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ILO's actions against the exploitation of agricultural work in Italy

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1. *At the origins of ILO: why Italy wanted to extend International Labour Standards to the agricultural sector*

Since the establishment of the International Labour Organization (hereafter "ILO"), Italy, as a member country, has, for distinct reasons, shown a particular inclination towards the protection of agricultural work.

A demonstration of this inclination can be found in a paper written shortly before the 2nd International ILO Conference (held in Geneva a century ago)[1], in which a trade unionist of the time analysed the ongoing discussion on whether international labour standards should be extended to the agricultural sector and explained the reasons of the favourable position of the Italian delegates[2].

[1] Sacco, *La regolamentazione del lavoro agricolo e la II conferenza internazionale del lavoro*, in *RISSDA*, 1921, vol. 91, fasc. 345, pp. 33-42.

[2] Ivi, p. 34. For an account of the Italian contribution to the foundation of the ILO

In this regard, he highlighted the agricultural vocation of the Italian economy and recommended the introduction of the international standards in that sector to bring together the opposing interests of workers and companies[3]. In his work, Sacco pointed out that Italy was a country that mainly exported agricultural products and, unlike the other European countries that had already enjoyed a significant industrial development (mainly, the United Kingdom, France and Germany)[4], it was obliged to import a large proportion of industrial products[5]: it followed that greater protection of agricultural labour would have increased the value of the food exported abroad and made it possible to recognise better economic treatment for Italian agricultural workers.

On the contrary the author emphasised that the exclusion of the agricultural sector from international rules would have caused a derangement in the goods trade balance traded with foreign countries[6].

As is well known, at the First International Conference of 1919 were approved distinct Conventions, the ratification of which, by our country, has led to a clear increase in the level of protection for Italian workers: for example, the issues of working hours, night work or protection for women workers during childcare leave[7]. However, at the 1919 conference, nothing

see CASTIGLIONE, *L'organizzazione permanente internazionale del lavoro*, in *RISS*, 1934, 6, p. 811 ff.

[3] SACCO, *cit.*, p. 36 ff.

[4] See FEDERICO, NATOLI, TATTARA, VASTA, *Il Commercio Estero Italiano 1862-1950*, Laterza, 2011, p. 15; see also BORZAGA, *Le politiche dell'Organizzazione Internazionale del Lavoro e dell'Unione Europea in tema di contrasto alla povertà*, in *LD*, 2019, p. 66, who recalls that some ILO member countries, including France, in the years immediately following the adoption of the founding treaty of the Organization, gave a "restrictive" interpretation of the "legislative" competence, limiting it to the industrial sector.

[5] See the studies and statistical data of the Bank of Italy, proposed in the volume FEDERICO, NATOLI, TATTARA, VASTA, *cit.*, pp. 15-17, where table 1.3 shows the percentage distribution of Italian imports, and it emerges that, until the 1940s, the total of imported manufactured products had maintained a percentage more than 30%.

[6] SACCO, *cit.*, p. 39.

[7] There are five conventions approved in 1919 by the ILO and then ratified by Italy: Convention no. 1 on working hours (ratified by Royal Decree no. 1429 of 29 March 1923, no longer applied today), Convention no. 2 on unemployment (Royal Decree no. 1021 of 29 March 1923), Convention No. 3 on maternity protection (ratified only by Law no. 1305 of 2 August 1952), Convention no. 4 on women's night work (ratified by Royal Decree no. 1021 of March 29, 1923, but, most recently, repealed at the 106th International Labour Conference in 2017), Convention no. 6 on children's night work (R.d. no. 1021 of 29 March 1923).

was set up for the agricultural sector, and it was only with the 1921 Conference that specific rules were extended to it, especially, on the minimum age of employment, rights of association and compensation for injuries[8].

Since then, international attention to agricultural work has been a constant feature of the Organization's work and has led to Conventions also on aspects strictly related to economic working conditions – such as minimum wages[9] or holidays[10] – as well as social security and inspection profiles[11].

On the other hand, the problems of the sector are still many and occur, across the board, at the international level: for example, the employment of particularly vulnerable people, such as migrants, women, and minors[12] or the cost-cutting practices of farmers that damage workers' wages[13], or the wide informality of labour relations, favoured by activities outside urban centres[14].

Our country, for its part, has followed the development of these rules with interest and has ratified, from 1921, the main part of the Conventions appointed to the sector[15]: nevertheless, it's important highlights that the

[8] Respectively, Conventions no. 10, 11 and 12, ratified in Italy by Royal Decree-Laws no. 585 of 20 March 1924, no. 601 of 20 March 1924 and no. 878 of 26 April 1930.

[9] Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (no. 99).

[10] Holidays with Pay (Agriculture) Convention, 1952 (no. 101).

[11] See the Conventions on Sickness (25 of 1927), Old Age Insurance (36 of 1933), Invalidity (38 of 1933), Survivors' Insurance (40 of 1933), and Convention 129 of 1969 on Labour Inspection.

[12] With reference to the three categories, see ILO report, *Decent work in agriculture*, International Labour Office, 2003, pp. 5, 14 and 17; on minors in agriculture see especially pp. 25-30, on gender discrimination see p. 34 ff. Stresses the specific contractual weakness of workers in agriculture Faleri, *Il lavoro agricolo. Modelli e strumenti di regolazione*, Giappichelli, 2020, pp. 87-88.

[13] From an international perspective, on the effects of globalisation, see again the ILO report, *Decent work in agriculture*, cit., p. 8 ff; in the national perspective, instead, see, recently, Pinto, *Rapporti lavorativi e legalità in agricoltura. Analisi e proposte*, in *DLRI*, 2019, p. 9 ff.; Canfora, Leccese, *Lavoro irregolare e agricoltura. Il Piano triennale per il contrasto allo sfruttamento lavorativo, tra diritto nazionale e regole di mercato della nuova CAP*, in *DA*, 2021, 1, p. 39 ff.; Jannarelli, *La "giustizia contrattuale" nella filiera agro-alimentare: considerazioni in limine all'attuazione della direttiva n. 633 del 2019*, in *GC*, 2021, p. 199 ff.

[14] See Carr, Alter Chen, *Globalization and the informal economy: How global trade and investment impact on the working poor*, Employment Sector Working Paper, Geneva, ILO, 2002. More recently, with reference to Italy, see Cornice, Innamorati, Pomponi, *Campo aperto: azioni di contrasto allo sfruttamento degli immigrati in agricoltura*, Inapp paper, 2020, p. 7 ff.; Pinto, *cit.*, pp. 8-9.

[15] Italy has not ratified two of the 12 Conventions for the agricultural sector: the 25 of 1927, on health insurance, and the 110 of 1958, on plantations.

choice to ratify these Conventions was motivated by reasons other than the 'mercantilist' ones highlighted by Sacco.

Although its ability to export agricultural products was kept[16], Italy had made industrial and tertiary sectors its main economic items by the 1960s thanks to the transformations in the production of goods and services that had affected it. Consequently, the need to apply international labour rules to the agricultural sector didn't come from a desire to increase the value of agricultural products for export, through increased labour costs (to offset the value of imports of industrial products purchased from industrialized countries); rather, it is evident that, by joining the industrialized countries, Italy continued to be interested in the agricultural sector because of the high rate of the ineffectiveness of the rules that had characterized it over time, as well as the social alarm caused by deaths at work and numerous episodes of exploitation[17].

It is worth noting that the way in which the work is performed in agriculture has a significant impact on the bargaining power of the workforce, since a large part of the production process is conducted by workers who lack specific skills and are, therefore, easily interchangeable. In addition, there is a complicating element linked to global competition with less developed or developing countries, which, regardless of their adherence to international Conventions, guarantee a substantial reduction in labour costs[18].

[16] See the data on export growth in GOMELLINI, *Il commercio estero dell'Italia negli anni Sessanta: specializzazione internazionale e tecnologia*, in *Quaderni dell'Ufficio Ricerche Storiche, Banca di Italia*, 2004, no. 7, p. 18; see also FAURI, *Struttura e orientamento del commercio estero italiano negli anni Cinquanta: alle origini del "boom" economico*, in *StS*, 1996, pp. 191-225.

[17] On these issues, see the ISTAT and INPS data collected in the introductory part (p. 1 ff.) of the "National Plan to tackle labour exploitation in agriculture", available here: https://www.lavoro.gov.it/priorita/Documents/Piano-Triennale-contrasto-a-sfruttamento-lavorativo-in-agricoltura-e-al-caporalato-2020-2022.pdf; in literature, on the same issues, see CORNICE, INNAMORATI, POMPONI, *cit.*, p. 7 ff.; PINTO, *cit.*, p. 9 ff.

[18] Not surprisingly, according to the 2016 report of the Land Matrix organization (NOLTE, CHAMBERLAIN, GIGER, *International Land Deals for Agriculture. Fresh insights from the Land Matrix: Analytical Report II*, 2016), more than a thousand land deals (around 26.7 million hectares) have been concluded in recent years, of which 553 – covering an area of more than 9 million hectares – concern the cultivation of food products. The crops grown are typically industrial ones, namely oilseeds, cereals, and sugar. The land of Africa, particularly along its main river courses and in East Africa, stays the prevailing target for over 40% of these agreements, covering 10 million hectares. A further 5 million hectares covered by these contracts are in Eastern Europe. On the

As we intend to highlight in this paper, the limits of the approach of the Italian legislator derive from the substantial "hypocrisy" with which, on the one hand, Italy has formally ratified the international Conventions on labour standards in agriculture (focusing on the stiffening of criminal sanctions in cases of violation)[19], but, on the other, still fails to prevent that the processes of recruitment and employment of workers occur illegally, and still seems far from an effective compliance with international policies for decent work.

In this context, the changes to the ILO's organization and goals have pointed out the limits and distortions of the national discipline of agricultural labour, but have also been able to better focus attention on the existing problems and to adopting intervention tools. This paper will show how ILO – with an approach that we would define as "two-way" – has firstly succeeded in highlighting, in a critical key and thanks to the work of its internal commission (the CEACR), the points of friction concerning the application of some principles and rules in the Conventions ratified by Italy. Secondly, it will highlight that the function of technical collaboration, on which the Organization have concentrated its efforts in recent decades, has made it possible, from a "collaborative" perspective, to exercise a fundamental work of moral suasion to recognise labour exploitation and propose solutions in this regard.

In this sense, in the first part, we will examine the Conventions for the agricultural sector ratified by Italy and will pay attention to the contextual historical changes on the functioning of the ILO. Next, we will focus on the recent technical activity of the CEACR, highlighting that two procedures of verification are currently underway against Italy, related to the Conventions 129 of 1969 and 143 of 1975.

Finally, after a brief review of the measures adopted by Italy to combat exploitation and illegal recruitment in agriculture recently, the results of the call launched by the ILO Office for Italy – in the context of the "National Plan to tackle labour exploitation in agriculture 2020-2022" – will be discussed to highlight useful actions to better control these labour dynamics.

topic of the effects of globalisation, see ROMANO, *L'impatto della globalizzazione asimmetrica sull'agricoltura dei PVS*, in *Agriregionieuropa*, 2007, no. 8; DE FILIPPIS, *L'agricoltura tra vecchia e nuova globalizzazione*, in *Agriregionieuropa*, 2018, no. 52.

[19] See *amplius*, *infra*, par. 5.

2. *ILO Conventions ratified by Italy on agricultural work: what happened from the constitution of the Organization to the Post-War period*

In this perspective it is necessary to examine the first ILO Conventions on agricultural labour ratified by Italy. Apart from the first, Convention 10 of 1921 – no longer applied today because replaced by Convention 138 of 1973, which has prohibited the work of minors in all economic sectors and has set the minimum age for working at fifteen years of age[20] –, two other Conventions on agricultural work adopted at the 1921 ILO Conference are still applied in Italy today: 11 and 12, respectively on the right of association and compensation for damages in the event of an injury[21].

These Conventions are not particularly important for the – very few – guarantee rules they contain, but rather for having traced the path of inclusion of the agricultural labour in the Organization's sphere of observation. The main goal of this path was to oblige States to extend to the agricultural sector the labour rules already in place in the industrial sector, so that foster fair trade competition among Member States.

According to Convention 11, the rights of union organization and coalition should be recognised "on the same terms as those provided for the industrial sector" (Art. 1). Since, at that time, a specific Convention on trade union organization and coalition rights for the industrial sector had not yet been established, it follows that the real objective of the Convention 11 wasn't to extend at the international level to agricultural workers the guarantees already applied to industrial workers, but only to affect trade relations between States, favouring those with an agricultural vocation.

The Convention would have had the effect of increasing the cost of agricultural products only in industrialized countries, where the recognition of union guarantees would have increased the cost of labour. On the contrary, States with an agricultural vocation – in which Convention 11 would not have produced significant effects given the lack of rules on trade union

[20] See, extensively, BORZAGA, *Contrasto al lavoro infantile e decent work*, Editoriale Scientifica, 2018, but also MAUL, *The International Labour Organization. One hundred years of social policy at the global level*, Ilo, 2020, p. 64 ff.

[21] In the historical context of the period, the question of the objective field of application of the ILO's competences was part of the debate, with some important member states (France and Germany in particular) attempting to limit it to the industrial sector and other specific sectors, such as the maritime sector; see MAUL, *cit.*, p. 70 ff.

rights for the industrial sector to extend to the agricultural one – would have enjoyed a greater ability to export their products abroad thanks to their lower labour costs.

Taking only this Convention into account, however, one might think that the failure to recognise specific guarantees for trade union freedom at the international level was caused by the political context of the 1920s, in which the presence of totalitarian regimes had certainly prevented the affirmation of this type of freedom[22]: it is no coincidence, in fact, that only after the end of World War II ILO approved the Conventions 87 of 1948 and 98 of 1949, defining, in favour of trade unions and workers, the trade union freedom and the right to collective bargaining with public authorities and employer organizations of all economic sectors[23].

However, the mercantilist aims of the first agricultural Conventions are confirmed in the third instrument issued in 1921. After having established that the rules on compensation for damages in case of accidents to industrial sector's workers shall be also applied to the agricultural sector (Art. 1), Convention 12 did not provide anything else to impose this protection in countries that were still exclusively agricultural, with the effect, as in the case of Convention 11, of limiting the action of the instrument only to countries where compensation for industrial work had already been recognised[24].

[22] The intention to regulate trade union freedom and the right to collective bargaining through a convention applicable to all sectors was inevitably revisited during the Second World War precisely because of the totalitarian regimes that characterised that period, see, *amplius*, FERRARA, *Libertà sindacale e tutela internazionale: il ruolo dell'ILO nel centenario della sua fondazione*, in *VTDL*, 2019, p. 749, nt. 12.

[23] See, more extensively, FERRARA, *cit.*, p. 750 ff; MAUL, *cit.,* p. 203 ff; see also the essays by BARRETO GHIONE, BAYLOS GRAU, *Il ruolo dei principi internazionali e del Comitato ILO sulla libertà di associazione*, and by RUSSO, *Le Convenzioni ILO*, in *La libertà sindacale nel mondo: nuovi profili e vecchi problemi. In memoria di Giulio Regeni*, in *QDLM*, n. 6, respectively at p. 43 ff. and 63 ff.

[24] It is worth noting that the tendency of international Conventions on agricultural work to impose the application of rules already in place in other sectors, especially in the industrial sector, has also concerned social security matters. In the 1933 International Conference were adopted three Conventions, no. 36, 38 and 40, respectively on Old Age, Invalidity and Survivors' Pensions, in which there were a reproduction of what said with Conventions no. 35, 37 and 39 for industrial and commercial sectors.

2.1. From the Philadelphia Declaration to the 1980s

In the following years, there were changes in the functioning of the Organization that affected the goals and techniques used to approve Conventions[25]: now we will try to briefly mention them before continuing the examination of the individual Conventions of interest.

First of all, it should be noted that the fervent wave of liberation of poor and developing countries from the imperialist power of Western States – in the context of the second half of the last century decolonisation processes[26] –, together with the UN's action in favour of the self-determination of peoples[27], have favoured an increase in the number of Member States[28] and, in this way, have also affected the functioning of the Organization[29].

The number of Member States rose from 52 in 1946 to more than 130 in the early 1980s, with the double consequence that western states lost their leadership within the Organization and became more difficult to reach a qualified majority of Delegates to approve Conventions[30].

It isn't, therefore, just a coincidence that between the 1950s and 1980s,

[25] For a historical reading on ILO's organizational evolution see SORGONÀ, *Sapere e politica. L'organizzazione internazionale del lavoro nelle ricerche di Franco De Felice*, in *StS*, 2021, pp. 835-855; in the same journal see *etiam* BRIZZI, *La battaglia delle 40 ore. Un aspetto delle relazioni tra l'Organizzazione internazionale del lavoro e l'Italia fascista negli anni Trenta*, 2021, pp. 941-965, and SETTIS, *Between Rationalization and Internationalism. The International Labour Organization and the United States from Wilson to Roosevelt*, 2021, pp. 967-994.

[26] On which see HEPPLE, *Labour Laws and Global Trade*, Hart, 2005, p. 33 ff.

[27] This principle was already provided in the UN Charter and, after, was reaffirmed, in 1960, by UN Declaration on Decolonisation.

[28] With decolonisation, the "liberated" States joined international formations (especially, in the UN) because of their need to find support in the fight against exploitation (caused by the more developed countries) and in favour of fair economic and social development at a global level.

[29] It must be taken into account that, starting from 1945, by joining the UN, States had the possibility to apply for membership in the ILO through a "simplified" procedure, consisting in the mere acceptance by the State of the obligations of the ILO Constitution, without going through the more elaborate process of Ordinary Membership, with the favourable vote of the International Labour Conference by a majority of two thirds of the Delegates – the process of Ordinary Membership is regulated by Art. 1, paragraph 4, of the ILO Constitution, while the process of Simplified Membership is regulated by Art. 1 paragraph 3. This was supplied for by the United Nations Charter, which, under the joint provisions of Articles 57 and 63, set up helped forms of liaison between the United Nations and specialised institutions, including ILO.

[30] Article 19(2), Constitution ILO.

even for the agricultural sector, the number of new Conventions approved was lower than in the earlier period (1919-1940s): 5 Conventions, compared to 7 (including social security Conventions) in the previous period[31].

Secondly, it should be borne in mind that following the proclamation of the Philadelphia Declaration[32] at the 26th International Conference, the goals of ILO were separated from the policy of competitive advantages between states – which, as we have seen before, had favoured the approximation of the rules of industry to the agricultural sector – and the reasons for social justice were better determined and made more ambitious[33].

In this perspective, focusing on the instruments introduced, the first Convention of this period, *i.e.* Convention 99 of 1951 on minimum wage-setting methods, is the first successful example of the protective intentions just mentioned. For the first time at the international level and concerning the agricultural sector, a Convention intervened on wage profiles, affirming the principle of the minimum wage, and requiring the plural intervention of stakeholders, starting with employers' and workers' organisations, to es-

[31] Borzaga, *Contrasto al lavoro infantile*, cit., p. 88, points to the existence of a relationship between the increase in the number of member states and the decrease in the number of Conventions approved.

[32] See the Declaration Concerning the Purposes and Objectives of the International Labour Organization, adopted by the International Labour Conference at its Twenty-sixth Session in Philadelphia on 10 May 1944, at the following address: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/publication/wcms_151915.pdf ; the Declaration was included as an appendix to the text of the ILO Constitution and, with it, lines of action as "fight against the need", "material progress and spiritual development of human beings beyond all discrimination", etc., placed the protection of workers at the centre of international debate. See Hepple, *cit.*, p. 32 ff; Borzaga, *Contrasto al lavoro infantile*, cit., p. 21; de Mozzi, Mechi, Sitzia, *The International Labour Organization: an introduction in the Centenary*, in *LDE*, 2019, no. 2; Maul, *cit.*, p. 118 ff.

[33] In the Declarations there are statements of principle – including "labour is not a commodity" or "poverty, wherever it exists, is dangerous to the prosperity of all" –, which have remained as iconic expressions of the struggle against exploitation and in favour of the dignity of the workforce. See Rodgers, Lee, Swepston, Van daele, *The Ilo and the quest for social justice 1919-2009*, Ithaca, 2009; de Mozzi, Mechi, Sitzia, *cit.*, p. 5. From a technical point of view, its approval has led to: *a*) the introduction of the non-regression clause in the ILO Constitution, which clarifies that the provision and/or ratification of international rules cannot be a pretext for removing more protective provisions from national laws (Art. 19(8)); and *b*) the strengthening of the monitoring system, with the obligation of Member States to communicate reports, not only for ratified Conventions, but also for non-ratified ones and for recommendations (Art. 19(5) and (6)). In this regard, see Borzaga, *Contrasto al lavoro infantile*, cit., chap. IV; Hepple, *cit.*, p. 47 ff.

tablish the appropriate method in wage determinatio[34].This not only equates to what was provided for the industrial sector by Convention 26 of 1928 – *i.e.* the commitment of States to establish or maintain "appropriate methods for fixing minimum wage levels" –, but the Convention acquires specific relevance if its content is read in conjunction with Convention 95 of 1949, which had defined the contours of the concept of Wages and the methods that could be used to pay them[35].

The prospect of enriching the international rules for the agricultural sector with labour protections is also confirmed by Conventions 101 of 1952 and 129 of 1969: the former, introduced the first international regulation of paid leave[36], and the latter – came after a long period of regulatory inertia – set up techniques and principles that will be fundamental for the construction of the modern national inspection systems[37].

The last Convention of this second period, Convention 141 of 1975, also aims to raise international labour standards and does so by updating what had previously been set up on trade union freedom by the 1921 Convention and the other Conventions approved on the subject[38]. Unlike the latter,

[34] Although the powers to define the treatment of workers and the cases of derogation from minimum wages for specific sectors are left to the national level – for essential and intuitable legal-operational reasons – the Convention confirms the intentions of the Philadelphia Declaration to promote higher social standards, regardless of competitive goals. See Hepple, *cit.,* p. 74 and the bibliography cited there: for an analysis of the changes in the organization's structure that followed the Philadelphia Declaration, see also pp. 76-77.

[35] The definition of wages under the 1949 Convention is as follows: "remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered."; see the comment in Ales, Bell, Deinert, Robin-Olivier, *International and European Labour Law. A Commentary*, Bloomsbury Publishing, 2018, p. 1093 ff.

[36] However, a minimum number of days' holiday was also not set up. This result was achieved only with Convention 132 of 1970, which extends the field of application to all economic sectors and recognises the right of workers to paid annual leave for at least three weeks.

[37] One thinks in particular of the need to make inspections compulsory in a series of fundamental areas (art. 6), to recognise the principle of the autonomy of inspectors with respect to changes in government and external influences (art. 8) or, again, to provide for an adequate number of inspectors to guarantee an efficient control service (art. 14) – the latter condition which, although without measurable parameters, captures one of the most critical problems still common to many developed countries, including our own.

[38] Particular attention is paid to workers' trade unions, saying, in an innovative way, that

where the focus was on actions to promote freedom as such (indicated as a goal), Convention 141 aims to encourage the creation and development of organizations as a tool to strengthen workers' political power in the social and economic choices of State, thus raising the bar on national protection obligations associated with its ratification.

3. *The policies of change and the recent ILO actions on agricultural work*

As we have tried to highlight so far, in the first thirty years of the ILO's activity, the Conventions had a generic content and were mostly aimed at extending the protections of the industrial sector to the agricultural one, to encourage fair competition between agricultural countries (as Italy was) and industrialized ones.

After the Philadelphia Declaration, Conventions on agricultural labour, though numerically reduced, have received greater technical-legal detail, and have regulated fundamental aspects of labour relations in a more incisive and guaranteeing manner, in line with the more general trend due to changes in the functioning and goals of the Organization.

To better represent what happened after the 1980s, it is necessary to stress on one common feature of the work carried out by the ILO until then, namely the fact that, regardless of the different purposes for which the Conventions (as well as the Recommendations) were approved, Organization's work was aimed at establishing new standards to which States would have to comply with through the formal act of ratification. The most recent period, instead, will see the Organization pursue an even more ambitious goal, putting the aim of approving new standards on the back burner, and giving priority to monitoring and technical cooperation activities, aimed at ensuring an effective application of the rules already established.

The decision to put the approval of new instruments on the back burner has certainly been helped by the fact that the number of Member Countries

the improvement of working and living conditions of the manpower should be intended as a prerequisite for the economic and social development of the agricultural sector. States are obliged to disapply incompatible regulations with the Convention but also to fulfil their programmatic obligations supporting trade union organizations, especially in the fight against discrimination (Article 4), and to improve employment opportunities and working conditions (Article 6).

has continued to grow and with it the difficulties in reaching majorities to approve Conventions. It was also noted that, over time, Conventions have covered most of the major labour law issues, making more complex to define new rules[39]. Referring only to the agricultural sector – although the same applies to conventions for all economic sectors – since the second half of the 1990s the figure has practically disappeared, with only the adoption of Convention 184 of 2001, on health and safety (which Italy has not ratified)[40].

After a long critical debate on how to revitalize the role of the Organization[41], which led to the approval first of the core labour standards – in 1998 with the Declaration on Fundamental Principles and Rights at Work and its follow-up[42] – and then, subsequently, of the Decent work agenda[43], since the second half of the 1990s the tendency to invest in technical cooperation and the implementation of existing rules has been in evidence.

The 1998 Declaration, by finding specific matters on which States were called upon to respect – irrespective of whether they chose to ratify them – the Eight Fundamental Conventions that governed those matters[44], adopted

[39] Referring to the ILO's internal position of business representatives, an "overproduction" of rules is mentioned in HEPPLE, *cit.*, p. 35 ff., see also the bibliography cited there.

[40] In the field of occupational health and safety, Italy is late in approving the well-known Occupational Safety and Health Convention, 1981 (No. 155), whose ratification process began in 2021 and is still ongoing today.

[41] See *ex plurimis* BORZAGA, *Contrasto al lavoro infantile,* cit., p. 80 ff., and the bibliography cited there. On the critical aspects of the ILO set-up and the fact that until 1998 there was no indication of the regulatory areas and Conventions to which States should give priority in ratification activities, see CHARNOVITZ, *The International Labour Organization in Its Second Century*, in Max Planck Yearbook of United Nations Law, 2000, p. 154.

[42] The text in Italian is available at: https://www.ilo.org/wcmsp5/groups/public/—-europe/—-ro-geneva/—-ilo-rome/documents/publication/wcms_151918.pdf; in literature see, *inter aliis*, BROWN, *International Trade and Core Labour Standards: A Survey of the Recent Literature*, in *Labour market and social policy*, Occasional papers, OECD, 2000, no. 43; LEE, *Globalization and labour standards: A review of issues*, in *ILR,* 1997, 2; SINGH, ZAMMIT, *The global labour standards controversy: critical issues for developing countries*, in Munich Personal RePEc Archive, 6 November 2000.

[43] See SENGENBERGER, *Decent Work: The International Labour Organization Agenda*, in *D&C*, 2001, no. 2; VOSKO, *"Decent Work": The Shifting Role of the ILO and the Struggle for Global Social Justice*, in *GSP*, 2002.

[44] The Core Labour Standards and related Conventions, which States were obliged to comply with, were: 1. Freedom of association and effective recognition of the right to collective bargaining (Freedom of Association and Protection of the Right to Organize Convention 87, 1948 and Right to Organize and Collective Bargaining Convention 98, 1949); 2. Elimination

a decisive method for bringing national legislation closer and raising standards of protection[45]. The Decent work agenda policy – launched in 1999, following a speech by the then Director-General of the International Labour Office, Juan Somavìa, and subsequently implemented with the 2008 Declaration on Social Justice for a Just Globalisation[46] – broadened the list of priority matters on which States should concentrate their efforts[47], defining a series of substantive and procedural goals.

The "strategic" changes resulting from these instruments do not need to be considered here in an analytical manner, but it is useful to highlight at least those that form the background and are intertwined with the recent monitoring and technical cooperation activities conducted by the ILO in the field of agricultural labour.

of all forms of forced or compulsory labour (Forced Labour Convention 29, 1930, with its Additional Protocol of 2014, and Abolition of Forced Labour Convention 105, 1957); 3. Effective abolition of child labour (Minimum Age Convention 138 of 1973 and Worst Forms of Child Labour Convention 182 of 1999); 4. Elimination of discrimination in respect of employment and occupation (Equal Remuneration Convention 100 of 1951 and Convention on Discrimination in Respect of Employment and Occupation 111 of 1958). In the literature, *ex plurimis*, see ALSTON, *"Core Labour Standards" and the Transformation of the International Labour Rights Regime*, in *EJIL,* 2004, vol. 15, no. 3, p. 464 ff.; KELLERSON, *The ILO Declaration of 1998 on Fundamental Principles and Rights: A Challenge for the Future*, in *ILR,* 1998, p. 223 ff.; SWEPSTON, *Human Rights Law and Freedom of Association: Development through ILO Supervision*, in *ILR*, 1998, p. 169 ff.; CHARNOVITZ, *The International Labour Organization*, cit., p. 147 ff.

[45] States were obliged to respect the eight Core Conventions regardless of the choice to ratify them: in this sense, the interest for the fundamental protections of workers was considered preeminent in confront of the compliance of the binding mechanisms of the Conventions' ratification on which the Organization was based. Not least, the Core Labour Standards made it possible to overcome the impasse of many Developing Countries that, after joining the Organization, had refrained from ratifying most of the Conventions, considering them excessive in number and unsuitable to their level of legal development.

[46] On which see MAUPAIN, *New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalisation*, in *EJIL*, 2009, p. 834 ff.

[47] In this regard, it is sufficient to say that this policy was composed of four pillars – later transposed in the 2008 Declaration –, the last of which has the aim to promote Core Labour Standards (already identified in 1998) and the other three based on more programmatic and general scopes, as: 1. the creation of greater opportunities for women and men to obtain decent employment and income; 2. the strengthening of the scope and effectiveness of social security instruments; 3. the strengthening of tripartism and social dialogue. See HEPPLE, *cit.*, p. 63 ff.; BORZAGA, *Core Labour Standards (International Labour Law)*, and BRINO, *International Labour Organization and the Global Market*, in PEDRAZZOLI (ed.), *Lessico Giuslavoristico. 3. Labour Law of the European Union and the Globalized World*, Bononia University Press, 2011, p. 74 ff. and 142 ff. respectively.

It is worth noting, first of all, the attention paid in the 2008 Declaration to compliance with "procedural" Conventions, understood as those which (while not directly recognising specific rights for workers) lay the foundations for promoting respect for the rules set out in other Conventions and for the functioning of national surveillance systems: the recent observation of the CEACR to the Italian government on Convention 129 of 1969 on labour inspections[48] – which we will discuss in the next paragraph – is part of this activity, as well as the analysis dedicated in the Three-year Plan to tackle labour exploitation and unlawful recruitment in agriculture, to the tools used in Italy to recruit and employ agricultural workers regularly – to which the final paragraphs of this paper are devoted.

Secondly, the actions for the development of a "fair" globalisation, promoted with the 2008 Declaration, have also outlined the perimeter within which to address the issue of migration – increasingly at the centre of public debate in Western countries and, more recently, addressed by ILO in its 2016 General Survey –, to guarantee migrants equal working conditions and decent work[49]. The CEACR's monitoring activity on Convention 143 of 1975, which also culminated in a recent observation against Italy – which is discussed in paragraph 6 – is part of this context.

4. *The Observations of the CEACR: compliance with Convention 129 of 1969 on agricultural inspections*

Regarding the 1969 Convention 129, the CEACR noted that in Italy the number of inspections carried out – between 2015 and 2018 – in all economic sectors has undergone a decrease of more than 20%[50], which was ac-

[48] The results achieved thanks to Core Labour Standards Strategy was extended through the Decent Work Agenda to a wider range of Conventions, including those that, although not aimed to introduce specific rights for workers, ended up affecting labour relations because aimed to improve national labour markets and people's employment opportunities. In fact, the Procedural Part of the 2008 Declaration includes the so-called four "Governance" Conventions – including the 129 of 1969 mentioned above – to facilitate the implementation of labour rules and make more effective the compliance with (also) other Conventions. See MAUPAIN, *cit.,* p. 843 ff.

[49] See ILO, *Promoting fair migration: General Survey concerning the migrant workers instruments*, 105th session, 2016; CHOLEWINSKI, TAYAH, *Promoting decent work for migrant workers*, Ilo, 2015.

companied by an increase in the number of violations compared to the inspections carried out in the same period[51].

The Italian government has been asked to explain the reasons of this trend and to comply, among other provisions, with Article 21, which provides that companies must be "inspected as often and meticulously as necessary to ensure the effective application of the relevant rules of law"[52].

For the 1969 Convention, further worrying evidence has appeared for the illogical legislative choice to entrust Inspectors the power, indiscriminately, to check compliance with labour standards and to verify that workers are in order with their residence documents. This dual function has been criticized for the problems it creates in getting workers to cooperate with Inspectors.

On this subject, it should be considered that the condition of foreigners' irregular residence generates an attitude of natural distrust towards the control authorities, which does not retreat to labour inspectors, who, while fight against the labour exploitation of foreigners, maintain the qualification and exercise the functions of Judicial Police Officers[53].

[50] The number of inspections reported by the Italian Government for the year 2015 was 145,697, while the number reported for the year 2018 was 116,846. See the Direct Request (CEACR), adopted in 2019 and published in 2021, available on the institutional website of the Organization.

[51] The percentage of violations detected compared to the inspections conducted was 60.29% in 2015 and 65.01% in 2018. See the Direct Request (CEACR), cited in the previous footnote. It should also be considered – as it emerges from the INL report for the year 2019 – that the agricultural sector accounts for just 5% of the total number of inspections carried out in Italy. See further, *infra*, paragraph 5, in footnote 70. On the Convention 129 see Ales, Bell, Deinert, Robin-Olivier, *International and European Labour Law. A Commentary*, p. 1106 ff.

[52] On the need for more controls by inspection bodies see, in literature, Leccese, Schiuma, *Strumenti legislativi di contrasto al lavoro sommerso, allo sfruttamento e al caporalato in agricoltura*, in *Agriregionieuropa,* 2018, p. 5; D'Avino, *Emersione e tutele del lavoro irregolare: una prospettiva comparata di sicurezza sociale*, Satura, 2018; Chiaromonte, *Le misure sanzionatorie di contrasto al lavoro sommerso e la regolamentazione del lavoro immigrato: due mondi lontanissimi*, in Ferrante (ed.), *Economia "informale" e politiche di trasparenza*, Vita e Pensiero, 2017, p. 138; Giaconi, *Le politiche europee di contrasto al lavoro sommerso. Tra (molto) soft law e (poco) hard law*, in *LD*, 2016, p. 439; Viscomi, *La disciplina delle migrazioni economiche tra protezione dei mercati e promozione dei diritti. Spunti per una discussione*, in *Studi in memoria di Mario Giovanni Garofalo*, Cacucci, 2015, II, p. 1029. On this topic see the recent ILO report, intended as a guide for the work of inspectors in the agricultural sector, *Conducting Occupational Safety and Health Inspections in Agricultural Undertakings*, International Labour Organization, 2021.

[53] See the joint provisions of Article 57 of the Code of Criminal Procedure, Article 6(2)

The fact that Inspectors are obliged, in the presence of clandestine workers, to report their presence on Italian territory to the Public Security Authorities[54], hinders the creation of any bond of trust between the control body and the workers, who should instead receive help from the intervention of the authority. In other words, the judicial police functions of the Inspectors make their investigative work more complicated, because favour the development of the (common) interest of the Irregular Workers and Gangmasters (and/or *De Facto* Employers[55]) to "staying away" from controls and the bodies that carry them out.

Noting the illogicality of this legislation and dwelling on the worrying spread of labour exploitation in agriculture, the CEACR, in its Observation of 2019, called on the Italian government to comply with Article 6, paragraph 1 of the Convention, stressing the need for Italian law not to give inspectors powers that could undermine the main function assigned to them, namely, to be guarantors of compliance with labour rules.

As the CEACR had previously raised doubts on different aspects of the national legislation, the Italian Government had already taken steps to highlight that the reform of Legislative Decree 149 of 2015 has contributed to ensuring that inspections in Italy are carried out in such a way as to ensure that irregular workers enjoy the same protections recognised for regular foreigners, binding employers to take on, in any case, pay, social security contributions and comply other obligations related to the employment relationship[56]: however, these reasons have not overcome the uncertainties

of Legislative Decree No 124 of 23 April 2004 and Article 1(2) of Legislative Decree No 149 of 14 September 2015.

[54] For identification and ritual controls for the verification of the crime of art. 10 *bis* of the Legislative Decree no. 286 of 23 July 1998, as well as for the purposes of the possible administrative expulsion, pursuant to art. 13 of the same decree.

[55] See COSTANTINI, *Soggiorno, residenza, contratto*, in CAMPANELLA (ed.), *Vite sottocosto. 2° Rapporto Presidio*, Aracne, 2018, p. 230 ff., who points out how the requirement of a residence permit becomes an element of further vulnerability of the immigrant labour employed in agriculture; in the same sense see also GRECO, *Relazioni tra imprese e rapporti di lavoro in agricoltura*, in CAMPANELLA (ed.), *cit.*, p. 358; NAZZARO, *Misure di contrasto al fenomeno del caporalato: il nuovo art. 603-bis c.p. e l'ardua compatibilità tra le strategie di emersione del lavoro sommerso e le politiche migratorie dell'esclusione*, in *CP*, 2017, n. 7-8, p. 2617 ff.

[56] See the Report of the Italian Government on the Application of Convention No. 129/1969 - Year 2017 "Labour Inspection in Agriculture", available online at: http://ilocentenary.lavoro.gov.it/Il-Ministero-e-lILO/Rapporti-dell-ILO-in-materia-di-lavoro/Documents/Rapporto-Convenzione-n-129-1969-anno- 2017.pdf.

of conformity specifically concerning the contextual attribution to the Inspectors both competences of protection and control on the regular stay in Italian territory.

While waiting for further government feedback, a useful regulatory reference can be found in Legislative Decree no. 109 of 16 July 2012[57], which has introduced a reward mechanism to encourage the cooperation of irregular workers with the supervisory authorities; according to it, in cases of serious labour exploitation, irregular workers who report their condition to the authorities, choosing to cooperate in criminal proceedings against the employer, are entitled to a Special Residence Permit, valid for the duration of the proceedings[58].

It is an instrument aimed at encouraging the cooperation of irregular migrants during the supervisory activities of the inspectors, which, in the presence of other conditions, such as at least the willingness of the foreigner to stay in Italy and to find alternative employment, may be able to break the collusion migrant-exploited/employer-exploiter, which instead socio-economic conditions and also – as noted by the CEACR – legal conditions, may favour.

However, the measure does not seem to be able to achieve exactly the objectives of the Convention, briefly recalled by the CEACR in the Observation: it is one thing to intervene in the competencies of the control bodies, to give priority to the actions of protection of vulnerable labour, it is another thing to reward the collaborative behaviour of foreigners. The intervention plans and the effects are not superimposable since there is an appreciable gap in the series of cases in which, for different reasons – lack of legal and linguistic knowledge, mistrust of the authorities, lack of alternative work opportunities, etc.[59] –, the foreigner does not intend to expose himself by filing a criminal complaint, but there is still a need to be "freed" from the exploitative condition in which he finds himself.

In other words, the choice of the irregular worker, who is a victim of

[57] With which the European Directive 2009/52/EC was implemented and paragraphs 12 *bis* and following were added to Art. 22, paragraph 12, of the Legislative Decree no. 286 of 25 July 1998. For a comment see FALERI, *Il lavoro agricolo*, cit., p. 96 and the bibliography cited there.

[58] On the requisites for the issuance of the aforementioned Special Residence Permit see Cass. sez. un. 11 December 2018 no. 32044 and Cass. 20 March 2019 no. 7845.

[59] On the "reticence" of irregular workers, see FALERI, *Il lavoro agricolo*, cit. p. 107.

exploitation, not to denounce the employer, under Article 22, paragraph 12 *quater*, does not change the fact that his prosecution by labour inspectors, due to the absence of regular residence documents, is contrary to Article 6 of the Convention.

4.1. The Observations of the CEACR: compliance with Convention 143 of 1975 on the protection of migrant workers

Since data on inspections carried out in Italy reveal that the highest number of foreigners who are victims of labour exploitation is in the agricultural sector[60], the recent Observation of the CEACR on the compliance of Italian regulations with Convention 143 of 1975 on the labour rights of migrants makes the Convention relevant for our purposes, even though it isn't one of those intended for agricultural work only.

The Observation of the CEACR concerned the compliance, among others, with Articles 1 and 9, which require the commitment of the Ratifying States to preserve the Fundamental Human Rights of Migrants (Art. 1) and to grant them, even if they are irregular, equal treatment concerning the labour guarantees of the host State (Art. 9). At the end of these observations, the Commission then formulated a series of information questions to the Italian Government, including the one asking to indicate how irregular workers can access information on labour rights in an understandable language and in a confidential manner and, in particular, those on how to obtain a Special Residence Permit under art. 22, par. 12 *quater*, Legislative Decree no. 286/98, in case of a complaint against the employer for serious labour exploitation.

As already mentioned, the Special Residence Permit is a tool that can help break the umbilical cord that binds migrants' vulnerability to the opportunism of Gangmasters and *De Facto* Employers: what Italy has been asked in this case, however, is not only to prove its abstract capacity to combat the exploitation of migrants, but also to demonstrate how far it

[60] According to National Labour Inspectorate, in 2018 migrant workers ascertained as victims of exploitation based on a labour inspection was 478, 350 of whom were employed in the agricultural sector. In addition, agricultural sector appears the sector with the highest percentage of irregular labour relationships: the 7160 inspections carried out in companies engaged in agriculture in 2018 showed that in 50% of cases work had been carried out in an irregular manner.

has been able to achieve the objective and, where this has not happened – as it appears to be in the concrete case –, to examine the causes of its poor expansive capacity.

From this point of view, the CEACR's Observations seem, in short, to call into question the techniques used by the legislator to make foreign workers aware of their rights and, more generally, to bring labour relations out of irregularity.

5. *Recent regulatory instruments and their limitations in combating irregular work*

However, the issues on which ILO, through the CEACR, has intervened in a critical sense concerning the regulations in our country have also been at the centre of the technical collaboration provided by the Organization to the Italian government, in the context of the tasks carried out to implement the Three-Year Plan to Tackle Labour Exploitation and Unlawful Recruitment in Agriculture (2020-2022), which we will shortly examine for the part relating to the Call on proposals for change in the sector. Before verifying the results of this activity, it is also right to briefly explain why the instruments adopted by the Italian legislator before the Three-Year Plan have not succeeded in eradicating exploitation and informality of labour relations.

In this regard, looking at the choices made in recent years we can speak of a Multidirectional Legislative Approach, based on instruments with distinct functions, but complementary from a teleological point of view. First, it is necessary to refer to Article 603 *bis* of the Criminal Code, as amended by Law No. 199 of 29 October 2016, which has made the sanctioning apparatus more incisive, going down the road of criminal repression against both gangmasters and employers[61]. Without going into an in-depth exegetical exami-

[61] The first version of Article 603 *bis* of the Criminal Code – introduced by Law Decree no. 138 of 13 August 2011, converted into Law no. 148 of 14 September 2011 – provided for a new type of offence to punish those who carried out organized intermediation activities, recruiting labour or organizing labour activities characterised by exploitation, by means of violence, threats, or intimidation, taking advantage of the workers' state of need or necessity. There were three main limitations to this offence. The first was related to its lack of effectiveness against the employer/user, who could only be held liable for complicity in the offence if it was

nation of the legislation – which has already been extensively commented –, it is sufficient to highlight the majority opinion according to which the use of criminal sanctions would not be sufficient to combat cases of violations of labour law that don't also constitute offences[62].

In other words, it has been pointed out that the rigidity of criminal sanctions doesn't intercept and address the phenomenon in its complexity, doesn't act directly on the causes that determine it and, among other things, doesn't resolve the "grey" situations in which companies resort to gimmicks to evade the law: think of cases in which part-time labour relationships are set up in order to use manpower for much longer hours, or cases in which wages are set on a piecework basis, and/or those in which they are calculated according to a collective agreement that recognises them in a way that seriously differs from what is laid down in national or territorial collective

proved that he was aware of the methods used by the intermediary. The second was the condition of criminal liability relating to the existence of an organizational structure on the part of the intermediary, such as to leave unpunished those who occasionally carried out illegal recruitment activities, without a structure of means and persons. The third limitation concerned the fact that violence and threats were identifiable elements of the case, so that all the hypotheses of exploitation of workers where they did not occur, or where the acceptance of the offer of work was voluntary, although induced by the condition of vulnerability, were excluded. Art. 1, law no. of 29 October 2016 amended the provision by establishing first of all two distinct offences, one attributable to the gangmaster for the recruitment of manpower for the purpose of assigning it to work for third parties in exploitative conditions, the other to the employer, who uses, hires, or employs labour subjecting workers to exploitative conditions and taking advantage of their state of need. In addition, the state of necessity has been replaced by the less serious state of need and the requirements of violence or threats have been excluded as constituent elements of the offence. See *amplius* Garofalo D., *Il contrasto al fenomeno dello sfruttamento del lavoro (non solo in agricoltura)*, in *RDSS*, 2018, p. 229 ff.; de Martino, D'Onghia, *Gli strumenti giuslavoristici di contrasto allo sfruttamento del lavoro in agricoltura nella legge n. 199/2016: ancora timide risposte a un fenomeno molto più complesso*, in *VTDL*, 2018, no. 1, p. 157 ff; de Santis, *Caporalato e sfruttamento di lavoro: politiche criminali in tema di protezione del lavoratore. Pregi e limiti dell'attuale disciplina. II Parte*, in *RCP*, 2018, no. 5, p. 1759; Chiaromonte, *"We were looking for arms, men arrived". Il lavoro dei migranti in agricoltura fra sfruttamento e istanze di tutela*, in *DLRI*, 2018, no. 2, p. 321 ff; Greco, *cit.*, p. 356 ff.

[62] In a critical sense, starting from the concept of labour exploitation, see Calafà, *Per un approccio multidimensionale allo sfruttamento lavorativo*, in *LD*, 2021, no. 2, p. 200 ff.; in the same sense see also, Faleri, *Il lavoro agricolo*, cit., p. 101 ff.; Id., *"Non basta la repressione". A proposito di caporalato e sfruttamento del lavoro in agricoltura*, in *LD*, 2021, p. 258 ff; Papa, *Paradossi regolativi e patologie occupazionali nel lavoro agricolo degli stranieri*, in Campanella (ed.), *cit.*, p. 253; Masini, *Neo-colonizzazione delle campagne: tutela del lavoro e diritti all'esistenza*, in *GC*, 2020, no. 4, p. 815 ff.

contracts stipulated by the most representative trade unions at the national level[63].

Similarly, practices aimed at encouraging the sale of goods produced only by agricultural enterprises belonging to production chains that comply with labour standards have so far not achieved the desired results. These are the so-called Ethical Marks or Labels Showing Goods Produced without Labour Exploitation, with which public and private authorities, using awareness-raising campaigns in favour of the culture of legality and quality of work, are trying to guide consumer preferences by promoting the commercial reputation of companies that adhere to such campaigns and/or certified consortia[64].

These instruments have the limitation of assuming that consumers spontaneously adopt responsible purchasing choices[65], and are, therefore, hindered by the fact that these choices are, instead, based on ethical logic only in a circumscribed number of cases, while the broader tendency is to prefer the quality and/or convenience of the goods bought. Moreover, it should be considered that today the cost of products from certified supply chains is, on average, higher than that of companies that don't belong to them. In short term, it doesn't seem that these instruments can be the key to ousting, or even circumscribing, the market space of companies that use irregular labour[66].

Another incentive tool that was supposed to guarantee compliance with labour standards by businesses is the Quality Agricultural Labour Network, introduced by Article 6 of Legislative Decree No. 91 of 24 June 2014 and

[63] Finally, on the differences between the cases of labour exploitation and those in which the criminal offence of exploitation of labour is committed, see FALERI, *"Non basta la repression". A proposito di caporalato e sfruttamento del lavoro in agricoltura*, in *LD*, 2021, pp. 258-260; cf. *etiam* NUZZO, *L'utilizzazione di manodopera altrui in agricoltura e in edilizia: possibilità, rischi e rimedi sanzionatori*, in *WP CSDLE "Massimo D'Antona".IT*, - 357/2018, p. 25 ff.

[64] Among the best known are the "No Cap" label and the certification of products sold by companies that are members of the World Fair Trade Organization (WFTO).

[65] PINTO, *Rapporti lavorativi e legalità*, cit., p. 26; FALERI, *"Non basta la repressione"*, cit., p. 271.

[66] These instruments could certainly be more successful if they were included in the context of supply chain agreements whereby large-scale distribution companies undertake to buy products exclusively from companies that respect the parameters of legal work. In this sense CANFORA, LECCESE, *cit.*, pp. 76-77.

amended by Article 8 of Law No. 199 of 2016[67]. This is a tool that allows Member Companies to enjoy different advantages, including that of being less subject to inspections by the authorities. In other words, in exchange for compliance with a series of parameters of legality – among which the compliance with the provisions of collective agreements entered into by the most representative trade unions at the national level[68]–, the companies belonging to the Network are exempt from ordinary supervision by authorities and benefit – following the amendments introduced in 2016 – from the possibility of enjoying any funding provided at the local level for the transport of workers.

Again, however, these measures have not been very convincing so far. One of the reasons why companies are reluctant to join the Network[69] is its low attractiveness, given that the main advantage – *i.e.*, exemption from ordinary inspections – is strongly mitigated by the low intensity with which the inspection bodies already conduct their surveillance activities on the territory. If we cross the data on the number of inspections carried out each year in Italy with those relating to the number of agricultural enterprises operating, it becomes clear – as mentioned above – that agriculture is the sector where fewer inspections are carried out than in any other sector[70]; moreover, considering that there are about five thousand inspections in agriculture every year and that there are more than seventy thousand companies[71], it is clear how rare it is to be subjected to a scheduled inspection by the authorities; in addition, membership of the Network does not guarantee, of course, that the company is not subject to inspections due to complaints or claims.

[67] Battistelli, Pascucci, *La promozione dell'impresa agricola di qualità*, in Campanella (ed.), *cit.*, p. 399 ff.; D'Onghia, de Martino, *cit.*, p. 14 ff.

[68] Among others, the absence of criminal convictions and administrative sanctions for violations of labour and social legislation and the regular payment of social security and insurance contributions.

[69] From the date of establishment of Quality Agricultural Work Network until January 2022, just over 5,000 farms have joined it; the total number of active farms in Italy – considering only those organized in corporate form – exceeds 70,000 (according to the latest ISTAT census, 2016).

[70] The data published by the National Inspectorate in the Annual Report on Labour and Social Legislation Surveillance Activity - Year 2019, p. 9, shows that out of more than 113,000 inspections conducted in all economic sectors, only 5806 involved enterprises working in agriculture (just 5%).

[71] Only those organized as companies are considered (Istat, 2016).

6. *ILO's good practices in the fight against exploitation and forced labour in agriculture*

Turning now to the second type of function carried out by the ILO for the protection of agricultural workers, that is, Technical Cooperation, within the framework of which, as mentioned, the Three-Year Plan to Tackle Labour Exploitation and Unlawful Recruitment in Agriculture (2020-2022) was adopted; for our purposes, it will be useful to examine in particular the outcome of the Call launched at the end of 2020[72], which aimed to receive, from public and private actors operating in the agricultural sector, concrete indications on the practices in place against labour exploitation.

From a practical point of view, the Call required participants to show the funding received to implement the practices, the operational context in which they took place, and the lessons learned in their implementation. To take part, participants were also expected to refer to at least one of the Ten Priority Actions predetermined by the Three-year Plan, which can be classified into three areas, depending on whether they are to be conducted before, during or after the workforce activity.

The first group includes Actions relating to the creation of an Information System for the Agricultural Labour Market, with which to map the territories and the agri-food chain and thus describe the areas at greatest risk of irregular employment of labour[73]. In the second group – destined for the "contextual" Actions – there are the Actions necessary for the Transportation of Workers by the Right Means and their Stay in Decent Housing Solutions[74]. In the third group, Actions following the Detection and/or De-

[72] The Call proposed by the ILO's Italy Office, in collaboration with the Ministry of Labour and the European Commission, can be found at the following address: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/publication/wcms_764054.pdf ; the results of this Call are published in the report "The promotion of Decent Work in agriculture. Analysis of promising practices in Italy": https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/genericdocument/wcms_803403.pdf.

[73] Priority Actions 1 to 4 belong to this group, namely: Action 1. Information system for the agricultural labour market; Action 2. Investments in innovation and enhancement of agricultural products; Action 3. Quality agricultural work network and measures for the certification of agricultural products; Action 4. Planning of labour flows and improvement of intermediary services.

[74] Priority Actions 5 to 8 belong to this group, namely: Action 5. Decent transport solu-

nunciation of Exploitative Conditions, such as protection and assistance to victims[75].

For our purposes, it is important to analyse the number of practices reported against each of the Priority Actions: this figure is indicative of the propensity with which operators are currently dealing with each of the Actions indicated in the Three-year Plan and also makes it possible to identify – in the presence of actions for which a small number of dossiers were reported – for which of them, operators have more problems implementing them. Looking at the ratio between the total number of practices presented – 67, of which 40 were presented by non-governmental organizations – and those proposed for each Priority Action, a significant element comes to the fore: there are two specific Actions for which the number of practices implemented was very low, namely actions 5 and 6 (two practices for action 5 and one for Action 6), which are devoted respectively to decent transport and housing solutions.

It is well known how important these Actions are to protect the lives of agricultural workers, especially if they are foreigners and irregular, and therefore in conditions of vulnerability that make them more likely to be victims of forced or compulsory labour and, in general, of labour exploitation by Gangmasters[76].

The inadequate satisfaction of basic needs related to housing or transport is, not by chance, among the characteristics to which the Referral Mechanisms refer the activation of protection and assistance procedures for victims of labour exploitation[77], and to which the Italian legislator has, con-

tions; Action 6. Decent housing solutions; Action 7. Communication campaign; Action 8. Strengthening of surveillance activities and fight against labour exploitation.

[75] Priority Actions 9 (Protection and assistance of victims of labour exploitation) and 10 (National system for the socio-occupational reintegration of victims) belong to this group. See Corbanese, Rosas, *Decent work and social inclusion of victims of labour exploitation*, Ilo, 2020.

[76] On the concepts of labour exploitation and forced or compulsory labour, see Calafà, *cit.*, p. 193 ff.

[77] See the recent Guidelines of 8 October 2021, approved by the State-Regions Conference in implementation of the Three-Year Plan to Tackle Labour Exploitation and Unlawful Recruitment in Agriculture (2020-22), designed to uniformly regulate the operations of those who are involved in various ways in the protection of and assistance to victims of labour exploitation in agriculture. On Referral Mechanisms, (also) from a comparative point of view, see Corbanese, Rosas, *Protezione e assistenza delle vittime di sfruttamento lavorativo. Un'analisi comparativa*, Ilo, 2020.

sequently, made reference when defining the indexes to apply criminal sanctions due to labour exploitation[78].

Capitalising the scarce financial resources made available by National and Local Governments[79], the operators who implement the practices attributable to these actions provide concrete support to the workers and, at the same time, exclude the illegal recruitment operations: the small number of cases in which this happens confirms, on the other hand, the wide scope of action left to the gangmasters, which adapt and operate by taking into account the differences between Regions, but also in crops, production cycles and the characteristics of workers[80].

Although well known, the *status quo* has not changed with the public investments and regulatory interventions proposed so far[81]. Farmers today

[78] Indeed, it's worth noting noted that the indices of exploitation identified in Article 603 *bis* of the Criminal Code – including "subjection of the worker to degrading working conditions, surveillance methods or housing situations", which the Inl Circular 5 of 2019 has specified is also attributable to the psycho-physical work stress due to the "transport to the workplace carried out with totally inadequate vehicles and exceeding the number of people allowed" – take up those that the ILO has defined, in collaboration with the European Commission, to identify cases of trafficking for labour exploitation (see ILO, *Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children*, 2012; ILO and EC, *Operational of Trafficking of Human Beings*, 2009, UE-ADF, *Severe Labour Exploitition: Workers Moving within or into the European Union: States' Obligations and Victims' Rights*, 2015).

[79] ILO's research on national policies and programmes to combat forced labour has shown that for many European countries, including Italy, the priority is still the initial assistance of foreigners through temporary housing, health care, psychological counselling, while there is a lack of long-term support, such as work inclusion programmes, which would be essential for the reintegration of these people: in this sense, see Corbanese, Rosas, *Decent work and social inclusion*, cit., p. 19 ff.

[80] In Lazio, for example, and particularly in the Agro Pontino area, foreigners working in fruit and vegetable cultivation and flower production are generally Indian workers from the Punjab region who are recruited by fellow countrymen who offer "packages" that include travel, accommodation, residence, and work permits. In Puglia, where the exploitation of workers in agriculture particularly concerns the provinces of Foggia and Bari and the production of fruit and vegetables, the widespread presence of informal settlements, even large ones, means that the gangmasters draw on labour already present in the area. In these terms see, *Participatory analysis of regional and local initiatives on preventing and combating labour exploitation in agriculture. Summary of the final report*, published on 25 January 2021 at the following link: https://www.ilo.org/rome/risorse-informative/articles/WCMS_779037/-lang—it/index.htm.

[81] According to the two Regions mentioned above, in Lazio, law no. 18 of 14 August 2019 (and the subsequent implementing regulation no. 24 of 5 October 2020) was approved, with the

are called upon to recruit a number of workers that no public service can guarantee over time, to the extent and for the periods necessary, as the Gangmasters do[82], and this happens in the agricultural sector for factors that are also known, which have to do with three main reasons: (*a*) the seasonality of agricultural production, which imposes rapid recruitment; (*b*) the wearing nature of the activity, which involves the intervention mostly of foreigners who are easily found only by the gangmasters; (*c*) the distance of the fields from urban centres, which requires workers to live in neighbouring areas and to use means of transport to get to work.

Although the institutional effort and the intervention of private non-profit bodies (for the latter, especially about the protection and assistance of the victims of exploitation) have so far been vast and the recent Three-Year Plan – thanks also to the technical role of ILO – has brought the problems of exploitation in agriculture back to the centre of the debate, a development perspective such as the current one in which the control of compliance with labour standards is left to the intervention *ex post* of Inspectors seems insufficient to meet the needs of the fight against exploitation and, consequently, also to solve the problem of illegal recruitment.

In other words, the dominance of Gangmasters in recruitment and employment of labour in agriculture seems to be also a consequence of the lack of adequate rules to allow a preventive control on the lawfulness of the activities.

The legislative "hypocrisy", to which reference was initially made, lies in the distortion of our legislation, which limits the exercise of intermediation activity to a restricted circuit of mainly public subjects – see Art. 6 Legislative Decree 276/2003 –[83] and, at the same time, allows the recruitment/employ-

provision of Computerised Booking Lists – aimed precisely at encouraging intermediation –, and of Congruity Indices intended to verify the relationship between the quantity and quality of goods and services offered by employers and the quantity of hours worked. Puglia, instead, has recently approved Regional Law no. 29 of 29 June 2018, with which it proposed to promote active labour policies and the fight against undeclared work and gangmaster, defining the functioning of Employment Centres and setting up the Regional Agency for Active Labour Policies (Arpal).

[82] In an adhesive sense, see Faleri, *Il lavoro agricolo*, cit., p. 89, which addresses the thinking of those who believe that gangmasters are entities that generate a benefit for workers and manufacturing firms. In the same sense, with reference to the tomato chain, see Ciconte, Liberti, Spolpati, *La crisi dell'industria del pomodoro tra sfruttamento e insostenibilità*, Third report #FilieraSporca, 2016, p. 16 ff.

[83] And, where it allows private individuals to carry it out for profit (as, for example, in the

ment activities to be provided by private persons without establishing specific rules of preventive control and, in this manner, leaving to Gangmasters a wide space of action.

If one takes into account how our legislation has intervened in liberalising the forms of labour interposition by private individuals, it's important to remind that legislative decree 276 of 2003 allowed outsourced labour without any distinction among economic sectors and this has meant for the agricultural sector – in which the rate of irregular work is higher – (continuing to) leave the control on compliance with labour regulations to subsequent checks by inspectors – who, as mentioned above, manage to do so with very limited frequency.

In this regard, in the light of the confirmations offered by the monitoring and technical cooperation activities carried out by ILO, a useful contribution to combating the problem of illegal recruitment in agriculture could come from "special" rules to strengthen controls, upstream of the establishment of companies, with the constraint for these companies to demonstrate that they can also meet the basic needs (mainly transport and accommodation) of seasonal workers[84].

7. *Going down different roads: more openness to the private sector and more public control to combat exploitation*

In this perspective, a useful inspiration can be derived from the British example of the Gangmasters and Labour Abuse Authority[85], which is a governmental body through which the recruitment of labour is controlled in highly exploitative sectors such as agriculture.

case of staffing agencies), it requires them to meet a series of particularly demanding requirements (high social capital, carrying out the activity in several regions, etc.) or to be accredited under Article 7 of Legislative Decree 276/2003 and according to rules established in a diversified manner at regional level.

[84] On the lack of Employment Centres capable of efficiently recruiting labour, see also PINTO, *cit.*, p. 28.

[85] Considered an example of best practices in ANDREES, NASRI, SWINIARSKI, *Regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges and opportunities*, Ilo, 2015, p. 79; on the evolution of the Gangmasters and Labour Abuse Authority see SCHENNER, *The Gangmaster Licensing Authority: An Institution Able to Tackle Labour Exploitation?*, in *EAA*, 2017, p. 357 ff. On labour brokering at a comparative level, see the work commissioned by ILO to ANDREES, NASRI, SWINIARSKI, *cit*.

With a glance to that experience, it could be requested to private individuals interested in recruiting and employing workers to obtain a licence, issued by the public authority, against payment and subject to renewal, after proving some requirements, including the opening of a VAT number, payment of registration fees, prior checking of means of transport and accommodation for workers.

The requirements for such licences would have to be different from those needed to obtain Ministerial Authorisation to carry out Intermediation Services according to Article 5(4) of Legislative Decree No. 276/2003, since the applicants would act as labour contractors, constituting the labour relations with the workforce themselves and, therefore, not being subject to the limitations provided for undertakings that only carry out intermediation activity. However, the licensing system would allow them to be subject to a fruitful preventive control of compliance with the conditions considered essential to protect those working in agriculture, including control over means of transport and the availability of adequate premises for housing workers.

In other words, it would be a question of linking the issuance of licences to certain conditions to which agricultural labour contractors must be subject, but compliance with which would also allow them to protect their economic interests. The existence of a certain regulatory boundary could facilitate the detection of offences by the authorities, dictating the differences between the hypotheses of recruitment and use of labour that are lawful and those that, since they are carried out without a licence – providing regulatory coordination with Article 603 *bis* of the Criminal Code – would flow back among the conduct to be criminally punished.

Secondly, the issuance of licences would allow an effective control – and not only documentary control as is the case today – on one of the requirements for the issuance of the residence contract for subordinate work which, according to art. 5 *bis* of Legislative Decree no. 286 of 25 July 1998, requires the employer who intends to employ a non-EU citizen to give a guarantee "of the availability of accommodation" (art. 5 *bis*).

Regulating recruitment activity through licensing could, among other things, supply a fundamental advantage to the long-standing issue of determining the prices of agricultural products and their fair distribution in the supply chain.

Today, as is well known, the price of agricultural products is strongly influenced by the problems linked to the low negotiation capacity of pro-

ducers who, due to the high perishability of their products, but also to the wide extension of the supply chain and the participation in it of companies with high capital, have extremely reduced negotiation margins and are very often forced to suffer the price imposed by purchasing companies, offloading the effects of their lack of profit on the cost of labour[86]. In this regard, the recent legislative decree no. 198 of 8 November 2021 implemented the European Directive 2019/633 of 17 April 2019[87], and the rules for the validity of sales contracts were thus revised to ensure greater guarantees for producers against unfair practices: among the rules introduced, there is also that of using the average production costs, indicated by ISMEA, as a parameter for the fair definition of the sale price of products[88].

In this context, a licensing system for the employment of labour in agriculture could have positive effects (also) on these negotiation dynamics, if the cost to be paid for the services of recruitment, employment, transport, and accommodation were imposed by law as an item – distinct from the sale price of the products – which the buyer must bear, paying the amount to the producer who has advanced it. In other words, the amount for recruitment and employment services in the sales contract of agricultural products should be written as an obligatory clause to the validity of the contract[89], and the task to find a minimum amount could be left to an *ad hoc* body[90]. This would make the cost of labour in its broadest sense more transparent and easier to decipher and would include those incidental expenses (transport and accommodation, above all) that are motivated by the peculiarities of the sector.

[86] On these issues the literature is extensive; see, for example, Canfora, Leccese, *cit.,* p. 58 ff.; Cornice, Innamorati, Pomponi, *cit.*, p. 12 ff.; Canfora, *La filiera agroalimentare tra politiche europee e disciplina dei rapporti contrattuali: i riflessi sul lavoro in agricoltura*, in *DLRI*, 2018, p. 259 ff.; Senatori, *Filiera agroalimentare, tutela del lavoro agricolo e modelli contrattuali di regolazione collettiva: una geografia negoziale dello sviluppo sostenibile*, in *DLRI*, 2019, p. 593 ff.

[87] For a comment on the implementation of the directive before legislative decree 198 of 2021 see Jannarelli, *cit.*, p. 199 ff.

[88] Article 7(3) of the Decree.

[89] Unless the manufacturer does not already have the workforce to fulfil the contract for the sale of the products.

[90] For example, a joint body – composed of the most representative social partners – could be set up with the task of differentiating the amount of these costs by homogeneous territorial areas and reviewing them at set intervals. Defining the cost of recruitment services in relation to the workers would also encourage regular work, since the farmer, to obtain the largest possible reimbursement from the buyer, would be interested in showing the actual number of workers needed to carry out the activity.

Abstract

In its first part, the paper offers a diachronic examination of the conventions on agricultural labour approved by the International Labour Organization and ratified by Italy. These conventions are examined by considering the changing purposes of the Organization, initially focused (in a mercantilist perspective) on ensuring economic development even for States with a predominantly agricultural vocation and, only later, oriented toward ensuring effective protections for workers.

The second part of the paper deals with more recent implications on the subject. CEACR's Critical Observations on the capacity of Italian legislation to ensure compliance with the standards of Conventions 129 of 1969 and 143 of 1975 are analyzed. Starting with an examination of the recent Plan to Combat Labor Exploitation in Agriculture, some of the causes that facilitate the activities of gangmasters are also highlighted and – drawing from comparative experience – possible solutions to combat them are proposed.

Keywords

International labour law, agricultural labour, ILO conventions, labour exploitation, gangmasters.