

Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Italy

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Summary

While both the topics of domestic work (DW) and trafficking human beings (THB) have received increased attention in scholarship, there is very limited research on the nexus of these two issues in Italy, i.e. on cases of THB in the DW sector. This paper investigates the forms of severe exploitation and THB in DW in Italy and examines the factors affecting the demand-side in this sector. Moreover, it analyses the gaps in current legal and political responses.

The paper highlights that domestic workers frequently experience several forms of exploitation and maltreatment, which go from the violation of the fundamental protection provided by the contract to severe abuse and trafficking. The hidden nature of DW renders the identification of cases of THB extremely difficult. The paper reveals that while economic motivations are the main factor influencing the demand for cheap and exploitable workers in DW, other aspects, such as political, legal, social and cultural factors, also play a crucial role in affecting the demand-side. Moreover, this study points out that Italian legal and political responses to THB and severe exploitation have proven inadequate in preventing these phenomena and in protecting the rights of the victims. By highlighting the need to adopt a comprehensive approach to THB, the paper proposes a set of recommendations in regard to political and legal responses, also addressing the demand-side.



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About the project

Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in it or protecting the human rights of victims. However, European countries are increasingly exploring ways in which to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves. **DemandAT** aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

DemandAT takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, in order to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking as well as demand-side policies of selected countries are examined, in order to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- Phase 1: Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.
- Phase 2: Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

Project Facts

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Country case studies - Introductory note

This country report is part of the DemandAT project's case study on trafficking in human beings (THB) in the domestic work sector. The study was conducted in seven European countries (Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK) and this paper is part of a series of seven country reports.

The key objectives of the country research were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking, ii) examine the motivations and factors driving and shaping the demand as well as iii) examine the gaps in legislations and policies. The scope of the country reports is comprehensive, and aimed at gaining a better understanding of the phenomenon in the country, and do not focus only on the demand-side aspects.

The reports are based on desk research of available literature as well as case law review and interviews with key stakeholders. Secondary sources, such as reports by international organisations and NGOs, and academic articles, were consulted, as well as primary sources in the form of legal instruments and policy documents.

The working paper 'Trafficking in domestic work: Looking at the demand-side' (Ricard-Guay 2016) provided a common research framework within which to conduct the seven in-country case studies.

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Introduction

In Italy, the employment of migrants in the domestic work (DW) sector has shown a substantial increase over recent years. According to a recent study by the OECD, Italy is the OECD country with the highest concentration of migrant workforce - especially female workforce - in the personal services sector, in particular in domestic care (OECD 2014: 20). Accurate data on DW are difficult to obtain due to the fact that this sector is characterised by high levels of irregularity (CENSIS 2012; ISTAT 2011; IREF 2014; IDOS 2014; Soletierre & Irs 2015).

The increasing demand for domestic workers in Italy has been driven by a combination of diverse factors. Firstly, the increase in the ageing of the population has led to higher demand for assistance and care for elderly people. Secondly, the growth in the participation of women in the labour market has undermined the informal care system that attributes the burden of care to women and this has caused a rise in households resorting to domestic workers, especially female migrant workers. Thirdly, the Italian welfare system is based on a 'familialist' model, which lacks efficient public services and assigns families the main role in providing care to their members who need assistance (Saraceno 2007; Scrinzi 2008). All this has, thus, resulted in what Ambrosini calls 'invisible welfare', where migrant domestic workers cover the inefficiencies of the welfare system (Ambrosini 2013).

Italian migration policies have also significantly supported the employment of migrants in DW, by adopting mechanisms which have facilitated their entry into this sector. Indeed, both the admission system based on annual quotas and the regularisation procedures for irregular migrants have provided migrant domestic workers with preferential treatment (Sarti 2010; Ambrosini 2013; Castagnone *et. al.* 2013; Triandafyllidou & Marchetti 2015).

At the same time, given the labour market segmentation on the basis of gender and nationality, often women who have migrated to Italy through channels which are not connected to DW have nonetheless found this to be the only work option available (Fullin and Vercelloni 2009; Vianello 2009; Castagnone *et al* 2013). This also occurs in the case of EU citizen migrants, who today constitute a significant component of the labour force in domestic work.

Although over recent years there has been progress in the recognition of the rights of domestic workers, they still receive different treatment in comparison to other workers and are typically viewed as low-status workers (Scrinzi 2008; Sarti 2010; Pasquinelli & Rusmini 2013). Moreover, they frequently face exploitative working conditions, which may range from the violation of the contract provisions and/or of mandatory rules on working conditions to severe abuse and trafficking in human beings (THB) (OSCE 2010; FRA 2011, 2015; ILO 2012, 2013).

While both the topics of DW and THB have received increased attention in scholarship, there is very limited research on the intertwinement of these two issues in Italy. Furthermore, even though over recent years more attention has been paid to the question of THB for labour exploitation, the DW sector has been overlooked by debate, interventions and policies on THB (GRETA 2014). As a result, severe labour exploitation and THB in DW remain hidden, invisible phenomena.

By aiming to cover this gap in knowledge and information and in order to contribute to the development of effective anti-trafficking measures, this paper examines the forms of severe exploitation and THB in DW in Italy, paying special attention to the demand-side aspects. Moreover, it analyses the inadequacies in current legal and political responses.

Objectives of the paper

This study is part of a broader project, DemandAT, which is aimed at addressing and reducing demand in the context of THB through anti-trafficking efforts and policies. Based on case law review and interviews with key stakeholders, this paper has three main objectives:

1. Investigate the types of situations in DW that may involve extreme forms of exploitation and trafficking;
2. Examine the factors driving the demand for cheap and exploitable workers in DW and the gaps in legislation and policies;
3. Propose a set of measures for national and international policy makers with the view of stepping up the action to combat trafficking and other severe forms of exploitation.

This study refers to the definition of DW provided by the ILO Domestic Convention 2011 (No. 198) stating that DW is 'work performed in or for a household or households', which includes diverse tasks such as cleaning the house, cooking, taking care of children, or elderly or sick members of a family, gardening etc. However, it should be outlined that this paper mainly focuses on elderly care as the stakeholders interviewed for this research predominantly concentrated upon this issue. This is because elderly care entails cohabitation, which tends to exacerbate dependency and power relationships fostering forms of abuse and severe exploitation.

A study on THB in DW in Italy is timely for several reasons. First, the issue of serious exploitation in DW has received increased attention on the international and European levels¹ and has been addressed by diverse research reports (OSCE 2010; OSCE 2014; FRA 2011; FRA 2015). Moreover, in January 2013 Italy ratified ILO Convention No. 189 concerning decent work for domestic workers². Furthermore, both GRETA (2014) and the OSCE (2014) in their reports on Italian anti-trafficking interventions and policies have stressed that domestic servitude is an area where further research is needed. Lastly, EU Directive 2011/36 on 'Preventing and combating trafficking in human beings and protecting its victims', which was transposed in Italy in March 2014, has driven attention to the issue of the position of vulnerability of victims and the irrelevance of consent, defining the position of vulnerability 'a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved' (Art. 2(2)). Today, most cases of labour exploitation and THB in labour sectors such as DW rely on the abuse of the situation of vulnerability of the victim.

Methodology

This research is based on literature review, case law review and interviews with stakeholders. In terms of literature review, given the scarcity of research on the intersection between DW and THB, in particular in Italy, this paper relies on the analysis of research reports, scholarly literature on DW and on THB for labour exploitation, with special attention on the Italian context. Furthermore, it draws on the examination of policy texts and legal documents.

With regard to case law review, it is worth highlighting that in Italy there have to date been no convictions for THB or slavery in the DW sector and there have been very few cases brought to the court which involved THB and serious exploitation in DW. This study focuses on three relevant cases: the *M. and Others v. Italy and Bulgaria* ruling of the European Court of Human Rights (ECtHR 2012, No. 40020/03); a ruling of the Court of Appeal of Assizes (28-11-2014, No. 17/2014); and a ruling of the Supreme Court of Cassation (11-04-2014, No. 24057).

¹ See for example the 'Global Action Programme on Migrant Domestic Workers and their Families' launched in 2013 by the ILO and funded by the European Commission.

² The Convention came into force in September 2013.

Interviews were conducted with 23 stakeholders, including judicial and law enforcement authorities, lawyers, policy makers, social workers, staff of trade unions and experts. The stakeholders were selected through the help of institutions and organisations and using the snowball method. Interviews were based on a semi-structured interview guide aimed at addressing the three research questions. The principles of confidentiality and anonymity were rigorously applied, and participants gave consent for the disclosure of the name of their organisations or institutions. The purpose, methods and possible uses of the research were made clear to all those involved in the research.

Outline of the paper

Section 1 offers an overview of the Italian context related to DW and THB, addressing in the first part the key legislation and policies while in the second part key features and trends of exploitation and THB in DW.

Section 2 examines, in the first part, relevant national case law related to THB in DW. The second part addresses the challenges that law enforcement authorities encounter in implementing Italian legal provisions on THB. Lastly, this section examines the remedies for persons who have been trafficked or exploited in DW.

Section 3 provides an analysis of the results. It outlines the specific features and trends of severe exploitation and THB in DW and the factors motivating the demand for cheap and exploitable workers in this sector. Finally, it examines the key gaps in policies and legislation.

Section 4 provides concluding remarks and policy recommendations concerning legal and political responses, including the demand-side dimension.

1 National context: trafficking in human beings (THB) in the domestic work sector

This section provides an overview of the Italian context related to DW and THB. More specifically, the first part highlights relevant legislations and policies concerning DW and THB. The second part offers an empirical overview of the key features and trends of exploitation and THB in DW.

1.1 Government approach and responses to THB in domestic work

1.1.1 Regulations of domestic work

In 1958 Italy adopted a law entirely dedicated to DW: law No. 339/1958 on the protection of domestic work. This law, which is still in force, establishes the rights and duties of workers and employers, and defines labour standards and conditions. It applies to workers who perform DW for at least four hours per day for the same employer.

Law No. 339/1958 made a fundamental contribution to the recognition and protection of the rights of domestic workers. However, it relies on the idea that domestic workers are different from other workers, and therefore it excludes them from enjoying many rights with respect to important issues such as maternity leave, illness and occupational safety and health (Sarti 2010; Basenghi 2010).

In 1974 the first collective agreement for domestic workers was signed. Since then, it has been renewed several times, with the last renewal in 2013. The collective agreement provides that

the maximum working time for live-out domestic workers is 40 hours per week while for live-in domestic workers it is 54 hours per week³.

It should be noted that in the live-in situation the boundaries between free time and working hours are often not clearly demarked and thus most workers work more than 54 hours per week (IREF 2014) as they are viewed to be at the constant disposal of the employer. Moreover, in the absence of a sufficient welfare system, very few households can afford the cost of a second domestic worker in order to have constant assistance for the entire week. Consequently, most live-in workers perform work which should be done by at least two people.

In order to try to guarantee adequate assistance (seven days a week) to dependent people, the 2013 collective agreement in force until 2016 has provided employers with the possibility to employ – with restricted costs – a second domestic worker to cover the rest days of the regular (full-time) domestic worker. But, as the respondents of this study have highlighted, this possibility is little used.

When a worker performs DW occasionally, the voucher service system may be implemented. As argued below, in the absence of efficacious controls, this system may risk – especially with its progressive liberalisation – incentivising irregularity in DW.

Over recent years there has been an increase in initiatives on DW developed by various stakeholders in several fields (such research, advocacy, awareness-raising and training) with the purpose of promoting legality in this sector and empowering domestic workers (Pasquinelli & Rusmini 2013; Soletterre & Irs 2015).

Despite an improvement in the legal status of domestic workers, they are still in a disadvantaged condition with respect to other workers (Interview 21, Trade Union-Filcams CGIL, February 2015). The juridical fragility that characterises the conditions of domestic workers has been aggravated by the fact that today the vast majority of domestic workers in Italy are migrants.

1.1.2 Migration policies and domestic work

Italian migration policies have played a crucial role, not without contradictions, in sustaining the increasing presence of migrant workers in DW and, consequently, in making migrant domestic workers (especially migrant women) a fundamental (exploitable) resource for the Italian 'familialist' welfare system (Scrinzi 2008; Sarti 2010; Castagnone *et. al.* 2013).

In 1998, Italy adopted the first comprehensive legal framework on migration: Legislative Decree No. 286/1998 ('Consolidated Text of provisions governing immigration and rules on the status of foreign nationals'). As for the admission of non-EU migrant workers, Legislative Decree No. 286/1998, with subsequent amendments, provides a system of admission based on a 'nominal hiring from abroad' (Castagnone *et. al.* 2013). According to this model, non-EU workers are only admitted into Italian territory upon a request from a resident employer (an Italian national or a foreigner regularly resident). The number of migrant workers admitted is defined in an annual governmental decree, Flow Decree (*Decreto Flussi*), which establishes quotas for diverse types of workers based on labour market needs. Quotas are reserved for seasonal and non-seasonal employment. In addition, special quotas are often granted to specific sectors. In particular, from 2005 until a few years ago a portion of the quotas for non-seasonal employment was reserved for domestic workers. In 2005, 29% of the general quota

³ Also, in cases of some specific categories of live-in domestic workers the maximum working time may be 30 hours per week.

for non-seasonal employment was given to domestic workers, 57% in 2006, 41% in 2007, 70% in 2008 and 36% in 2011⁴ (Castagnone *et. al.* 2013).

It is worth noting that over the years the Italian admission system based on annual quotas has proven to be inadequate (Santoro 2010; Salis 2012; Amnesty International 2012). This is mainly because the administrative procedure for the implementation of the quota system is excessively complicated and long. Moreover, employers often do not want to hire a person they have not met before (Ambrosini 2013). All this has led many employers, especially families who urgently need a domestic worker, to employ 'irregular' migrants already in Italy and to try to regularise their status later through government regularisation or 'misuse' of the annual quota system as an *ex post* regularisation tool (Salis 2012: 1). However, over recent years, this latter mechanism has been difficult to apply. Indeed, since 2012, in the framework of the economic crisis, cases of abuse of the quota system, the increase in refugee migration, the large number of family reunifications⁵ and the high number of unemployed migrant workers, there have been no real quotas for subordinate non-seasonal workers, including domestic workers⁶. Therefore, there has been no possibility to migrate to Italy as domestic workers, and undocumented domestic workers already working in Italy have no possibilities – outside general regularisation programmes – to regularise their status later. This, together with the rigid linkage between a residence permit and the existence of a contract of employment, risks further pushing migrants towards irregular channels, increasing their vulnerability to exploitation.

Given the extent of irregular migrant labour in the Italian labour market, the Government has frequently implemented regularisation procedures for irregular migrant workers. In particular, since 2002 regularisation programmes have dedicated special attention to DW because of the significant presence of migrant workers, especially migrant women, in this sector. Such preferential treatment for migrant domestic workers – the procedure of which has left abusive employers unpunished – has fostered the development of a transnational familialist welfare system in Italy (Näre 2013).

It is worth highlighting that in recent years, especially since 2007 when Romania joined the EU, there has been a considerable increase in the presence of EU citizen migrants in DW and, as pointed out below, they are also exposed to a high risk of exploitation.

1.1.3 Anti-trafficking policies and initiatives

Policies and legal definitions

In 2003, law No. 228/2003 on 'Measures against trafficking in human beings' amended the Criminal Code (CC) in line with the 2000 United Nations *Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*⁷, revising the provisions concerning 'slavery' (Article 600), 'Trafficking in persons' (Article 601) and 'Purchase and sale of slaves' (Article 602). In 2014, Directive 2011/36/EU on THB was implemented into national law through Legislative Decree No. 24/2014 on 'Prevention and Suppression of Trafficking in Human Beings and Protection of Victims'. The Decree amended

⁴ The decrease in 2011 was probably due to the regularisation of irregular migrants of 2009.

⁵ This consists of around 70% of women, many of whom find a job in DW (Interview 13, Italia Lavoro, May 2015).

⁶ For instance, in the 2016 Flow Decree, with regard to subordinate non-seasonal work, there are quotas for workers of Italian origin residing in Argentina, Uruguay, Venezuela and Brazil, for workers from non-EU countries who participated in the Universal Exposition of Milan in 2015 (EXPO) and for workers who have participated in special education and training programmes implemented by Italian institutions and associations in their countries of origin. In addition, there are quotas for those who want to convert a resident permit for seasonal work, for study, for training or for other reasons into a resident permit for subordinate work. As for subordinate seasonal workers, there are quotas only in agriculture and the tourist industry.

⁷ Italy signed the UN Protocol in 2000 and ratified it in 2006.

the provision of the CC on 'Placing or Holding a Person in Conditions of Slavery or Servitude' (Article 600) and especially that on 'Trafficking in persons' (Article 601), in order to adopt the definition of THB provided by the Directive.

In particular, Article 601 of the CC provides the following definition of THB:

A term of imprisonment of 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 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 organs⁸

Assistance and protection for victims of THB and serious exploitation

Law No. 228/2003 also provided for implementing a special programme of temporary assistance, the so-called 'Article 13 Programme'. This is a short-term programme⁹ providing immediate assistance and support to Italian, European Community, and foreign victims of slavery, servitude and THB. Once the Article 13 programme is terminated, people can be assisted under Article 18 of Legislative Decree No. 286/98¹⁰.

Article 18 of Legislative Decree No. 286/98 provides victims of serious exploitation and THB with a long-term programme of assistance and social integration (it lasts 6 months and can be renewable for an additional year), and with a residence permit for humanitarian reasons. It applies to EU and non-EU citizens victims of situations of violence or severe exploitation, and when their safety is considered endangered because of attempts to escape from a situation of exploitation or as a consequence 'of statements made during preliminary investigations or in the course of court proceedings'.

Article 18 provides two paths through which the residence permit for humanitarian reasons can be granted¹¹: the so-called 'judicial path', which requires victims to cooperate with law enforcement agencies and judicial authorities and the so-called 'social path', which is not contingent on victims' reports and participation in criminal proceedings. It should be highlighted that the issuing of the residence permit is conditional on the person's participation in the programme of assistance and social integration. However, it does not depend, even in the case of the judicial path, on the existence and outcome of criminal proceedings.

The residence permit for humanitarian reasons under Article 18 lasts six months and can be renewed for one year. Furthermore, it can be converted into a residence permit for work or study purposes.

Despite the progressive approach of Article 18, its application, as highlighted below, has often been inadequate throughout the country (GRETA 2014; OSCE 2013; Special Rapporteur on trafficking in persons 2014; Palumbo 2015; Braglia 2015).

Provisions addressing labour exploitation

⁸ Translation provided by GRETA (2014: 18).

⁹ It lasts three months and can be renewable for another three months.

¹⁰ Legislative Decree No. 24/2014 has formally unified, as has already happened in practice, in one single programme the Article 13 and Article 18 projects. However, the non-regulatory decree, which should define this programme, has not been issued yet.

¹¹ See Art. 27 of Presidential Decree No. 349/99.

In cases of labour exploitation, in addition to the above-mentioned provisions, there are other specific legal instruments.

In 2011 Legislative Decree No. 148/2011 introduced the crime of 'unlawful gang mastering and labour exploitation' through Article 603-bis of the CC. This provision imposes sanctions on those who 'conduct organised brokering activities by recruiting workers or organising their working activity with a view to exploiting them, through the use of violence, threat or intimidation, or taking advantage of their vulnerable condition or state of need'.

In 2012 Legislative Decree No. 109/2012, which transposed into national law Directive 2009/52/EC concerning penalties for employers exploiting irregular third-country nationals, introduced – by amending Art. 22 of Legislative Decree 286/98 – some aggravating circumstances to the crime of employing irregular migrant workers¹². Moreover, it provided for the possibility of granting a residence permit for humanitarian reasons to migrant workers who are victims of specific labour exploitation¹³ and who denounce their employers and cooperate in the criminal proceedings against the employer (Art. 22 (12-quater)).

As pointed out in section 3, these provisions have proven inadequate in addressing labour exploitation (Amnesty International 2014; Medu 2015).

Institutional framework: key stakeholders

The Department for Equal Opportunities (DEO) of the Italian Presidency of the Council of Ministers is the governmental body in charge of co-ordinating, developing and implementing anti-trafficking policies (excluding law enforcement and prosecution activities).

According to Article 51 of the Code of Criminal Procedure, the competence to prosecute trafficking-related cases is attributed to Anti-mafia prosecutorial authorities. Public prosecutors have the significant role of making the request for the issuing of a residence permit to victims of severe exploitation and THB to a Chief of Police (*Questore*).

Among law enforcement agencies, the State Police and Carabinieri are the two police forces responsible for public security and criminal investigation. Police headquarters (*Questura*) are located in every province and headed by a *Questore*, who, acting on the proposal of public prosecutors or NGOs, decides whether a victim of serious exploitation and THB is granted a residence permit.

Labour Inspection depends on the Ministry of Labour and Social Affairs, which defines national priorities and coordinates activities for inspections and prevention. In order to access private households labour inspectors need the consent of the homeowner. The Carabinieri Command for the Protection of Labour, which operates under the Ministry of Labour, is tasked with the fight against illegal employment, severe labour exploitation and THB, in all sectors including DW.

¹² Article 22 (12-bis) of the Decree provides that the penalties should be higher when one of the following circumstances occurs: a) the number of recruited irregular workers is more than three; b) one or more recruited persons are minors who are not yet of working age; c) workers are subjects to particularly exploitative working conditions as described in Article 603bis(3) of the CC. These conditions include, in addition to circumstances a and b, the circumstance in which the worker is exposed to serious danger, given the characteristics of the tasks performed and the working conditions.

¹³ Specific forms of labour exploitation are defined in Art. 22 (12-bis) see footnote 11.

Regional and local authorities play a significant role in supporting anti-trafficking interventions, by co-financing Article 13 and Article 18 programmes, and sometimes coordinating local activities.

The Italian system of assistance and protection of victims of serious exploitation and THB relies on the important work of NGOs which implement Article 13 and Article 18 programmes. These NGOs are part of the national Anti-trafficking network, which guarantees efficacious protection to victims, making it possible to provide victims of THB identified in one region with assistance in another region.

Trade Unions play an important role in the fight against labour exploitation, by monitoring activities, developing raising awareness campaigns and providing workers with legal support.

1.1.4 Policies and measures addressing demand-side of THB in DW

In Italy, the demand-side is firstly addressed in the context of THB in the sex industry. There is little attention on the issue of demand in other sectors and there are no specific measures or policies aimed at directly tackling the demand-side of THB in DW.

It is worth mentioning that in July 2014 the anti-mafia caravan organised by the Italian NGOs Arci, the Libera Association and Trade Unions CGIL, CISL and UIL was dedicated to the topic of THB. In particular, by also supporting the project 'Campaign for Awareness Raising and Training to fight Trafficking' (CARTT), the Caravan travelled in Italy, France, Malta, Romania, Serbia and Spain, organising public events and conferences on THB in diverse sectors. In Italy, the issue addressed was the exploitation of domestic workers¹⁴.

Some significant initiatives, also relevant to DW, have been carried out at regional and local levels. For example, in 2011 and in 2012 the Emilia Romagna Region directed a campaign addressing potential victims of severe labour exploitation and promoting the national Toll-Free Helpline for victims of THB and serious exploitation. The slogan of the campaign was: 'Are you exploited in the workplace? Are you victim of violence, threats, blackmail? Call us!'. Similar initiatives have been realised in other regions (GRETA 2014).

Trade Unions have developed diverse information and awareness campaigns about domestic workers' rights involving civil society actors¹⁵. Last year, the Filcams CGIL launched a video campaign for the respect of the rights of domestic workers¹⁶.

Moreover, over recent years regions and municipalities have implemented diverse measures aimed at supporting employers and improving working conditions of domestic workers, especially domestic workers caring for elderly and dependent people (Pasquinelli & Rusmini 2013). These measures include: cash for care schemes, training activities, and service desks aimed at coordinating supply and demand providing information, help and support to both employers and domestic workers. Some municipalities and regions have also introduced, often in connection with the service desks, registers of domestic workers in order to provide information to households and to limit informality in the job recruitment process (Rusmini 2012). In some systems domestic workers need to have some qualifications to enrol on the registers¹⁷.

¹⁴ See: <http://www.redattosociale.it/Notiziario/Articolo/458058/In-cammino-contro-la-tratta-dei-nuovi-schiavi-Riparte-la-Carovana-antimafie>

¹⁵ Interview 20, Trade Union-Acli Conf, February 2015; Interview 21, Trade Union-Filcams CGIL, February 2015.

¹⁶ See <https://www.youtube.com/watch?v=DS4XloNEGqw>

¹⁷ For the limitations of the registers providing strict requirements of qualification see Rusmini 2012.

1.1.5 Key debates

Hitherto, there have been no specific national measures or policies aimed at addressing THB in DW. This deficiency reveals the lack of attention from the Government towards forms of abuse occurring in sectors such as DW, which are delicate and difficult to tackle. On the other hand, this should also be read within a general tendency of the Government to overlook the issue of THB. Indeed, as stakeholders interviewed have highlighted, in recent years anti-trafficking interventions have not been adequately supported¹⁸. In October 2014, the Association for Legal Studies on Immigration (ASGI) presented a statement to the Government requesting they respect the commitments undertaken with Legislative Decree 24/2014 transposing Directive 2011/36/EU.

Both Directive 2011/36/EU and Directive 2009/52/EC have been inadequately transposed into national law (Castelli 2014; ASGI 2015)¹⁹. Last June, ASGI filed two complaints to the European Commission denouncing the Italian Government's violation of the provisions of the EU Directives.

These lacunae have strongly undermined the Italian legal framework on THB, which is considered, especially with reference to Article 18 of the Legislative Decree No. 286/1998, particularly innovative regarding the protection of the rights of victims.

1.2 THB in domestic work: general trends

1.2.1 Empirical data

Domestic work

According to official estimates, which refer to officially registered workers, in 2014 77.1% of the total workforce in DW was migrant labour (INPS 2014; IDOS 2015). The same data reveal that women constitute the majority of migrant domestic workers, especially in elderly care, and most of them come from eastern European countries (Romania, Ukraine, Moldova and Albania), Asia (Philippines, Sri Lanka and India) and South America (Peru and Ecuador) (IDOS 2015).

Studies demonstrate that DW is one of the sectors with the highest rate of irregularity (CENSIS 2012; IREF 2014; Soleterre Irs 2015). Most cases of irregularity concern the partial or non-payment of contributions from the employers. According to a study on elderly care carried out by IREF in cooperation with Acli Conf, 51.1% of domestic workers interviewed declare forms of irregularity in the payment of contributions (IREF 2014). In addition, as the stakeholders interviewed for this research highlighted, domestic workers frequently experience situations of fundamental rights violation.

Trafficking in human beings and severe forms of exploitation

Due to the lack of a uniform identification system, there is no data on the total number of victims of THB identified per year in Italy, and thus of victims of trafficking in DW. However, the DEO, through the national database on victims of trafficking and severe exploitation (SIRIT), gathers data on the number of victims who benefit annually from Article 13 and Article 18

¹⁸ Interview 5, ASGI, March 2015; Interview 17, Emilia Romagna Region, February 2015; Interview 18, Tuscany Region, May 2015.

¹⁹ See Section 3.

programmes.²⁰ According to the data referring to victims assisted under Article 18²¹, in 2013 there were seven victims of domestic servitude and seventy-one victims of labour exploitation, of which seven were cases of labour exploitation in the services to the person sector, and in 2014 there were two victims of domestic servitude and thirty-five victims of labour exploitation, of which one was a case of labour exploitation in the services to the person sector²².

Yet, as the interviewees for this research outlined, these data do not provide clear figures. Indeed, the absence of national guidelines in collecting data on the national database makes it difficult for NGOs and institutions, which supply data, to distinguish cases of labour exploitation in the services to the person sector from cases of domestic servitude²³.

At the same time, these figures, which are not huge, seem not to correspond to what our respondents reported to us: far from being occasional cases, domestic workers, especially live-in workers, often face exploitative working conditions up to cases of severe abuse and trafficking.

1.2.2 Main characteristics and features of THB in domestic work

There is a lack of information and research on THB in DW in Italy. However, relevant information can be found in a recent study carried out by Caritas Italiana and Coordinamento Nazionale Comunità di Accoglienza (CNCA) (Castelli 2014). According to this research, the geographic area from which come most of the victims of THB for labour exploitation (including labour exploitation in DW) is Eastern Europe (especially Romania), followed by Africa, Asia and Latin America. In most cases, the migratory path starts with a voluntary choice of a person to migrate, and is not the outcome of a coercive act. The debt that many people incur for their migratory project fosters their vulnerability to exploitation. The main channels through which people find a job are: word of mouth among family and friends, illegal intermediaries ('caporali') and recruitment agencies. The study points out that victims of THB for labour exploitation experience several forms of exploitation and maltreatment such as excessive working hours, no salary paid or salary below legal minimum wage, working conditions significantly different from what was agreed, passport retained, discrimination and physical and sexual abuse (Castelli 2014).

The trends highlighted by this study have been broadly confirmed by the stakeholders interviewed for this research. Indeed, based on the cases documented by our respondents, it has emerged that some people migrate autonomously and find a job through family or friends, while others do so with the 'help' of agencies or intermediaries. Migrant domestic workers experience the above-mentioned forms of exploitation, including sexual abuse.

2 Case law review

This section provides an overview of key national case law related to THB in DW and discusses some of the challenges in implementing legal provisions related to severe exploitation and THB. The section also presents remedies for persons who have been trafficked or exploited in DW.

²⁰ These data do not refer to the number of convictions but to the victims of labour exploitation and trafficking who have been assisted under Article 13 of Law No. 228/2003 and Article 18 of Legislative Decree No. 286/98.

²¹ Since there is a significant degree of double counting as many victims are first assisted under Article 13 and then pass to Article 18 projects (see also Eurostat 2015), the data used in this section refer to victims assisted under Article 18 projects.

²² Data provided by the DEO in January 2016.

²³ Interview 7, NGO-Proxima, February 2015; Interview 17, Emilia Romagna Region, February 2015.

2.1 Key national case law

In Italy, there have been no convictions for trafficking or slavery in the DW sector and there have been very few cases brought before the court which involved THB and serious exploitation in DW.

This section focuses on three relevant cases: the first is the *M. and Others v. Italy and Bulgaria* ruling of the European Court of Human Rights (ECtHR) involving trafficking in DW; the second is a sentence of the Court of Appeal of Assizes regarding a case of arranged marriage also involving domestic servitude; the third is a recent sentence of the Supreme Court of Cassation concerning labour exploitation of some Romanian workers in a firm. Although this last case does not concern exploitation in DW, it highlights the difficulty in proving the condition of continuing subjection as envisaged in Article 600 of the CC ('Placing or Holding a Person in Conditions of Slavery or Servitude')²⁴.

***M. and Others v. Italy and Bulgaria* (No. 40020/03. ECtHR 2012)**

Principal facts

The applicants are a Roma family (parents and daughter) from Bulgaria who went to Milan following a promise of work in the house of a Roma man of Serbian origin. The family alleged that few days later, beaten and threatened with death, they were forced to go back to Bulgaria, leaving their daughter – who was a minor at the time – behind. They claimed that the daughter was kept under constant surveillance, raped, forced to steal, threatened with death and physically abused. They reported to the Italian police the facts and the police raided the villa of the Roma man and rescued the daughter. The events were investigated by the Italian authorities but no criminal proceedings were instituted against their daughter's kidnappers.

Legal analysis

The applicants alleged that Italy had breached Article 3 (Prohibition of torture and inhuman or degrading treatment) of the European Convention of Human Rights (ECHR) because the authorities did not prevent further ill-treatment by ensuring their daughter's swift release and because the investigations in both Italy and Bulgaria into their allegations were not effective. Based on Article 4 (Prohibition of slavery, servitude or forced labour), the applicants also claimed that their daughter had been a victim of THB and both Bulgaria and Italy were responsible for this violation. They also claimed a violation of Article 14 (Prohibition of discrimination).

The Court found a violation of Article 3 as the Italian authorities had not effectively investigated the applicant's alleged ill-treatment by the Serbian family. However, the Court rejected all complaints based on Article 4 and Article 14. With regard to Article 4, the Court ruled that the circumstances may have amounted to THB, but that the evidence submitted had not enabled it to determine whether the applicants' allegations were truthful. Therefore, the Court held that given that it had not been established that the girl was victim of THB, the obligations under Article 4 to penalise and prosecute THB did not come into play in this case.

Comment

By putting the burden of proof on the applicants, the Court departed from the lower threshold of 'credible suspicion' supported in *Rantsev v Cyprus and Russia* (No. 25965/04, 2010). In *Rantsev v Cyprus and Russia*, the Court held that THB falls within the scope of Article 4 of the ECHR and that States have positive obligations to investigate allegations of THB where circumstances give rise to a credible suspicion. The choice of the Court in *M and Others v. Italy and Bulgaria* to shift the burden to 'prove' the factual circumstances on the applicants appears to be problematic as it seems to overlook the complex nature of the offence of THB,

²⁴ It should be noted that the rulings illustrated in this section refer to the formulation of the provisions on slavery and THB (Articles 600 and 601) before the implementation of Directive 2011/36/EU into national law in 2014.

where frequently there is a lack of evidence, especially because victims are often traumatised by the experience suffered. Moreover, given that complaints against States are usually filed when authorities have not effectively investigated the facts and therefore when there is little evidence available, this Court's ruling makes it considerably difficult for victims of THB to invoke Article 4 in claiming a State's responsibility for failing to investigate and prosecute THB (Jovanovic 2013).

The Court of Appeal of Assizes (No. 17/2014. 28-11-2014)

Principal facts

This case involved an arranged marriage between a 15 year old girl from Kosovo and a Roma minor boy living in a Roma camp in Pisa, Italy. The girl's parents, who were an extremely poor family, received a sum of money as dowry from the young man's parents. The girl was illegally brought to Italy by the uncles of the young Roma boy. She was forced to have sexual intercourse with her spouse. According to the Roma tradition, the bride must be a virgin and have her first sexual intercourse with her spouse. The girl also claimed that she was forced to perform exhausting domestic chores and tasks for the family. Moreover, she was repeatedly forced to engage in sexual acts by her spouse and also subjected to sexual abuse by her father-in-law. She also claimed that she was segregated in the Roma camp and deprived of her passport. The few times she spoke with her parents, she admitted to them that she had been subjected to abuse and violence. Worried, her parents contacted the police headquarters in Pisa. A few days after their first visit to the camp, the police took the girl away.

Legal analysis

The prosecution charged the young man with the offence of sexual violence²⁵ (Article 609bis of the CC) and the members of the young man's family with the offence of group sexual violence (Article 609-octies of the CC) as they, according to the tradition, 'forced' the girl to submit to a sexual act with her spouse. Moreover, the prosecution charged members of the young man's family with the offence of THB (Article 601 of the CC) as they illegally brought the young girl to Italy for the purpose of reducing her to a condition of slavery. Lastly, the prosecution charged the young man's parents with the offence of 'Placing or Holding a Person in Conditions of Slavery or Servitude' (Article 600 of the CC) as they, by taking advantage of her situation of need and through physical and psychological violence, placed and held the young woman in a condition of continuous subjection in order to force her to perform labour services in the Roma camp as well as sexual acts with her alleged husband.

The Court of Assizes²⁶ (First level instance) rejected the allegations of sexual violence and slavery and reduced the offence of THB to that of facilitation of irregular migration (Article 12(3) Legislative Decree No. 286/98). With regard to THB and slavery, the Court argued that the young girl knew she had to marry the young Roma boy and voluntarily chose to move to Italy to join her spouse. In addition, the Court held that the young woman was not placed in a condition of slavery. Although there was a situation of interpersonal tensions and conjugal violence, it did not amount to a condition of subjugation. Moreover, by putting into question the credibility of the statements of the young girl, the Court held that the girl had not performed non-respectable domestic work.

The Court of Appeal of Assizes (Second level instance) held as valid the allegation of group sexual violence but rejected, on the basis of the same reasoning provided by the Court of first instance, the allegations of THB and slavery.

The Public Prosecutor has recently appealed to the Court of Cassation.

²⁵ As he is a minor, there are separate proceedings.

²⁶ Court of Assizes, 15-03-2013, No. 18046/10.

Comment

The rulings of the Courts appear problematic on several grounds. First, the Courts held that the case did not amount to trafficking because the young woman voluntarily chose to move to Italy to join her spouse. In so arguing, the Courts seem to neglect the principle of the irrelevance of the consent of a victim of THB as affirmed by the UN Protocol on trafficking and by Directive 2011/36/EU. The latter also states that 'when a child is concerned, no possible consent should ever be considered valid'. Although it is worth noting that the Courts referred to the formulation of the provisions on slavery and THB (Articles 600 and 601) before the implementation into national law of Directive 2011/36/EU in 2014, it should also be noted that even Council Framework Decision 2002/629/JHA, replaced by Directive 2011/36/EU, affirmed the irrelevance of the consent of the victims. As for labour exploitation, both the Courts held that the young woman exaggerated regarding the severity of her DW activities, as she felt uncomfortable in an environment to which she did not belong. However, they did not provide clear and robust explanations of the reasons why the statements of the young girl regarding her DW were not credible. Furthermore, the Courts highlighted that one of the witnesses argued that the young woman had not carried out heavy work but was limited to performing the same DW that women of her age usually do for their families in the camp. In this way, the Courts seemed to implicitly support the idea that doing the same work performed by the other women in the camp means performing normal and not heavy activities. However, it cannot be ruled out that other women in the camp have experienced forms of exploitation.

Supreme Court of Cassation (Cass.pen.sez VI. 11-04-2014. No. 24057)**Principal facts**

This case involved some Romanian people working in a farm of an Italian man under exploitative and degrading conditions including extremely bad accommodation, inadequate supply of food, excessive working hours (around 12 hours per day) and lack of payment.

Legal analysis

The Tribunal of Viterbo (First level instance) convicted the employer of the offence of 'Placing or Holding a Person in Conditions of Slavery or Servitude' (Article 600 of the CC).

The Court of Appeals of Rome²⁷ (Second level instance) found that the circumstances did not amount to the offence of slavery (Article 600 of the CC) as the working conditions suffered by the Romanian people did not prevent them from self-determination and therefore from escaping such an abusive working environment. Thus, they were not placed in a condition of continuing subjection as envisaged in Article 600. The Court reclassified the offence as 'Abuse in family' (Art. 572 of the CC). It argued that this offence also addresses the context of working relationships defined as para-familial relationships ('relazioni parafamiliari'), which are characterised by the existence of a regular and intense relationship between employer and employee, habits of life among persons and the subjection of one person to the other.

The case was brought to the Supreme Court of Cassation, which confirmed the ruling made by the Court of Appeals.

Comment

As this ruling highlights, according to existing case law (which mainly refers to the text of the provision on slavery before the implementation of Directive 2011/36/EU), taking advantage of other people's work, performed in conditions of exploitation, does not amount to the offence of

²⁷ Court of Appeals of Rome, 21-06-2013, No. 5552.

slavery when the victim is not placed in a situation of continuing subjection such as that in which there is a substantial reduction of a person's ability of self-determination²⁸.

Given the difficulty in proving a condition of continuous subjection, cases of serious exploitation have often been punished under other offences such 'Abuse in Family' (Article 572 of the CC) and 'Extortion'²⁹ (Article 629 of the CC). The use of offences that are not strictly linked to labour exploitation, such as 'Abuse in Family', runs the risk of neglecting the seriousness of the crime committed and highlights the inadequacies of the Italian legal framework on severe labour abuse; inadequacies which today might be addressed thanks to the recent implementation into national law of Directive 2011/36/EU.

In this regard, it is worth highlighting that in Italy, so far, severe labour exploitation has mainly been prosecuted under the provision concerning the crime of facilitation of irregular migration (Article 12 of Legislative Decree 286/98) and under the provision concerning penalties for employers employing irregular migrant workers (Article 22 of Legislative Decree 286/98). However, these instruments aim at combating irregular migration rather than protecting victims of labour abuse. Moreover, they appear ineffective nowadays as most cases of labour exploitation involve migrants who are not irregular but are asylum seekers, refugees and poor EU citizens (in particular Romanians) and migrants with a residence permit. In these cases, the provisions of the Criminal Code available today to address severe labour exploitation are Article 603bis ('unlawful gangmastering and labour exploitation') and Articles 600 (slavery) and 601 (trafficking), which, as argued, have been recently amended by the transposition of Directive 2011/36/EU into national law. In particular, by adopting the broad definition of THB provided by Directive 2011/36/EU, the new formulation of Article 601 could lead to a more effective application of this provision, addressing the complex forms of contemporary labour exploitation.

2.2 Key challenges in implementing legal dispositions and in legal proceedings

Certainly, one of the reasons there have been few criminal proceedings on THB in DW concerns the hidden nature of this sector, which renders identifying and addressing cases of severe exploitation and THB extremely difficult. However, it should be highlighted that in general, in Italy, the numbers of criminal proceedings and convictions related to the offences of slavery and THB is low (Greta 2014; ASGI 2015) and most of these concern cases of sexual exploitation. This derives from diverse challenges in implementing Italian legal provisions on these offences.

First of all, as indicated in interviews with a judge and some prosecutors and lawyers, the way the offence of THB (Art. 601) was formulated in the criminal code before the implementation in 2014 of Directive 2011/36/EU was so inadequate as to make the provision difficult to be applied³⁰. Indeed, there was not a clear distinction of the acts, means and scopes of THB and it was almost impossible to prove all the elements of the crime (see also ASGI 2015)³¹. Consequently, the offence of slavery (Art. 600 of the CC) has been used in preference to that of THB. As the judge and UN Special Rapporteur, Maria Grazia Giammarinaro, when interviewed for this study, argued: 'now we have to wait to see the effects of the implementation of EU Directive 2011/36 and thus of the adoption of the international definition of trafficking into national legislation. But, it is worth saying that the new provision on trafficking inserts into a

²⁸ Cass. pen., sez. V, 24-09-2013, No. 44385.

²⁹ Cass. pen., sez V, 26-10-2011, No. 251.

³⁰ Interview 1, DDA of L'Aquila, March 2015; Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015.

³¹ Interview 4, ASGI, February 2015; Interview 5, ASGI-Arcobaleno, March 2015.

consolidated juridical situation in which there is the habit of applying Article 600' (Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015).

However, as illustrated above, even the provision on slavery has not frequently been applied so far, especially in cases of labour exploitation. This is mainly due to the severity of the associated penalties and to the vague formulation of 'the situation of continuous subjection' as envisaged by Article 600 of the CC. Accordingly, most prosecutors have preferred to charge the accused person with other offences such as 'private violence', 'kidnapping', 'extortion' and 'abuse in family' which ensure that they win the criminal trial and thus get a successful conviction (Interview 4, ASGI, February 2015). In general, it may be argued that the offences of THB or slavery have usually been charged in the presence of damning elements.

Another issue concerns the difficulty by competent authorities in understanding and perceiving the severity of the crime committed in cases of labour exploitation. According to Giammarinaro, this difficulty derives from the fact that

[t]hese cases regard in particular migrants and there is a dominant ideology which normalises the exploitation of migrants. As a consequence, some forms of exploitation are not viewed as a violation of fundamental human rights such as, for example, the right to health and the right to physical integrity (as to work in inhumane conditions is a terrible and traumatic experience which leaves indelible marks on a person's health and psyche) (Interview 2, Tribunal of Rome and UN Special Rapporteur on THB, March 2015)³²

Moreover, as the case law outlined above indicates, when cases involve minorities, such as Roma people, prejudices often may inform competent authorities' decisions so that exploitation is not only normalised but is also viewed as 'natural' for these groups (see also Boicu 2013).

A further problem is related to the fact that THB is a relatively new offence, involving complex situations, and among competent authorities there is often a fear of or difficulty in acting in absence of a robust case law to build upon and of systematic activity of training and dissemination (GRETA 2014)³³. Emblematic of the lack of robust training activities is the fact that landmark cases of ECtHR, such as *Siliadin vs. France* and *Rantsev vs. Cyprus and Russia*, are usually neglected by judicial authorities.

Difficulties in the application of the legal provisions also concern the different conceptions of trafficking among competent authorities, including judges, prosecutors and lawyers. According to most competent authorities, THB involves a transnational movement and consists of a single chain in which the recruitment of a person from his/her country of origin and his/her exploitation in the country of destination are under the control of the same criminal group or people. However, as studies and experts have pointed out, today - especially in cases of labour exploitation - the trafficking process is mainly composed of diverse segments (Castelli 2014; Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015). Indeed, often in the first phase of this process people migrate with the 'help' of a *porteur* (facilitator), who asks them for some money for his or her 'service', and subsequently they end up involved in abusive working contexts.

In the light of this, Giammarinaro points out that 'when we speak about trafficking the focus should not be on transfer but on exploitation. The essence of trafficking is the purpose of exploiting people, which means taking advantage of unpaid or underpaid labour or services of another person, performed in inhuman, degrading and unsafe conditions' (Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015).

³² See also FRA 2015 on this point.

³³ Interview 1, DDA of L'Aquila, March 2015; Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015.

However, not all forms of exploitation amount to THB. Exploitation is a continuum which goes from relatively less serious forms of exploitation to slavery or THB (Anderson & O'Connell-Davidson 2006; Skrivankova 2010) and depends on the penalty range. Therefore, in order to qualify a case as THB, judicial authorities have to evaluate each case on its own merits and look at all the factors and parameters at stake, especially the situation of vulnerability of the person. Such a task is extremely challenging in today's context marked by a strong increase in poverty and precariousness and thus where most of the workers experience exploitative conditions, which rely on the abuse of a condition of vulnerability.

Given the complex features of trafficking, it is not surprising that scholars and practitioners have different views on how to interpret the THB definition contained in the new provision of the CC (Article 601), which has adopted the broad definition provided by EU Directive 2011/36. For example, some argue that Article 601 should be linked to the provision on slavery (Article 600) and thus should be applied only when the victim's self-determination is so limited that he/she finds him/herself in a state of subjection as in the case of Article 600 of the CC (Interview 4, Lawyer, ASGI, February 2015). Indeed, according to this view, only referring to the condition of subjection envisaged in Article 600 it is possible to justify the severe penalties imposed in cases of THB.

Although valuable, this interpretation of the provision may risk further reinforcing the strong relationship between the offence of trafficking and that of slavery, which - given the difficulty to prove the existence of the condition of continuous subjection - has limited the range of application of provision on THB (Interview 23, Expert on trafficking, June 2015; Vallini 2014).

In order to avoid this risk and to make the provision on THB capable of addressing most of the contemporary cases of labour exploitation relying on the abuse of a position of vulnerability, professor Emilio Santoro – an expert on the matter of labour exploitation who was interviewed for this research – suggests interpreting Article 601 as envisaging two criminal conducts: while the first conduct is linked to the existence of a condition of slavery as envisaged in Article 600, the latter focuses on exploitation. However, one of the main obstacles for this interpretation may be the severity of the penalties imposed in THB cases. In this sense, by highlighting that Directive 2011/36/EU establishes a minimum penalty of five years of imprisonment, Santoro argues that Article 601 should be amended to provide for a penalty of five to twenty years of imprisonment instead of eight to twenty years (Interview 23, Expert on trafficking, June 2015).

2.3 Other remedies for persons who have been trafficked or exploited in domestic work

Trafficked and exploited workers have the right to diverse remedies by the competent national courts for acts violating their rights and freedoms guaranteed by law.

Often victims of trafficking have difficulties obtaining free legal aid. This is mainly because the victims have a right to free legal aid if they have an income equal or inferior to € 11,369.24 per year. However, it is often difficult for the victims to prove their income in Italy and their income in their countries of origin (GRETA 2014).

In addition, the Italian government has not integrated into national law Article 11 of EU Directive 2011/36 which requires Member States to take the necessary measures to ensure that a person is provided with assistance and support as soon as the authorities have a reasonable-grounds indication for believing that the person is a victim of THB. Moreover, Italian legislation does not provide for assistance for extrajudicial dispute resolution.

It is also important to point out that the existence of effective remedies also depends on the support that civil society actors – such as associations, NGOs and trade unions – provide to victims (FRA 2011).

Residence permit for victims of THB and severe exploitation

Article 18 of Legislative Decree 286/1998 provides foreign people who have been victims of THB and severe exploitation with a residence permit for humanitarian reasons (see Section 1.1.3).

Article 22 of the Legislative Decree 286/98 provides a residence permit for humanitarian reasons to migrant workers who are victims of 'particularly exploitative working conditions', and cooperate with competent authorities (see Section 1.1.3).

Compensation for victims of THB

Victims of crime, if they act as a civil party in the criminal proceedings, can ask for compensation for damage suffered from the perpetrators. In the case of victims of THB, a problem which often occurs is that perpetrators have no assets and thus no compensation can be obtained from them (GRETA 2014).

Legislative Decree No. 24/2014, by amending Article 12 of law No. 228/2003, has established that the 'fund for anti-trafficking measures' is also aimed at financing the compensation of victims. The compensation is €1,500.00 per victim. This fund is extremely exiguous. Legislative Decree No. 24/2014 has thus inadequately transposed Article 17 of Directive 2011/36/EU ('Compensation to victims') into national law. Moreover, Italy has also inadequately implemented Directive 2004/80/EU on compensating victims of crime (Cardi 2014).

Remedies for labour law violations

Under Italian civil law, workers who experience violation of the contract provisions and/or of mandatory rules on working conditions (e.g. working hours, the minimum wage, social security, maternity leave and health and safety) have the right to summon the employer before the Courts of Labour in order to request compliance with contract conditions and employer obligations. Furthermore, workers who experience forms of abuse including maltreatment and violation of fundamental rights (such as discrimination, verbal and psychological abuse and mobbing) have the right to sue the employer for compensation for patrimonial and non-patrimonial damages (Articles 2043 and 2055 of the Civil Code).

Domestic workers who experience the above-mentioned violations may also decide to opt for extra-judicial dispute resolution mechanisms, such as conciliation: administrative conciliation and trade union conciliation. Although it depends on the cases, it is however possible to argue that conciliation strategies prove to be more efficient for migrant workers to recover salary and/or contribution owed to them by employers than long court procedures.

Migrants in an irregular status who experience labour rights violations have the right to raise claims with courts and/or access conciliation procedure. However, the fear of being reported to authorities and deported to the country of origin prevents workers from exercising this right (FRA 2011). This situation, of course, differs for victims of THB or serious exploitation who can be granted humanitarian or specific residence permits.

It has to be outlined that Italy did not implement Article 13(1) of Directive 2009/52/EU, which requires that Member States ensure that there are effective mechanisms to allow third-country nationals in illegal employment to lodge complaints against their employers, directly or through unions or associations, and also to recover their wages or any differential wages.

3 Discussion of results

The first part of the following section offers a description of the specific features and trends of THB in DW. Subsequently, it focuses on the factors motivating the demand for cheap and exploitable workers in DW. Finally, it examines the key gaps in policies and legislation.

3.1 THB in domestic work: Observations on types of situations and conditions

DW and Migrant Workers' Vulnerability to exploitation

In Italy, as in other countries, care has not only been persistently undervalued as a political and public issue but also as 'work' (Balbo 2001; Lutz 2008; Sarti 2010; Sciarba 2015), and this is certainly reflected in the fact that, as argued above, DW is not adequately regulated. Highlighting the gendered character and low social status of DW, the national secretary of the Filcams CGIL, Giuliana Mesina, argues:

In Italy the burden of the care in a family is still mainly on women's shoulders [...] Also, the productive assets of DW are considered poor when in reality they consist of relational goods which are not reproducible by a machine and which have involved a solid heritage whose value is immeasurable. In Italy, the value of a job is viewed on the basis of the remuneration (Interview 21, Trade Union-Filcams CGIL, February 2015).

The complexity of the relationship between employer and employee, which is marked by high levels of intimacy and proximity (Lutz 2008; Ricard-Guay 2015), has also contributed to DW not being well regulated (OSCE 2010). This relationship is characterised by a specific power imbalance, which is frequently 'clothed in the language of obligation, support and responsibility' (Anderson 2007: 255). Moreover, paternalist practices that assimilate labour relations with family relations may also contribute to undermining workers' rights: 'under the category "you're like one of the family" there is often the risk of also justifying the non-respect of rules' (Interview 22, Expert on DW, March 2015). However, in considering the complexity of the employer/employee relationship in DW, it is worth noting, as many interviewees outlined, that in some instances households are in a situation of need as one of their members is a fragile, elderly person who is not self-sufficient and they find themselves alone because they have no institutional help. The welfare system's inadequacies may exacerbate the difficult position of employers as market and family actors (Triandafyllidou & Marchetti 2015).

The fact that DW is performed in the employer's household, and thus in the private sphere, is another factor that makes this sector unlike any other and that increases workers' vulnerability (OSCE 2010; Mantouvalou 2012) as they are isolated (Parreñas 2008) and have limited or no access to information and assistance measures (Interview 21, Trade Union-Filcams CGIL, February 2015; OSCE 2010). Furthermore, in the live-in situation, the boundaries in terms of tasks and between free time and working time often blur and worker's privacy may be highly limited (Vianello 2012). Cohabitation may 'foster exasperation and also forms of mutual violence among employers and domestic workers' (Interview 22, Expert on DW, March 2015).

In Italy, private households escape labour inspections. Therefore, most cases of abuse and exploitation in DW remain hidden from the public and authorities. In absence of control, the specific situation of imbalance of power which characterises this sector 'can produce an escalation of violence and coercion, up to situations of slavery-like conditions' (Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015.).

The lack of concrete occupational alternatives leads many migrant domestic workers, whose priority is often to send money to their families in the countries of origin, to remain in exploitative working conditions.

Migrant domestic workers with an irregular status face a high risk of exploitation (FRA 2011, 2015; Triandafyllidou 2013), especially when they work as live-in. Indeed, in addition to the fear of losing a job and a place to sleep, the fear of being reported to competent authorities, then to be deported constitutes a further factor which prevents them from escaping situations of exploitation (Interview 21, Trade Union-Filcams CGIL, February 2015).

However, even EU citizen migrant workers, who today constitute an essential component of the labour force in diverse sectors, such as DW, face a heightened risk of being severely exploited (Medu 2015). Their possibility to move freely across EU boundaries does not entail an effective 'access to rights and social justice' (Palumbo & Sciarba 2015b). Furthermore, the illegal employment of EU citizen migrants is less risky for the employers as they are not at risk of being accused of the offences of facilitation and exploitation of irregular migration.

Gendered dynamics and power relations increase the risk of strengthening the segregation of migrant women in market niches (Piper 2007; Scrinzi 2008), such as DW, often marked by dynamics of labour and sexual abuse (Interview 15, Municipality of Cesena, March 2015; Interview 21, Trade Union-Filcams CGIL, February 2015).

Recruitment process

From the interviews conducted for this study, it has emerged that in some instances migrant domestic workers move to Italy through the help of recruitment agencies (in source or destination countries), in other cases they move to Italy autonomously and then find a job through diverse channels. These channels include word of mouth, parishes, recruitment agencies, social cooperatives, and associations of the community of origin based in Italy. There are also cases in which domestic workers, who are employed in other countries, come to Italy with their employer. However, there is no clear data on this and from the interviews there has emerged only few cases of this type.

As documented in existing reports, as well as by some of our respondents, social cooperatives and recruitment agencies - which range from legal to informal and illegal organisations - can play a fraudulent and/or abusive role by leading migrants into exploitative working situations (Andrees 2008; OSCE 2010; FRA 2015)³⁴. Moreover, some migrants often find themselves in debt to such agencies due to the high fee they have to pay to them for facilitating migration and helping with job placement. This increases migrant workers' vulnerability and limits possibility of escaping exploitation³⁵.

One interviewee reported a case involving an illegal agency managed by an Italian man with the help of some migrant men and women³⁶. They recruit both migrant women who are already in Italy and women in their country of origin (especially from Romania), offering them jobs in DW (mainly in elderly care) under exploitative conditions. The agency often makes women understand that if they are available for sexual services, they can obtain a better job. This agency also has some apartments where women can stay, under payment (€10 per day), when they are waiting to start work. Usually they stay in this apartment for 15-20 days and thus in order to afford this cost most of them incur a debt with this agency. In addition, women have to pay around €100 to the agency for finding them a job. This amount may be greater if it is a job with a contract.

Another important case regards a legal agency in Modena that 'employed' domestic workers already present in Italy and then sent them to local households. Many workers did not have

³⁴ Interview 15, Municipality of Cesena, March 2015; Interview 21, Trade Union-Filcams CGIL, February 2015.

³⁵ Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015; Interview 20, Trade Union-Acli Conf, February 2015.

³⁶ As the case is currently under investigation it is better not to mention the name of the city (and the Region) where the case is taking place.

residence permits and in the case of regular migrants, often there was no contract. The salary and working conditions were unfair. Workers who contacted trade unions were threatened with being dismissed by the agency. Once a woman was deprived of her passport and physically attacked by the boss. The situation deteriorated when the agency refused to pass on payment to workers even if the households continued to pay it. The lack of payment led workers to contact trade unions and the 'Oltre la Strada e Oltre lo Sfruttamento' project of Modena (Interview 14, Municipality of Modena, March 2015).

Exploitative working conditions

As the interviewees outlined, migrant domestic workers frequently experience several forms of exploitation and maltreatment, which range from violation of the fundamental protection provided by the contract to trampling the dignities of the person. In particular, migrant workers often have no contract, or have a contract in which the number of working hours is less than that effectively performed, and they work excessive hours, without a weekly day off and with low salaries. A recent study has revealed that salaries of domestic workers in elderly care have not increased in recent years and in the South of Italy salaries are very low: around €400-600 per month (IREF 2014). As emerged from the interviews, there are also cases in which domestic workers are deprived of a salary as it is substituted by payment in kind, i.e. room and board (Interview 7, NGO-Proxima, February 2015).

In addition, domestic workers often have inadequate accommodation, are prevented from eating the same food families eat and are subject to humiliations³⁷. Moreover, employers frequently limited or strongly controlled domestic workers' private lives (Interview 8, NGO-Papa Giovanni, March 2015; Vianello 2012). In some instances, they used forms of coercion, such as verbal, psychological or even physical abuse. Important to mention is a case concerning a young Indonesian woman brought to Italy by a couple, a Libyan man and an Italian woman, in order to work as a domestic worker, in particular to clean and take care of their house. The young woman was deprived of her passport and forced to work in highly exploitative conditions for around sixteen months. In particular, she worked every day from 5.30 am to 1.00 am, without holidays, with a monthly salary of \$200, which was not consistently paid. The accommodation provided to her was of a very low standard. She was also victim of verbal abuse and physically abused by her employer³⁸.

Although actual confinement is not frequent, live-in domestic workers, who often have only a half a day of free time per week, suffer high levels of restriction on freedom of movement as they are at the constant disposal of the employer (Interview 21, Trade Union-Filcams CGIL, February 2015).

As the case law illustrated in section 2 reveals, there are also cases of arranged marriage which involve labour and sexual exploitation: the victim is 'forced' to marry and then forced to perform household work, according to gendered roles and traditionalist practices, and simultaneously to submit to her husband's sexual requests. The 1956 Supplementary Convention on Slavery explicitly identifies the link between servitude and forced marriage (Article 1).

Despite frequent experience of several forms of exploitation, maltreatment and abuse, nonetheless not all situations amount to trafficking. It is necessary to view each case on its own merits, looking at the circumstances of the facts and factors at stake and paying particular attention to the position of vulnerability of the victim³⁹.

³⁷ Interview 15, Municipality of Cesena, March 2015; Interview 21, Trade Union-Filcams CGIL, February 2015.

³⁸ As the criminal proceeding has not yet started, the name of the city (and the region) where the case took place cannot be mentioned. I obtained information about this case from the association which assisted the victim.

³⁹ Interview 1, DDA of L'Aquila, March 2015; Interview 2, Tribunal of Rome and UN Special Rapporteur, March 2015.

3.2 Key motivation factors and demand-side dimension

As emerged from the interviews, diverse factors – such as economic, political, legal, social and cultural factors – affect demand for cheap and exploitable workers in DW in Italy.

The economic motivation, meaning lacking or saving money, is undoubtedly one of the main factors. In Italy, the average value of pensions as well as of household incomes is quite low⁴⁰ and in the absence of sufficient welfare state services, people cannot afford more than a certain amount.⁴¹ This situation has been exacerbated by the current economic crisis. As Senator Guerra points out:

The number of families in which members are able to provide care is in decline while the need for assistance and care increases. As Istat stated, the family networks are increasingly narrow and long. At the same time, the cost of legally employing a (live-in) domestic worker [around €1100] is impossible for many families today. Therefore, a cheap labour force has become more desirable (Interview 12, Senate, March 2015).

However, the issue of demand cannot be restricted to economic aspects, as other factors play a role and concern both wealthy and less wealthy households. As highlighted by one interviewee of this study, Raffaella Sarti, an expert on domestic work, in Italy there is a 'widespread tendency not to respect the rules on working conditions. This is part of an extensive malpractice in which being a migrant becomes an element added to a situation which is already critical', especially in the context of domestic work where the boundaries between employment and family relations constantly blur. On the other hand, Italian policies and laws on DW have played an important role in fostering the idea of migrant domestic workers as workers 'who in some ways can be exploited to a greater extent, in comparison to Italian workers' (Interview 22, Expert on DW, March 2015). For example, Law No. 339/1958 does not address those workers who worked less than four hours per day and for a long time there was a discussion about paying contributions to these workers. Finally, at the beginning of the 70s, it was established that contributions should also be paid (Sarti 2010). However, at the same time, 'the idea that contributions should not be paid to migrant workers spread. It was a wrong idea but it took some time to clarify this' (Interview 22, Expert on DW, March 2015).

The fact – as argued above – that domestic work is not recognised as 'work' is certainly another issue affecting the demand-side. Indeed, for example in some cases of elderly care, in addition to not paying the workers enough and not employing them legally, households require them to work excessive hours and overload them with tasks, such as to take care of two elderly people, often with serious health problems, overlooking the amount of work assigned (Interview 15, Municipality of Cesena, March 2015). This is influenced by the gendered and racialised character of DW (Anderson 2007; Lutz 2008) and by the idea of DW being an activity outside of marketisation (Ungerson 2003).

Prevailing social norms also constitute a key factor as they play a significant role in shaping people's behaviour as employers of DW (Anderson and O'Connell Davidson 2003; ICAT 2014).

⁴⁰ In 2014, 42.5% of Italians received a pension income lower than €1,000 and among these 12.1% lower than €500 (INPS 2014). As for family incomes, official data reveal that in 2012, half of Italian families had an income around €2,000 per month (Banca D'Italia 2014).

⁴¹ Interview 12, Senate, March 2015; Interview 21, Trade Union-Filcams CGIL, February 2015.

As Anderson and O'Connell Davidson point out, 'their understanding of these norms is largely determined through peer behaviour and what they can get away with' (2003: 42). Indeed, as one of the respondents highlighted, people often justify their actions by saying 'our friends or neighbours did the same'. This is a 'sort of "self-justification" and the reason for this is that the families do not view themselves as strong employers as they do not make an income from DW' (Interview 16, Municipality of Cesena, March 2015). Moreover, people know there are few cases in which employers of domestic workers have been effectively punished (Interview 21, Trade Union-Filcams CGIL, February 2015).

This sense of impunity has been strengthened by policies and laws that have tried to protect employers of domestic workers. For instance, when Directive 2009/52/EC was implemented through Legislative Decree No. 109/2012,⁴² the Government decided to stipulate the requirement that the number of recruited workers has to be more than three, because otherwise many Italian families, which exploit migrant domestic workers, would have been punished. As Senator Maria Cecilia Guerra, who was interviewed for this research, points out: 'if we had embraced Directive 2009/52 in an extreme way, there would have been the risk of sending to prison many Italian families which, however, the State had not helped to face the issue of caring for non-self-sufficient people. I am not happy about this choice but it was obligatory. Yet, I know that this choice makes it very difficult to address cases of exploitation and trafficking' (Interview 12, Senate, March 2015).

Many interviewees highlighted that a further core factor influencing the demand-side regards the dominant conception that migrant domestic workers come from situations of poverty, and consequently it should not be a problem for them to work under difficult conditions. According to this reasoning, 'people think that they give migrants an opportunity and so migrants have to be thankful and make do with what they have' (Interview 21, Trade Union-Filcams CGIL, February 2015). It is as if the migrant's condition of need and willingness to work is turned into the employer's right to exploit (Interview 22, Expert on DW, March 2015). As Sarti stressed in the interview conducted for this study, this is 'a kind of distorted cultural relativism which offers some justification: 'in their countries they suffer so much, thus here they are far better off' (Interview 22, Expert on DW, March 2015). Such an approach is developed even in forms of paternalism, which, as illustrated above, may function as forms of exploitation.

Focusing on the logic of paternalism versus the logic of rights, Santoro, in the interview carried out for this study, argues that paternalism has been embedded in Italian migration policies from the 1990s. Migration policies and laws rely on the idea that 'migrant workers are subordinate and can come to Italy only if an employer provides a guarantee for them. Even the regularisation programmes for irregular migrants have been based on the employer's guarantee' (Interview 23, Expert on THB, June 2015). Thus, laws and policies have fostered the conception that it is the employer who allows a migrant worker to come and stay in Italy and accordingly migrants have to be thankful (and do what the employer asks them to do).

As for the irregular employment of many migrant workers in DW, our respondents outlined that workers often opt not to sign a contract for economic reasons. Sarti calls these situations 'consensual forms of disrespect for the rules' (Interview 22, Expert on DW, March 2015) based on 'double reciprocal convenience' for both employers and workers (Castagnone *et al* 2013:

⁴² See Section 1.

20; Pasquinelli & Rusmini 2013). For example, many migrant workers opt for irregular work because they cannot redeem contributions in case of return to their countries of origin as Italy has not made bilateral agreements with many non-EU countries (Interview 13, Italia Lavoro, May 2015).

With respect to the role of fraudulent and abusive recruitment agencies and intermediaries, as Sarti highlights, these can create 'mechanisms of alteration of the intersection between demand and supply': they meet a demand for cheap and exploitable migrant labour, while recreating a supply in some cases as they often provide migrant workers with jobs which are exhausting, to the point of being impossible, thus leading people to contact them again for another job. This particularly occurs when the migrant worker is in a position of indebtedness towards the agencies (Interview 22, Expert on DW, March 2015).

3.3 Key gaps in legislations and policies (include demand-side dimension)

Key gaps in laws and policies on DW

Over recent years, in the wake of ILO Convention 189, there has been more attention paid to the issue of DW, but mostly at the regional level. Some regions, for example, have developed specific laws on DW (e.g. the Emilia Romagna Region). On the national level, however, nothing has really been done. As Mesina stresses: 'although most parts of the Convention have already been addressed by Italy, there are still two main issues which cry out for justice: maternity and health and safety in the workplace' (Interview 21, Trade Union-Filcams CGIL, February 2015). For example, regarding maternity, domestic workers can be dismissed after the mandatory maternity leave.

As argued above, in recent years there has been an increase in municipal or regional service desks aimed at addressing and coordinating demand and supply in DW by providing information, help and support to both households and domestic workers. With the exception of some that operate in connection with employment centres ('centri per l'impiego') or accredited private employment agencies, most service desks do not address the selection of domestic workers and contract issues. This strongly affects the efficacy of such interventions. Some services, such as project 'Pronto Badante' of the Tuscany Region, provide households with vouchers on the condition that they and the domestic worker would have to register with the National Institute of Social Security (INPS) and be monitored throughout the period of the voucher. However, the director in charge of managing the operation centre of the project reported that many families contacted them because they wanted the €300 voucher and when they understood that they would have to regularise domestic workers, they preferred not to utilise this service (Interview 19, Tuscany Region, May 2015).

While services addressing demand and supply in DW have increased, economic resources are still highly insufficient. In fact, for instance, the funding for non-self-sufficient persons has been subjected to deep cuts in the last few years. Lately, the current Government has established an increase, since 2016, in the funding from €250 million to €400 million (Interview 12, Senate, March 2015). But, Italy still lacks a structured plan for non-self-sufficient people.

As Senator Guerra points out in the interview conducted for this study, DW is not an issue of political priority because Italy is currently affected by the economic crisis and the crucial issue right now is the lack of job opportunities. DW, as she argued, 'is viewed as a private issue, even by the Left. There is the idea that once you put families in conditions of economic independency, ensuring them a job, the rest goes without saying. But this is not true, because to have a job is not enough. Families need the support of the State in dealing with DW issues'.

According to Guerra, there is a 'collective hypocrisy': there is no structured plan for non-self-sufficient people, but at the same time, there is a sort of tolerance for the 'people's do-it-yourself answer', which frequently involves forms of illegality and exploitation of migrant workers (Interview 12, Senate, March 2015). This has thus resulted in a model in which migrant domestic workers cover the deficiencies of the welfare system (Ambrosini 2013).

Recently the ceiling of the income from vouchers has been raised from €5000 to €7000 a year for each worker. As trade unions stress, this progressive liberalisation of the voucher system risks keeping workers in a condition of instability and precariousness. At the same time, in the absence of efficacious control, the vouchers are often used to 'cloak' subordinate and continuous work relationships rather than regularise occasional work relationships. Thus, far from addressing the black market, the voucher system risks instead fostering irregularity, and hence workers' vulnerability, in labour sectors, including domestic work (Interview 21, Trade Union-Filcams CGIL, February 2015).

Key gaps in laws and policies on THB

While the transposition of Directive 2011/36/EU into national law could be an important opportunity to improve the Italian anti-trafficking framework, Decree 2014/24 implementing the Directive presents several limitations. The Decree has not developed an integrated, comprehensive approach to THB as provided for in the Directive (ASGI 2015). Indeed, for instance, it downplays the need for a gender approach in addressing THB (Palumbo 2015). Its sole reference to a gender perspective consists of a brief reference to gender violence in its Article 1. Moreover, the Decree has not adopted the definition of position of vulnerability provided by the Directive and has not implemented some important provisions, including those regarding the irrelevance of the consent of the victims (Art. 2(4)); non-prosecution of, or non-application of penalties to the victim (Art. 8); and adequate and unconditional assistance (Art. 11). As mentioned above, the Decree has also inadequately transposed the provision of the Directive concerning the compensation to victims (Art. 17).

In addition, Italy still lacks a national plan against trafficking, as well as a national system of identification of victims. Furthermore, as respondents stressed, State funds for the system of assistance for victims have been provided in a discontinuous way, jeopardising NGOs activities.

The national plan should be adopted, after severe delays, in the next few months and will provide for actions of prevention, protection, repression and cooperation, following the 2012-2016 European strategy on THB. With respect to the issue of the demand-side, as the coordinator of the secretariat on THB of the DEO says, the Plan will dedicate specific attention to preventive activities, which include training in the countries of destination and origin (Interview 11, DEO, March 2015).

In a context of general political and institutional inattention towards the topic of THB, it is not surprising that the issue of demand is rarely discussed and faced, especially in the field of labour exploitation (Interview 17, Emilia Romagna Region, February 2015). Probably there is not the will to tackle such a complex issue, as this would lead to encountering the tangles of the Italian labour market and economy, undermining entire sectors, which rely on the exploitation of migrant workers.

Little attention is also paid to the issue of labour exploitation and/or THB in DW. As an interviewee points out, probably this is also because 'exploitation in DW is a complex and delicate social phenomenon, which also entails the economic difficulties of many Italian families, and so probably there is not the will to address it' (Interview 5, ASGI, March 2015).

With regard to the assistance and protection of victims of THB and severe exploitation, as many interviewees highlighted, the implementation of Article 18 of Legislative Decree No. 286/1998 is often inadequate, especially in cases of THB for labour exploitation (see also

GRETA 2014; OSCE 2014; ASGI 2015). For example, the so-called social path is rarely applied. Moreover, 'there is a regression in the way police interpret Article 18 and its requirements', especially the requirement of danger (Interview 5, ASGI, March 2015). Further, the issuing of the residence permit often takes a long time and there are problems with its renewal.

Lastly, the lack of concrete and fast working alternatives to offer to victims affects anti-trafficking interventions as it often pushes people to go back to work in exploitative conditions (Interview 7, Proxima, February 2015).

Key gaps in legal instruments on labour exploitation

Italian legal instruments specifically addressing labour exploitation have also proven inadequate. As for Article 603bis of the Criminal Code introducing the offence of 'unlawful gang-mastering and labour exploitation', this provision addresses primarily abusive intermediaries and not abusive employers (OSCE 2013; GRETA 2014; Medu 2015). At the same time, it identifies the role of abusive intermediaries in a way that is often difficult to apply in practice, especially in DW (Interview 1, DDA of L'Aquila, March 2015).

Doubts also exist over the efficacy of Legislative Decree No.109/2012 transposing Directive 2009/52/EC into national law. First of all, the main aim of this Decree, as well as of the Directive, is to combat irregular immigration, and not to protect the rights of victims. Moreover, by modifying Article 22 of Legislative Decree No. 286/1998, the Decree has provided a very restrictive definition of 'particular working exploitation'⁴³, which does not conform to that offered by Directive 2009/52/EC. As one of the interviewees argues, 'the way Italy has implemented Directive 2009/52/EC has clearly demonstrated that it does not want to address the issue of demand-side in the field of labour exploitation'. This is because 'labour exploitation of migrant workers is congenial to the Italian economic system. At the same time, the existence of a class in a condition of juridical and social subalternity offers the possibility to raise the living standards of other people' (Interview 4, ASGI, February 2015).

In summary, these provisions are principally aimed at addressing irregular migration and illegal gang-masters. The focus on irregular migration has resulted in the relative impunity of abusive employers and in a lack of effective protection for victims. Furthermore, this approach results in being particularly inadequate if one considers that today, as argued above, most of the exploited migrant workers are not irregular (Palumbo & Sciarba 2015b; Medu 2015).

At the same time, as an interviewee highlighted, 'the rhetoric of gang-masters, like the rhetoric of smugglers (*scafisti*), drives attention away from the root causes of THB and serious exploitation. The phenomenon of gang-masters needs to be redimensioned' (Interview 5, ASGI, March 2015).

4 Concluding Remarks and key messages for national policy makers

In order to efficaciously address cases of severe exploitation and THB in the DW sector, it is necessary to develop measures based on a comprehensive approach, as promoted by Directive 2011/36/EU (Giammarinaro 2012). This approach relies on the idea that trafficking is a complex and evolving phenomenon in which diverse issues are at stake – such as migration policies, labour measures, gender discrimination, poverty and violence – and, accordingly, anti-

⁴³ See section 1.

trafficking interventions cannot be developed solely through the instruments of criminal law or be limited to assisting victims, but require the implementation of concerted measures of different natures aimed at tackling the root causes of THB. At the same time, Directive 2011/36/EU has driven attention to the issue of the position of vulnerability of victims and the irrelevance of consent, highlighting how situations of vulnerability – in which the person has no real or acceptable alternative other than submitting to the abuse involved – *de facto* deny freedom of choice (Palumbo & Sciarba 2015a).

A comprehensive approach, therefore, implies addressing the structural factors that produce migrant workers' vulnerability. This, on the one hand, entails long-term aims as it means first of all tackling the deep economic disparities among people and among countries. On the other, it also requires the development of interventions aimed at addressing how national policies, laws and cultural and social norms foster migrants' vulnerability to exploitation and lead people to take advantage of this situation of vulnerability. Unsurprisingly, it is on these latter initiatives that most anti-trafficking policies and actions – not only in Italy but also in many other countries – mainly focus (or aim to focus).

In Italy, domestic workers frequently experience several forms of exploitation and maltreatment, which range from violation of the fundamental protection provided by the contract to severe abuse and trafficking. This paper argues that while economic motivations are the main factor influencing the demand for cheap and exploitable workers in DW, other aspects, such as political, legal, social and cultural factors, also play a crucial role in affecting the demand-side.

The hidden nature of DW renders the identification of cases of severe exploitation and THB extremely difficult. This study highlights that Italian legal and political responses to THB and severe exploitation have proven inadequate in preventing and addressing these phenomena and in protecting the rights of the victims.

Based on these considerations, the paper suggests the following recommendations concerning legal and political responses, which also address the demand-side dimension.

Recommendations

1.To enhance regulation on DW and to strengthen the rights of domestic workers:

- Disentangling the DW sector from the quota system and developing a special programme which allows migrant domestic workers to enter Italy as jobseekers.
- Achieving a full recognition of the rights of domestic workers (such as with regard to the issues of maternity and of health and safety in the workplace).
- Supporting and promoting the role of trade unions in monitoring the implementation of labour standards and supporting domestic workers in claiming their rights and seeking redress.
- Promoting bilateral agreements with non-EU countries of origin, in order to allow workers to redeem contributions in case of return to their countries.

2.To improve services for dependent persons and their relatives:

- Providing effective and coordinated services to households, for instance, by developing a structured plan for non-self-sufficient persons, addressing effectively the issue of health and social integration and guaranteeing that each person is supported by various services, which cooperate to meet their needs.
- Enhancing progressive economic subsidies to bear the cost of DW as well as fiscal incentives.

3.To enhance legal and political interventions on THB and labour exploitation:

- Ensuring the full transposition of Directive 2009/52/UE by modifying, for instance, Art. 22(12bis) of Legislative Decree No. 286/1998 matching the provisions of the Directive.

- Providing, in accordance with Article 13(1) of Directive 2009/52/UE, provisions to effectively allow third-country nationals in illegal employment to lodge complaints against their employers, and also to recover their wages.
- Introducing into national law important provisions provided by Directive 2011/36/EU, including the definition of position of vulnerability; the irrelevance of the consent of the victims; non-prosecution of, or non-application of penalties to, the victim; and adequate and unconditional assistance. Moreover, it is necessary to provide efficacious forms of compensation for damages to victims in accordance with Article 17 of the Directive.
- Adopting a structured National plan against trafficking, which also addresses the issue of THB in DW.
- Developing a national system of identification of the victims of THB and severe exploitation.
- Improving the national database SIRIT by developing a more comprehensive and coherent statistical system and developing guidelines for the collection of data.
- Securing and increasing funding for victim assistance and protection programmes.
- Establishing an independent National Rapporteur to ensure data analysis, monitoring and assessment of anti-trafficking measures.

4.To improve protection of victims of severe exploitation and THB in DW and their access to justice:

- Ensuring a correct and full application of Article 18 of Legislative Decree No. 286/1998, especially with reference to the so-called social path, which provides protection to victims irrespective of their cooperation with law-enforcement and judicial authorities.
- Providing systematic training to trade unions, parishes, NGOs, labour inspectors, lawyers, law enforcement agencies and judicial authorities on new features of labour exploitation and trafficking, especially in domestic work, and on applicable provisions.
- Improving and strengthening co-operation and knowledge sharing between law enforcement authorities and NGOs involved in identifying, assisting and protecting victims of THB and severe exploitation in DW.
- Enhancing rights information and access to justice and remedies through qualified legal counselling to victims and fostering the access of victims to free legal assistance.

5.To enhance measures to prevent labour exploitation and THB in DW, and address more directly the demand-side:

- Providing systematic training to both employers and domestic workers about their rights and duties.
- Developing national campaigns and awareness-raising activities at all levels aimed at addressing the social acceptability of abusive practices in DW, by challenging the gendered character and low social status of this work.
- Implementing an efficacious monitoring of the data of the National Institute of Social Security (INPS) as well as an efficacious mechanism of traceability of the vouchers in DW. Also, developing mechanisms to control, through the banks, the payments by employers.
- Enhancing measures aimed at monitoring working activities in households, for example ensuring that the municipality service desks coordinating supply and demand in DW can implement activities of monitoring.
- Controlling and monitoring the activities of recruitment agencies, for example developing – as some municipalities have done – a register of recruitment agencies in DW which meet certain requirements.

6.To further conduct research on THB and severe exploitation in DW, in particular on the ways fraudulent and abusive recruitment agencies, in source and countries of origin, operate; on THB for DW in diplomatic households in Italy as well as on cases of arranged marriage and DW exploitation.

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Annexe

List of interviews conducted in this study

Sector	Position	Organisation	Date of Interview	No
Judicial	Prosecutor	District Anti-Mafia Directorates (DDA) of L'Aquila	20-03-2015	JUS1
Judicial	Judge - UN Special rapporteur on THB	Tribunal of Rome	27-03-2015	JUS2
Judicial	Prosecutor	District Anti-Mafia Directorates (DDA) of Florence	23-04-2015	JUS3
Legal	Lawyer	ASGI	26-02-2015	LAW4
Legal	Lawyer - Coordinator of the area on THB	ASGI- Arcobaleno	16-03-2015	LAW5
Law Enforcement	Head of the Carabinieri Command for the Protection of Labour	Ministry of Labour and Social Affairs	24-08-2015	LAWEn 6
NGO	Coordinator of THB projects	Proxima Association	18-02-2015	NGO7
NGO	Coordinator of THB projects	Papa Giovanni, Bologna	02-03-2015	NGO8
NGO	President of the association	Association on the Road	13-03-2015	NGO9
NGO	Coordinator of THB projects	Gruppo Abele Onlus	06-07-2015	NGO10
Government	Coordinator of the secretariat on THB	Department of Equal Opportunities (DEO)	02-03-2015	GVT11
Government	Senator Democratic Party	Senate	30-03-2015	GVT12
Government	Head of immigration area	Italia Lavoro	13-05-2015	GVT13
Government	Coordinator of Project 'Oltre la strada'	Municipality of Modena	03-03-2015	GVT14
Government	Coordinator of Project 'Oltre la strada'	Municipality of Cesena	04-03-2015	GVT15
Government	Social worker of the Support Service for care work	Municipality of Cesena	04-03-2015	GVT16
Government	Consultant on the Project 'Oltre la Strada'	Emilia Romagna Region	12-02-2015	GVT17
Government	Contact person for Project 'CONTRATTO'	Tuscany Region	14-05-2015	GVT18
Government	Director of the Operation Centre of the project Pronto Badanti	Tuscany Region	18-05-2015	GVT19
Trade Union	National director	Acli Cof	25-02-2015	TU20
Trade Union	National Secretary	FILCAMS-CGIL	26-02-2015	TU21
Expert	Professor	University of Urbino	06-03-2015	EXP22
Expert	Professor	University of Florence	25/06/2015	EXP23

About the author

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Addressing demand in anti-trafficking efforts and policies (DemandAT)

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Lund, Sweden

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Studies
Florence, Italy

Geneva Centre for the Democratic Control of Armed Forces
Geneva, Switzerland

La Strada Czech Republic
Prague – Czech Republic

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FURTHER READING:

Palumbo, L (forthcoming 2016) *Policy Brief: Trafficking in Human Beings in Domestic Work in Italy: Tackling severe exploitation in hidden spaces*, DemandAT Policy Brief, Vienna: ICMPD

Ricard-Guay, A. (2016) *Trafficking in Domestic Work: Looking at the demand-side*. DemandAT Working Paper 5. Vienna: ICMPD

More DemandAT Country Studies on the Domestic Work Sector:

Angeli, D (2016a) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Cyprus*, DemandAT Country Study No. 2, Vienna: ICMPD

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