



# EUROPEAN POLICY BRIEF



## Exploited for Care: Abuse and Trafficking in Domestic Work in Italy

Domestic workers, especially live-in workers, are frequently victims of exploitation, including severe abuse and trafficking. This seems to be overlooked by public debate and policies on trafficking. By highlighting the factors producing domestic workers' vulnerability to exploitation as well as the inadequacies of Italian legal and political responses, this policy brief calls for the need to adopt a comprehensive approach to trafficking and severe exploitation in domestic work through the implementation of concerted measures of different natures.

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### INTRODUCTION

In Italy, domestic work, in particular care work, is a key sector of occupation for migrant workers, especially migrant women. The demand for domestic workers has been driven by multiple factors including an increase in the population's ageing, a rise in women's participation in the labour market, a gendered division of tasks in households, and a lack of efficient welfare services.

Italian migration policies have also significantly supported the employment of migrants in domestic work by adopting mechanisms—specific annual quotas for domestic work and special regularisation programmes for irregular migrants—which have facilitated the entry of migrants in this sector. At the same time, given the labour market's segmentation based on gender and nationality, migrant women often end up in domestic work even if they have migrated to Italy through channels that are not connected to this sector. This also occurs in the case of EU citizen migrants, who today constitute a significant component of the labour force in domestic work in Italy.

Domestic workers frequently experience several forms of exploitation, including severe abuse and trafficking in human beings (THB). This happens particularly when domestic workers are live-in (i.e. workers who live in the house where they perform the work) as cohabitation often distorts employment relations, exacerbating dependency and power relationships.

While in recent years more attention has been paid in Italy to the issue of trafficking for labour exploitation, the domestic sector has been overlooked in the debate, interventions, and policies on trafficking. As a result, severe labour exploitation and trafficking in domestic work remain hidden, invisible phenomena.

This policy brief highlights the structural factors producing domestic workers' vulnerability as well as those aspects influencing the demand for cheap and exploitable domestic workers. It argues that Italian legal and political responses to trafficking and severe exploitation—in domestic work specifically—have proven inadequate in preventing and addressing these phenomena and in protecting the victims. By pointing out the need to adopt a comprehensive approach to trafficking and severe exploitation in domestic work, it proposes a set of recommendations concerning political and legal interventions.

## EVIDENCE AND ANALYSIS

### Data on severe exploitation and trafficking in domestic work

Due to the lack of a uniform identification system, there is no data on the total number of victims of trafficking identified per year in Italy, and thus also of the number of victims of trafficking in domestic work. However, the Department of Equal Opportunities, through the computerised system for the collection of information on trafficking in human beings (SIRIT), gathers data on the number of victims of trafficking and severe exploitation<sup>1</sup> who benefit annually from the programmes of assistance and protection under Article 13 of Law No. 228/2003 and under Article 18 of Legislative Decree No. 286/98.<sup>2</sup> According to the data related to the Article 18 programme:<sup>3</sup>

- In 2013, there were **7 victims of domestic servitude** and 71 victims of labour exploitation, of which **7 were cases of labour exploitation in the services to the person sector**.
- In 2014, there were **2 victims of domestic servitude** and 35 victims of labour exploitation, of which **1 was a case of labour exploitation in the services to the person sector**.

Yet, as the interviewees for our research outlined, these data do not provide clear figures. Indeed, the absence of national guidelines in collecting data in 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 servitude.

Furthermore, these figures, which are not high, do not seem to correspond to what our respondents reported: far from being occasional cases, domestic workers, especially live-in workers, frequently face exploitative working conditions which may range from violation of the fundamental protection provided by the contract to trampling human dignity—i.e. cases of severe abuse and trafficking.

### Recruitment process and exploitative working conditions

Migrant workers find a job in the domestic work sector through diverse channels spanning word of mouth among family and friends, parishes, associations of the community of origin based in Italy, municipality help desk, social cooperatives, and recruitment agencies (in source or destination countries).

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 conditions. In these cases, the debt that migrants often incur with these agencies strongly reduces their possibility of escaping situations of exploitation.

With regard to work conditions, migrant domestic workers, in particular live-in workers, often experience a combination of diverse forms of exploitation and maltreatment, including:

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<sup>1</sup>The SIRIT database refers to both victims of trafficking and severe exploitation without making a distinction between cases of labour exploitation that do not include elements of trafficking and cases of trafficking.

<sup>2</sup> 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.

<sup>3</sup> 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, these data refer to victims assisted under Article 18.

- Lack of contract or contract in which the number of working hours is less than effectively performed
- Excessively long working hours, often without a weekly day off
- No salary paid as it is substituted by payment in kind (i.e. room and board) or very low salaries (even around €400-600 per month)
- Verbal, psychological, or even physical abuse
- Sexual abuse
- Humiliating treatment
- Inadequate accommodation
- Passport retained
- Restriction on freedom of movement as they are at the constant disposal of the employer

Despite the fact that such forms of abuse and maltreatment frequently occur, not all situations amount to trafficking. Each case has to be viewed on its merits, evaluating the factors at stake.

As the case law review in our study shows, there are also cases of arranged marriage which involve sexual abuse and labour exploitation in domestic work amounting to trafficking.

### **Factors contributing to domestic workers' vulnerability to exploitation**

Migrant domestic workers' condition of vulnerability to exploitation is fostered by the interaction of diverse factors including the inadequacies of migration and welfare policies, and of the regulation on domestic work as well as the low social value attached to domestic work and the distinctive features of the sector.

#### *Policies and regulations*

As for migration policies, over the years the Italian quota system for the admission of foreign third-country workers has proven inadequate. This is mainly because its administrative procedure is excessively complicated and long. Moreover, employers often do not want to hire a person they have not met before. Consequently, many people, especially those who urgently need a domestic worker, have employed 'irregular' migrants already in Italy, trying to regularise their status later, misusing the annual quota system as a 'regularisation' tool. However, in recent years, this mechanism has been difficult to apply. Indeed, since 2012 there have been no real quotas for subordinate non-seasonal workers, including domestic workers. 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—for regularising their status later. This risks further pushing migrant workers towards irregular channels, thus increasing their vulnerability to exploitation.

Nevertheless, it should also be noted that today EU citizen migrant workers are a substantial component of the labour force in domestic work and are also, despite their possibility to move freely across the EU, highly vulnerable to maltreatment and abuse. This is mainly because residency, which is necessary to entitle people to social rights, is tied to a person's income. Furthermore, the illegal employment of EU citizen migrants is less risky for employers as they do not risk being charged with the offences of facilitation and exploitation of irregular migration.

With regards to the regulation on domestic work, although Italy has been in the vanguard with the adoption of a national agreement for domestic workers in 1974, domestic workers are still less protected than other workers. For instance, domestic workers can be dismissed without just cause and with short notice of eight days. Also, they are still excluded from enjoying many rights with respect to important issues such as maternity protection and health and safety in the workplace.

At the same time, the lack of adequate welfare services for households to deal with the problem of caring for dependent persons (Italy, for instance, lacks a structured plan for non-self-sufficient persons) has significantly contributed to jeopardizing the rights of domestic workers, leading to a levelling down of these, especially in terms of wages and working hours. For instance, in addition to low pay, most live-in workers work more than the maximum working hours (54 per week) provided by the national collective agreement, performing work which should be done by at least

two people. This is also because in the absence of institutional assistance, very few households can afford the cost of a second domestic worker in order to have constant assistance for the entire week.

### *Employment relationship and workplace*

In addition to the above-mentioned factors fostering domestic workers' vulnerability, it is worth highlighting that domestic work is still persistently undervalued and deemed not to be 'real work'. This perception, which has clearly contributed to domestic work not being adequately regulated, is influenced by the gendered character of such work as well as by its non-profit-making nature.

Accordingly, employers often do not perceive themselves as such and thus do not pay attention to the domestic worker's rights. The relationship between employers and domestic workers, therefore, is characterised by a specific power imbalance. This tends to intensify in the live-in situation where such a relationship is marked by high levels of intimacy and proximity.

Furthermore, in the live-in situation, the boundaries in terms of tasks and between free time and working hours are often not clearly defined. Most live-in workers work excessive hours carrying out diverse tasks as they are viewed to be at the constant disposal of the employer.

The fact that domestic work is performed in household, and thus in the private sphere, is another issue that increases workers' vulnerability as they are isolated and have limited or no access to information and assistance measures. Moreover, in Italy households escape labour inspections: therefore, most cases of exploitation remain hidden from the public and authorities.

The fear of losing a job, and consequently also a place to sleep, prevents live-in migrant domestic workers—especially when they have incurred a debt with recruitment agencies—from escaping situations of exploitation. Irregular migrant workers face a high risk of exploitation as the fear of being reported to authorities and being deported is an additional factor leading them to accept abusive working conditions.

### **Factors shaping the demand for cheap and exploitable workers**

Diverse factors—such as economic, political, legal, social, and cultural aspects—affect demand for cheap and exploitable workers in domestic work in Italy.

The economic motivation, meaning lacking or saving money, is undoubtedly one of the main issues. In Italy, the average value of pensions and household incomes is quite low and in the absence of sufficient state welfare services, many families cannot afford the cost of legally employing a (live-in) domestic worker. This may lead to demand for a cheap labour force.

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 the interviewees for this research outlined, in Italy there is a tendency not to respect the rules on work conditions and this is often exacerbated when the worker is a migrant, especially in the context of domestic work where the boundaries between employment and family relations blur. At the same time, Italian laws and policies on domestic work, by excluding domestic workers from enjoying many rights with respect to important issues such as maternity, have played an important role in fostering the perception of domestic workers as subordinate workers in comparison to others.

The fact, as argued above, that domestic work is not recognised as 'real work' is certainly another issue influencing the demand-side. For example, in many 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, overlooking the amount of work assigned.

Moreover, as our respondents highlighted, there is the widespread idea that since migrant workers come from conditions of poverty, they ought to be 'grateful' for the job opportunities given to them and make do with what they have, including working under difficult conditions. It is as if the migrant's situation of need and willingness to work is turned into the employer's right to exploit.

At the same time, people know that exploitative employers of domestic workers have rarely been severely punished. This sense of impunity has also been fostered by the fact that some policies and laws on labour exploitation hardly address abusive employers of domestic workers. For example, when Directive 2009/52/EC concerning penalties for employers exploiting irregular third-country nationals was transposed into Italian Legislation by Legislative Decree No. 109/2012, the Government decided to adopt a definition of serious exploitation that does not allow domestic workers to report abusive families to the competent authorities.

With regards to the irregular employment of many domestic workers, there are often situations of mutual convenience for both employers and workers. For instance, many workers opt not to sign a contract for financial reasons.

### **Legal framework and policies on trafficking and labour exploitation**

In Italy, the offences of slavery and trafficking are prosecuted under Articles 600 and 601 of the Criminal Code (CC). These Articles, in particular the provision concerning trafficking (Art. 601), have recently been amended through Legislative Decree No. 24/2014 implementing Directive 2011/36/EU on trafficking, in order to adopt the definition of trafficking provided by the Directive.

Hitherto, there have been no convictions for trafficking or slavery in the domestic sector and there have been very few cases brought before the courts involving trafficking and serious exploitation in this sector. This is mainly due, on the one hand, to diverse challenges in implementing provisions on trafficking and slavery and, on the other, to a difficulty among competent authorities in understanding the seriousness of the crimes committed in cases of labour exploitation. Also, the hidden nature of domestic work renders identifying and addressing these cases extremely difficult.

The Italian legal framework on trafficking is considered a milestone in the international scenario with regards to the assistance and protection of victims. In particular, Article 18 of Legislative Decree No. 286/98, which applies to EU and third-country nationals, provides victims of serious exploitation and trafficking with a long-term programme of assistance and social integration and with a residence permit for humanitarian reasons. There are two paths through which the residence permit can be granted: the first is the so-called 'judicial path', which is dependent on the victim's cooperation with law enforcement agencies and judicial authorities, while the second is the so-called 'social path', which is not contingent on victims' reports and participation in criminal proceedings. Despite the progressive approach of Article 18, its application has often been inadequate throughout the country, especially in cases of labour exploitation. For example, the 'social path' is rarely applied.

In recent years, anti-trafficking interventions have not been effectively supported by the Government. For instance, state funds for the system of assistance and protection of victims have been provided in a discontinuous way and the national plan against trafficking has been adopted only recently (February 2016) after a severe delay of more than one year with respect to the established deadline. Furthermore, Directive 2011/36/EU has been inadequately implemented into national law. All this risks weakening the national system against trafficking, and in particular innovative instruments such as Article 18.

As for legal provisions specifically addressing labour exploitation (especially Legislative Decree No. 109/2012 transposing into national law Directive 2009/52/EC and Article 603bis of the CC), the emphasis is on tackling irregular migration and illegal gang-masters. The focus on irregular migration has resulted in a lack of effective protection for victims. Moreover, this approach has proven even more inadequate if one considers that currently most of the exploited migrant workers are not irregular but are asylum seekers, refugees, poor EU citizens, and migrants with a residence permit. At the same time, the focus on gang-masters risks diverting attention from the root causes of trafficking and serious exploitation, as gang-mastering constitutes just one link in a long chain of labour exploitation.

Finally, with regard to interventions addressing the demand-side, regions and municipalities lately have implemented diverse measures aimed at supporting employers and improving work conditions of domestic workers, such as service desks intended to coordinate supply and demand. Nevertheless, the lack of a structured economic support to households undermines the efficacy of these initiatives.

## POLICY IMPLICATIONS AND RECOMMENDATIONS

In order to efficaciously tackle severe exploitation and trafficking in domestic work, it is necessary to develop interventions based on a comprehensive approach, as promoted by Directive 2011/36/EU. This requires the implementation of concerted measures of different natures aimed at addressing how national policies, laws, and social and cultural attitudes foster migrant workers' vulnerability to exploitation and lead people to take advantage of this situation of vulnerability.

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

### **1. To enhance regulation and policies on domestic work and to strengthen the rights of domestic workers:**

- Disentangling the domestic work sector from the quota system and developing a special and structured programme allowing migrant domestic workers to enter Italy as jobseekers.
- Achieving full recognition of the rights of domestic workers with regard to maternity and 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.
- Enhancing progressive economic subsidies to bear the cost of domestic work as well as fiscal incentives.

### **3. To enhance legal and political interventions on trafficking and labour exploitation:**

- Ensuring the full transposition of Directive 2009/52/EC by modifying, for instance, Art. 22(12bis) of Legislative Decree No. 286/1998 to match the provisions of the Directive.
- Providing, in accordance with Article 13(1) of Directive 2009/52/EC, provisions to effectively allow third-country nationals in illegal employment to lodge complaints against their employers as well 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.
- Securing and increasing funding for victim assistance and protection programmes.
- Enhancing the system of data collection.

### **4. To enhance measures to prevent labour exploitation and trafficking in domestic work and address more directly the demand-side:**

- Providing systematic information 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 domestic work.
- Implementing mechanisms to control, through the banks, payments by employers and efficacious mechanisms to monitor the data of the National Institute of Social Security.
- Enhancing measures aimed at monitoring work activities in households, for example ensuring that the municipality service desks coordinating supply and demand in domestic work can implement effective activities of monitoring.
- Controlling the activities of recruitment agencies, for example, by developing—as some municipalities have done—a register of recruitment agencies in domestic work that meet certain requirements.

#### 5. To improve protection of victims:

- Ensuring a correct and full application of Article 18 of Legislative Decree No. 286/1998, especially with reference to the so-called social path.
- 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.
- Enhancing rights information and access to justice and remedies through qualified legal counseling to victims and fostering their access to free legal assistance.

### RESEARCH PARAMETERS

This national study is part of the DemandAT country studies on trafficking in human beings (THB) in the domestic work sector conducted in seven European countries: Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK.

The key objectives of 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 research was based on literature review, case law review and interviews with stakeholders. Interviews were conducted with 23 stakeholders, including judicial and law enforcement authorities, lawyers, policy makers, social workers, staff of trade unions and experts.

In terms of literature review, the study relied on the analysis of research reports, scholarly literature on domestic work and on trafficking for labour exploitation, with special attention on the Italian context. Furthermore, it drew on the examination of policy texts and legal documents.

With regard to case law review, this research focused 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).

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## PROJECT IDENTITY

<b>PROJECT NAME</b>	Addressing Demand in Anti-Trafficking Efforts and Policies (DemandAT)
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