

Paola Cavanna ■

Labour Exploitation in the Italian Agricultural Sector: “The Way of Production”

Abstract: Despite a solid legal framework, labour exploitation seems to be “the way of production” in the Italian agricultural sector, built around the goal of cutting costs and maximising profits through underpayment of wages. The paper aims to provide a picture of the phenomenon, overcoming a stereotypical perception of victims while challenging the assumption that criminal law is the panacea. The article is divided in four sections. After an introduction of the issues at stake, official statistics on recorded crime are presented and their reliability discussed. In the second section Italy is at the centre of the reflection to provide tangible cases within a global perspective, at the intersection of labour market and migration policies. The third section investigates who is a victim of labour exploitation. Subsequently, the concept of corporate crime is introduced. Finally, specific policy recommendations are made for strengthening the currently available redress, leaving criminal law tools as the last resort.

Keywords: labour exploitation, corporate crime, modern slavery, undocumented migrants, vulnerability.

Introduction

Although the European Union claims to be founded on values such as human dignity and freedom,¹ evidence of labour exploitation abounds, and agriculture – together with construction and domestic work – is among those sectors most concerned.² It is sufficient to take a scatty look at the reality in the agri-food sector to feel a disturbing gap between the terms of employment set by the law

Dr Paola Cavanna, Università Cattolica del Sacro Cuore (Italy), Paola.Cavanna@unicatt.it.

¹ See the Preamble to the Charter of Fundamental Rights of the European Union of 2012.

² International Labour Office, *Profits and Poverty. The Economics of forced labour*, ILO, Geneva 2014.

and the actual working conditions in which food is produced.³ According to Article 31 of the EU Charter of Fundamental Rights *every worker has the right to fair and just working conditions*, nevertheless many workers perform labour in the conditions that have been described, without hesitation, as close to slavery. Long working hours and underpayments, physical and psychological violence, the control over the workers mobility and extra-payments for food and water have led the media to decry the existence of “modern slavery” in Europe.⁴ Indeed, exploitation of workers who move within or into the EU seems to be a common element across the sector in Europe: see the case of Thai berry pickers unpaid for most of their seasonal work in Sweden,⁵ the Dutch serial offender that exploited Romanians, Polish and Portuguese workers on an asparagus farm⁶ as well as migrants exploited in the meat-processing industry in Germany.⁷ Moreover, it is largely demonstrated that where there is demand for cheap labour, victims of trafficking can be found, too: see the case of Bangladeshi workers trafficked to Greece and forced to work at the main strawberry farm in Manolada.⁸ By allowing labour exploitation to spread across agriculture, *the EU not only tolerates serious violations of fundamental rights, but ultimately allows them to have a negative impact on*

³ Fundamental Rights Agency, *Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights*, Publications Office of the European Union, Luxembourg 2015.

⁴ The expression “modern slavery” is used to describe a wide range of situations without much consideration of whether they meet legal definitions of slavery, forced labour or trafficking.

⁵ See further C. Woolfson, P. Herzfeld Olsson, C. Thörnqvist, *Forced labour and migrant berry pickers in Sweden*, “International Journal of Comparative Labour Law and Industrial Relations”, vol. 28, no. 2, 2012, pp. 147–176; L. Vogiazides, C. Hedberg, *Trafficking for forced labour and labour exploitation in Sweden: examples from the restaurant and the berry industries*, in: N. Ollus, A. Jokinen, M. Joutsen (eds.), *Exploitation of migrant workers in Finland, Sweden, Estonia and Lithuania: uncovering the links between recruitment, irregular employment practices and labour trafficking*, HEUNI, Helsinki 2013, pp. 171–237 and N. Mešić, C. Woolfson, *Roma berry pickers in Sweden: economic crisis and new contingents of the austeriat*, “Transfer: European Review of Labour and Research”, vol. 21, no. 1, 2015, pp. 38–50.

⁶ The Dutch farmer was sentenced for labour exploitation and to pay 7200 euros compensation to each claimant. Although all the interviewed workers had received a letter in their own language with information about the possibility of joining the criminal proceedings and submitting a claim, only five did so while 36 Romanian workers preferred to return home without claiming their wages. See Joseph Rowntree Foundation, *Detecting and tackling forced labour in Europe*, The Policy Press, London 2013, pp. 13–14.

⁷ B. Wagner, A. Hassel, *Posting, subcontracting and low-wage employment in the German meat industry*, “Transfer: European Review of Labour and Research”, vol. 22, no. 2, 2016, pp. 163–178.

⁸ *Chowdury and others v. Greece*, case no. 21884/2015, ECHR [2017]. According to the OSCE, agriculture represents one of the sectors in which trafficked workers are most commonly found: Organization for Security and Co-operation in Europe, *A summary of challenges on addressing human trafficking for labour exploitation in the agricultural sector in the OSCE Region*, OSCE, Vienna 2009, p. 21. See further Eurojust, *Prosecuting THB for the purpose of labour exploitation – Report*, Eurojust, The Hague, 2015.

*the labour standards of all industries.*⁹ Instead, within the EU project labour should be a tool for the construction of a person’s identity, feeding the human need for self-esteem and for social recognition.¹⁰

The article is divided into three sections. First, it provides a snapshot of available data around the phenomenon and discusses their reliability. As known, statistics are always to be read carefully, since *concepts, definitions, quantitative models, and theories must be adjusted to the fact that the data are not some objectively observable universe of ‘criminal acts’, but rather those events defined, captured, and processed as such by some institutional mechanism.*¹¹ The second section describes the phenomenon of labour exploitation, specifically targeting the Italian agriculture. Italy will be at the centre of the reflection to provide for tangible examples within a global perspective, at the intersection of labour market and migration policies. Attention will be paid to the relevant academic literature, data collected throughout ethnographic research and interviews with former victims, providing insights on what is currently known about labour exploitation in the Italian agricultural sector.¹² By focusing on a specific sector, supply chain issues as well as the peculiar market dynamics prevailing in the sector will be taken into due consideration. A better understanding of these dynamics and an appreciation of the social, political and economic environment within which legal norms have to be implemented are essential for a knowledge-based policy. This paper seeks, indeed, to follow the teaching that criminology stands as the empirical basis for criminal law.¹³ Accordingly, the analysis of different cases of labour exploitation is seen as an important contribution to deepen the understanding of this complex and largely hidden problem, acknowledging that each sector of the economy has different structural features. The phenomenological study is, indeed, aimed at obtaining

⁹ C. Manolopoulos, *Foreword*, in: Fundamental Rights Agency, *Severe labour exploitation: workers moving within or into the European Union. States’ obligations and victims’ rights*, Publications Office of the European Union, Luxembourg 2015, p. 3.

¹⁰ Insightfully, the European Court of Human Rights in *Niemietz v. Germany* (case no. 13710/1988, ECHR [1992]) has emphasised that the workplace is where people flourish by developing social relationship with outside work. According to Collins, self-realisation is at the basis of the right to work: *as social animals, human beings create their society around their work relations*. See H. Collins, *Is there a human right to work?*, in: V. Mantouvalou (ed.), *The right to work. Legal and philosophical perspectives*, Oxford–Portland 2015, pp. 17–38.

¹¹ A.D. Biderman, A.J. Reiss, *On exploring the “dark figure” of crime*, “Annals of the American Academy of Political and Social Science”, vol. 374, 1967, pp. 1–15.

¹² It is important to clarify that the term “victim” is herein used for legal purposes, but it does not imply that workers who suffered labour exploitation are passive subjects, they of course also possess agency. See further B. Andrees, *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, ILO Working Paper, Geneva 2008, p. 2 and R. Gomberg-Muñoz, *Willing to work: agency and vulnerability in an undocumented immigrant network*, “American Anthropologist”, vol. 112, no. 2, 2010, pp. 295–307.

¹³ In the Italian literature, see G. Forti, *L’immane concretezza. Metamorfosi del crimine e controllo penale*, Raffaello Cortina, Milano 2000, p. 10.

a picture as reliable as possible, clarifying the recurrent themes and patterns that may determine or allow labour exploitation and it might suggest a more promising range of tools for action. In the third section, the article tries to sketch out who is the victim of labour exploitation. The reality coming out is more complex and fraught than what the media usually report. Indeed, the media tend to reproduce stereotypical images, involving extreme violence and control, organised crime groups and illegal immigration, missing a wider discussion of what would need to be changed to prevent exploitation from penetrating food supply chains. The third section will contend that labour exploitation needs to be approached through the criminological category of “corporate crime” as defined by Pearce and Tombs (1998). Finally, specific policy recommendations will be made for strengthening the currently available redress, leaving criminal law tools as the last resort.

A methodological note

It is important to note that this article has been completed using mainly desk-research and review of the existing international literature, navigating between different legal systems.

Sharing the idea that *it is probably incorrect to describe the process of legal analysis as being dictated by a ‘methodology’*,¹⁴ we engage anyway in the effort to reflect upon previously unquestioned legal assumptions and to articulate an explanation of the methodology herein followed for the sake of achieving “genuine interdisciplinary rigour”.¹⁵ Going beyond the most traditional “black letter” methodology, the paper addresses “law in action”.¹⁶ In researching “in law”,¹⁷ legal texts (both books and academic papers) and relevant case-law have been the most important backup to understand the current legal framework to fight labour exploitation. The major part of the literature used has been published in the recent years and also in the process of writing, as the topic is very specific and contemporary. When researching “about law”,¹⁸ the economic and sociological implications have been taken into account in order to gain empirical knowledge and an understanding of how the law and legal proceedings impact on the parties involved. This has been done also for the purpose

¹⁴ P. Chynoweth, *Legal research*, in: A. Knight, Les Ruddock (eds.), *Advanced Research Methods in the Built Environment*, Wiley-Backwell, Oxford 2008, pp. 28-38:34.

¹⁵ Ivi, p. 37. Even though intriguing, it is not the purpose of this essay to engage in the old and recurring controversy whether law is a ‘true’ science.

¹⁶ R. Pound, *Law in books and law in action*, “American Law Review”, vol. 44, 1910, pp. 12–36.

¹⁷ H.W. Arthurs (ed.), *Law and learning: report to the Social Sciences and Humanities Research Council of Canada*, Social Sciences and Humanities Research Council of Canada, Ottawa 1983.

¹⁸ P. Chynoweth, *Legal research*, in: A. Knight, Les Ruddock (eds.), *Advanced research methods in the built environment*, Wiley-Backwell, Oxford 2008, pp. 28-38:30.

of evaluating the effectiveness of the current (intertwined) legal framework and, if needed, to facilitate a future change in the regulation.

Despite the normative character of legal rules,¹⁹ the empirical world affects the validity of a legal framework. Following this line of reasoning, four cases have been provided, based on the aspiration to develop explanations of the phenomenon under study, clarifying the recurrent themes and patterns that may determine or allow labour exploitation. Case studies have been conducted following Yin’s definition of such a method as *an empirical enquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident*.²⁰ This is exactly what has been intended in this research, gaining some insight in the complexity of labour exploitation with regards to the Italian agricultural sector for the sake of better regulation that would be informed by real life. All the cases presented conform to Yin’s definition. The criteria for the selection of cases were as follows:

- *Product*: production of items falling within the product categories of the sector under study, namely the agri-food sector, that is the business of agricultural production, referring to the range of activities encompassed by modern food production (agriculture, food processing, wholesale and retail);
- *Geographical location*: an attempt has been made to cover the entire country having regard to the peculiarities of the context, in order to ensure an accurate representation;
- *Criminal outcome*: cases having resulted in criminal proceedings and judgments for an event of alleged labour exploitation committed in Italy, in order to assess the criminal law’s ability to address the issue;
- *Availability*: cases being found in published reports such as the FRA Report of 2015, the Eurojust Report of 2015 and the 2016 Eurispes Report.

It is important to emphasise that the empirical elements of the case studies are not intended to be comprehensive, which would have required extensive time in the field. Rather, the research aims at providing a conceptual framework, fleshing out the analytical categories with real life. The close dialogue between the empirical findings and the existing literature improves its generalisability. As such, the findings can deliver interesting insights for a regulation focusing on those elements that really matter. It is, indeed, the empirical basis that has to ensure the pertinence and the innovative dimension of the research.

¹⁹ As Kelsen highlighted, legal rules dictate how individuals ‘ought’ to behave. See H. Kelsen, in: M. Knight, *Pure theory of Law*, University of California Press, Berkeley 1967.

²⁰ R.K. Yin, *Case study research. Design and methods*, Sage, London 2009, p. 23.

1. The size of the phenomenon

The International Labour Organization has estimated that 20.9 million people are victims of forced labour globally, trapped in jobs into which they were coerced or deceived and which they cannot leave.²¹ Of the total number of 20.9 million forced labourers, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises with illegal profits exceeding 44 billion US dollars.²² Out of these, 14.2 million (68%) are victims of forced labour exploitation in economic activities such as agriculture, construction, domestic work or manufacturing. However, few victims of corporate abuses are identified as such and even fewer perpetrators are convicted. According to the 2015 Eurostat working paper, including the data for 2010–2012, 30,146 trafficking victims had been registered in the EU Member States.²³ Labour exploitation accounts for around 19%, and the majority of victims are male (71%). The majority of registered victims of labour trafficking (61%) have EU citizenship, particularly Bulgarian or Romanian. Pursuant to the Report from the Commission to the European Parliament and the Council of 2016 on the progress made in the fight against trafficking in human beings, labour trafficking accounts for 21% of total registered victims, with an increase in the number of male victims (74%), specifically in the agricultural sector.²⁴

At the national level, there is no systematic collection of information in Italy. NGOs register the victims that they are assisting: in 2014, there were 35 cases of labour exploitation, of which 11 were in agriculture (in 2013, 22 out of 71 total cases).²⁵

²¹ International Labour Office, *Profits and poverty: the economics of forced labour*, ILO, Geneva 2014. See also International Labour Office, *ILO global estimate of forced labour. Results and methodology*, ILO, Geneva 2012 and *A global alliance against forced labour. Global Report under the follow-up to the Declaration on fundamental principles and rights at work*, ILO, Geneva 2005.

²² International Labour Office, *ILO global estimate of forced labour. Results and methodology*, ILO, Geneva 2012.

²³ The working paper is based on statistical data as gathered and submitted by national authorities. Italy is considered a destination and transit country: 6,572 victims of trafficking have been identified: Eurostat, *Trafficking in human beings*, Publications Office of the European Union, Luxembourg 2015. See also Europol, *Situation report. Trafficking in human beings in the EU*, Europol, The Hague, 2016. According to the report, in 2014 Europol received 190 contributions by Member States' law enforcement agencies (see p. 24).

²⁴ European Commission, *Report from the Commission to the European Parliament and the Council. Report on the progress made in the fight against trafficking in human beings (2016) as requires under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, 19 May 2016, Com(2016) 267 final. See also European Commission, *Commission staff working document: Accompanying the document – Report from the Commission to the European Parliament and the Council. Report on the progress made in the fight against trafficking in human beings (2016) as requires under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, 19 May 2016, SDW(2016) 159 final, particularly pp. 70–76.

²⁵ L. Palumbo, *Trafficking and labour exploitation in domestic work and the agricultural sector in Italy*, EUI, San Domenico di Fiesole 2016.

However, this data collection is not coordinated and has varied coverage, leading sometimes to double counting. As a consequence, the collected data, while informative and valuable as such, are not comparable. Interestingly, no official data are available on serious forms of exploitation in the country (i.e. illegal employment of thirdcountry nationals under particularly exploitative working conditions, illegal gangmastering and slavery). Only the data concerning trafficking are recorded, even though not always made publicly available: relevant websites such as the SIRIT, Computerised System for the Collection of Information on Trafficking set up by the Department of Equal Opportunities and used by NGOs and other bodies implementing social protection projects, have not been updated yet. The number of convictions is significantly lower than the number of cases reported to the authorities. According to the U.S. Trafficking in Persons Report of 2016, in 2014 the Italian authorities investigated 2,897 suspected traffickers (3,803 in 2013), 824 were prosecuted (1,024 in 2013), 169 were convicted and appeals courts affirmed the convictions of 184 defendants (representing a significant increase from 74 traffickers convicted and 108 convictions upheld in 2013). According to the 2015 Eurostat Working Paper, over the reference period (2010-2012), only 69 traffickers were convicted.

It is important to note that all the available estimates and official statistics on recorded crime can only ever show a part of the picture: many cases remain hidden and the cases that have come to the attention of the authorities represent only a fraction of the full volume of the phenomenon.²⁶ Accurate figures are difficult to find also because victims – the key sources of information – are reluctant to report their experiences to the authorities, fearing deportation.²⁷ In the very words of the UN Special Rapporteur on trafficking: *Any irregular migrant wanting to report abuse, including trafficking and labour exploitation, risks exposing himself or herself to the real danger of being charged for the offence of ‘irregular entry or stay’, and even detained and ultimately expelled. As a result, many irregular migrants are afraid to contact the authorities and avoid seeking legal protection and remedies, even when they are entitled to them.* This places huge challenges to the identification

²⁶ K. Kangaspunta, *Collecting data on human trafficking availability reliability and comparability of trafficking data* and F. Laczko, *Enhancing data collection and research on trafficking in persons*, both in: E.U. Savona, S. Stefanizzi (eds.), *Measuring human trafficking. Complexities and pitfalls*, 2007, pp. 27–36 and pp. 37–44. On the main methodological challenges see also B. Andrees, M.N.J. van der Linden, *Designing trafficking research from a labour market perspective: the ILO experience*, “International Migration”, vol. 43, no. 1/2, 2005, pp. 55–73.

²⁷ UN Special Rapporteur on trafficking in persons, especially women and children, *Report of the Special Rapporteur on trafficking in persons, especially women and children – Joy Ngozi Ezeilo. Mission to Italy*, 2014, para. 37. See also Organization for Security and Co-operation in Europe, *Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Italy from 17–18 June and 15–19 July 2013*, OSCE, Vienna, para. 21 and Amnesty International, *Exploited labour. Migrant workers in Italy’s agricultural sector*, Amnesty International Publications, London, 2012, pp. 29–31.

of potential cases. It is also unclear to what extent a larger reported number is the evidence of a greater amount of cases, of a more effective criminal justice response or of a more efficient victims identification system. Conversely, the main reason for the low numbers of trafficked victims may be due to the fact that the current systems of victim assistance fail to provide incentives for the victims to resort to the authorities and become identified victims: in practice, they may lose more than they gain when they cooperate with the authorities. It will become increasingly difficult to justify the establishment and development of a system of targeted victim assistance, amendments of domestic legislation, the financing of NGOs and working groups, if victims are not identified.

Measuring the real magnitude of labour exploitation in the Italian agriculture remains a very complex task due to its hidden nature, reinforced by the victims' reluctance to approach the authorities.²⁸ Reliability of data remains a thorny issue. The UNESCO trafficking statistics project thus summarised the problem: *numbers take on a life of their own, gaining acceptance through repetition, often with little inquiry into their derivations. Journalists, bowing to the pressures of editors, demand numbers, any number. Organizations feel compelled to supply them, lending false precisions and spurious authority to many reports.*²⁹

2. The phenomenon of labour exploitation in the Italian agriculture

After a brief overview of the Italian agricultural sector and its peculiarities, this section will present empirical cases. This is done for the purpose of capturing recurrent themes and patterns that may determine or allow labour exploitation. An improved knowledge of the phenomenon is seen as the starting point for examining the ability of the current (intertwined) legal framework to deal with employers who breach the rules, from low-level non-compliance to serious criminality (i.e. slavery and trafficking). The contention is that labour exploitation represents a structural problem of the Italian agriculture. This should also be read in the context of global processes (i.e. global supply chains).³⁰

²⁸ See further C. Coleman, J. Moynihan, *Understanding crime data: haunted by the dark figure*, Open University Press, Buckingham 1996 and M.N. Datta, K. Bales, *Slavery in Europe: part 1, estimating the dark figure*, "Human Rights Quarterly", vol. 35, 2013, pp. 817–829.

²⁹ Unesco 2003 as cited by A.A. Aronowitz, *Overcoming the challenge to accurately measuring the phenomenon of human trafficking*, "Revue Internationale de Droit Pénal", vol. 3–4, 2010, pp. 493–511: 498. Likewise, see G. Tyldum, A. Brunovskis, *Describing the unobserved: methodological challenges in empirical studies on human trafficking* and L. Kelly, "You can find anything you want": A critical reflection on research on trafficking in persons within and into Europe, both "International Migration", vol. 43, no. 1/2, 2005, respectively pp. 17–34 and pp. 235–265.

³⁰ Global supply chains have intensified challenges for decent work. See further G. Gereffi, J. Lee, *Why the world suddenly cares about global supply chains*, "Journal of Supply Chain Management",

Indeed, the globalisation of food supply chains has dramatically increased the level of competition, both between farmers and workers. Given the high cost of various intermediaries in the global supply chains, in order to be profitable, food production needs to employ cheap and flexible labour, increasingly provided by migrants all over the world.³¹ This may lead to labour market practices that facilitate labour exploitation – and ultimately trafficking in human beings. After all, if exploitation is embedded in our economic model, trafficking in human beings might be a logical outcome.

2.1. An overview of the sector

The agri-food in general is a strategic sector in Italy, well-developed and fully integrated into the global market, representing 4% of total added value or 1,468,941 million euros.³² In particular, Italy is considered as one of the most important global producers of *quality* agri-food products.³³ The so-called “Made in Italy” food industry is estimated to make up 8.7% of Italy’s GDP (14% including related business and 14% in terms of jobs).³⁴

vol. 48, no. 3, pp. 24–32. Several scholars have found a link between global supply chains and processes of employment degradation: to navigate the issue see S. Barrientos, F. Mayer, J. Pickles, A. Posthuma, *Decent work in global production networks: framing the policy debate*, “International Labour Review”, vol. 150, no. 3–4, 2011, pp. 299–317. For an overview of how labour exploitation fits into broader dynamics of international development see G. Lebaron, *Slavery, human trafficking, and forced labour: implications for international development*, in: J. Grugel, D. Hammett, *The Palgrave Handbook of international development*, Palgrave Macmillan, London 2016, pp. 381–398.

³¹ According to OSCE, agricultural work has been particularly impacted by global trends such as migration, labour contracting and fragmentation of labour: Organization for Security and Co-operation in Europe, *A summary of challenges on addressing human trafficking for labour exploitation in the agricultural sector in the OSCE Region*, OSCE, Vienna 2009, pp. 29–32. According to Bonanno and Barbosa Cavalcanti, labour exploitation may be understood as ‘the primary factor in restructuring of global agri-food’: A. Bonanno, J. S. Barbosa Cavalcanti, *Labor relations in globalized food. Research in rural sociology and development*, Emerald, Bingley 2014.

³² Istat, *Anno 2015 – Landamento dell’economia agricola*, ISTAT, Roma 2016, http://www.istat.it/it/files/2016/06/Andamento-economia-agricola_2015_PC.pdf?title=L%E2%80%99andamento+dell%E2%80%99economia+agricola++06%2Fgiu%2F2016++Testo+integrale.pdf [accessed: 25.06.2018]. See also Eurostat, *Agriculture, forestry and fishery statistics – 2015 edition*, Publications Office of the European Union, Luxembourg 2016.

³³ Indeed, it is the leading country within the EU for the number of certifications for geographical indications and traditional specialities, known as protected designation of origin (PDO), protected geographical indication (PGI) and traditional specialities guaranteed (TSG). See Istat, *Quality agro-food products PDO, PGI and TSG – Year 2014*, ISTAT, Roma 2016, http://www.istat.it/en/files/2016/03/EN_DOP_2014.pdf?title=Quality+agro-food+products++25+Mar+2016++Full+text.pdf [accessed: 25.06.2018].

³⁴ A. Capparelli, *Italy’s agriculture and food industry has a lot of growth potential*, in *Sole 24 ore*, <http://www.italy24.ilssole24ore.com/art/business-and-economy/2014-11-18/lots-of-unexpressed-potential-to-expand-italy-s-agriculture-and-food-export-204211.php?uui=ABSGPSFC> [accessed: 25.06.2018].

Accurate data with regards to the number of employees are difficult to obtain due to the seasonality of agricultural production (with peaks of intense work) and the well-known prevalence of undeclared work in the sector.³⁵ Migrant workers seem to constitute *a structural, steadily growing component of the agricultural workforce (both as declared workers and as undeclared workers)*.³⁶ According to INEA figures, 42.1% of third-country nationals and 40.4% of EU workers coming to Italy are paid salaries below the minimum wage.³⁷ In addition, phenomena such as under-reporting worked days and working hours exceeding the number contractually agreed are widespread.³⁸ A factor that is typical of the agricultural sector, especially in Southern Italy, is the phenomenon of illegal gangmastering, often closely linked to organised crime.³⁹ Gangmasters have the task of illegally hiring daily labourers on behalf of the employers. Every early morning migrants wait in the centre of the town or just on the street close to the “ghetto” – a segregated informal camp in the countryside – for the gangmaster to pick them up and drive them to the working place (farms are typically not served by public transport).⁴⁰ Basically, they match labour supply with demand and they control the harvest in terms of the speed of work, breaks, length of the working day and so on. They operate year-round but they are most active during peak seasons. Operationally, they pay the workers (around 25 euros per day), after deducting inflated costs of food, transport to the fields, accommodation and

³⁵ Eurispes, *Agromafie. 4° Rapporto sui crimini agroalimentari in Italia*, Minerva, Roma 2016, pp. 152-153.

³⁶ R. Cillo, T. Toffanin, *Corporate social responsibility to prevent human trafficking. Immigrant workers in Italian agriculture – A mapping*, 2014, p. 14, http://www.unive.it/media/allegato/DIP/Filosofia_beni_culturali/laboratori/ricerca-sociale/digital-library/cillo-toffanin.pdf [accessed: 25.06.2018]. According to official data, the foreign labour force in the sector accounts for 16.6% of the total, approximately three times the incidence recorded ten years earlier: Ministry of labour and Social Policies, *Seventh Annual Report – Migrants in the Italian labour market*, 2017, http://www.integrazionemigranti.gov.it/Documenti-e-ricerche/SintesiENG_SettimoRapportoAnnuale_GlistranierinelmercatoLavoroinItalia_DEF.pdf [accessed: 25.06.2018].

³⁷ Istituto Nazionale dell’Economia Agraria, *Annuario dell’agricoltura italiana 2011*, INEA, Roma 2012, p. 161 and pp. 164-165.

³⁸ *Ibidem*.

³⁹ For a sociological study, in the Italian literature, L. Leogrande, *Uomini e caporali. Viaggio tra i nuovi schiavi nelle campagne del Sud*, Mondadori, Milano 2008.

⁴⁰ Transport, which usually costs between three and five euro per person, is at the expense of the labourers. The presence of both large and small ghettos for the migrant workforce facilitates brokers and entrepreneurs in accessing new reserves of workers and at the same time limits wage demands and the workers’ bargaining power. *Renting a house in a village or town is complicated because of the low wages earned and the inbred racism of the local population. While the ghetto, as well as ensuring greater protection for undocumented migrants, allows the construction of a kind of African (or, sometimes, more specifically Burkinabe, Ghanaian, Ivorian, Sudanese, Moroccan) ‘community’, as they can find themselves with friends, family and compatriots. It is also easier to find a job in the ghetto, and this arrangement makes it easier to organize work and transportation to the field by the gangmaster*: see D. Perrotta, D. Sacchetto, *Migrant farmworkers in Southern Italy: ghettos, caporalato and collective action*, “International Journal on Strikes and Social Conflicts”, vol. 1, no. 5, 2014, pp. 79–80.

other essentials.⁴¹ Gangmasters generally also provide other services such as housing, transportation to supermarkets, railway stations or hospitals, the supply of food and water, and the provision of credit for the workers’ needs, thus strengthening their dependency.⁴² The recourse to threats and violence is not marginal.⁴³ Such a system allows the workforce management literally on a “just-in-time” basis.⁴⁴

The high percentage of irregularities (i.e. 51.65%) may also be explained by the peculiarities of the sector, constituting one of the factors underlying the widespread nature of exploitation in the Italian agriculture.⁴⁵ First, the recourse to irregular work is seen as a means for producers to adjust to seasonal discontinuities and supply chain management. Low wages coupled with the labour-intensive nature of the sector have led to a high concentration of seasonal migrant labour. The Placido Rizzotto Foundation estimates that 400,000 workers without an employment contract, of whom around 100,000 (80% of them foreigners) are forced to be involved in forms of blackmail and live in injurious conditions, with a turnover of 9,000,000,000 euros and 600,000,000 euros per year of tax evasion.⁴⁶ Second, employers can declare the working days performed by workers at a later time, presenting a form to the National Institute for Social Security (INPS) every three months. This regulatory regime *de facto* allows the employer to declare fewer working days than those effectively performed by the workers. Lastly, small and medium-sized companies, which are the most widespread in Italy, are difficult to monitor, also due to the lack of adequate resources. In September 2015, the Italian Government launched the network of a quality agricultural work [*Rete del lavoro agricolo di qualità*] aimed

⁴¹ As observed by Perrotta and Sacchetto, *the gangmaster draws his lifeblood from the isolation of the workforce*: D. Perrotta, D. Sacchetto, *Migrant farmworkers...*, *op. cit.*, p. 97.

⁴² From the very words of a foreign worker: *The capos do everything. They have power, they behave bad with us. They don't want us to stop working during the day, they decide when we eat or drink. Many of us, they took our documents, 'because they want to make contracts'. But it is fake, they just don't want us to go around, they want us to depend on them for transport, food, everything. The capos sometimes steal your money, and if you ask for payment, they tell you you're not going to work anymore. So I know I have to stay quiet or I can't work anymore.* See G. Carlini, *Ghetto Ghana workers and the new Italian 'slaves'*, in: *Open Democracy*, 22 July 2016, <https://www.opendemocracy.net/beyondslavery/gloria-carlini/ghetto-ghana-workers-and-new-italian-slaves> [accessed: 25.06.2018].

⁴³ See the Parliamentary Question No. 168 of 29 April 2009 concerning the area surrounding Foggia (Apulia). However, Perrotta and Sacchetto distinguish different typologies of gangmasters (full-time gangmaster; black boss; the father-master; etc.): D. Perrotta, D. Sacchetto, *Migrant farmworkers...*, *op. cit.*, pp. 75–98.

⁴⁴ T. Ohno, *Toyota production system. Beyond large-scale production*, Productivity Press, New York 1988.

⁴⁵ Ispettorato Nazionale del Lavoro, *Rapporto annuale dell'attività di vigilanza in materia di lavoro e legislazione sociale – Anno 2016*, Roma 2016, <http://www.lavoro.gov.it/documenti-e-norme/studi-e-statistiche/Documents/Rapporto%20annuale%20dell%E2%80%99attivita%20di%20vigilanza,%20anno%202016/rapporto-annuale-2016-INL-attivita-di-vigilanza.pdf> [accessed: 25.06.2018].

⁴⁶ Eurispes, *Agromafie. 4° Rapporto sui crimini agroalimentari in Italia*, Minerva, Roma 2016, p. 156.

at listing agricultural companies that respect fair working conditions.⁴⁷ However, as highlighted by Palumbo, once a company is part of the network, it is subjected to fewer controls rather than more.⁴⁸ Indeed, Government enforcement agencies will prioritise their controls over companies not belonging to the network (the rule does not apply if workers or trade unions representatives ask for intervention or in case of complaints to judicial authority or other administrative authorities). What is clear is that generalised informality may lead to cases of severe exploitation and outright human trafficking.

2.2. Case studies

This section will present recent cases with a short analysis of the context, ensuring a good mix in terms of types and geographical coverage. This is done in order to improve the understanding of labour exploitation in the Italian agriculture, avoiding stereotypical images, which fail to grasp the complexity of the context in which the phenomenon occurs. Four cases have been selected, also on the basis of analyses of available data sets: a) a case of slavery in the Apulian countryside; b) “double exploitation” of Romanian women in Sicilian greenhouses; c) the case of the Sikh community in Central Italy, and d) exploitative working conditions in the “quality food” product chains in the North of Italy. Such a focus on cases is intended to develop a conceptual model of the business of labour exploitation to deepen the understanding of its *modus operandi*, expanding the knowledge about how labour exploitation allows businesses to turn a profit. The case study has been conducted following Yin’s definition of such a method, which is *an empirical enquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident*.⁴⁹

Slavery in the Apulian countryside

An organised criminal group recruited Polish agricultural labourers through misleading advertisements in local newspapers and on Polish websites that promised well-paid jobs in Italy. Transfer, accommodation and food were promised, providing for the possibility of paying the services when receiving the wages.⁵⁰ Once the Polish

⁴⁷ See Article 6, Law Decree No. 91/2014 converted with changes by Law No. 116/2014.

⁴⁸ L. Palumbo, *Trafficking and labour exploitation in domestic work and the agricultural sector in Italy*, EUI, San Domenico di Fiesole 2016, pp. 28–29 and L. Palumbo, *Why show your cards? The problem of transparency in agricultural supply chains*, in: *Open Democracy*, 27 May 2016, <https://www.opendemocracy.net/beyondslavery/pt/letizia-palumbo/why-show-your-cards-problem-of-transparency-in-agricultural-supply-cha> [accessed: 25.06.2018].

⁴⁹ R.K. Yin, *Case study research. Design and methods*, Sage, London 2009, p. 23.

⁵⁰ See further in the Italian literature A. Giuliani, *I reati in materia di “caporalato”, intermediazione illecita e sfruttamento del lavoro*, Padova University Press, Padova, 2015, pp. 116–118 and F. Gatti, *I was*

workers arrived in southern Italy, they were enslaved into a gangmaster system of forced labour: they were not allowed to move freely and had deductions illegally made from their wages. This was not a mere situation of labour exploitation. Workers were reduced and held, through deceit, violence and threats in a state of continuous subjection, forced to work in the Apulian countryside in inhumane conditions for ten hours a day without any break. Their passports were confiscated and they were hosted in dilapidated farmhouses, without external relations, in a condition of promiscuity and continuously supervised in order to prevent potential attempts of leaving. In addition, there was a system of penalties in the case of absence or illness, which could consist in non-payments, physical beatings and retaining of food. Here, the Italian Supreme Court found integrated the offence of slavery under Article 600 of the Italian Criminal Code.⁵¹ The Italian jurisprudence has always used the slavery offence to punish exploiting employers, but it has to be proven, beyond any reasonable doubt, that victims had no possibility to *determine themselves in their life choices*. Such a high threshold is required not to render banal slavery by applying it to circumstances that amount to no more than a seriously exploitative employment relationship. Nowadays, the so-called *caporalato* provision (Article 603 *bis* of the Italian Criminal Code) is intended to fill the gap in the legal system fighting the distortions of the labour market that, as characterised by exploitation, rest in between the mere illegal brokering activities and the crime of slavery.⁵² In these cases, other offences may be notified, for instance, exploitation of illegally staying third-country nationals, maltreatment of family members or cohabitants and extortion.

Despite the clear criminal prohibition against slavery and the available tools (e.g. longer preliminary investigations, and potential use of undercover agents), prosecutions remain exceptional at the national level, particularly with regards to legal persons. Moreover, such prosecutions are often difficult and unsuccessful endeavours. Barriers to effective investigation and prosecution of slavery – with particular reference to the agricultural sector – include impediments to accessing victims (in the fields) and their testimony, including the reluctance of the victims

a slave in Puglia, “L’Espresso”, 4 September 2006, <http://espresso.repubblica.it/palazzo/2006/09/04/news/i-was-a-slave-in-puglia-1.1319> [accessed: 25.06.2018]. On the growing importance of the new technologies in recruiting victims, see European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The EU Strategy towards the eradication of trafficking in human beings 2012–2016*, 19 June 2012, COM/2012/0286 final, p. 15 and A. P. Sykiotou, *Trafficking in human beings: Internet recruitment. Misuse of the Internet for the recruitment of victims of trafficking in human beings*, Council of Europe, Strasbourg 2007.

⁵¹ Court of Cassation, Decision No. 40045/2010.

⁵² To date, Article 603 *bis* of the Italian Criminal Code punishes (i) whoever recruits workers for third parties under exploitative conditions, taking advantage of the workers’ state of need; and (ii) whoever uses, hires or employs workers, including through brokering activities, exploiting them and taking advantage of their state of need. As the reframed provision is rather new (see “Law”, no. 199/2016), there is little experience to date with its practical implementation and enforcement.

themselves to cooperate for fear of further harm (i.e. imprisonment or deportation); low incentives for conducting costly, time-consuming and often dangerous transnational investigations; social acceptance of slavery despite its formal illegality that is also reflected in the lack of political will to eradicate such a phenomenon.

When sexual exploitation is added

The case of “double exploitation” faced by Romanian female workers employed in the countryside around Ragusa (Sicily) has recently been brought to the attention of the general public.⁵³ The area is one of the most important vegetable districts in Italy, hosting the highest concentration of greenhouse farming, especially for the cultivation of tomatoes, eggplants, zucchini and peppers. As an outset of the development of greenhouses, women constituted a fundamental part of the total labour force. Indeed, women are hired more frequently than men since they are considered quicker, more accurate and more attentive to the appearance of the product.⁵⁴ Here, Romanians, who accept lower pay, have largely replaced Tunisians.⁵⁵ Since 2007, following the Accession Treaty of 2005, when Romania joined the European Union, employers no longer risk incurring the crime of aiding and abetting illegal immigration. Paradoxically, acquisition of EU citizenship has made these people more easily exploitable. More than 40% of the Romanians working in the greenhouses are women aged between twenty and forty. They come to Sicily in coaches from the Botosani region, pushed by the gap between the rising costs of living and average wages in Romania, for the purpose of remitting money back home.⁵⁶ They rarely consider Italy as a country where to build their future. It is rather a temporary place of employment and, as such, many tolerate abusive conditions.

⁵³ See A. Mangano, *Violentate nel silenzio dei campi a Ragusa. Il nuovo orrore delle schiave romene*, “L’Espresso”, 15 September 2014, <http://espresso.repubblica.it/inchieste/2014/09/15/news/violentate-nelsilenzio-dei-campi-a-ragusa-il-nuovo-orrore-delle-schiave-rumene-1.180119> [accessed: 25.06.2018]; D. Di Vico, *Romanian slave workers forced to abort*, “Corriere della Sera”, 23 October 2014, http://www.corriere.it/english/14_ottobre_23/romanian-slave-workers-forced-to-abort-c0e2eb54-5aa4-11e4-a20c-1c0cce31a000.shtml [accessed: 25.06.2018] and L. Tondo, A. Kelly, *Raped, beaten, exploited: the 21st-century slavery propping up Sicilian farming*, “The Guardian”, 12 March 2017, <https://www.theguardian.com/global-development/2017/mar/12/slavery-sicily-farming-raped-beaten-exploited-romanian-women> [accessed: 25.06.2018].

⁵⁴ V. Piro, G. Sanò, *Entering the ‘plastic factories’. Conflicts and competition in Sicilian greenhouses and packinghouses*, in: A. Corrado, C. De Castro, D. Perrotta (eds.), *Migration and agriculture. Mobility and change in the Mediterranean area*, Routledge, Abingdon 2016, pp. 293-308:295.

⁵⁵ International Organization for Migration, “*Stagione amara*” *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia – Dicembre 2010*, IOM Italy, Roma 2010, p. 43.

⁵⁶ L. Palumbo, *Trafficking and labour exploitation in domestic work and the agricultural sector in Italy*, EUI, San Domenico di Fiesole, 2016, pp. 19–22 and L. Palumbo, A. Sciuirba, *New mobility regimes, new forms of exploitation in Sicily*, in: *Open Democracy*, 9 July 2015, <https://www.opendemocracy.net/beyondslavery/letizia-palumbo-alessandra-sciuirba/newmobility-regimes-newforms-of-exploitation-in-s> [accessed: 25.06.2018].

They work in the polytunnels up to eleven hours a day, six days a week and they live nearby in appalling conditions. Moreover, they are not provided with protective measures, even though they are in continuous contact with toxic pesticides. Quite often, they choose to work in this sector given the fact that they can bring their children over and live with them. Yet, Romanian women are increasingly the victim of an economic subjection that has also become sexual. There are no episodes of brutal violence, Romanian women are just at the mercy of their bosses: as Palumbo and Sciuurba put it, *migrant women who work in the greenhouses know that, in order to keep their job, sooner or later, they will probably have to go along with sexual requests of the employer*.⁵⁷ If they lose their job, they lose their housing. This is how the farmers' unspoken blackmail works.

Sikh in the Latina area: a community of merely hands

Research led by Omizzolo has revealed the scale of the exploitative and sometimes hazardous conditions to which Sikh workers are subjected in the fields of the Agro Pontino Region (Lazio), where courgettes, radishes, melons, kiwis and mozzarella are produced.⁵⁸ The sociologist describes the exploitative practices as an insider: he infiltrated among the summer workers and experienced first-hand the enslavement suffered by the Indian Sikh labourers. According to Omizzolo, about 7,000 Indian nationals live in the area, mostly of Sikh faith and originating from the Indian State of Punjab. The recruitment starts in the workers' country of origin (and, here, the debts start). They claim to be paid less than Italians that are working with them and to have worse working conditions, regardless of their status.⁵⁹ It is commonly taken for granted that legalisation automatically protects migrants from exploitation,

⁵⁷ L. Palumbo, A. Sciuurba, *New mobility regimes, new forms of exploitation in Sicily*, in: *Open Democracy*, 9 July 2015 and A. Sciuurba, *Effetto serra. Le donne rumene nelle campagne del ragusano*, in: *L'Altro Diritto*, 2013, <http://www.altrodiritto.unifi.it/ricerche/migranti/ragusa.htm> [accessed: 25.06.2018].

⁵⁸ In Migrazione, *Doparsi per lavorare come schiavi. Un esercito di braccianti indiani sikh sfruttati e costretti a doparsi per sopportare la fatica dei campi e le violenze dei "padroni", a pochi chilometri dalla Capitale*, 2014, http://www.inmigrazione.it/UserFiles/File/Documents/87_2014%20-%20DOPARSI%20PER%20LAVORARE%20COME%20SCHIAVI.pdf [accessed: 25.06.2018]; In Migrazione, *Sfruttati a tempo indeterminato. Storie di un collaudato sistema di sfruttamento lavorativo dei braccianti agricoli nell'agro pontino*, 2014, http://www.inmigrazione.it/UserFiles/File/Documents/109_SFRUTTATI%20A%20TEMPO%20INDETERMINATO.pdf [accessed: 25.06.2018]; M. Omizzolo, *The Sikh community in the province of Latina (Italy). Exploitation, discrimination, violence*, "Review of Agrarian Studies", vol. 3, no. 1, 2013; M. Omizzolo, *La formazione dello spazio sociale transurbano e il caso della comunità sikh della provincia di Latina*, in: C. Colloca, A. Corrado (eds.), *La globalizzazione delle campagne. Migranti e società rurali nel Sud Italia*, Franco Angeli, Milano 2013, pp. 159-171; M. Omizzolo, *I Sikh a Latina. Una storia trentennale di lavoro agricolo*, "Libertà Civili", vol. 5, nr. 10, 2010, pp. 108-115. See also Amnesty International, *Exploited labour. Migrant workers in Italy's agricultural sector*, Amnesty International Publications, London 2012, pp. 24-25.

⁵⁹ *Ibidem*.

but the Sikh community in the Agro Pontino rather proves that holding a valid work permit does not guarantee labour rights protection. It has been defined a “community of merely hands”: speaking little or no Italian, many cycle long distances every day, they work 10–14 hours per day, seven days per week, for 3.00 euros per hour instead of 8.26 euros per 6.40 hours as stated by the relevant collective agreement.⁶⁰ Their work is overseen by gangmasters, often members of the Sikh community. Long hours and shift work entirely spent within the holding with co-nationals may undermine opportunities to improve Italian language skills and integrate with the local community. Not surprisingly, a growing number of workers are taking performance-enhancing drugs and painkillers in order to keep up with the inhuman work-rhythm imposed.⁶¹ Few workers admit chewing husks as drug use is taboo in the community. A worker said to the Thomson Reuters Foundation: *In summer it is very hot, your back hurts. A bit of opium helps you not to get tired... Too much puts you to sleep, I took just a little, only to work.*⁶² Cases of physical violence have been reported, too.

The association “In Migrazione” has supported migrants willing to bring civil action in a criminal trial against the exploiters. This process ended up with the charging of five people for the offences of forgery, fraud and breach of immigration law. Moreover, the association organises courses in Italian in the neighbourhood where the majority of the members of the Sikh community live. This is an important initiative since the knowledge of the local language is a fundamental step towards stronger integration. Interestingly, a recent movie combining the documentary and the traditional Punjabi choreographies shows the humiliation of the workers exploited in the Agro-Pontino region.⁶³

Exploitation in the ‘quality food’ product chains

Cases of labour exploitation have been detected also in the Northern regions. Moscato, Barolo, Dolcetto and Barbera are high-quality wines distinctively produced in Piedmont, then exported and recognised all over the world. In the area of production, grapes are harvested mainly by migrant workers often under exploitive conditions. Canelli, a small town at the southern tip of Piedmont, has become a hub for migrants looking for a job in the vineyards. Given extremely low wages, the living conditions are dire: many migrants find shelter in the countryside

⁶⁰ M. Omizzolo, *Il movimento bracciantile in Italia e il caso dei braccianti indiani in provincia di Latina dopati per lavorare come schiavi*, in: M. Omizzolo, P. Sodano (eds.), *Migranti e territori. Lavoro diritti accoglienza*, Ediesse, Roma 2015, pp. 201-265:243.

⁶¹ In Migrazione, *Doparsi per lavorare come schiavi...*, *op. cit.*

⁶² U. Bacchi, *Opium numbs the pain for Indian pickers exploited on Italian farms*, “Thomson Reuters Foundation News”, 19 July 2017, http://news.trust.org/item/20170719050300-ut4bn/?inf_contact_key=447a63ecc17e00e3fef0b034b03573fbc665c3f11906f1024df01290aca63321 [accessed: 25.06.2018].

⁶³ <https://www.theharvestmovie.org/the-movie/> [accessed: 25.06.2018].

in order to be close to the fields, where they may be suddenly called to work, prioritising remitting over rent. Moreover, a common occurrence is the non-remuneration of work or payment at the end of the season. This means that workers cannot afford to seek other employment without risking the loss of all their earnings. A wave of seasonal workers has been flooding Canelli with cheap labour since Macedonia entered the European free-circulation Schengen agreement in 2009. Due to its climate and position, Macedonia has a well-established winemaking tradition and therefore offers cheap skilled manpower. This resulted in a general wages downfall. In particular, the cooperative system is (ab)used: small firms, often owned by Macedonian workers who settled permanently in Canelli, subcontract workers to larger companies that own the vineyards, paying workers two or three euros per hour. In this way, the entrepreneurs do not bear any responsibility for the wage dynamics nor in the working conditions in general. Complex systems of subcontracting are, indeed, doomed to be a particularly effective way for employers to cut labour costs, shed responsibility, increase flexibility and disempower the workforce.⁶⁴ According to LeBaron, the link between forced labour and subcontracting is grounded in key facets of the retail business model (low-cost, high-volume production).⁶⁵

Under Italian labour law, the practice is legal as long as the subcontractor provides all means of production and actually controls the production process (supervising the work, including agreed hours and workers safety) rather than simply providing labour. Instead, the unique purpose of these cooperatives is often to recruit cheap labourers, particularly from Romania and Bulgaria. They may be called “landless cooperatives” in the sense that they only consist of labourers. An Italian trade union – CGIL has compared the function of these cooperatives to a new form of illegal gangmastering, since they offer a low-cost service guaranteeing maximum flexibility. In fact, as gangmasters, the cooperatives seize the workers’ documents; provide the workers with undeclared rented accommodation and with transport for getting to work.⁶⁶

⁶⁴ J. Wills, *Subcontracted employment and its challenge to labor*, “Labor Studies Journal”, vol. 34, no. 4, 2009, pp. 441–460:444. See also L. Mosely, *Labor rights and multinational production*, Cambridge University Press, New York 2011.

⁶⁵ G. LeBaron, *Subcontracting is not illegal, but is it unethical? Business ethics, forced labor, and economic success*, “The Brown Journal of World Affairs”, vol. XX, no. II, 2014, pp. 237–249.

⁶⁶ F. Oliveri, *Giurificare ed eternalizzare lo sfruttamento. Il caso dei lavoratori immigrati nella vitivinicoltura senese*, in E. Rigo (a c. di), *Leggi, migranti e caporali. Prospettive critiche e di ricerca sullo sfruttamento del lavoro in agricoltura*, Pacini, Pisa 2015, pp. 47–67 and Redattore Sociale, *Il nuovo caporalato delle “cooperative senza terra”: solo braccia*, in *Redattore Sociale*, 4 January 2012, <http://www.migrantitorino.it/?p=20718> [accessed: 25.06.2018].

2.3. Findings: labour exploitation as the way of production

A panorama of cases describing different forms of exploitation, has been provided. Exploiters are both native and foreigners. The very lesson to be learned is that labour exploitation seems to be “the way of production”, rather than a “few bad apples”. The pervasiveness of labour exploitation in the agricultural sector may be explained by its own peculiarities: seasonality of food production, segregation of housing and cheap prices fixed by large-scale retailers.

First, here nature itself dictates the need for seasonal labour which forces poverty-stricken and poorly informed people into unacceptable employment situations, and this goes together with the high mobility of migrant workers who often follow the crop cycles.⁶⁷ As a result, migrants cannot build any strong relationship with the local community because of their short-term stay.

Secondly, they mainly work in isolated rural settings, hidden from public view, thus they hardly have any contact with nationals or people from outside the holding.⁶⁸ Structural and spatial invisibility feeds vulnerability. It has been observed that, paradoxically, such invisibility is more easily guaranteed for migrants from EU Member States since they *are white, Christian and come from countries that are part of the Schengen area*.⁶⁹ The fact that workers live and work far from public view is also the main reason why victims of labour exploitation are so difficult to identify and clearly victims cannot be effectively assisted and protected if they are not properly identified.⁷⁰

Third, in the food production system, conditions are shaped by the competitive pressures that large suppliers and retailers, including major supermarkets, place on employers who try to undercut production costs by lowering workers' wages.⁷¹ As a result, suppliers and workers at the bottom of the chain receive an extremely small

⁶⁷ J. Allain, A. Crane, G. Lebaron, L. Behbahani, *Forced labour's business models and supply chains*, Joseph Rowntree Foundation, London 2013, pp. 47–49.

⁶⁸ S. Cavalieri, *The eyes that blind us: the overlooked phenomenon of trafficking into the agricultural sector*, “Northern Illinois University Law Review”, vol. 31, 2011, pp. 501-519:514.

⁶⁹ G. Avallone, *The land of informal intermediation. The social regulation of migrant agricultural labour in the Piana del Sele, Italy*, in: A. Corrado, C. De Castro, D. Perrotta (eds.), *Migration and agriculture. Mobility and change in the Mediterranean area*, Routledge, Abingdon 2016, pp. 217–230.

⁷⁰ As stated by the European Commission, it should be emphasised that early identification is crucial to promptly assist, support and protect victims of trafficking in human beings and it may enable police and prosecution authorities to better investigate and punish traffickers: European Commission, *Guidelines for the identification of victims of trafficking in human beings – Especially for Consular Services and Border Guards*, Publications Office of the European Union, Luxembourg 2013, p. 3.

⁷¹ According to the Italian Competition Authority (AGCM), in Italy large retailers' share of the food market grew from 44% in 1996 to 71% in 2011: Autorità Garante della Concorrenza e del Mercato, *Indagine conoscitiva sul settore della GDO – IC43*, AGCM, Roma 2013, <http://www.agcm.it/indagini-conoscitive-db/open/C12564CE0049D161/973E4D42D69C4A11C1257BC60039BBA0.html> [accessed: 25.06.2018].

share of the retail price. By way of example, the price paid to farmers by the soft drink industry in Rosarno was so low that farmers considered it more worthwhile to let the oranges rot away on the trees rather than sell them to the industry.⁷²

As consumer prices fall while the costs of many raw materials rise, the sad reality is that suppliers cannot meet the retail price without resorting to labour exploitation. In conclusion, while hyper-flexible work patterns create problems for workers, this is beneficial to supermarkets looking to supply consumers with cheap food to which they have become accustomed. This poses challenges beyond simply ethical consumption, calling for a structural change.

As a matter of fact, migrant labour (being ultra-flexible) has been a key element all over the world in containing prices as well as ensuring efficiency in delivery schedules.⁷³ In Italy, as in many European countries, the agricultural sector relies on the employment of a migrant workforce, “considered exploitable and cheap”.⁷⁴ Temporary low-skilled jobs have been typically covered by migrants from sub-Saharan Africa, North Africa and Asia, recently followed by Romanians and Bulgarians.⁷⁵ There is a close relationship between migration and exploitation, deriving from the migrants’ economic circumstances, limited language ability, widespread use of tied housing and reliance on gangmasters (often from their own community).⁷⁶ Nonetheless, the recognition of such a nexus is one to be handled with cautiousness. In the current economic crisis, more and more people have to accept marginal

⁷² Institute of International Sociology, *Light on: cross-community actions for combating the modern symbolism and languages of racism and discrimination. Understanding perception – Research as a tool against racism*, ISIG, Gorizia 2015, pp. 77-80, http://www.lightonproject.eu/uploads/File/Final_Research_Report.pdf [accessed: 25.06.2018]. The agricultural model in the area is, indeed, based on low levels of investment in technological innovation, which is made possible by the use of a *real reserve army of undeclared or semi-undeclared work force, to be used only at specific moments, such as public holidays, production peaks, extreme rainfall events, malfunctioning machinery or ‘just-in-time’ supermarket orders*: Radici, *Dossier Radici/Rosarno. Monitoraggio autunno/inverno 2010/2011, 2012*, <http://www.integrazionemigranti.gov.it/Documenti-ericerche/CampaniaDossier%20Radici%20Rosarno%202012%20FondazioneIntegrazione.pdf> [accessed: 25.06.2018].

⁷³ Equality and Human Rights Commission, *Inquiry into recruitment and employment in the meat and poultry processing sector: report of the findings and recommendations*, EHRC, London 2010, also available at https://www.equalityhumanrights.com/sites/default/files/meat_inquiry_report.pdf [accessed: 25.06.2018].

⁷⁴ C. Colloca, A. Corrado (eds.), *La globalizzazione delle campagne. Migranti e società rurali nel Sud Italia*, Franco Angeli, Milano 2013 as cited by L. Palumbo, A. Sciarba, *Vulnerability to forced labour and trafficking: the case of Romanian women in the agricultural sector in Sicily*, “Anti Trafficking Review”, vol. 5, 2015, pp. 89–108.

⁷⁵ Amnesty International, *Exploited Labour. Migrant workers in Italy’s agricultural sector*, Amnesty International Publications, London 2012, p. 23.

⁷⁶ Fundamental Rights Agency, *Severe labour exploitation: workers moving within or into the European Union. States’ obligations and victims’ rights*, Publications Office of the European Union, Luxembourg 2015, p. 30. See further UN Special Rapporteur on the human rights of migrants, François Crépeau, *Report of the Special Rapporteur on the human rights of migrants – Labour exploitation of migrants*, A/HRC/26/35, 3 April 2014.

employment out of economic necessity, including EU citizens and sometimes locals. It follows a constant supply for labour exploitation.⁷⁷ Paradoxically, EU citizens are vulnerable because of their freedom of movement across the European Union that does not automatically protect them from being victims of serious abuses (see both the case of Polish daily labourers and the case of Romanian women in Sicily). Also Italians are exploited. According to Eurispes' estimates, around 160,000 Italians are employed in agriculture in the conditions of high vulnerability.⁷⁸ A naïve association of exploitation with migration may divert political attention from the structural factors which predispose migrants to exploitation, including the State's approach to migration. Indeed, restrictive migration regimes, often fuelled by popular hostility to migrants, are thought to contribute to migrants' exploitation.⁷⁹ Particularly, the tie between the employment contract and the residence permit makes the migrants' situation extremely precarious, leading to a high risk of exploitation.

Labour exploitation is a complex phenomenon, inextricably linked to the processes of labour flows, globalisation and migration. Hence, the responses need to be sophisticated.

3. Who are the victims?

Victims of labour exploitation in Italy are mostly men, but evidence of female victims has also been found (see the case of Romanian female workers).⁸⁰ There is no evidence of minors as victims of labour exploitation from the court data, although reports say that being an unaccompanied minor without a family in Italy is an important risk

⁷⁷ Eurispes, *Agromafie. 4° Rapporto sui crimini agroalimentari in Italia*, Minerva, Roma, 2016; Medici per i diritti umani, *Terra ingiusta. Rapporto sulle condizioni di vita e di lavoro dei braccianti stranieri in agricoltura*, 2015, http://www.mediciperidirittiumani.org/pdf/SINTESI_MEDU_Aprile_2015.pdf [accessed: 25.06.2018]; H. Lewis, L. Waite, *Asylum, immigration restrictions and exploitation: hyper-precarity as a lens for understanding and tackling forced labour*, "Anti-Trafficking Review", vol. 5, 2015, pp. 49-67; L. Palumbo, A. Sciarba, *New mobility regimes, new forms of exploitation in Sicily*, in: *Open Democracy*, 9 July 2015, <https://www.opendemocracy.net/beyondslavery/letizia-palumbo-alessandra-sciarba/new-mobility-regimes-new-forms-of-exploitation-in-s> [accessed: 25.06.2018]; Osservatorio Placido Rizzotto (ed.), *Agromafie e Caporalato. Secondo Rapporto*, Lariser, Roma 2014.

⁷⁸ Eurispes, *Agromafie. 4° Rapporto sui crimini agroalimentari in Italia*, Minerva, Roma 2016, p. 159.

⁷⁹ C. van den Anker, *Rights and responsibilities in trafficking for forced labour: migration regimes, labour law and welfare States*, "Web Journal of Current Legal Issues", vol. 1, 2009, available at <http://eprints.uwe.ac.uk/12725/1/vandenankerlegalissues.pdf> [accessed: 25.06.2018] and T. Shelley, *Exploited: migrant labour in the global economy*, Zed Books, London 2007.

⁸⁰ See further L. Palumbo, A. Sciarba, *The vulnerability to exploitation of women migrant workers in agriculture in the EU: The need for a Human Rights and Gender based approach*, 2018, [http://cadmus.eui.eu/bitstream/handle/1814/55444/IPOL_STU\(2018\)604966_EN.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/55444/IPOL_STU(2018)604966_EN.pdf?sequence=1) [accessed: 25.06.2018].

factor for labour exploitation.⁸¹ Potential victims are mainly Romanians, Bulgarians and third-country nationals. While it is important to stress that not all exploitative situations in the labour market are a result of trafficking in human beings, some may be. In such cases, the recruitment phase usually takes place at the beginning of the trafficking chain and often in the victim’s country of origin (see the case of the Sikh community in the Agro Pontino region). It seems that they often leave their home country voluntarily, in the hope for a better life. Poverty and the lack of alternatives are mentioned as central push factors for coming to Italy.

Interestingly, victims of severe labour exploitation have not necessarily been coerced into exploitative working conditions. Working in agriculture can be a platform for later upward mobility. Workers often do accept to work in harsh conditions because they see it as a preliminary step on a difficult path towards a professional life and/or because they are in need to earn money, sometimes to pay the debts incurred in the process of entering the country or finding a job, or at least to survive and send remittances back home:

most migrant workers who work under hazardous conditions for low pay and without protection from labour law are not forced to work at gunpoint. There is a large enough pool of migrants who are willing to take high risks to enter Europe and who are determined to make their journey a success. But not all of them succeed, and some fall victim to various forms of coercion. Those who demand a better bargain for their labour are quickly replaced by more docile workers. The supply is huge and shifting gradually farther East and South.⁸²

Fear is an important factor to be taken into account:

workers are afraid of losing their jobs and of losing accommodation that is linked to employment. They fear that if they complain about work conditions or quit working, they will never receive the money that they are owed. If they are regular migrants, they may fear losing their work permits and permission to stay in the country. If they are on seasonal work permits, they may fear not being invited to return for the next season. If they are irregular migrants, they fear being arrested and/or deported. They may fear that an employer will use violence against them or hunt them down and return

⁸¹ Save the Children, Ministero della Giustizia, Dipartimento per la giustizia minorile, *Lavori ingiusti. Indagine sul lavoro minorile e il circuito della giustizia penale*, June 2014, http://images.savethechildren.it/IT/f/img_publicazioni/img237_b.pdf [accessed: 25.06.2018]; Save the Children Italia Onlus, Associazione Bruno Trentin, *Game Over. Indagine sullo sfruttamento minorile in Italia*, Ediesse, Roma, 2014 and Save the Children, *Piccoli schiavi invisibili. I volti della tratta e dello sfruttamento – Dossier 2014*, Roma 2014, <http://www.immigrazione.it/docs/2014/rapp-stc-tratta-minori.pdf> [accessed: 25.06.2018].

⁸² B. Andrees, P. Belsler (eds.), *Forced labour. Coercion and exploitation in the private economy*, Lynne Rienner Publishers, Boulder, 2009, p. 89-90 as well as B. Andrees, *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, ILO, Geneva 2008, p. 1.

*them to the workplace. They fear being unable to repay sums that they owe to labour recruiters and employment agencies.*⁸³

As such, working under exploitative conditions seems a rational choice: being exploited is anyway better than being jobless for these people. It reflects a need for immediate survival rather than ignorance of rights.⁸⁴ O'Neill refers to the "compulsion by necessity" in order to describe the situation in which many workers find themselves, forced into unfree labour relations by their webs of ethical obligations, responsibilities and economic circumstances.⁸⁵ The scholar argues that these exchanges (namely consensual exploitation) should be seen as a "trade of last resort" that needs to be limited by the law. Alvesalo et al. warn that if (migrant) workers appear to consent to exploitative labour conditions, they risk being delegitimised as victims.⁸⁶ However, agency and exploitation are not mutually exclusive.⁸⁷

Crucially, also victims do not necessarily see themselves as victims of crime (and may not like to be framed as such).⁸⁸ They might be in an irregular position or be guilty of some crimes and, therefore, afraid of becoming exposed to the authorities and removed from the country. Moreover, they voluntarily entered the migration

⁸³ Organization for Security and Co-operation in Europe, *A summary of challenges on addressing human trafficking for labour exploitation in the agricultural sector in the OSCE Region*, OSCE, Vienna 2009, p. 30.

⁸⁴ In Prince's words: *I know that in the newspaper they call us slaves. I saw it. For me this thing of picking tomatoes, or other vegetables, it's just a job. I'm not stupid, I know that we live in poor, very poor conditions, like animals, and we work a lot, too much, for little money. And the caporale or the Italian boss can be bad with me, but as long as I earn my money I can stand it, it's ok*: G. Carlini, *Ghetto Ghana workers and the new Italian 'slaves'*, in: *Open Democracy*, 22 July 2016, <https://www.opendemocracy.net/beyondslavery/gloria-carlini/ghetto-ghana-workers-and-new-italian-slaves> [accessed: 25.06.2018]. See also Singh, a sikh worker in the Agro Pontino: *It is not easy for us. Here, we're foreigners. I'm afraid to go back [to India] because I have nothing there. But I know what is happening to us here in Italy is wrong*. See further D. Sala, M. Valle, *'An employer? No, we have a master: the Sikhs secretly exploited in Italy'*, "The Guardian", 22 December 2017, <https://www.theguardian.com/global-development/2017/dec/22/sikhs-secretly-exploited-in-italy-migrant-workers> [accessed: 25.06.2018].

⁸⁵ J. O'Neill, *Varieties of unfreedom*, University of Manchester Press, Manchester 2011. See also the concept of 'forced flexibility' as developed by Ollus, according to whom some migrants decide or feel forced to remain in exploitative working conditions by reason of limited alternatives: N. Ollus, *Forced flexibility and exploitation: experiences of migrant workers in the cleaning industry*, "Nordic Journal of Working Life Studies", vol. 6, no. 1, 2016, pp. 25–45, http://www.inmigrazione.it/UserFiles/File/Documents/109_SFRUTTATI%20A%20TEMPO%20INDETERMINATO.pdf.

⁸⁶ A. Alvesalo, A. Jokinen, N. Ollus, *The exploitation of migrant labour and the problems of control in Finland*, in: P. Van Aerschot, P. Daenzer (eds.), *The integration and protection of immigrants: Canadian and Scandinavian critiques*, Ashgate Publishing Limited, Surrey 2014, pp. 121–138:132.

⁸⁷ D.F. Haynes, *Exploitation Nation: the thin and grey legal lines between trafficked persons and abused migrant laborers*, "Notre Dame Journal of Legal Ethics and Public Policy", vol. 23, no. 1, 2009, pp. 1–71.

⁸⁸ P. Monzini, *Tratta e sfruttamento lavorativo nell'area mediterranea*, in: E. Nocifera (ed.), *Quasi schiavi. Paraschiavismo e super-sfruttamento nel mercato del lavoro del XXI secolo*, Maggioli Editore, Santarcangelo di Romagna 2014, pp. 103–122:113.

process and they often earn more money than they would earn in their country of origin, thus they are ready to accept poor wages and indecent working conditions in order to maintain their families back in their country of origin. It is well known that, for many families in the country of origin, the remittances are the most important source of income.⁸⁹ As a result, victims try to be invisible to the authorities and, when discovered, they are often returned to their home countries without being provided with any assistance or protection.⁹⁰ Based on the Italian experience, it seems that there is a real risk that exploited migrants are not identified as victims but merely treated as undocumented migrants, regarded as persons who do not “deserve” the protection provided by the State. The fact that the victim’s own perception tends to affect the police’s response has also been highlighted by the EU Fundamental Rights Agency.⁹¹

The picture coming out, once again, is saying that social reality is more complex and fraught: not really an “ideal victim” in the words of Christie.⁹² There is also a sense that exploitation is a matter of bad luck rather than a crime, and this gives rise to shame and rejection of the victim status. Likewise, offenders also differ from the ideal offender, which in the public mind is *a human being close to not being one*.⁹³ In reality, instead, labour exploitation usually takes place within legitimate business activities: *many legitimate enterprises, such as farms, restaurants and transport companies, make significant profits by turning a blind eye to this pervasive phenomenon*.⁹⁴

4. Labour exploitation as corporate crime

The paper claims that labour exploitation needs to be approached through the criminological category of ‘corporate crime’. It follows a brief literature review on this. Subsequently, an overview of the Italian legal framework concerning corporate responsibility with regards to labour exploitation is provided.

As defined by Pearce and Tombs, corporate crime means any illegal act or omission, punishable by the State under administrative, civil or criminal law which is the result

⁸⁹ R. Plant, *Modern slavery: The concepts and their practical implications*, ILO, Geneva 2014, p. 3, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_355052.pdf [accessed: 25.06.2018].

⁹⁰ L. Shelley, *The commodification of human smuggling and trafficking*, in: A. Quayson, A. Arhin (eds.), *Labour migration, human trafficking and multinational corporations: the commodification of illicit flows*, Routledge, London–New York 2012, pp. 38–55.

⁹¹ Fundamental Rights Agency, *Severe labour exploitation: Workers moving within or into the European Union. States’ obligations and victims’ rights*, Publications Office of the European Union, Luxembourg 2015, p. 77.

⁹² N. Christie, *The ideal victim*, in: E.A. Fattah (ed.), *From crime policy to victim policy. Reorienting the justice system*, MacMillan, London 1986, pp. 17–30.

⁹³ *Ibidem*, p. 26.

⁹⁴ L. Shelley, *The commodification of human smuggling and trafficking*, 2012, p. 50.

of deliberate decision making or culpable negligence within a legitimate formal organization.⁹⁵ Since these acts or omissions take place within legitimate, formal, business organisations, they tend to be separated from criminal law, and if treated under criminal law, are still often not viewed as ‘real crimes’, with the consequence that there is little available data on corporate crime and its victims.⁹⁶ Invisibility is, indeed, a peculiar characteristic of corporate crime, both as a result of ideological barriers and its material characteristics.⁹⁷ Notably, the few corporate crimes that meet the headlines are usually extreme cases and this, in turn, tends to obscure their systemic and widespread incidence.⁹⁸ With regard to the phenomenon under study, this means that exceptional serious abuses (i.e. human trafficking and slavery) are emphasised at the expense of the larger problem of labour exploitation, which has emerged as “the way of production” within the Italian agricultural sector.

Another important feature of corporate crime is that most victims of corporate crime are doomed not to know that they are victims.⁹⁹ They often view their “misfortune” as an accident and “no one’s fault”.¹⁰⁰ As Whyte puts it, *victims of corporate crime [...] have never been granted ‘ideal victim’ status; they cannot be described as ‘a person or category of individuals who – when hit by crime – most readily are given the complete and legitimate status of being a victim’*.¹⁰¹ This clearly applies to situations of labour exploitation in which exploited workers do not consider themselves as victims, and even if they do, they do not seek help.¹⁰²

⁹⁵ F. Pearce, S. Tombs, *Toxic capitalism: Corporate crime and the chemical industry*, Ashgate, Aldershot 1998, pp. 107–110.

⁹⁶ *Ibidem*. See also D.L. Rothe, D. Kauzlarich, *Crimes of the powerful. An introduction*, Routledge, London–New York 2016, pp. 166–180; S. Tombs, D. Whyte, *The corporate criminal. Why corporations must be abolished*, Routledge, London–New York 2015, p. 134; E.B. Leonard, *Crime, inequality, and power*, Routledge, Abingdon–New York 2015 and D. Whyte, *Victims of corporate crime*, in: S. Walklate (ed.), *A handbook of victimology*, Willan, Collumpton 2007, pp. 446–463:449–451. On corporate victimisation, a subject relatively neglected in criminology and victimology, see A. Wolbert Burgess, C. Regehr, A.R. Roberts, *Victimology. Theories and applications*, Jones & Bartlett Learning, Burlington, 2013, pp. 552–555; K. Snell, S. Tombs, *How do you get your voice heard when no-one will let you? Victimisation at work*, “Criminology & Criminal Justice: an International Journal”, vol. 11, no. 3, 2011, pp. 207–223; D. Friedrichs, *Trusted criminals. White collar crime in contemporary society*, 2010, pp. 48–54 and B.G. Stitt, D.J. Giacomassi, *Assessing victimisation from corporate harms*, in: M.B. Blankenship (ed.), *Understanding corporate criminality*, Routledge, New York 1993, pp. 57–83.

⁹⁷ H. Croall, *The victims of white collar crime*, in: Svenåke Lindgren (ed.), *White-collar crime research. Old views and future potentials. Lectures and papers from a Scandinavian seminar*, National Council for Crime Prevention, Stockholm, 2001, pp. 35–54.

⁹⁸ S. Tombs, D. Whyte, *The corporate criminal. Why corporations must be abolished*, Routledge, London–New York 2015, pp. 36–37.

⁹⁹ S. Box, *Power, crime and mystification*, Routledge, London 1983, p. 17.

¹⁰⁰ *Ibidem*. See also S. Tombs, D. Whyte, *Safety crimes*, Willan, Collumpton 2007.

¹⁰¹ D. Whyte, *Victims of corporate crime*, in: S. Walklate (ed.), *A handbook of victimology*, Willan, Collumpton 2007, p. 447 citing N. Christie, *The ideal victim*, in: E.A. Fattah (ed.), *From crime policy to victim policy. Reorienting the justice system*, MacMillan, London 1986, pp. 17–30:18.

¹⁰² See the previous paragraph.

In addition, in the context of corporate crime, duration is relevant: the traditional concept of the “victimising event” is of limited value since the relationship between the victim and the offender is based upon an on-going relationship of unequal power.¹⁰³ Concerning labour exploitation, workers are likely to experience repeated victimisation, where physical and economic harm is involved (moreover, what may be seen as primarily economic harm also has emotional effects).

There is much agreement as to the view that corporate crimes are primarily committed because they are profitable.¹⁰⁴ This paper does not want to enter the discussion of the nature of corporations (i.e. criminogenic or not).¹⁰⁵ Labour exploitation may be intentional and part of the business strategy of the employer or it may be unintentional, but equally benefitting the corporation from an economic point of view.¹⁰⁶ In addition, contractual practices that are not criminal at all, such as subcontracting, can still be harmful and exploitative. The corporate crime perspective helps to conceptualise labour exploitation as made up by the organisation’s structure, its culture, its unquestioned assumptions and its very *modus operandi*, instead of focusing on single “bad employers”.¹⁰⁷ This does not mean that individuals are without fault but, rather, that structural factors influence actions.¹⁰⁸ Such an approach also sheds some light on labour exploitation as a form of negligence by the State, failing to enforce adequate regulation to tackle the phenomenon. The relative absence of literature on corporate crime and labour exploitation is particularly interesting given the awareness of the nexus between business and labour exploitation and given the devastating consequences (social and economic) this type of harm

¹⁰³ D. Whyte, *Victims of corporate crime*, in: S. Walklate (ed.), *A handbook of victimology*, Willan, Collumpton 2007, p. 455.

¹⁰⁴ L. Snider, *Researching corporate crime*, in: S. Tombs, D. Whyte (eds.), *Unmasking the crimes of the powerful*, Peter Lang Publishing, New York 2003, pp. 49–68:65.

¹⁰⁵ H. Glasbeek, *The corporation as a legally created site of irresponsibility*, in: H.N. Pontell, G. Geis (eds.), *International handbook of white-collar and corporate crime*, Springer, New York 2007, pp. 248–278 and S. Tombs, P. Hillyard, *Towards a political economy of harm: States, corporation, and the production of inequality*, in: P. Hillyard, C. Pantazis, S. Tombs, D. Gordon (eds.), *Beyond criminology. Taking harm seriously*, Pluto Press and Fernwood Publishing, London–Black Point 2004, pp. 30–54:39. Critically also on the relation between corporations and the regulator, see S. Tombs, D. Whyte, *The corporate criminal. Why corporations must be abolished*, 2015 and L. Snider, *The regulatory dance: Understanding reform processes in corporate crime*, “International Journal of the Sociology of Law”, vol. 19, 1991, pp. 209–236.

¹⁰⁶ Ollus notes that labour exploitation is clearly built around the aim of cutting costs and maximising profit through underpayment and over-work without compensation: N. Ollus, *From forced flexibility to forced labour: The exploitation of migrant workers in Finland*, HEUNI, Helsinki 2016, p. 52.

¹⁰⁷ S. Bittle, *Still dying for a living. Corporate criminal liability after the Westray mine disaster*, UBC Press, Vancouver–Toronto, 2012, p. 45 and S. Tombs, D. Whyte, *Safety crimes*, Willan, Collumpton 2007, p. 3, as referenced by N. Ollus, *From forced flexibility to forced labour: the exploitation of migrant workers in Finland*, HEUNI, Helsinki 2016, p. 53.

¹⁰⁸ J. L. McMullan, *Beyond the limits of the law. Corporate crime and law and order*, Fernwood Books Ltd, Halifax 1992, p. 45.

holds for such a large number of people worldwide.¹⁰⁹ Only recently, Ollus has explicitly categorised the exploitation of migrant workers, which ultimately may result in human trafficking, as a specific form of corporate crime, which the scholar labelled as “exploitative crimes and harms of the employer”.¹¹⁰ Rothe and Kauzlarich cite human trafficking as an example of (violent) corporate crime committed as a part of a company’s pursuit of profit.¹¹¹

Since evidence from the ground shows that labour exploitation takes place within legitimate business activities, States should ensure the responsibility of business enterprises acting as employers. According to Directive 2009/52/EC, the Member States are obliged to ensure that legal persons may be held liable for employing third-country nationals in an irregular situation under particularly exploitative working conditions where such an offence has been committed for their benefit. A similar provision is included in Article 5 of the Trafficking Directive. Sanctions for legal persons should be *effective, proportionate and dissuasive*. They may include measures such as financial sanctions, exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; exclusion from participating in public contracting; placing under judicial supervision; judicial winding-up; temporary or permanent closure of establishments that have been used to commit the offence.

Concerning the Italian context, corporate liability is provided for the exploitation of illegally staying third-country nationals,¹¹² the (new) illegal gangmastering,¹¹³ slavery or servitude¹¹⁴ and trafficking in human beings¹¹⁵ when they are committed

¹⁰⁹ See under Paragraph 1 – *The size of the phenomenon*.

¹¹⁰ N. Ollus, *From forced flexibility to forced labour: the exploitation of migrant workers in Finland*, 2016, pp. 88-89. Previously, H. Croall, *Victims of white-collar and corporate crime*, in: P. Davies, P. Francis, C. Greer, *Victims, crime and society*, Sage, Thousand Oaks 2007, pp. 78–108:87–88. See also the label ‘labour crimes’: K.K. Clark, *Labor crimes*, in: L.M. Salinger (ed.), *Encyclopedia of white-collar & corporate crime*, Sage, Thousand Oaks 2013, pp. 539–543.

¹¹¹ D.L. Rothe, D. Kauzlarich, *Crimes of the powerful. An introduction*, Routledge, London–New York 2016, pp. 90–91.

¹¹² Article 22, para. 12 of the Consolidate Immigration Act prohibits the employment of illegally staying third-country nationals, in conformity with Article 3, Directive 2009/52/EC. Paragraph 12 *bis* of Article 22, Consolidated Immigration Act provides for an increase by one third to one half when the employed workers (a) are more than three; (b) are minors of non-working age; (c) are subjected to those particularly exploitative working conditions provided by para. 3 of Article 603 *bis* CC.

¹¹³ See under footnote no. 52.

¹¹⁴ To date, Article 600 CC, titled ‘Reduction or maintenance in a condition of slavery or servitude’, reads as follow: *Whosoever exercises over a person powers corresponding to those of the right of ownership or whosoever reduces or holds a person in a state of continuative subjection, forcing the victim to do work or perform sexual services or to beg or any other activity that involves exploitation or to consent to organ removal shall be punished by imprisonment from eight to twenty years.*

¹¹⁵ Following Legislative Decree No. 24/2014, to date Article 601 CC reads as follows: *A term of imprisonment from eight to twenty years shall be applied to whoever recruits, introduces into the territory of the State, transfers even outside said territory, transports, yields authority over a person to another*

by senior management (corporate officers) and by those subject to the direction and oversight of the former (subordinates) in the interests or for the benefit of the company itself. This is provided by Legislative Decree No. 231/2001, which regulates in general terms corporate “criminal” liability.¹¹⁶ Sanctions for legal entities include monetary fines up to 1,500,000 euros (4,500,000 euros in the case of a plurality of offences); seizure of the profits resulting from the crime; publication of the Court’s decision and disqualifying sanctions (i.e. ban from business activity, suspension or withdrawal of licenses and permits, prohibition to contract with the public administration, exclusion or revocation of financing and subsidies). In particular, pursuant to Article 16, para. 3 of Legislative Decree No. 231/2001, if the entity or one of its organisational units is permanently used for the sole or main purpose of enabling or facilitating the commission of the crimes under Article 600 CC (i.e. slavery) and Article 601 CC (i.e. trafficking in persons), the revocation of the company’s licence to operate applies. Interestingly, an affirmative due diligence defence is provided: the company could avoid strict liability by proving that the criminal acts of agents or employees were directly contrary to corporate policies and that the corporation had undertaken substantial efforts to enforce those policies and prevent individual wrongdoing.¹¹⁷ However, to date, no case in which legal persons have been held liable for labour exploitation offences have been referred to.

person, offers lodging to one or more persons who are in the conditions specified in Article 600, or performs the said conducts against one or more persons by deceit, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, or of a weaker physical or psychic condition or a condition of need, or by promising or giving money or of any other advantage to the person having control over that person, for the purpose of inducing or forcing him/her to perform work, sex or to beg or, in any case, to perform unlawful activities entailing his/her exploitation or removal of organs.

¹¹⁶ Legislative Decree No. 231/2001, titled ‘Provisions governing the administrative liability of legal entities, companies and associations also without legal status, in accordance with Article 11 of Law No. 300 dated September 29, 2000’ was issued on 8th June 2001 and entered into force on 4th July 2011. In general terms see A. Di Amato, *Criminal Law in Italy*, Wolters Kluwer, Alphen aan den Rijn, 2013, pp. 74-77. The piece of legislation has been modeled in part after the U.S. Sentencing Guidelines for Organizations and was passed to meet the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997.

¹¹⁷ When the crime is committed by a corporate officer, the company is not liable if it proves that (i) it had adopted and effectively implemented a compliance model suitable to prevent the kind of offence occurred; (ii) a supervisory body had been appointed with the task of monitoring the functioning, updating and respect of the model; (iii) the crime was committed by *fraudulently* circumventing the compliance model; and (iv) the supervisory board had carried out its work properly. Likewise, when the crime is committed by an employee subject to the control of the top management, the company is not responsible if (i) a compliance model suitable to prevent the kind of crime occurred had been adopted and effectively implemented; and (ii) the employee failed to comply with these rules.

Concluding remarks

Labour exploitation is a complex phenomenon, to be read in the context of global processes of labour flows and mobility. Specific characteristics of the agricultural sector may create or exacerbate worker' vulnerability to exploitation. Understanding the phenomenon not only as the product of individual behaviour has significant consequences for tackling the phenomenon beyond criminalisation of employers and traffickers on one hand and the rescue of victims on the other. It is, indeed, a structural problem, lying in the dynamics of legitimate supply chain practices (e.g. extensive subcontracting). Therefore, the narrow criminal response has to be seen together with related policies aimed at alleviating the factors that make persons vulnerable to exploitative practices while ensuring that breaking the law does not pay. Society needs a long-term targeted and multi-level strategy addressing the many intertwined factors that leave workers vulnerable, both individual factors (e.g. poverty, discrimination, precarious legal status, etc.) and deficiencies in the regulation of labour market and the global economy (e.g. general lack of economic opportunities, cuts in the social services budgets, lack of legal and viable migratory channels, etc.).¹¹⁸ On the contrary, toughening the State response to vulnerable workers who have fallen in breach of immigration regulations will have the effect of locking more people into systems of "modern slavery" without any hope of protection from the law.¹¹⁹ This does not mean that criminal law is unnecessary. States should criminalise and prosecute the most severe forms of labour exploitation, but should also take effective measures to prevent the phenomenon and provide victims with protection and access remedies, including compensation for suffered damages. Challenging the dominant crime control-centred approach, unconditional assistance to victims is crucial.¹²⁰ The identification of victimisation is complex and raises questions of who is to receive (the rights of) victimhood. States should avoid the trap of thinking in terms of "innocent victims" and "evil offenders":

¹¹⁸ See Art. 2, let. f) of the 2014 ILO Protocol. The forced Labour Convention No. 29 of 1930 has been further supplemented by 2014 Protocol to address implementation gaps and to advance prevention, protection and compensation measures, for the purpose of effectively achieving the elimination of forced labour.

¹¹⁹ The concept of modern slavery though not legal is used by some scholar to further an expansionist approach to the elimination of slavery, capturing slavery and slavery like practices, forced labour and trafficking in persons. On the historical and cultural roots of contemporary slavery, see further J. Quirk, *The Anti-Slavery Project. From slave trade to human trafficking*, University of Pennsylvania, Philadelphia 2011 and J. O'Connell Davidson, *Modern slavery. The margins of freedom*, Palgrave, New York 2015.

¹²⁰ R. Raffaelli, *The european approach to the protection of trafficking victims: The Council of Europe Convention, the EU Directive, and the Italian Experience*, "German Law Journal", vol. 10, no. 3, 2009, pp. 205–221 and C. Rijken, E. de Volder, *The European Union's struggle to realize a human rights-based approach to trafficking in human beings. A call on the EU to take THB-sensitive action in relevant areas of law*, "Connecticut Journal of International Law", vol. 25, no. 49, 2009, pp. 49–79

a person can both have the will to improve one’s life and still be exploited.¹²¹ Importantly, labour exploitation needs to be addressed as a corporate crime, and businesses should make sure they do not have negative impact on people wherever and however they do business, performing human-rights due diligence throughout the whole value chain, in compliance with the UN Guiding Principles on Business and Human Rights. Stakeholders can put pressure on corporations to live up to their responsibility; however, the consumers’ power must not be overestimated. Ultimately, the fight against labour exploitation is only a part of a larger struggle to promote compliance with international labour standards in today’s global economy, where companies operate transnationally while law enforcement is still primarily located at the national level.

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¹²¹ D.F. Haynes, *Exploitation Nation: the thin and grey legal lines between trafficked persons and abused migrant laborers*, “Notre Dame Journal of Legal Ethics and Public Policy”, vol. 23, no. 1, 2009, pp. 1-71.

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