

## **L'Altro diritto inter-university research centre on prison, deviance, marginalisation and migration governance: first data on the contrast of labour exploitation.**

The inter-university research centre l'Altro diritto has started an analysis of the operation of Italian criminal provisions meant to combat labour exploitation. Thanks principally to the reports by the FLAI-CGIL union, the Centre is gathering media news on prosecution for offences concerning labour exploitation. It contacts the courts and retrieves and analyses the proceedings (from request for pre-trial custody by prosecutors to verdicts).

As of this writing, the Centre is monitoring 46 investigations by 16 prosecution offices. We know of investigations initiated by other 14 offices, of which we do not yet have the proceedings, however. The investigations being monitored provide sufficient data for a first assessment of the main features of labour exploitation, of the main sectors where it is happening, of the types of workers most exposed to it, as well as of the offences used to combat it and of how they are being used, of course.

The first given to emerge is that the phenomenon is widespread – almost endemic – throughout Italy. Although article 603-*bis* of the Italian criminal code, titled “Unlawful brokerage and labour exploitation”, was introduced in 2011 to tackle serious instances of exploitation that happened in southern Italy, and was amended in 2016 again mostly or exclusively in relation to developments in southern Italian countryside, **19 of the 46 investigations being monitored concern facts that took place in central-northern Italy**, namely in Asti, Brescia, Florence, Forlì, Latina, Livorno, L'Aquila, Padua, Pesaro, Prato and Mantua.

The second given to emerge is that, although the victims of exploitation are usually thought to be foreigners, possibly irregular immigrants because of their condition of special marginalisation, data show that most foreign victims of exploitation are regular immigrants; that many victims are not properly “foreigners”, being nationals of a European Union state; and that the number of exploited Italian nationals is not negligible. **5 of the 46 investigations being monitored involve the exploitation of Italian nationals, often employed together with foreign workers<sup>1</sup>.**

As to foreigners, in line with many UN reports, people waiting for a decision on international protection appear to be especially vulnerable and exposed to exploitation. In a Cosenza case the manager of an immigration reception centre has been himself indicted with exploitation. Apart from this striking case, foreigners waiting for a decision on their status are often exploited in Chinese-run textile factories in Prato and Naples, and in farms of both northern and southern Italy.

Another given to emerge is that, contrary to the common picture of the phenomenon, labour exploitation is not concentrated in farming. Although act 199/2016, that amended article 603-*bis*, is itself titled “Provisions to combat irregular work and exploitation of farm labour and to enforce legal salaries in farming”, **the employment of workers in clearly illegal conditions is often found in different economic sectors: no less than 12 of the 46 investigations being**

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<sup>1</sup> In particular, the use of exploited Italian manpower has emerged in cases prosecuted by the offices of Cosenza, Agrigento, Brindisi and L'Aquila, where no less than two investigations concern Italian victims of exploitation.

monitored concern nonfarm sectors<sup>2</sup>.

The new wording of article 603-*bis*, which made exploitation independent from the existence of a broker, has turned out useful especially in less obvious – by no less serious – cases of exploitation concerning sectors other than farming, where the abuse of workers is hidden behind a veil of legality. For instance, there are employment contracts that state a total amount of hours much lower than the actual one<sup>3</sup>, or formally refer to the rules about occasional employment<sup>4</sup>, or employers who pretend to pay the contract salary, which sometimes is paid only in part, and other times is partly returned to the employer<sup>5</sup>. These situations would be hard to prosecute under the former wording of article 603-*bis*, because there is no brokerage at all. The case of the procurators' office of Prato is telling. In order to combat the exploitation of workers in Prato textile factories, mostly run by Chinese, prosecutors seem to have started a consistent use of the criminal code article, thanks to the new wording that, unlike its predecessors, allows the prosecution of employers regardless of a broker's presence<sup>6</sup>.

The legal framework makes it still difficult to punish the exploitation of workers employed by subcontractors or in cooperatives managing logistics for a customer who has no direct relationship to workers. This is shown by three of the cases being monitored: two prosecuted by the L'Aquila office, concerning various workers employed in the rebuilding after the 2009 earthquake, and one by the Padua office, concerning the logistics sector.

The importance of article 603-*bis* for prosecuting labour exploitation in sectors other than farming emerges from the data on interim measures, too. Within the 46 cases being monitored, we have analysed 16 requests of interim measures for **a total of 53 requested and 46 granted measures, of which 24 relating to investigations about farming and 22 to investigations about other sectors**<sup>7</sup>.

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<sup>2</sup> In particular, we are referring to the cases prosecuted by the offices of Florence, concerning some asylum seekers hired for leafleting; Cosenza, concerning some Afghan construction workers; Livorno, concerning an immigrant employed on a fishing boat; Lecce, concerning some foreign workers employed in installing photovoltaic panels; Catania, involving some foreign workers employed in the breeding sector; Pesaro, concerning some workers in the making and maintenance of fixtures; Padua, concerning an instance of exploitation in the logistics sector; Prato, concerning labour exploitation in the packaging of textiles; and to the two couple of cases prosecuted by the offices of L'Aquila, concerning the reconstruction after the 2009 earthquake, and Naples, concerning foreign workers of the textile sector.

<sup>3</sup> The case prosecuted in Prato is significant. The worker, employed with a part-time contract, was in fact forced to work twelve hours a day, seven days a week, and was deprived of the right to leave the workplace for leave or other reasons.

<sup>4</sup> This situation has emerged in a case prosecuted by the Florence office. Foreigners, employed for leafleting, were hired through a verbal contract for occasional work, but they had to work five days a week for nine hours and subjected to a strict organisation of labour.

<sup>5</sup> Though such situations have been found in several proceedings being monitored, the cases of L'Aquila are noteworthy. While the workers were regularly paid, they were later forced to return a large share of their salaries to the employer.

<sup>6</sup> The Centre has made a specific agreement with the prosecutors' office of Prato to analyse this employment and verify the operation of the legal rules on the social protection of exploited workers.

<sup>7</sup> In particular, the picture of the interim measures taken in farming-related cases is as follows. The Ragusa office, in connection with one of the cases it is prosecuting, requested and obtained the home detention of the two main defendants; the Catania office, in one of the cases it is prosecuting, has requested 8 interim measures in personam, of which only 4 have been granted; the Latina office, in one of its cases, requested and obtained the pre-trial custody of the main defendant; the Larino office, during the validation of arrest, requested and obtained an interim measure

As to the seriousness of offences, lawmakers showed a concern that the new wording of article 603-*bis* might allow the criminal prosecution of minor administrative violations. It emerges from the monitoring that only two out of the nine investigations initiated under the new article 603-*bis* concern facts non-aggravated by violence or threat, and that even in these two cases there are other aggravating circumstances provided for by the article's fourth paragraph (committing the fact against three or more workers, or minor workers, or exposing workers to a serious danger). **In no case is the offence being prosecuted in its non-aggravated form. The seriousness of the situations being investigated is supported by the fact that in six cases defendants have been charged with conspiracy<sup>8</sup>, and in one case with money laundering<sup>9</sup>. The minor violations of labour regulations are still prosecuted under the law 276/2003<sup>10</sup>. Article 603-*bis* is only invoked in connection with situations of serious labour exploitation which are usually denoted by several indices.**

**On the contrary, article 603-*bis* seems to protect employers against more serious charges. Before the introduction of article 603-*bis*, the offence of extortion (article 629 of the Italian criminal code) was used to repress the behaviour of employers who, by threatening layoff or failure to hire, had employees accept terms in violation of the law or collective bargaining, such as illegal work or actual salary inferior to the agreed one, or sign resignation letters. Among the analysed proceedings, extortion was used by the L'Aquila prosecutors in connection with facts predating the entering into force of article 603-*bis* and related to the post-earthquake rebuilding. Extortion, in its basic formulation, is punished more severely than the offence of article 603-*bis* when the crime is characterised by threat. Moreover, since it can be punished independently of any form of taking advantage of workers' being in need, it enables prosecution of many more behaviours of employers.**

**Behaviours punished under article 603-*bis* often fall within much more serious offences, such as enslavement (article 600 of the Italian criminal code) and trafficking of human beings (article 601), both punished with a term of eight to twenty years.**

Two of the proceedings being analysed, coming to the verdict, are clear witness to article 603-*bis*'s "protective" function of employers.

The first emblematic case is a recent judgment of the Naples Tribunal, made in connection to an instance of labour exploitation involving some Bangladesh nationals, hired in their native country with a false promise of a well-paid job in some textile factories of a fellow

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against the main defendant; the Agrigento office, in the case it was prosecuting, requested and obtained 3 interim measures against the main defendants; the Cosenza office requested and obtained 13 interim measures in personam of varying content while prosecuting a case of labour exploitation of farm workers. As to other economic sectors, the same Cosenza office requested and obtained a pre-trial custody while prosecuting a case of exploitation of Afghan construction workers; the Pesaro prosecutors' office (prosecuting a maker of solar panels) requested and obtained the home detention of the main defendant; the Padua office, in a case related to logistics, requested 5 interim measures in personam and obtained 4 and, in a case concerning the farming sector, requested and obtained 2 interim measures in personam; the L'Aquila office, in the case it is prosecuting, requested 16 interim measures and obtained 14. **Therefore, the total granted interim measures in personam are 46, out of 53 requests.** Additionally, an interim seizure was obtained by the Pesaro office against the main defendant.

<sup>8</sup> Catania, Napoli, Prato, Lecce and L'Aquila (two).

<sup>9</sup> Investigations of Padua.

<sup>10</sup> A typical example of this is a case prosecuted by the Asti office where the defendants had been charged with making service contracts against the requirements of article 29 of the law 276/2003. The charges were dropped because the facts were not material for purposes of the misdemeanour provided for in that law.

national of theirs. The main defendant, aided by a few accomplices, first promoted the illegal entrance of foreigners in Italy and then employed them in his factories in conditions of exploitation. The defendants were found guilty of conspiracy (article 416 of the Italian criminal code), aiding and abetting in illegal immigration (article 12 par. 3, 3-*bis* and 5 of the law 25 July 1998 n. 286) and labour exploitation. The facts happened before 2016 but article 603-*bis* in its original formulation could be applied because the businessman played an active role in the recruiting stage, too. Without resorting to article 603-*bis* the defendant would have been charged with trafficking of human beings, since there were all of the constitutive elements of this offence: the behaviour (of recruiting), the *modus operandi* (taking advantage of an individual situation of weakness) and the required purpose of exploitation. Thus, without article 603-*bis*, the defendant would have been likely sentenced to a much longer term. It is worth emphasising that, after the transposition of the 2011 EU directive on trafficking, this offence is present even if the recruitment followed by employment and exploitation does not take place abroad, but all of the offence's elements occur in Italy (so-called "internal trafficking").

As to the offence of enslavement, the Court of Assizes of Lecce, called upon to rule on the serious facts of labour exploitation that took place from 2008 to August 2011 in the Nardò countryside and emerged following the homonymous riots, charged three businessmen and eight brokers with it. The facts happened before the entering into force of article 603-*bis*<sup>11</sup>.

**We sadly note that, even though law n. 199 grants the victims of labour exploitation a social protection under article 18 of the immigration law (similarly to the protection accorded to victims of sexual exploitation), in the examined proceedings there is no trace of this measure.**

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<sup>11</sup> It should be emphasised that in some monitored cases, for instance in a case prosecuted by the Catania office, the investigation started by hypothesising enslavement, which was then demoted to labour exploitation.