in a case under the jurisdiction of the Vicenza public prosecutor's office, all three offences (labour exploitation, aiding and abetting illegal entry into Italian territory and employment of illegal labour, in addition to the offences of possession and manufacture of false documents and sexual violence) were charged against employers and *caporali* accused of having employed a number of Moldovan workers, including minors, in a water bottling company, subjecting them to conditions of labour and sexual exploitation, after recruiting them in their country of origin and providing them with false documents certifying their Romanian nationality in order to allow them to enter Italy as EU citizens.
In this regard, we reiterate some perplexities both in terms of victim protection and in terms of the legal qualification of the material conduct of the crime. With respect to the protection of the victims, the feeling is that the investigators who use the rules in question have an approach to the matter more inclined to consider the worker as an "illegal immigrant" than as a victim of exploitation, with a shift of the centre of gravity of the protection from the dignity of the person to the protection of public security. What has been said would seem to be confirmed by the fact that in almost all of the proceedings detected by the *Laboratory* in which Article 12 of the TUI, which does not allow any form of protection for exploited workers, is used by the public prosecutor's offices as the only charge or in conjunction with Article 603-*bis* of the Criminal Code, the denunciation of the employer is followed by the denunciation of the worker himself, in order to initiate procedures for expulsion instead of those for the activation of protection paths.
The other perplexity relates to the qualification of the exploitative conduct. In our opinion, when the recruitment is carried out with the specific purpose of directing the worker to exploitation, the affair should be considered as a whole, as a single conduct of exploitation, and be brought back at least to the more adherent provision of Article 603-*bis* of the criminal code, which is moreover more seriously punished.
On closer inspection, in fact, in many of the cases in which recruitment takes place abroad – especially when accompanied by the false promise of a well-paid job in Italy (i.e. deception) – all the elements capable of constituting the offence of trafficking in persons for the purpose of labour exploitation (Article 601 of the Criminal Code) would appear to be present. This offence in turn could absorb within itself not only Article 12 of the TUI but also Article 603 bis of the Criminal Code itself[79].
However, the use of this offence is very scarce, as shown by the fact that we have identified only three cases in which it occurs, and is always constrained by a bias of the historical origin of this offence. In fact, the Italian judiciary continues to think of the crime of trafficking as a tool to punish a transnational phenomenon, in spite of the Warsaw Convention which clearly states in art. 2 that trafficking can be a national phenomenon, of the ECtHR judgment *S.M. v. Croatia*, which in 2018 at § 295 clearly reiterates the concept, of Directive 2011/36/EU "on preventing and combating trafficking in human beings and protecting its victims" which expressly states in Art. 10 § 1 letter a) that the crime can be "committed entirely" on national territory, and even though nothing in Art. 601 of the Criminal Code contradicts these provisions.
The judiciary seems to be unaware that the provision on trafficking in persons (Article 601 of the Criminal Code) has been thoroughly reformed in our legal system by Legislative Decree No. 24/2014, precisely in order to transpose the aforementioned EU Directive. In the new formulation, the typical conduct of the offence consists of three fundamental elements. The first element is the acts through which the offence is to be committed, which include the introduction into the territory of the State and the transfer out of it, hence transnational conduct, but also numerous forms of conduct that can

[79] This orientation, moreover, is already followed by case law about sexual exploitation, which unequivocally considers the offence of aiding and abetting illegal immigration to be absorbed within the offence of trafficking in persons for the purpose of sexual exploitation: see, *ex multis*, Criminal Court of Cassation, Sec. V, judgement no. 20740/2010.

be carried out entirely within the national territory, i.e. recruitment, transportation, transfer of authority over the person, harbouring. The second element is the means by which the conduct is carried out (deception, violence, threat, abuse of authority or taking advantage of a situation of vulnerability, physical or mental inferiority or necessity, promise or giving of money or other advantages to the person having authority over him/her). The third element, finally, is the purpose of exploitation ("labour, sexual or begging services, or, in any case, the performance of illegal activities entailing exploitation or the removal of organs").

To date, only two cases have come to the *Laboratory*'s attention in which the crime of trafficking in persons has been applied to a case of labour exploitation in agriculture: a 2019 case in Salerno[80] and a case under the jurisdiction of the DDA of Catania, known as the *Boschetari* operation, in which an appeal judgement has already been pronounced. The latter case deserves a quick analysis because of the judicial articulation it has taken. The case involved a number of Romanian nationals (including minors) who were employed in the fields of southern Italy as labourers: the workers, extremely poor[81], had been recruited directly in Romania by the *caporali* (acquaintances and relatives of the victims themselves, so much so that some were their grandchildren) with the promise of gainful employment in Italy. However, once they arrived at their destination they had been deprived of their documents and forced to work to repay the debt contracted for the journey, in conditions of extreme degradation and exploitation: seven days a week, in all weather and physical conditions, without any pay and under constant pressure of death threats, as well as being subjected to physical and sexual violence. The housing conditions were even worse: the workers were housed in semi-abandoned huts near the work camps, where they had no hot water or heating, and were rationed and given rotten food in an obvious state of decomposition, consisting of the leftovers of the meals eaten by the bosses. Moreover, the unfortunate people were not allowed to leave their place of abode except under the supervision or in the presence of the *caporali* themselves, who also controlled private telephone communications with their families, to prevent requests for help.

Probably due to the resistance to conceiving trafficking as a crime that can take place entirely within the national territory, the trial originating from the facts in question was divided into two proceedings: one against the *caporali* for the crimes of trafficking in persons, exploitation of the prostitution of minors, sexual violence and kidnapping,[82] and one against the employers, two Italian agricultural entrepreneurs, for the crime referred to in Article 603-*bis* para. 1, no. 2, of the Criminal Code. In this case, the conduct of recruitment, which took place abroad through deception and for the purpose of labour exploitation, was considered by the investigators and judges to constitute the crime of trafficking, on the basis of the fact that Article 603-*bis* of the Criminal Code intersects the area of typicality of Article 601 of the Criminal Code "every time it results in the recruitment and transportation of someone within a certain country" for the sole purpose of employing the victims for exploitation, including labour exploitation. The case is also significant because the victims were all of European origin, confirming that the legal status of workers does not necessarily indicate greater or lesser exposure to exploitation[83]. This split has caused a striking disparity in the treatment of sanctions between employers and *caporali*: while the Romanian *caporali* were charged with the crime of trafficking in persons, the line of investigation that led to the prosecution of employers continues under art. 603-*bis* of the penal code, even though several passages in the trial documents show that they were aware of the methods of both recruitment and employment of labour[84].

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[80] See below fn. 89.

[81] The term *boschetar* in the Romanian language is used to refer to a person living in extreme poverty, comparable to a "homeless person", and was used by the investigators to refer to the extreme poverty and poor schooling of the victims.

[82] The trial in turn consisted of two other trials, one in the alternative forms of the abridged procedure before the Catania Magistrate's Court and one in the ordinary form before the Syracuse Court of Assizes, both of which ended with the conviction of all the defendants to sentences ranging from thirteen to twenty years, all confirmed on appeal.

[83] See E. Santoro, *La regolamentazione dell'immigrazione come questione sociale*, in Id. (ed.), *Diritto come questione sociale*, Giappichelli, Turin, 2009, p. 163. On this point, in international literature see also FRA, *Severe labour exploitation: workers moving within or into the European Union States' obligations and victims' rights*, Vienna-Austria, 2015, p. 44, available at: https://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf.

[84] Reading the documents, for instance, it emerges how the entrepreneur was aware of the fact that the *caporale* recruited the labourers employed on his land directly from Romania in order to meet his demands and, on the contrary, urged him to procure an ever-increasing number of labourers to be employed so that they would work at the pace he imposed, regardless of the weather conditions, of the long continuous hours of harvesting, unloading and loading the fruit boxes, even when the *caporale* himself pointed this out to him. Moreover, the paltry salary that the entrepreneur paid the *caporale* for the labourers was often a moment of tension between the two, as the *caporale* considered it too low for the workload carried out by his "team". Finally, it emerges from the investigation documents that the entrepreneur's son, who was also involved

Despite the fact that in at least 10 other proceedings for labour exploitation the material conduct of recruitment for the purpose of exploitation took place in a manner overlapping with that described above, i.e. by finding labour abroad with the deception of well-paid work in Italy, in no case was the crime of trafficking in persons charged, not even in conjunction with other offences[85].
These events are significant of what we have called the "protective function"[86] that Article 603-*bis* of the criminal code performs with respect to more serious offences, such as the crime of slavery and trafficking in persons. Whereas before the reform of Article 603-*bis* of the criminal code they were used by the judiciary when the material conduct of exploitation took on particularly serious connotations, to date they remain marginal in the fight against labour exploitation: suffice it to say that from 2016 to date, the *Laboratory* has intercepted only two proceedings in which, in addition to Article 603-*bis* of the criminal code, the crime of trafficking in persons for the purpose of labour exploitation has been charged[87]; three trials in which both art. 603-*bis* and art. 600 of the Criminal Code are being charged[88]; one investigation in which illicit brokering and labour exploitation,

in the trial, had ordered the *caporali* several times to hide the workers because of the presence of a police cruiser near the citrus trees on their property and to "free" them only when the officers had passed by.

[85] Reference is made to a 2022 case filed at the public prosecutor's office of Lamezia Terme, in which proceedings are being carried out pursuant to Article 603-*bis* of the Criminal Code against thirteen people (eleven of Bulgarian nationality and two Italians) following the complaint of two couples of Bulgarian citizens, who escaped the situation of exploitation and reported that they had been recruited in Bulgaria with false promises of well-paid employment, but once they arrived in Italy, they were allegedly forced, with threats and violence, to submit to exploitative working conditions; a 2022 proceeding under the jurisdiction of the public prosecutor's office of Cagliari in which proceedings are being conducted pursuant to Article 603-*bis* of the Criminal Code and Article 12 of the TUI against eight people (six Italian men and one woman and a Kyrgyz woman) for having introduced into Italian territory, with the false promise of a well-paid job and of obtaining Italian documents, some citizens coming from Kyrgyzstan, first passing through other European states, with visas for tourism or work, but once they arrived in Italy, the workers were employed as caregivers, domestic helpers and labourers, in exploitative conditions, with uninterrupted hours (from 7 a.m. to 9 p.m.) without breaks or days off, for a salary of approximately EUR 600 per month; a 2022 case, under the jurisdiction of the public prosecutor's office of Vicenza, already mentioned above, in which Moldavian workers are involved in the bottling of mineral water; a 2023 case under the jurisdiction of the public prosecutor's office of Gorizia in which three Romanians and one Moldavian are under investigation ex art. 603-*bis* of the Criminal Code for having recruited abroad thirty Romanian labourers, including some minors, through two companies, one based in the province of Gorizia and one under Romanian law, with the promise of a well-paid job in Italy that would allow them to send remittances to their families left in Romania, but once they arrived in Italy they were employed in the fields in extreme conditions of exploitation; a 2019 proceeding of the prosecutor's office of Bologna, known as *Operation Blue Angels*, discussed above; a 2017 proceeding of the prosecutor's office of Florence, in which proceedings are being brought for 603-*bis* c.p. against some Romanian nationals who managed a real traffic of compatriot labourers, organising the journey from Romania to Italy, the accommodation and the exploitation of the same, who were sorted in Tuscany, Veneto and Switzerland; a proceeding under the jurisdiction of the prosecutor's office of Asti, in 2018, known as *Operation Sun*, referred to above; and three other proceedings of the prosecutor's offices of Novara, Macerata and Lanciano.

[86] E. Santoro, C. Stoppioni, "Secondo rapporto sul contrasto allo sfruttamento lavorativo. Strategie per combattere lo sfruttamento lavorativo dopo l'entrata in vigore della legge 199/2016. I primi dati della Ricerca del Laboratorio di ricerca sullo sfruttamento lavorativo e sulla protezione delle sue vittime Altro diritto/FLAI CGIL", p. 5, available at the link: https://www.adir.unifi.it/laboratorio/secondo-rapporto-sfruttamento-lavorativo.pdf.

[87] Reference is made to the *Boschetari* affair mentioned above and to another affair under the jurisdiction of the Potenza public prosecutor's office, involving some Moldavian women recruited through social networks who, once they arrived in Italy, were deprived of their passports and employed in care activities under worse conditions than those initially agreed, without a contract and with gruelling shifts.

[88] Proceedings under the jurisdiction of the public prosecutor's office of Rome (DDA), in which some female workers employed in the washing and cleaning of vegetables in exploitative conditions were allegedly forced to perform sexual services in exchange for the renewal of their work contracts; proceedings in 2020 under the jurisdiction of the public prosecutor's office of Foggia, against seven defendants, employers and *caporali*, originating from investigations started in 2016 after the complaint of Alessandro Leogrande and Yvan Sagnet against one of the *caporali*: investigations revealed a system of "black bosses" who had in their hands the management of the Rignano ghetto, in which foreign workers were housed, recruited by the day to be employed in exploitative conditions in the agricultural fields of Italian entrepreneurs or recruited directly in Africa before the start of the harvest season. The charges were subsequently dropped both against the entrepreneurs (because the charged facts predate L. 199/2016 reforming Article 603-*bis* of the Criminal Code), and against the *caporali*, for insufficient evidence of the use of threats and violence against the workers as required by the previous wording of Article 603-*bis* of the Criminal Code.

enslavement and trafficking in human beings are being charged[89] and, finally, four cases in which only art. 600 of the Criminal Code is being charged[90].
Finally, the crime of extortion (Article 629 of the Criminal Code) deserves special discussion. The second paragraph of Article 603-*bis* of the criminal code, which outlines the boundaries of 'serious exploitation', that characterised by violence and threats, can be considered almost as a 'special provision' with respect to the provision of Article 629. A special provision, however, destined, in theory, to succumb to the general one, by virtue of the reservation clause that opens Article 603-*bis* of the criminal code ("Unless the fact constitutes a more serious offence"). Article 629 of the criminal code was, in fact, historically used by case law prior to the introduction and reform) of Article 603-*bis* of the criminal code, i.e. when employer conduct was not the subject of any specific criminal provision, to repress threatening or violent employer conduct to impose deteriorating working conditions on its employees, both at the time of hiring and during the employment relationship. This use was endorsed by the case law of legitimacy[91] - referred to in the measures applying Article 629 of the Criminal Code - according to which the crime of extortion is committed when the conduct of an employer who, "in order to force his employees to accept the payment of deteriorating treatment inadequate to the services rendered, threatens them with dismissal",
This offence continues, however, to be used to this day with not inconsiderable frequency: the *Laboratory* has intercepted a constant and persistent use of the provision over the years both independently (in 8 proceedings) and in conjunction with Article 603-*bis* of the Criminal Code (in 32 proceedings)[92]. The judicial casuistry in which Article 629 of the Criminal Code is challenged concerns cases in which the employer, under threat of dismissal, forces the worker to sign blank letters of resignation (and/or to waive other social security benefits) or to return part of the wages paid to him, qualified by the magistrates as conduct that is *further* and *different from* the imposition of exploitative conditions.
The court documents collected by the *Laboratory* show that the crime of extortion is charged, in conjunction with art. 603-*bis* of the criminal code, when the threat and violence is used by the employer to impose the conditions of exploitation[93]. With respect to the latter judicial practice, the

[89] Prosecution by the Salerno DDA of a criminal association aimed at labour exploitation, enslavement, human trafficking and aiding and abetting illegal immigration. The organisation had bases in Morocco, France Belgium, through which migrants were recruited and made to pay very high sums to reach Italy (from 5,000 to 12,000 euros) and to obtain a residence permit, which, however, was not issued to them. The victims, once they arrived at their destination with a regular entry visa for work reasons, were employed by their partners in exploitative conditions, blackmailed into a posthumous regularisation, which would never take place, taking advantage of their irregular status in the territory.
[90] One case, prior to 2016, under the jurisdiction of the public prosecutor's office of Taranto, which ended with the conviction by the Court of Assizes of Taranto of a Bulgarian citizen for having induced, by means of deception, one of his compatriots in Italy, and then forcing him to live at his home and work in the fields under exploitative conditions, after having taken away his documents and telephone, without paying any salary and subjecting him to continuous violence, both physical and verbal; a 2015 case under the jurisdiction of the public prosecutor's office of Lecce, against two entrepreneurs and a *caporale*, for manslaughter and reduction to slavery: in November 2022, the Court of Assizes of Lecce sentenced the owner of the company and the *caporale* to 14 years and six months of imprisonment, in the trial in which the FLAI CGIL Lecce had joined as civil parties; a 2011 case under the jurisdiction of the Lecce public prosecutor's office, against two entrepreneurs and a *caporale*, for criminal conspiracy and enslavement to the detriment of numerous foreign migrants, including some asylum seekers, employed in the harvesting of watermelons and olives in the countryside of Nardò, which had started after the workers' revolt; and, finally, a case again for facts predating 2016, under the jurisdiction of the public prosecutor's office of Lecce, against 12 people for having employed more than 400 people, all foreigners, in the installation of photovoltaic panels in exploitative conditions, in which they are being prosecuted for criminal conspiracy, enslavement, aiding and abetting illegal immigration and aggravated extortion.
[91] See Criminal Court of Cassation, Sec. II, judgement no. 36642/2007; Criminal Court of Cassation, Sec. II, judgement no. 2868/2008; Criminal Court of Cassation, Sec. II, judgement no. 656/2010, according to which "the threat constituting the crime of extortion includes the employer's proposal to employees, in a context of serious employment crisis, to lose their jobs if they do not accept an economic treatment inferior to that resulting from their pay slips" and Criminal Court of Cassation, Sec. II, judgement no. 16656/2010, in which the Court recognised the elements of attempted extortion in the employer's claim to force aspiring female workers, already selected on the basis of their qualifications, to forfeit part of their salary, even if it was included in their pay slips.
[92] One example is a case under the jurisdiction of the public prosecutor's office of Catania against two brothers who were partners in a farm, accused of having employed eight employees in exhausting shifts of approximately nine consecutive hours, without the recognition of holidays and weekly rest periods, for a salary of approximately EUR 3 per hour, under threat of dismissal: in the indictment the public prosecutor's office charged Articles 603-*bis*, paragraph 2, and 629 of the Criminal Code, reporting the threat of dismissal both as an aggravating circumstance of the former and as extortionist conduct. According to the documents acquired by the *Laboratory*, the prosecutor's offices of Vicenza, Civitavecchia and Rovereto were oriented in the same direction.
[93] One example is a case under the jurisdiction of the public prosecutor's office of Catania against two brothers who were partners in a farm, accused of having employed eight employees in exhausting shifts of approximately nine consecutive

same perplexities already stated in the past are reiterated[94], since there is a risk of punishing the same conduct twice, given that paragraph 2 of Article 603-*bis* of the criminal code already provides for the aggravating circumstance of using threats and/or violence to recruit labour and/or to employ them in conditions of labour exploitation (the "serious exploitation" referred to which opens the way to protection under Article 18 TUI) and that, in most cases, the offence is charged in its aggravated version[95].
Therefore, the prosecution of the crime of extortion as a single offence, instead of the aggravated 603-*bis*, to repress violent and/or threatening employer conduct takes on anachronistic features in light of the majority judicial practice, but it is not without legal grounds and, given the more serious punishment provided for by Article 629 of the Criminal Code, serves as a reminder to those who would like to repeal the crime of labour exploitation because it is too severe on employers. It should be emphasised that if only the crime of extortion were to be used to prosecute labour exploitation, its victims would not currently be covered by any form of protection, as this crime does not *in fact* allow access to the permit ex art. 18 TUI given the lack of funding for programmes for victims of this crime.
With respect to the boundaries between the two offences, moreover, the Supreme Court of Cassation[96] recently ruled, in a case of extortion in the context of the employment relationship – in which, it should be noted, there were no proceedings for 603-*bis* c.p. – that the unfair damage intended by the employer's threat to waive the formally agreed remuneration is realised only during the employment relationship, whereas it cannot have its effects at the time of recruitment "and therefore before an employment relationship is established [...] since there is no right of the aspiring worker to be hired under certain conditions" before the conclusion of the agreement, nor does it create actual damage to the worker's assets when the latter is unemployed[97]. In our opinion, the judgment just quoted envisages a possible criterion of demarcation between articles 603-*bis* and 629 of the Criminal Code, reserving the former to threatening and violent conduct carried out by the employer at the time of recruitment and the latter to conduct carried out when the employment relationship is already in place. It remains to be understood, according to the Court of Cassation, how the employer should be sanctioned in the event that the employees do not submit to his extortionist conduct during the signing of the agreement and refuse to accept the establishment of the relationship.

7.3. The perpetrators of exploitation: employers and *caporali* in comparison

The table below (Fig. 18) shows the analysis of the investigations in respect of which it was possible to identify the persons being prosecuted[98], divided between cases in which exploitation was imposed by the employer without the presence of an intermediary (second column) and cases in which exploitation was carried out through the presence of a *caporale* (third and fourth columns).

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hours, without the recognition of holidays and weekly rest periods, for a salary of approximately EUR 3 per hour, under threat of dismissal: the public prosecutor's office challenged in the indictment Articles 603-*bis*, paragraph 2 and 629 of the Criminal Code, reporting the threat of dismissal both as an aggravating circumstance of the former and as extortionist conduct. According to the documents acquired by the *Laboratory*, the prosecutor's offices of Vicenza, Civitavecchia and Rovereto were oriented in the same direction.

[94] See *IV Rapporto del Laboratorio*, cit., p. 20 ff.

[95] On this point, particularly interesting is the analysis contained in the request for the application of a personal interim measure submitted to the GIP by the Urbino public prosecutor's office and aimed at denying the concurrence between Article 603-*bis* and Article 629 of the Criminal Code. The public prosecutor referred to the principle of substantial *ne bis in idem* and to the fact that, in reality, the two provisions would refer to different factual situations, since the hypothesis of exploitation aggravated by the use of violence or threat would differ from the more serious crime of extortion because, in the first case, the exploited person, on whom the pressure is exerted, would in any case have chosen to work in conditions that are not dignified for him, while extortion presupposes actual coercion.

[96] Cass., Sec. II Pen., judgement no. 7128/2024.

[97] Ibid: "Moreover, the requirement of harm to others is lacking, by reason of the pre-existing condition of unemployment for the workers (who should take on the role of injured parties), in respect of which the failure to obtain an employment opportunity, representing a certainly patrimonial positive fact, does not however negatively affect the party's income condition".

[98] It should be noted that the total number of cases opened (first and fifth columns) also includes cases for which the public prosecutor's offices informed us of the existence of pending or dismissed cases of labour exploitation, by means of simple prospectuses from their offices, but without providing us with further details on the facts or on the economic sector. This is why the sum of columns two, three and four in all sectors and the sum of columns six, seven and eight in agriculture differ from the total in the first column.

Fig. 18) Table of investigations in which it was possible to identify the persons being prosecuted: all sectors and agriculture compared

YEARS	ALL ECONOMIC SECTORS				AGRICULTURE			
	Total number of criminal proceedings	Proceedings in which only the employer was prosecuted	Proceedings in which only the "caporale" was prosecuted	Proceedings in which both the employer and the "caporale" were prosecuted	Total number of criminal proceedings	Proceedings in which only the employer was prosecuted	Proceedings in which only the "caporale" was prosecuted	Proceedings in which both the employer and the "caporale" were prosecuted
2011-2015	22	7	7	3	10	2	3	1
2016	12	4	4	4	10	3	4	3
2017	40	21	8	8	26	13	6	4
2018	78	31	22	19	49	18	16	14
2019	139	65	39	26	74	28	19	22
2020	127	73	23	25	65	32	17	16
2021	107	57	27	21	59	32	10	17
2022	97	49	13	18	35	16	8	11
2023	87	50	21	14	34	9	9	11
Total	**709**	**357**	**164**	**138**	**362**	**153**	**92**	**99**

The *Laboratory*'s updated data confirm what has already been noted above, namely that the reformed rule has been largely used by investigators to crack down on exploitative employer conduct from 2017 onwards, with a total of 357 proceedings in which exploitation was imposed solely by the employer, without the involvement of an intermediary in the recruitment and management of labour, of which as many as 153 proceedings (approximately 43%) concern the agricultural sector. This conduct was not covered by the 'old' art. 603-*bis* of the criminal code.
Looking then at the investigations of exploitation through "caporalato" (columns three and four, for all sectors, and seven and eight, for agriculture), the cases in which only the *caporali* are prosecuted differ according to the sector. If, compared to the figure for all sectors, the proceedings against intermediaries only (164) exceed those against both the employer and the *caporale* (138), in agriculture the data are reversed with 92 proceedings against *caporali* only and 99 against both, out of a total of 191 proceedings for exploitation through *caporalato*: the trend is almost constant in all the years surveyed, and from 2021 it stabilises in this direction. One possible interpretation of this figure is that in agriculture, in addition to being more familiar to the investigators as a phenomenon, 'caporalisation' is carried out with simpler schemes than in other sectors, with a direct relationship and often without any formal assignment between intermediary, employer and labour, which makes it easier to identify the client-end user of the exploited labour, i.e. the landowner or the owner of the farm. A reading of the court documents shows, in fact, that in sectors other than the primary one the main difficulty for the investigators in tracing the employer-contractor, as already addressed a few pages above, is the dense network of contracts and sub-contracts that often 'protect' the final user of the service and make it possible to prosecute only those who play the role of employer in appearance but in fact limit themselves to providing the labour. The perspective of the investigators, however, is changing and this is evidenced by the fact that in the most recent data (see for example the 2022 data for all sectors), the number of proceedings in which both *caporali* and employers are prosecuted (18) exceeds, albeit by a few units, the number of those in which only *caporali* are prosecuted (13).

8. The outcome of proceedings

Compared to the previous report, the fact that convictions exceed acquittals is confirmed, but it can be seen that acquittals have increased substantially: while up to 2021 only 20 of the monitored proceedings ended with dismissal or acquittal, today 98 out of 682 proceedings have resulted in the acquittal of the suspect/defendant, with 78 dismissals and 20 acquittals, approximately 15% of the total. This increase appears to be due to (and entirely consistent with) the gradual declassification of court documents over time, which allows us to understand how the various intercepted proceedings end a few years later.
From an analysis of the archiving orders found it emerges that the reasons prompting the public prosecutor's office to drop the charges mainly concern the failure to reach the quantum of evidence

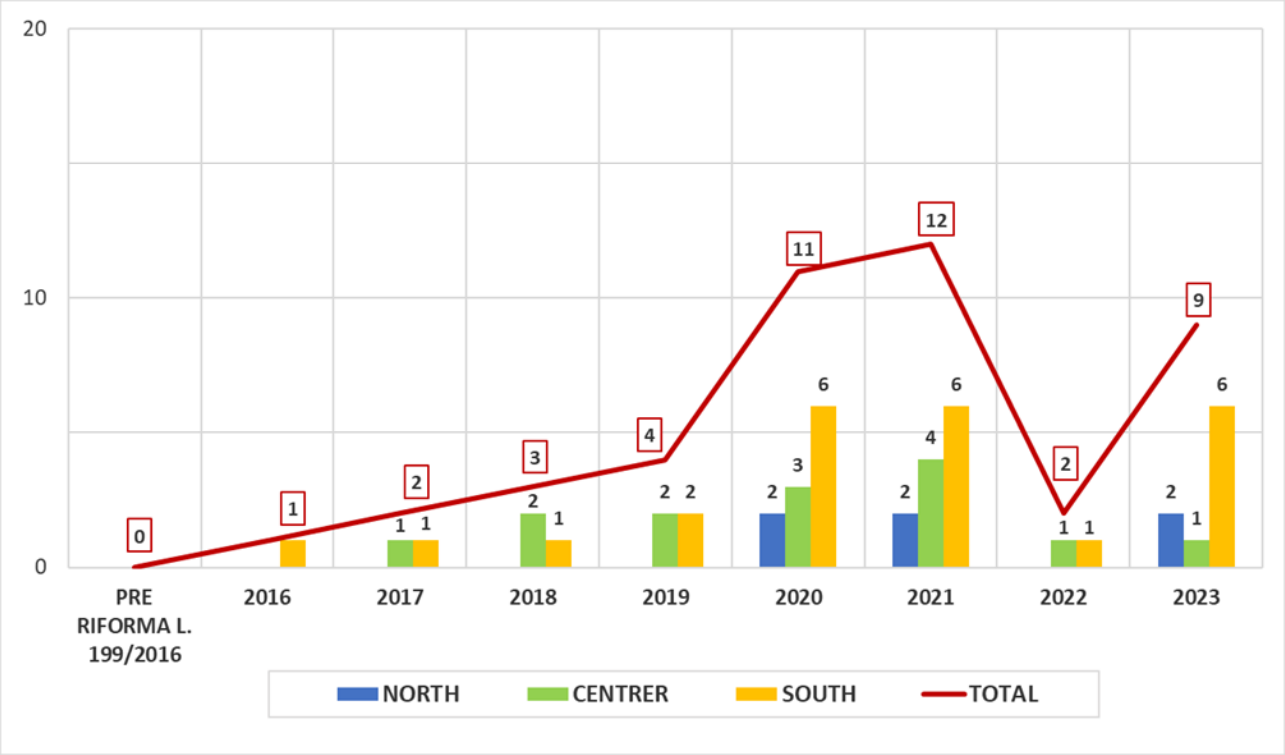
necessary to support the existence of the exploitation indexes in the subsequent stages of the proceedings. This confirms what has been said above about the attention of the investigators (but also of the judges on the merits) in giving prominence exclusively to those conditions that can unequivocally integrate paragraph 3 of Article 603-*bis* of the criminal code, stemming the risk of a vague and indiscriminate application of the offence. This is clear from a request for dismissal made by the Cuneo public prosecutor's office in a case in which a farmer was under investigation under Article 603-*bis* of the criminal code for the alleged exploitation of some foreign labourers, which states that although the evidentiary incident had confirmed the difference in wages under the CCNL for some workers (of African origin and asylum seekers), the lack of rest periods and the inadequacy of the accommodation made available to the workers (a hut without radiators and hot water), these conditions were not considered relevant as indices of criminal exploitation "in light of the overall conditions of employment of seasonal labour", but at most on an administrative level.
There are also cases in which dismissal is ordered because there is insufficient evidence of the victim's state of need or that he or she has been taken advantage of by his or her employer. This is true, for example, of a case under the jurisdiction of the public prosecutor's office of Aosta, where the request for dismissal (later accepted by the GIP) did not consider the state of need to be integrated by the mere existence of the worker's irregular condition in the territory, although it recognised that the indices of exploitation were integrated. For a cross-section of the reasons for dropping charges, we refer to the attached focus conducted in the in-depth examination of the trials started in the province of Foggia. The results of that focus seem to us, as things stand, to be generalisable to the entire national territory.
On the other hand, when the indicators of exploitation are supported by a solid evidentiary apparatus, the accused is indicted and in many cases chooses to proceed with alternative rites, such as the request for the application of the penalty pursuant to Article 444 of the Code of Criminal Procedure (so-called 'plea bargaining') and/or with an abbreviated procedure, in order to obtain significant reductions in the sentence – the abbreviated procedure provides for a reduction of one third of the sentence, while plea bargaining provides for a reduction of up to one third – functional to the granting of the conditional suspension of the sentence (if it is less than two years' imprisonment), which is granted in almost all the sentencing measures of this type in our possession.

9. The importance of preventive and interim instruments along the chain of exploitation as a means of protecting workers: judicial administration and judicial supervision of the enterprise

One of the most interesting tools introduced by Law 199/2016 is the judicial supervision of the company, referred to in Article 3 of the same law. Judicial supervision is a real interim measure that can be ordered in the enterprise in which the crime of exploitation has been committed (Article 603-*bis* of the criminal code) when all the conditions for preventive seizure are met and if the judge considers that "the interruption of the business activity could have negative repercussions on employment levels or compromise the economic value of the enterprise as a whole". The measure may be requested directly by the public prosecutor's office in place of the seizure and may be ordered – or substituted for the seizure – by the judge for preliminary investigations, who appoints a judicial administrator to assist the entrepreneur in managing the company in order to re-establish legality within it.
This instrument is therefore of the utmost importance, since it guarantees the continuity of the enterprise's activity both in order to preserve the employees' jobs, to avoid that the denunciation of exploitation corresponds to a certain loss of the victim's job due to the seizure of the enterprise, and to restore, when possible, legality in the enterprise, preserving its economic value.
However, the measures acquired by the *Laboratory* show that judicial supervision is ordered in only 44 proceedings, i.e. in just 7% of cases[99]. Looking at the graph below (Fig. 19), it can be seen that the use of this measure has increased over time (in fact, as with many other data, the graph reveals a clear drop in 2022 and a sharp rise in 2023, and this trend is due, as already mentioned many times before, to the combined effect of the secrecy of the investigation and the long time it takes to collect data).

[99] The percentage is calculated on 620 proceedings, i.e. the total number of proceedings in which Article 603-*bis* of the criminal code is charged, possibly in conjunction with other offences.

Fig. 19) Graph of the number of proceedings in which judicial supervision of the enterprise was ordered



Not being able to consider the years prior to Law 199 as relevant – as the measure under consideration had not yet been introduced into the legal system – we note that from 2016 onwards, the number of proceedings in which judicial supervision of the enterprise was ordered grew steadily, with 1 case in 2016, 2 cases in 2017, 3 in 2018, 4 in 2019, 11 in 2020, 12 in 2021 until reaching a drastic drop in 2022, with 2 proceedings, to return to 9 proceedings in 2023.
Despite the evident growth from a diachronic point of view, in absolute terms the figure remains very low. One possible explanation for the low use of the measure, as emerged from interviews with investigators, lies in the practical limits that judicial supervision may encounter in individual cases, as exploitative companies are often unable to remain competitive on the market in the long term once legality has been re-established within them[100].
However, we would like to emphasise that the measure nevertheless plays an important role with respect to workers who are victims of exploitation not only from an employment point of view, guaranteeing (at least in the short term) the preservation of their jobs – which, from the documents we have received, seems to be the preeminent assessment made by the Courts where it is adopted[101] – but also from a social security point of view, by regularising employment positions and allowing workers to have access to social shock absorbers (first and foremost, unemployment benefits) even if the company should go bankrupt following a judicial supervision, as happened in particular in an investigation conducted by the Prato public prosecutor's office, the subject of an in-depth study in the previous *Report*[102]. Therefore, it is to be hoped that the measure will be given greater consideration by the judiciary.
If judicial supervision can be a useful tool directly applicable against the enterprise where the workforce is employed, the other tool, of a preventive nature, that comes into play is judicial administration pursuant to Article 34 of Legislative Decree no. 159/2011 (the so-called Anti-Mafia Code), applicable against the commissioning company that has facilitated the activity of the material author of the offence, even though it is not the direct author of the exploitation[103]. The usefulness of

[100] In many exploitation proceedings, tax offences (e.g. VAT evasion) are also charged and, therefore, the company's irregular balances are often irrecoverable.
[101] The courts that make most use of judicial supervision in companies are those of Prato, Macerata, Urbino, Foggia, Civitavecchia, Lamezia Terme, Milan, La Spezia, Viterbo, Latina, Ascoli and Bari.
[102] See *IV Rapporto del Laboratorio*, cit., pp. 28-29.
[103] Pursuant to Article 34 of Legislative Decree no. 159/2011, the judicial administration may be ordered for a limited period of time and when there is "sufficient evidence" to believe that "the free exercise of economic activities [...] may in any case

the measure comes to the fore in relation to cases in which the production chain (or the provision of a service) is articulated in a series of contracts and sub-contracts, which makes it difficult for investigators to trace the top of the entire production chain, usually occupied by large commissioning enterprises that deny having any actual knowledge of the exploitation imposed by the intermediary or the 'downstream' contracting enterprise.

In this sense, we consider particularly interesting the work of the Milan public prosecutor's office and the Court of Milan, Prevention Measures Section, which, starting with the *Nolostand spa* affair[104], have used the judicial administration in two other proceedings for labour exploitation, in which two important Italian companies in the fashion sector, a symbol of Made in Italy, were involved, as mentioned a few pages above[105]. In both cases, the making of some products (such as bags, belts, small leather goods) was entirely contracted out to companies that in turn subcontracted to Chinese-run factories, where the entire making of the final product took place through labour exploitation. The investigations of the public prosecutor's office revealed that, in both cases, the client companies had subcontracted the production to contracting companies that even lacked their own production department and therefore necessarily had to subcontract the production themselves. Despite this, the contracting companies, even though they had codes of ethics, appropriate management and control models and certificates of sustainability, had "never actually checked the production chain, verifying the real entrepreneurial capacity of the companies with which to enter into supply contracts and the actual production methods adopted by them" and had remained inactive "even though they had become aware of the outsourcing of production by the supplying companies, by failing to take initiatives such as formally requesting the verification of the sub-contracting chain or the authorisation of sub-contracting", as stated in the requests and orders applying the measures.

The failure to control the production chain on the part of the commissioning companies was considered by the investigators to be capable of fuelling and facilitating the criminal conduct of labour exploitation directly attributable to the subcontracting companies, making the former liable to be placed under judicial administration pursuant to Art. 34, in order to "adopt an organisational model provided for by Legislative Decree 231/2001 suitable for preventing the type of offence referred to in Article 603-*bis* of the Criminal Code; also, to strengthen the internal control and reputational checks on the company's suppliers".

These cases are particularly significant in that they signal, as mentioned a few pages above, a change in the investigators' viewpoint in extending investigations also to the commissioning companies, to avoid that the fragmentation of the production chain could lead to diluting or evading their responsibilities in relation to the facts of labour exploitation.

We believe that this point of view could (and should) be extended to other sectors, first and foremost the agricultural sector where the strong contractual imbalances that characterise the agri-food chain are now well known – and also paid attention to at the European institutional level[106] and at the national level[107]. The current structure of the supply chain favours the subjugation, de facto, of suppliers to the large-scale retail trade (large-scale distribution), whose buyer power very often translates into the imposition of a "low and fixed" final sale price of the product that is totally insufficient to guarantee profits to the producer and to cover production costs, thus favouring practices of labour exploitation. Despite these critical issues, however, the agri-food chain has the 'advantage' of being more traced than the production chain of other sectors (e.g. the jungle of

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facilitate the activity of persons subject to criminal proceedings" for certain offences, including Article 603-*bis* of the Criminal Code. The powers of the administrator appointed pursuant to Article 34 are more far-reaching than those of the administrator provided for in the judicial supervision pursuant to Law 199: he, in fact, exercises all the powers pertaining to the owners of the rights over assets and enterprises and, when the enterprise is run as a company, "may exercise the powers pertaining to the administrative bodies and the other corporate bodies, in accordance with the procedures established by the court, taking into account the requirements for the continuation of the business".

[104] Proceedings in which a mafia-type criminal conspiracy in the contracts that Fiera Milano had commissioned for the construction of some stands for Expo 2015 was charged.

[105] The Milan public prosecutor's office requested and obtained the application of the measure of judicial administration against the fashion houses Alviero Martini and Giorgio Armani for the exploitation perpetrated by Chinese-run textile companies in subcontracting them.

[106] Of utmost importance is Directive 633/2019/EU of the European Parliament and of the Council of 17 April 2019 "on unfair business-to-business commercial practices in the agriculture and food supply chain".

[107] See Legislative Decree No. 198 of 8 November 2021, "Implementation of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 concerning unfair business-to-business commercial practices in the agricultural and food supply chain and Article 7 of Law No. 53 of 22 April 2021 on the marketing of agricultural products and foodstuffs", by which the double-down auction mechanism was also banned in Italy.

contracts and sub-contracts in logistics and construction) and this traceability could simplify, from an investigative point of view, the reconstruction of the production chain and the identification of the individual actors operating within it (large-scale distribution players, producers' organisations (POs), intermediaries, etc.) by investigators in individual cases of exploitation.
Despite the extreme usefulness of the measure in preventing exploitation along the production chain, very few cases of the application of judicial administration in relation to cases of labour exploitation have been identified to date: out of a total of 9 proceedings in which judicial administration has been ordered against third-party commissioning enterprises[108], in only one case, once again filed in the Milan public prosecutor's office, was the measure applied for one year to a company operating in the fruit and vegetable sector, Spreafico, a veritable giant in the fruit and vegetable wholesale market. The investigators ascertained that the company contracted the supply of labour to a complex system of consortia and cooperatives that alternated over time and transferred the labour from time to time (this practice is defined as "transhumance of workers"), recruited and employed under exploitative conditions, and considered the failure to supervise the supply chain to be likely to facilitate the exploitation perpetrated internally by the suppliers on the labour.
In this perspective, in our opinion, the use of supervised management, which has been referred to by case law as a sort of "modern company probation"[109], could be the most appropriate preventive tool, even within the agri-food chain, to force commissioning companies to set up mechanisms to monitor – in compliance with the rules of prudence and good business management (so-called 'due diligence') – how the companies 'downstream' in the chain actually carry out the activity commissioned to them.

[108] Reference is made to the *Cemento nero* enquiry under the jurisdiction of the Prato public prosecutor's office, to 7 proceedings handled by the Milan public prosecutor's office and to the *CEVA Logistic* enquiry at the Pavia public prosecutor's office: the first and the last enquiry were the subject of in-depth analysis in the previous Report, to which reference should be made.
[109] See Criminal Cass., Sec. II, judgement no. 9122/2021.

Appendix 1
Details on the project Di.Agr.A.M.M.I. of Legality in the Centre-South

The *Di.Agr.A.M.M.I. of Legality in the Centre-South* project (henceforth "Diagrammi Sud") coordinated by the FLAI-CGIL was implemented by a very diversified and capillary partnership in eight regions of Central and Southern Italy: Abruzzo, Basilicata, Calabria, Campania, Molise, Apulia, Sicily and Sardinia. The main objective of the project was the creation of a multistakeholder network to take charge of 'fragile subjects', potential victims of labour exploitation and "caporalato" who, based on the action plan set by the Ministry of Labour for the project, were exclusively foreign workers with a regular residence permit. The project reached 5321 beneficiaries, i.e. workers who were victims or potential victims of exploitation.

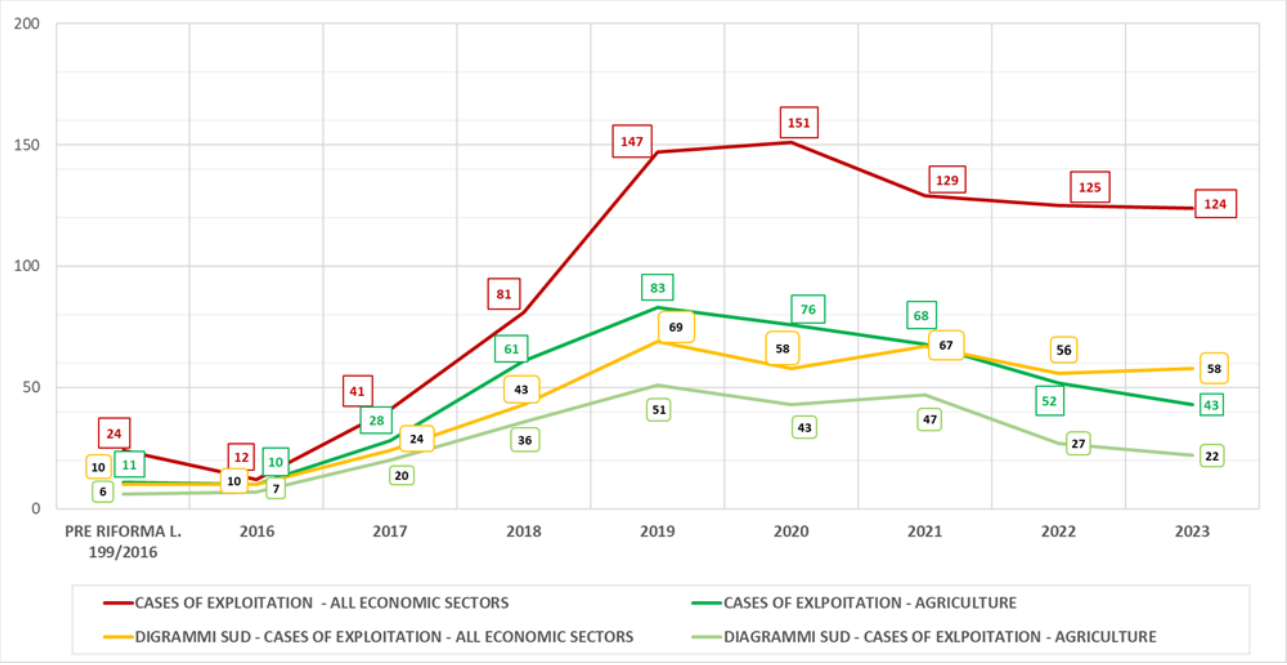
The objective of this appendix to the *Fifth Report* is to provide elements to assess whether the project has succeeded in fostering an increase in complaints by exploited workers, in particular, and in criminal investigations, in general, through the strengthening of the assistance-protection networks for the victims of exploitation and caporalisation in agriculture. In line with the approach of the *Report*, we will therefore limit ourselves to providing useful elements to estimate the effectiveness of the project from a purely judicial point of view, focusing on the data on criminal proceedings opened as a result of events qualified as labour exploitation by the public prosecutor's office, in the regions involved in the project.

It should be noted that, for the overall assessment, it should be borne in mind that the project only started to deploy in 2021 and ended at the end of 2023. Therefore, due to the physiological time lag for judicial data to settle, the analysis in this appendix is based on very partial data.

1. The fight against labour exploitation in the *Di.Agr.A.M.M.I. South* regions

The graph below (Fig. 1) compares the chronological trend of investigations intercepted nationally in all sectors and in agriculture, with the trend of investigations in the eight regions where Diagrammi Sud took place. It shows that the eight regions covered by the project concentrated approximately 47% of the cases of exploitation intercepted nationwide (395 out of 834) in all production sectors and approximately 59% of those specifically concerning the agricultural sector (259 out of 432), a figure that reflects the greater concentration of exploitation in agriculture in the Centre-South, as mentioned above.

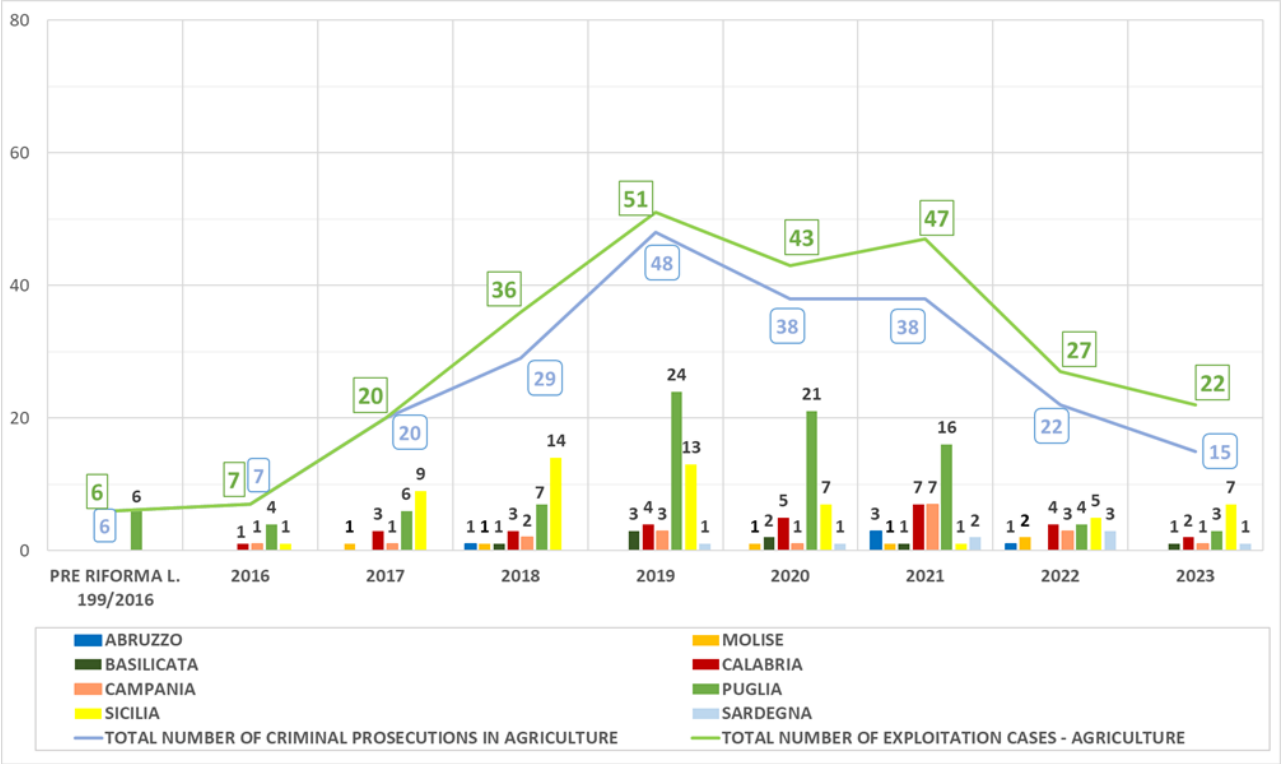
Fig. 1) Comparison of national survey data and *Di.Agr.A.M.M.I. South* regions: all sectors and agriculture



The overall trend of the investigations intercepted by the *Laboratory* in the eight regions belonging to the Diagrammi Sud project is similar to the national one whereby, from 2019, there is a significant increase in cases of exploitation compared to previous years: in 2019, the 72 cases of exploitation, of

which 51 related to the agricultural sector, constitute the highest figure of cases recorded since the introduction of Article 603-*bis* in the Criminal Code. In subsequent years, there is a slight decrease in the data: 58 cases of exploitation, of which 43 in the agricultural sector, in 2020; 67 cases of exploitation, of which 47 in the agricultural sector, in 2021; 54 cases of exploitation, of which 27 in the agricultural sector, in 2022 and, finally, 58 cases, of which 22 in agriculture, in 2023.
In evaluating these and forthcoming data we must take into account what emerges from the graph below (Fig. 2), which shows how the gap over the years between reported cases of exploitation and those in which we have seen criminal proceedings initiated. According to the data we were able to collect from the 259 cases of exploitation detected in agriculture in the eight regions covered by the Project, criminal proceedings were initiated in 223, i.e. 86% of the cases. Once again, we would like to emphasise that the figures for 2022 and 2023 must be considered 'particularly provisional'.

Fig. 2) Incidence of criminal proceedings on cases of exploitation in the *Di.Agr.A.M.M.I. South* regions



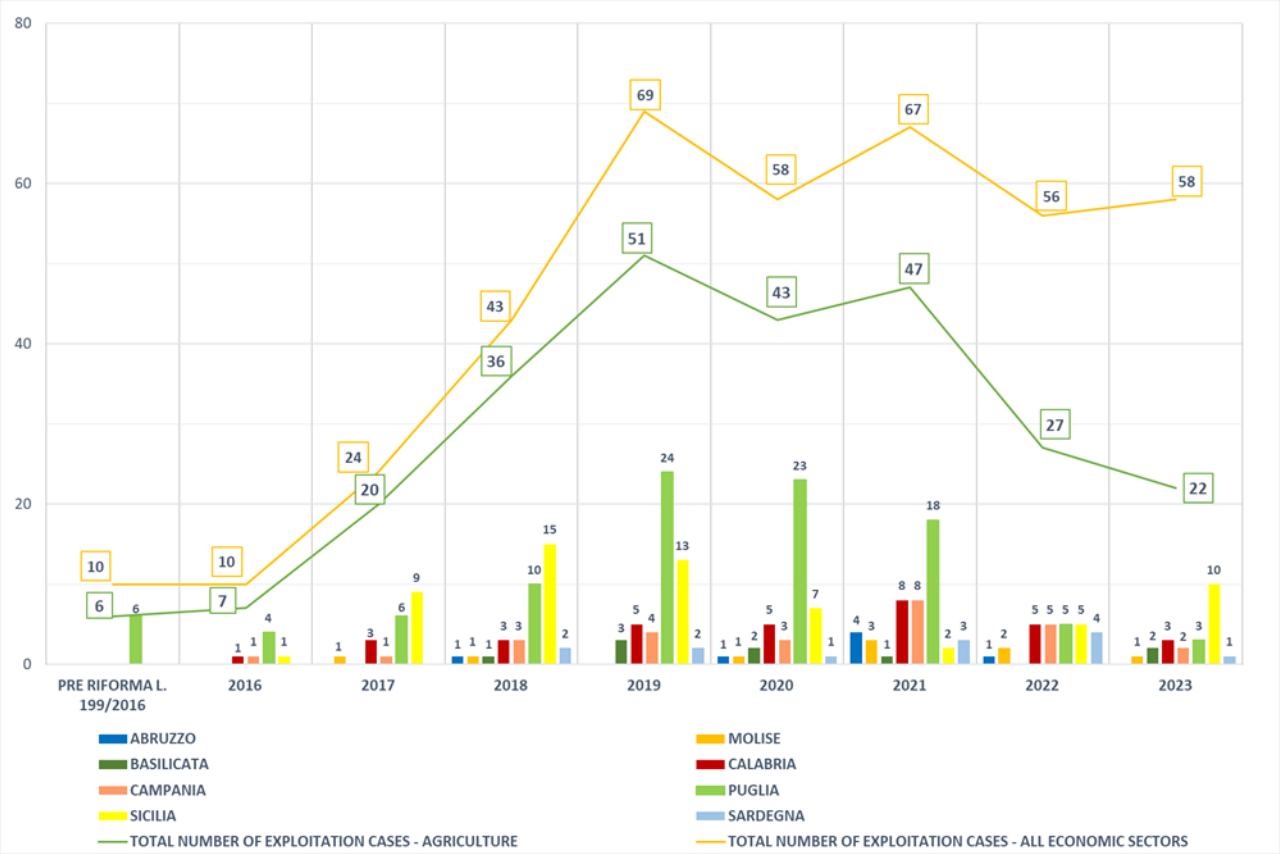
The table below shows aggregated data by region instead of by year, concerning the total cases of exploitation in agriculture intercepted on each regional territory where the project took place (Fig. 3).

Fig. 3) Cases of labour exploitation in agriculture in the *Di.Agr.A.M.M.I. South* regions

REGIONS	PRE RIFORMA L.199/2016	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL NUMBER OF CASES PER REGION
ABRUZZO	0	0	0	1	0	1	4	1	0	7
BASILICATA	0	0	0	1	3	2	1	0	2	9
CALABRIA	0	1	3	3	5	5	8	5	3	33
CAMPANIA	0	1	1	3	4	3	8	5	2	27
MOLISE	0	0	1	1	0	1	3	2	1	9
PUGLIA	6	4	6	10	24	23	18	5	3	99
SICILIA	0	1	9	15	13	7	2	5	10	62
SARDEGNA	0	0	0	2	2	1	3	4	1	13
TOTAL NUMBER CASES PER YEAR	6	7	20	36	51	43	47	27	22	259

The figure below (Fig. 4) graphically illustrates the trend in the eight project regions of cases of agricultural exploitation, comparing it with the trend of agricultural exploitation investigations as a whole.

Fig. 4) *Di.Agr.A.M.M.I. South* region graph: survey trends in the agricultural sector, with region-by-region detail, compared with all sectors



The region with the highest number of cases of exploitation is Apulia, where out of a total of 117 cases of exploitation detected by the *Laboratory*, as many as 99 cases concern the agricultural sector. This is followed by Sicily with 62 cases, Calabria with 33 cases, Campania with 27 cases, Sardinia with 13 cases, Basilicata and Molise with 9 cases, and Abruzzo with 7 cases (Fig. 3).
The disparity between cases of exploitation in one region compared to another is to be read not so much (or not only) in the sense of a greater spread of the phenomenon in some territories compared

to others, but rather in the sense of greater attention and detection on the part of the bodies in charge of control and repression. Nor is our ability to establish relations with the public prosecutor's offices and their willingness to collaborate with the research work negligible: as mentioned in the *Report*, in the regions where the Diagrammi Sud project was carried out there are two public prosecutor's offices, Foggia and Ragusa, which allowed us access to the records of all the investigations they conducted into labour exploitation that were not covered by the investigative secret[110].
This twofold interpretation of the data should be particularly taken into account when reading the situation in Apulia. This region suffers from a high rate of unemployment and inactivity among the population settled there (both native and immigrant)[111] and that, in particular, the territories of the province of Foggia, which are part of the well-known Tavoliere delle Puglie, have historically and traditionally suffered from widespread exploitation in agriculture, also favoured by factors of social precariousness of the workforce - suffice it to say that the largest informal settlement in Italy is located here[112]. To this should be added, as already mentioned in the last *Report*, that almost at the same time as the approval of Law 199, the province of Foggia was considered one of the areas where it was essential to organise an intervention, including a social one, to combat labour exploitation, which is why on 10 August 2017, Prefect Jolanda Rolli was appointed as Extraordinary Commissioner of the Government for the Manfredonia Municipality area. Moreover, the local public prosecutor's office was one of the first to implement, from an institutional and judicial point of view, the preventive and repressive measures against labour exploitation introduced by the same law. These are the reasons that prompted us to dedicate a specific in-depth study to that province[113].
Out of the 259 cases of exploitation detected in agriculture in the eight regions covered by the Project, criminal proceedings were taken in 223, i.e. 86% of the cases (Fig. 4).

2. Trend and distribution of complaints in the *Di.Agr.A.M.M. South* regions

The map below (Fig. 5) depicts the eight regions involved in the Diagrammi Sud project, with a graphic representation of the complaints concerning the agricultural sector for each of them.

Fig. 5) Complaints in agriculture in *Di.Agr.A.M.M.I. South* regions

The region with the highest number of complaints is Apulia, with a total of 9 proceedings initiated following victims' complaints, followed by Calabria (8), Sicily (6), Basilicata (2), Campania (1) and Sardinia (1) and, finally, Abruzzo and Molise, with no criminal proceedings initiated following victims' complaints.
The figure still seems low, but if we contextualise it in the light of the diachronic trend and focus on complaints in the agricultural sector it shows, as the table below (Fig. 6) reveals, a very interesting trend. In agriculture, the incidence of complaints by victims of exploitation in the regions involved in the Diagrammi Sud project out of the total number of proceedings initiated is 22%: we found 27 complaints out of 223 proceedings for exploitation in agriculture. Scrolling down the fifth column (the one concerning complaints in proceedings identified in the agricultural sector alone), we can see a steady increase in the data as we approach 2023: 5 complaints in 2021, 4 in 2022 and 5

[110] This produced the two in-depth studies by Claudio de Martino and Marta Lavacchini attached to the *Report*.
[111] INPS, *Foggia. Rendiconto sociale provinciale 2022*, 2023, pp. 18-19 available at: https://www.inps.it/it/it/dati-e-bilanci/rendiconto-e-bilancio-sociale/rendiconto-sociale-2022/rendiconti-provinciali-2022.html.
[112] Reference is made to the so-called 'former runway of Borgo Mezzanone', a hamlet of the municipality of Manfredonia, in the province of Foggia.
[113] Please refer to the already cited in-depth study by Claudio de Martino.

in 2023. This means that more than half of the complaints (14 out of a total of 27) found since 2011 in investigations related to exploitation in the agricultural sector are concentrated in the period Diagrammi Sud takes place (2021-2023) to date. The figure for complaints becomes even more valuable if we consider complaints and prosecutions relating to all sectors: only 3 complaints in the 8 regions relate to investigations in production sectors other than agriculture.

Fig. 6) *Di.Agr.A.M.M.I. South* regions table on investigations, proceedings and complaints: all sectors and agriculture

YEARS	DIAGRAMMI SUD – ALL ECONOMIC SECTORS			DIAGRAMMI SUD-AGRICULTURE		
	Total number of exploitation cases	whose criminal proceedings initiated	whose on workers' complaints	Total number of exploitation cases	whose criminal proceedings initiated	whose on workers' complaints
2011-2015	10	10	1	6	6	1
2016	10	8	1	7	7	1
2017	24	24	2	20	20	2
2018	43	41	5	36	29	1
2019	69	60	6	51	48	5
2020	58	51	5	43	38	3
2021	67	54	6	47	38	5
2022	56	43	7	27	22	4
2023	58	40	4	22	15	5
Total	**395**	**331**	**37**	**259**	**223**	**27**

The highlighted trend seems to highlight the positive impact of the Diagrammi Sud project. Indeed, it seems logical to link, in light of what was said in the *Report* on the relationship between complaints and social and legal support offered to victims of exploitation, the increase in complaints over the years of the project to its 5321 beneficiaries. For the sake of honesty, it must be said that in the same years in which Diagrammi Sud was active, there were also audits carried out within the framework of the mentioned projects to combat labour exploitation and undeclared work - such as the projects *Su.Pr.eme*, *A.L.T. Caporalato!* and *A.L.T. Caporalato D.U.E.* - which saw the involvement of IOM cultural mediators in the inter-force task forces. Indeed, there was close cooperation between IOM and Diagrammi Sud actors of which IOM itself was a member. This coincidence of the timing of actions and the strong collaboration that developed makes it very problematic to assess the specific impact of the Diagrammi Sud project by analysing the survey data: the trend created by the set of projects implemented in the 8 regions and the synergies they created can be assessed very positively. IOM in its *Briefing* did not provide data broken down by regions or geographic areas, so the only data that allow us to contextualise the activities of Diagrammi Sud in the eight regions are those provided by the NLI concerning the irregularities that emerged as a result of inspection visits to farms in the territory of each region, which are shown in the table below (Fig. 7)[114].

Fig. 7) Victims of labour exploitation in agriculture in the *Di.Agr.A.M.M.I. South* regions according to NLI data and comparison with criminal proceedings identified by the *Laboratory*

[114] The data in the table have been sourced from NLI, *Relazione sull'attività svolta dall'Ispettorato Nazionale del Lavoro*, 2021, available at: https://www.ispettorato.gov.it/files/2022/12/Relazione-attivita-INL-e-Rapporto-Vigilanza-2021-12082022.pdf for the year 2021 and from NLI, *Rapporto annuale delle attività di tutela e vigilanza in materia di lavoro e legislazione sociale*, 2022, available at: https://www.ispettorato.gov.it/files/2023/05/Rapporto-annuale-2022_20230426-1.pdf for the year 2022. Sicily has not been included in the table, since, as is known, the NLI reports do not provide data on that region.

REGION	Irregular inspections in agriculture (INL data) (2021)	Reports number of undeclared workers (INL data) (2021)	Reports number of workers victims of "caporalato"/exploitation (INL data) (2021)	Irregular inspections in agriculture (INL data) (2022)	Reports number of undeclared workers (INL data) (2022)	Reports number of workers victims of "caporalato"/exploitation (INL data) (2022)	Total number of irregular inspections in agriculture (2021-2022) (dati INL)	Total number of undeclared workers (2021-2022) (dati INL	Total number of workers victims of "caporalato"/exploitation (dati INL) (2021-2022)	Criminal proceedings (Laboratorio data) (2021-2022)
ABRUZZO	119	61	94	76	63	14	**195**	**124**	**108**	**4**
BASILICATA	161	105	18	161	95	207	**322**	**200**	**225**	**1**
CALABRIA	338	305	20	326	252	58	**664**	**557**	**78**	**11**
CAMPANIA	277	331	20	338	185	14	**615**	**516**	**34**	**10**
MOLISE	48	42	4	48	20	0	**96**	**62**	**4**	**3**
PUGLIA	710	725	40	570	403	21	**1.280**	**1128**	**61**	**20**
SARDEGNA	76	43	415	69	43	2	**145**	**86**	**471**	**5**

As also stated in the *Report*, the NLI data are not comparable with those of the *Laboratory* since they only provide a framework within which to read the trends. Although it must be remembered that the data provided by the NLI relate to the number of workers who are victims of exploitation pursuant to art. 603-*bis* of the criminal code and not to the number of exploitation proceedings, as reported instead by the *Laboratory*, what stands out is the considerable gap between the last two columns, i.e. between the reports that according to the NLI relate to cases of exploitation and forced labour (i.e. to art. 603-*bis* of the criminal code) and the criminal investigations intercepted by the *Laboratory*, especially taking into account that investigations in which different offences are charged are also included. This gap then becomes enormous if we take into account the category 'irregular inspections', which represents a macro-category of which the category '*Caporalato*/ Exploitation art. 603-*bis* c.p.' constitutes a sub-class. The macro-category under consideration, in fact, includes a series of many other sub-classes, such as labour services without a contract ("illegal work"), workers employed without a residence permit, interposing phenomena, transnational posting, working time violations, as well as those provided for and punished by the Consolidated Work Safety Act (etc.). As pointed out in the regional documents "*Comparative analysis of good practices and depository of practical intervention methods*", drafted by the inter-university research centre *L'Altro Diritto* (ADir-UniFI) for the Diagrammi Sud project, the NLI classification does not show how cases related to other cases (e.g. art. 22 co. e.g. the art. 22 co. 12 or 12-*bis* TUI) nor on the basis of which parameters "the situations of 'Black Labour' can be distinguished (starting from the assessments made during the inspections) from those of '*Caporalato*/Exploitation art. 603 bis c.p.'"[115].
These considerations lead us to say that an interesting area of research is opening up: with regard to the facts that occurred between 2021 and 2023, certainly in the next few years the court documents available to us should increase considerably and it will be interesting to follow the development of the NLI reports in which the violation of 603-*bis* was specifically hypothesised. It will also be interesting to see how many of the cases falling under the macro-category 'irregular inspections' will then have been the subject of criminal investigations into exploitation, and we hope that the information that the NLI will provide will allow this verification to take place.

3. Victims of exploitation in the *Di.Agr.A.M.M.I. South* regions

The table below (Fig. 8) shows that it was possible to identify the origin of the victims in 261 out of the 395 investigations we know of, across all sectors. If we add up the data in the third (188) and fourth column (42), we see that in no less than 230 investigations third-country nationals are involved (88%), while EU citizens are identified as victims in just under a third of the investigations, in 31 cases alone and in 42 cases together with non-EU citizens. If we focus on the agricultural sector, the number of investigations where it was possible to identify the origin of the victims is 195 out of

[115] See S. Archain, "Analisi comparata buone prassi e *depository* di metodi di intervento pratiche", Unifi-Centro Adir within the Diagrammi Sud project.

259: again, the vast majority of investigations (175) involve non-EU nationals, while 52 also involve (32) or only (20) EU nationals. It is interesting to note the lower percentage in agriculture, around 9%, of investigations in which the victims included Italian nationals compared to that found in all sectors, over 13.7%.

Fig. 8) *Di.Agr.A.M.M.I. South* regions table: the origin of the victims

YEARS	DIAGRAMMI SUD - ALL ECONOMIC SECTORS						DIAGRAMMI SUD - AGRICULTURE					
	Total number of exploitation cases	Total number of cases where it was possible to trace the origin of the victims	Non-UE foreign nationals only	Both European and non-UE citizens	European citizens only	Only or also Italians	Total number of exploitation cases	Total number of cases where it was possible to trace the origin of the victims	Non-UE foreign nationals only	Both European and non-UE citizens	European citizens only	Only or also Italians
2011-2015	10	8	6	1	1	0	6	7	5	1	1	0
2016	10	7	6	1	0	1	7	7	6	1	0	0
2017	24	21	11	4	6	4	20	18	9	4	5	4
2018	43	32	23	3	6	4	36	24	17	4	3	2
2019	69	44	26	7	11	6	51	37	25	6	6	3
2020	58	40	30	8	2	10	43	35	27	6	2	5
2021	67	47	32	10	5	8	47	35	27	5	3	2
2022	56	33	28	5	0	1	27	21	17	4	0	1
2023	58	29	26	3	0	1	22	11	10	1	0	1
Total	**395**	**261**	**188**	**42**	**31**	**35**	**259**	**195**	**143**	**32**	**20**	**18**

Focusing on the agricultural sector alone and in the project years (2021-23), it emerges that out of 96 investigations the origin of the victims could be identified in 67 investigations, i.e. in about 70% of the cases. In 54 investigations the victims were only third-country nationals, in 10 investigations both EU and third-country nationals and in 3 investigations only EU nationals, while Italians were identified as victims in 4 investigations.
These data, as well as the national data commented in the *Report*, reveal that the protection measures ex art. 18 and 22 TUI and the programmes such as Diagrammi Sud that exclusively target third-country workers who are victims of labour exploitation certainly cover the most important share of them but exclude a not indifferent part made up of EU citizens.
The following table (Fig. 9) gives us an overview of the "refugeeisation" phenomenon in the eight regions covered by the Diagrammi Sud project.
Analysing the agricultural sector alone, consistent with the project's scope, there were a total of 175 investigations involving non-EU nationals, and 64 in the years Diagrammi Sud was active. It was possible to trace the status of non-EU victims in 69 investigations overall (just under 40 per cent) and in 24 investigations in 2021-23, a slightly lower percentage. If we look at the data as a whole, in 25 investigations only foreigners without residence permits were among the victims, and in 25 these were joined by legally resident foreigners, while in 16 investigations only legally resident foreigners were involved. Of the 41 investigations in which legally residing foreigners were among the victims, 26 (over 63%) involved victims with permits relating to the procedure for recognition of international protection or humanitarian permits.

Fig. 9) *Di.Agr.A.M.M.I. South* regions table: the legal status of victims in agriculture

YEARS	DIAGRAMMI SUD - AGRICULTURE						
	Total number of cases in which it was possibile to trace the origin of the victims	Cases in which only or also foreign nationals are victims of exploitation	Cases in which it was possible to trace the legal *status* of the victims	Cases with only foreign with and without residence permits as victims	Cases with only foreigners with residence permits as victims	Cases with only or also asylum seekers or humanitarian protection holders as victims	Cases with only foreign without residence permits as victims
2011-2015	7	6	3	1	1	2	1
2016	7	7	0	0	0	1	0
2017	18	13	3	2	1	3	0
2018	24	21	9	4	1	7	4
2019	37	31	17	3	8	7	6
2020	35	33	13	3	2	3	6
2021	35	32	8	5	1	1	2
2022	21	21	13	5	1	1	6
2023	11	11	3	2	1	1	0
Total	**195**	**175**	**69**	**25**	**16**	**26**	**25**

If we look only at the years of the project, we have 64 investigations in which foreign nationals were among the victims of exploitation, and in 24 of these it was possible to identify their status. Those in which only legally resident foreigners were involved are only 3; those in which the victims were only foreigners without residence permits are 8, while in 12 cases (50%) the victims were foreigners of both categories. Of the 15 cases involving legally resident foreigners, only in 3 cases were their residence permits for humanitarian reasons or related to the international protection procedure.

4. The persons against whom proceedings are brought and the criminal offences used

Out of a total of 311 proceedings initiated in the Diagrammi Sud regions, we were able to identify those against whom proceedings were initiated in 301 investigations, of which 211 related to agriculture (Fig. 10)[116]. If we analyse the overall data, in 61% of the cases (185) proceedings were only brought against employers, in 15% of the cases (44) only against *caporali* and in just under 24% of the cases (71) against both. If we examine the agricultural sector alone, in line with the national figure, the percentage of cases in which proceedings are taken against the *caporale* alone increases to 23% and that in which proceedings are taken against the employer alone drops to just under 47%. If we look at the years of the project, the situation does not change: out of 73 investigations in which it was possible to reconstruct against whom one proceeds, in 15 cases one proceeded only against the *caporale*, i.e. 21% of cases, while in 35 cases (48%) against the employer alone.

Fig. 10) Table of *Di.Agr.A.M.M.I. South* regions, subjects against whom action is taken: all sectors and agriculture

[116] It should be noted that the total number of proceedings initiated (first and fifth columns) also take into account those proceedings for which the public prosecutor's offices have indicated to us, through prospectuses from their Offices, the existence of pending or dismissed proceedings concerning facts of labour exploitation, but without providing us with further details regarding the factual matter, nor with respect to the economic sector. This is why the sum of columns two, three and four in all sectors differs by 10 proceedings compared to the first one, while the sum of columns six, seven and eight by 12 proceedings compared to the total number of proceedings in agriculture.

YEARS	DIAGRAMMI SUD-ALL ECONOMIC SECTORS				DIAGRAMMI SUD-AGRICULTURE			
	Total number of criminal proceedings	Proceedings in which only the employer was prosecuted	Proceedings in which only the "caporale" was prosecuted	Proceedings in which both the employer and the "caporale" were prosecuted	Total number of criminal proceedings	Proceedings in which only the employer was prosecuted	Proceedings in which only the "caporale" was prosecuted	Proceedings in which both the employer and the "caporale" were prosecuted
2011-2015	10	4	2	2	6	2	2	2
2016	8	3	3	2	7	3	3	1
2017	24	15	3	5	20	12	3	4
2018	41	16	7	14	29	12	7	9
2019	60	33	7	16	48	21	7	15
2020	51	27	11	11	38	13	11	11
2021	54	31	8	14	38	19	5	14
2022	43	27	3	8	22	10	2	8
2023	40	29	0	0	15	6	8	1
Total	331	185	44	72	223	98	48	65

With regard to the criminal offences used in the investigations, in line with the national figure, in the eight regions surveyed, Article 603-*bis* of the criminal code is by far the most commonly used criminal offence to frame cases of labour exploitation in agriculture, charged as the sole offence in 188 proceedings, i.e. 84%. In the project years, the offence was used exclusively in 58 out of 74 investigations, i.e. a slightly higher percentage: 78% (Fig. 11).

Fig. 11) *Di.Agr.A.M.M.I. South* regions table: the use of facts in agriculture

OFFENSES CHARGED-AGRICULTURE	PRE RIFORMA L.199/2016	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL PER OFFENSES
Art. 603-bis cp	3	6	20	27	41	33	34	10	14	**188**
Artt. 603-bis cp, 12 TUI	0	0	1	0	1	2	2	2	0	**8**
Artt. 603-bis cp, 22, co. 12 o 12-bis TUI*	0	0	0	1	0	1	0	4	1	**7**
Artt. 603-bis, 601 cp	0	0	0	0	0	0	0	0	0	**0**
Artt. 603-bis, 629 cp	0	0	0	1	2	0	0	2	0	**5**
Artt. 603-bis, 600 cp	0	0	0	0	0	1	0	0	0	**1**
Artt. 603-bis, 600 cp, 601 cp	0	0	0	0	1	0	0	0	0	**1**
Art. 22 co. 12 o 12 -bis TUI*	0	1	0	0	0	0	1	3	0	**5**
Art. 12 TUI	1	0	0	0	0	0	1	0	0	**2**
Art. 600 cp	2	0	0	0	0	1	0	0	0	**3**
Artt. 600 cp, 629 cp	0	0	0	0	0	0	0	0	0	**0**
Art. 601 cp	0	0	0	0	1	0	0	0	0	**1**
Art. 629 cp	0	0	0	0	2	0	0	0	0	**2**
TOTAL PER YEAR	6	7	21	29	48	38	38	21	15	223

With reference to the reasoning developed in the *Report*, it is worth emphasising that Article 22 of the TUI was used in a total of 12 proceedings, (only in 5 cases, 4 of which in the project years, as the only offence, while in 7 proceedings in conjunction with Article 603-*bis* of the Criminal Code), with an incidence on the national figure, as far as agriculture is concerned (12 and 25 proceedings respectively, i.e. 37) of approximately 32%. The data, therefore, show that the judicial practice of resorting to the use of this offence is prevalent in the North and in the other regions of the Centre, as pointed out in the commentary on the data of the Diagrammi Nord project, to which reference should be made. Moreover, in the project years (2021-2023), the offences of trafficking for labour exploitation and extortion were never charged.

Appendix 2
Follow up project *Di.Agr.A.M.M.I. North*

The *Di.Agr.A.M.M.I. Project of Legality in the Centre-North* (henceforth 'Diagrammi Nord') is a FAMI project that began in 2020 and ended at the end of 2022[117] which, in a complementary relationship with the Diagrammi Sud project, had as its main objective the creation of a multistakeholder network for taking charge of 'fragile subjects', potential victims of labour exploitation and 'caporalato' (forced labour) in agriculture, limited to foreign workers with a regular residence permit in eight regions (Piedmont, Lombardy, Veneto, Emilia-Romagna, Tuscany, Umbria, Marche and Lazio).

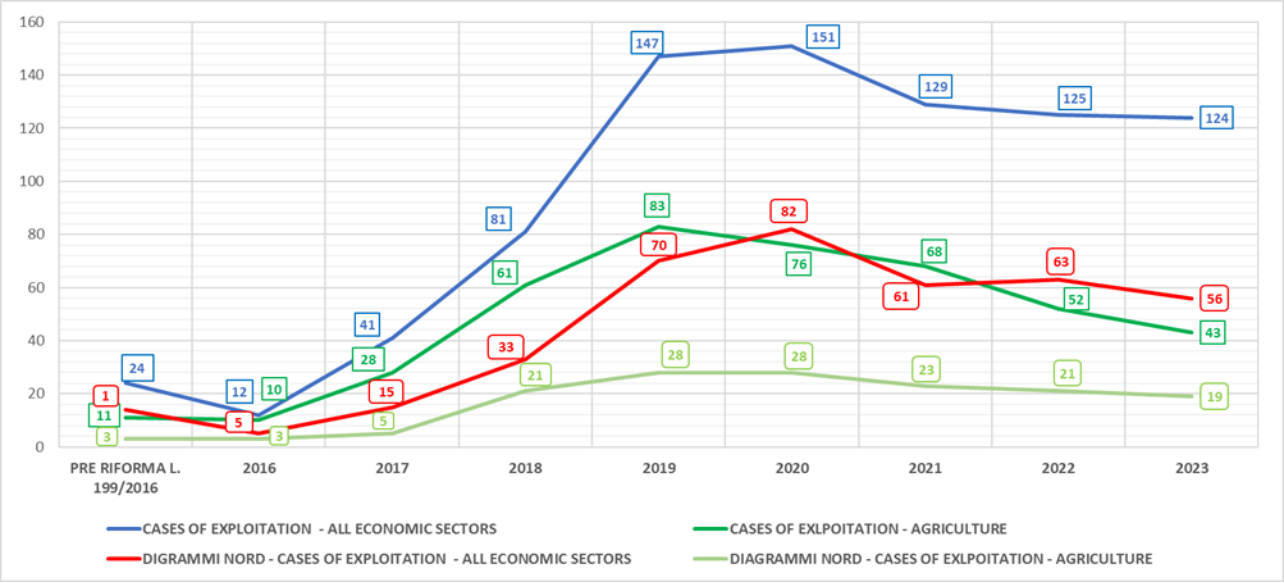
In the last *Report* we presented the first data of the project, pointing out that the perspective of the analysis carried out was to provide elements to evaluate the capacity of the Diagrammi Nord project to foster the development of complaints of exploited workers, in particular, and of criminal investigations, in general. At the time of the publication of the *4th Report*, Diagrammi Nord was about halfway through its life, and the data we were reporting referred to a very recent time in relation to the drafting of the *Report* and was therefore physiologically incomplete.

Today, the project has come to an end and the data we will present below to help assess its impact are not only those for the years in which the project took place, but we also propose a follow up that takes into account the data tracked for 2023 to see how persistent its effects are.

1. Survey trends, their geographical distribution among economic sectors

The first graph we present (Fig. 1) shows the development of the curves of both the exploitation cases relating to all economic sectors and those relating to the agricultural sector in the eight Diagrammi Nord regions, compared with the development of the respective curves at national level.

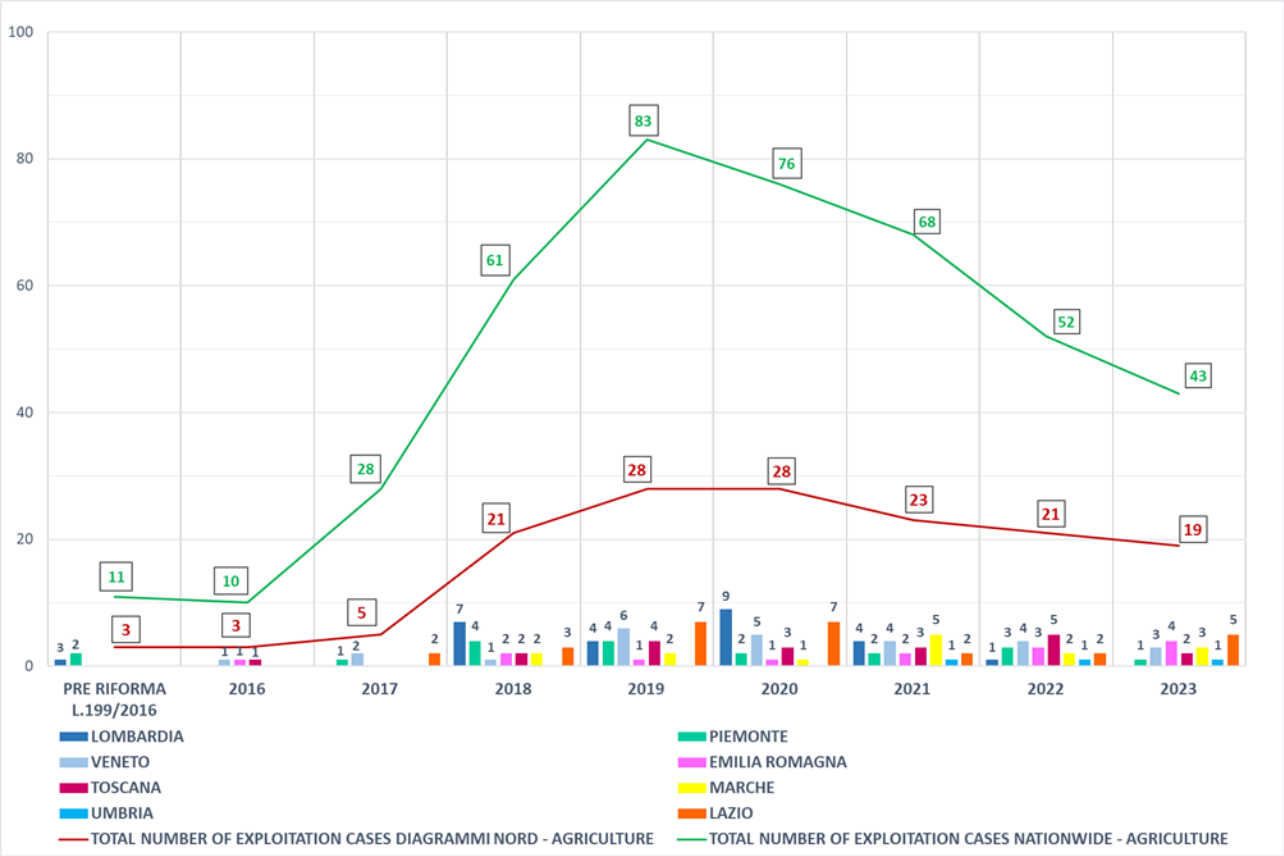
Fig. 1) Comparison of national survey data and *Di.Agr.A.M.M.I. North* regions: all sectors and agriculture compared



The incidence of exploitation cases related to all sectors in the Diagrammi Nord regions is 48% of those at national level, with a total of 399 out of 834 cases. With respect to the agricultural sector, the following graph examines in detail, region by region, the development of the overall exploitation cases detected in the individual Diagrammi Nord regions, compared with the development of the curve of exploitation cases in agriculture at national level (Fig. 2).

[117] Project "Di.Agr.A.M.M.I. of Legality in the Centre-North - Rights in Agriculture through Multistakeholder and Multidisciplinary Approaches for Integration and Fair Work" FAMI 2020/2024 - Specific Objective: 2. Integration / Legal Migration - National Objective: ON 2 - Integration - letter i-*ter* Socio-labour integration interventions to prevent and fight against caporalato - PROG-2996.

Fig. 2) Graph *Di.Agr.A.M.M.I. North* regions: trends in agricultural sector investigations, with region-by-region detail, and national agricultural sector curve comparison



The region with the highest number of exploitation cases is Latium, with 30 investigations, followed by Piedmont, with 29 investigations, Veneto, with 24 exploitation cases, Lombardy, with 21 investigations, Tuscany, with 20 investigations, Emilia-Romagna, with 18 investigations, Marche, with 13 investigations, and, finally, Umbria, with 5 investigations[118].
The distribution of exploitation in agriculture in the Centre and in the North is, therefore, almost homogeneous, with the pre-eminent role of Lazio, which, as mentioned above, sees the province of Latina most affected by the phenomenon of exploitation in agriculture, where no less than 17 out of 30 investigations are concentrated in the region.

2. The incidence of victims' complaints

The total number of exploitation investigations intercepted in the eight Diagrammi Nord regions amounted to 399 in all sectors and 151 in agriculture, which is an increase compared to the previous *Report*, as shown in the table below (Fig. 3): while at the end of 2021 we had intercepted 249 exploitation investigations in all sectors and 101 in agriculture, we have now intercepted 150 new investigations, of which 63 relating to 2022 and 56 relating to 2023 and 31 relating to the previous years, of which the most significant increase concerns 2021, with +9 investigations. If we analyse the data on investigations in the agricultural sector, the scope of the project, we see that 50 new exploitation investigations have emerged: compared to the previous *Report*, the most significant increase relates to 2021, in fact the first year of the project, with 4 new investigations, as many as 21 relate to 2022, the last year of the project, and 19 to 2023, the follow up year.

Fig. 3) Comparison of investigations, prosecutions and complaints exploitation between *V Report* and *IV Report* data

[118] Please refer to the Table in the general part of the *Report* where cases of exploitation are aggregated by region (Fig.14).

YEARS	DIAGRAMMI NORD - ALL ECONOMIC SECTORS						DIAGRAMMI NORD-AGRICULTURE					
	Total number of exploitation cases (IV Report)	Total number of exploitation cases	whose criminal proceedings (IV Report)	whose criminal proceedings	whose on workers' complaints (IV Report)	whose on workers' complaints	Total number of exploitation cases (IV Report)	Total number of exploitation cases	whose criminal proceedings (IV Report)	whose criminal proceedings	whose on workers' complaints (IV Report)	whose on workers' complaints
2011-2015	9	14	7	13	2	2	3	3	1	3	1	1
2016	5	5	6	3	0	0	3	3	2	3	0	0
2017	13	15	12	16	1	2	3	5	3	4	0	0
2018	29	33	30	33	3	3	19	21	20	17	0	0
2019	64	70	61	68	6	6	26	28	21	27	3	3
2020	77	82	65	74	6	6	28	28	25	26	4	4
2021	52	61	42	53	10	12	19	23	14	19	3	5
2022	0	63	0	42	0	7	0	21	0	14	0	2
2023	0	56	0	41	0	7	0	19	0	15	0	3
Total	**249**	**399**	**223**	**343**	**28**	**45**	**101**	**151**	**86**	**128**	**11**	**18**

The most interesting data concerns complaints: if we take into consideration all the sectors (columns five and six) in the table above, we notice that complaints have more than doubled in recent years: there are 26 proceedings in the last three years in which there is a complaint out of a total of 45 proceedings initiated as a result of the victim's complaint. In the years of action of the Diagrammi Nord project: in 2020 partially covered by the project, there are 4 complaints, in 2021 5 and 2 in 2022, i.e. 11 complaints out of a total of 61%. The trend seems to continue with 3 complaints in 2023 (remember that the figures for 2022 and 2023 are physiologically expected to grow).
Compared to the national figure, complaints in the Diagrammi Nord regions account for approximately 55%, with 45 out of 82 complaints in all sectors, and 42% (18 out of 43) in the agricultural sector, a figure that must be contextualised by the fact that the largest number of investigations in the sector are concentrated in the southern Italian regions. If in fact the cases of exploitation detected in the Diagrammi Nord regions is only a few units higher than those detected in the Diagrammi Sud regions, with 399 and 395 cases respectively in all sectors, the agricultural sector is the one where the greatest gap between the two projects is recorded, with 151 exploitation investigations in the Diagrammi Nord regions and as many as 259 in the Diagrammi Sud regions, confirming the different distribution of exploitation in the various economic sectors and production sectors, as discussed above. In the table below, a comparison is made between the aggregated data at the national level of the agricultural sector and those for the Diagrammi Nord regions only (Fig. 4).

Fig. 4) Comparison of national agricultural surveys with surveys in *Di.Agr.A.M.M.I. North* regions

YEARS	ALL REGIONS - AGRICULTURE			DIAGRAMMI NORD-AGRICULTURE		
	Total number of exploitation cases	whose criminal proceedings	whose on workers' complaints	Total number of exploitation cases	whose criminal proceedings	whose on workers' complaints
2011-2015	11	10	1	3	3	1
2016	10	10	1	3	3	0
2017	28	26	1	5	4	0
2018	61	49	2	21	17	0
2019	83	74	7	28	27	3
2020	76	65	8	28	26	4
2021	68	59	6	23	19	5
2022	52	35	7	21	14	2
2023	43	34	10	19	15	3
Total	**432**	**362**	**43**	**151**	**128**	**18**

The data show that out of 432 cases of exploitation identified in the agricultural sector at national level, 151 are located geographically in the eight Diagrammi Nord regions (around 35%), a percentage that is almost mirror-like in relation to criminal proceedings initiated against cases of exploitation in the agricultural sector, with 128 out of 362 proceedings at national level (around 35%).
If we focus on the years of the project (2020-22) we see that in the regions covered by the project, investigations were 32% of those initiated nationwide between 2016, the year Law 199 came into force, and 2019, in the three-year period of the project the percentage rises slightly to 37%, and the

growth seems to accelerate decisively in 2023 when investigations in the eight Diagrammi Nord regions rise to 44%. Complaints show the same trend, rising from 27% in the four-year period preceding the project to 52% in the three-year period in which Diagrammi Nord took place (almost doubling in percentage points), while the figure for 2023 is 30%, which is already higher than the first four-year period in which Law 199 was in force.

3. Victims of exploitation in the *Di.Agr.A.M.M.I. North* regions

The table below shows the data on the origin of the victims of labour exploitation in the eight Diagrammi Nord regions (Fig. 5). Out of a total of 399 cases intercepted in the project territories, in 340 cases it was possible to trace the origin of the victims: in 278 cases the exploitation involved only foreign citizens from third countries, in 30 cases the victims of exploitation were both foreign citizens and European citizens, in 32 cases only European citizens.
With regard to the agricultural sector, out of 151 cases of exploitation, it was possible to trace the origin of the victims in 130 cases, of which 107 involved only workers from third countries, 14 involved both foreign and EU workers, and 9 involved only EU workers.
The pre-eminent fact, therefore, is that in the Diagrammi Nord regions, in line with the national trend, the main victims of exploitation are foreign workers from third countries, accounting for 77% of cases, i.e. 308 cases (taken from the sum of the third and fourth columns of the table) out of 399 cases of exploitation in all sectors, with a significantly higher percentage in agriculture of around 81%, with 121 cases (taken from the sum of columns 11 and 12) out of 151. The data mirrors the national trend.

Fig. 5) Table *Di.Agr.A.M.M.I. North* regions: the origin of the victims

YEARS	DIAGRAMMI NORD-ALL ECONOMIC SECTORS							DIAGRAMMI NORD-AGRICULTURE						
	Total number of exploitation cases	Total number of cases where it was possibile to trace the origin of the victims	Non-UE foreign nationals only	whose asylum seekers or humanitarian protection holders	Both European and non-UE citizens	European citizens only	Only or also Italians	Total number of exploitation cases	Total number of cases where it was possibile to trace the origin of the victims	Non-UE foreign nationals only	whose asylum seekers or humanitarian protection holders	Both European and non-UE citizens	European citizens only	Only or also Italians
2011-2015	14	10	8	4	0	2	1	3	2	1	0	0	1	0
2016	5	5	3	0	1	1	1	3	2	2	0	0	0	0
2017	15	14	11	6	2	1	3	5	4	2	3	2	0	0
2018	33	31	25	11	2	4	4	21	18	17	8	0	1	1
2019	70	66	53	17	6	6	10	28	27	22	9	3	2	1
2020	82	74	64	19	2	7	5	28	23	20	8	2	1	1
2021	61	54	44	5	4	8	6	23	18	12	1	3	3	3
2022	63	43	38	4	5	0	4	21	17	15	4	2	0	2
2023	56	43	32	4	8	3	5	19	19	16	4	2	1	1
Total	399	340	278	70	30	32	39	151	130	107	37	14	9	9

With respect to the phenomenon of "refugeeisation", in the regions where Diagrammi Nord is being developed, what was observed in the last *Report* is reconfirmed, namely that the rate of exploitation of asylum seekers or holders of international protection is higher in agriculture than in other sectors: out of 70 cases of exploitation in which only or also asylum seekers are involved, as many as 37 concern the agricultural sector, i.e. more than half, and if we calculate the incidence of the figure on the total number of cases in which it was possible to trace the origin of the victims, after subtracting the agricultural sector, we note that in agriculture the incidence of asylum seeker victims is more than 28% (37 out of 130) compared to about 16% in the other sectors (33 out of 210).
Lastly, it is worth noting that compared to the data available in the last *Report*, the number of Italian workers involved in exploitation has increased from 29 to 39 in all sectors and has doubled in agriculture: while at the end of 2021 the figure stood at 5 cases of exploitation involving Italian victims, at the end of 2023 we have identified no less than 9 investigations in which Italian men and women workers are subjected to labour exploitation, with a percentage of 6% (9 out of 151 cases), very close to the national figure of just over 7% (32 out of 432).

4. The fight against labour exploitation in the *Di.Agr.A.M.M.I. North* regions and the people being prosecuted

In the eight Diagrammi Nord regions out of a total of 399 cases of exploitation intercepted, 343 criminal proceedings were reported (Fig. 6). Of these, in 171 proceedings (a good 57 more than in the previous survey data) only the employer is prosecuted, in a labour relationship in which a third party does not intervene either in the recruitment or in the imposition of the exploitative conditions, i.e.

in approximately 50% of the proceedings monitored in the project regions[119]. The percentage drops, however, if we consider the proceedings in which exploitation is conveyed by the intermediation of a third party: if we consider the third and fourth columns of the table, out of a total of 150 proceedings for 'caporalato', there are 65 proceedings in which the employer is also prosecuted and 85 cases in which only the 'caporale' is prosecuted, confirming the national trend. With regard to the agricultural sector, the situation is partially different: out of 151 cases of exploitation detected in agriculture in the eight regions covered by the project, there are 128 cases in which we have been able to ascertain that criminal proceedings have been brought, i.e. in 85% of the cases. Of these, unlike in the other sectors, out of 67 proceedings in which both employer and *caporale* are involved (total obtained from the sum of the last two columns of the table), the number of proceedings in which both are prosecuted (36) exceeds that against the *caporale* alone (30), while in 44 cases only the employer is prosecuted, in the absence of intermediation by a third party.

Fig. 6) Table of *Di.Agr.A.M.M.I. North* regions concerning persons against whom criminal proceedings are brought: all sectors and agriculture compared

YEARS	DIAGRAMMI NORD-ALL ECONOMIC SECTORS				DIAGRAMMI NORD-AGRICULTURE			
	Total number of criminal proceedings	Proceedings in which only the employer was prosecuted	Proceedings in which only the "caporale" was prosecuted	Proceedings in which both the employer and the "caporale" were prosecuted	Total number of criminal proceedings	Proceedings in which only the employer was prosecuted	Proceedings in which only the "caporale" was prosecuted	Proceedings in which both the employer and the "caporale" were prosecuted
2011-2015	13	1	6	1	3	0	3	0
2016	3	1	1	3	3	0	0	3
2017	16	8	3	3	4	3	1	0
2018	33	17	8	8	17	5	4	5
2019	68	25	23	15	27	5	9	11
2020	74	44	10	13	26	11	6	5
2021	53	30	11	8	19	9	2	5
2022	42	25	9	8	14	5	3	3
2023	41	20	14	6	15	6	2	4
Total	**343**	**171**	**85**	**65**	**128**	**44**	**30**	**36**

Focusing on the agricultural sector, the following table (Fig. 7) shows the data on the use of criminal offences in the criminal proceedings initiated in the eight project regions: out of 128 proceedings reported or known to have been initiated, it was possible to trace the charged offence in 122 proceedings, a good 39 proceedings more than in the last *Report*, of which 14 related to 2022 and 15 to 2023. The updated data confirm that also in the eight regions covered by the Diagrammi Nord project, Article 603-*bis* of the Criminal Code is the most commonly used criminal offence in cases of labour exploitation, charged as the only offence in 97 proceedings, i.e. in 78% of the criminal proceedings, a figure in line with the national percentage.

FIG. 7) Table *Di.Agr.A.M.M.I. North* regions: the use of criminal offences in agriculture[120]

[119] It should be noted that in 22 proceedings it is known that prosecutors have opened criminal proceedings for exploitation, but it has not been possible to ascertain against whom they are proceeding, nor to reconstruct the facts as a whole.
[120] It should be noted that it has not always been possible to identify with sufficient certainty the section being charged between s. 12 (employment of foreigners without residence permits) and s. 12-*bis* (c) (aggravated by exploitation and employment of foreigners without residence permits), which is why we have joined the two sections together.

OFFENSES CHARGED-AGRICULTURE	PRE RIFORMA L.199/2016	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL PER OFFENSES
Art. 603-bis cp	2	1	4	15	19	18	13	11	13	**97**
Artt. 603-bis cp, 12 TUI	0	0	0	1	1	0	0	0	0	**2**
Artt. 603-bis cp, 22, co. 12 o 12-bis TUI*	0	1	0	0	3	4	4	2	1	**15**
Artt. 603-bis, 601 cp	0	0	0	0	0	0	0	0	0	**0**
Artt. 603-bis, 629 cp	0	0	1	0	1	2	1	0	1	**6**
Artt. 603-bis, 600 cp	0	0	0	0	1	0	0	0	0	**0**
Artt. 603-bis, 600 cp, 601 cp	0	0	0	0	0	0	0	0	0	**0**
Art. 22 co. 12 o 12 -bis TUI*	0	0	0	0	0	1	1	0	0	**2**
Art. 12 TUI	0	0	0	0	0	0	0	0	0	**0**
Art. 600 cp	0	0	0	0	0	0	0	0	0	**0**
Artt. 600 cp, 629 cp		0	0	0	0	0	0	0	0	**0**
Art. 601 cp	0	0	0	0	0	0	0	0	0	**0**
Art. 629 cp	0	0	0	0	0	0	0	0	0	**0**
TOTAL PER YEAR	**2**	**2**	**5**	**16**	**25**	**25**	**19**	**13**	**15**	**122**

Looking at the other offences, the numbers are very low and not worthy of particular comment, with the exception of two cases: the offence referred to in Article 22, co. 12 and/or 12-*bis* TUI (employment of a foreigner without a residence permit) is charged in no less than 15 proceedings in conjunction with Article 603-*bis* of the Criminal Code, This figure has a modest incidence compared to the total (i.e. in about 12% of the proceedings in agriculture) but represents more than half of the total number of proceedings in which these offences are used at national level (tot. 25 proceedings); also significant are the 6 proceedings in which Article 603-*bis* of the Criminal Code is charged in conjunction with Article 629 of the Criminal Code (extortion), which also in this case represents a significant share, i.e. 38% of the national figure (tot. 16). For the comment on the use of these cases, please refer to what has been said above, concerning the problems that may arise in the event of concurrence of the above-mentioned criminal provisions. Finally, it is worth noting that none of the prosecutor's offices in the eight regions under review has charged more serious offences: in no case are there proceedings for the crime of trafficking in persons for the purpose of labour exploitation in agriculture (Article 601 of the Criminal Code), nor for reduction and/or maintenance in slavery (Article 600 of the Criminal Code). With regard to the latter crime, it should be noted that in the last *Report*, Article 600 of the Criminal Code was charged (in conjunction with Article 12 of the TUI) in a 2017 case under the jurisdiction of the Venice public prosecutor's office, in which a Bengali couple who ran a farm exploiting the labour of fifteen compatriots were charged, but the facts were reclassified in the first instance conviction as labour exploitation and illegal intermediation (Article 603-*bis* of the criminal code), confirming what was said a few pages above regarding the 'protection' that the rule offers compared to more serious cases that were used by the judiciary before its reform.