



## **THE FEDERATION OF PROTESTANT CHURCHES IN ITALY**

***Slave labour***

***Some aspects of the phenomenon in Italy and Spain***

*by Francesco Carchedi*

## **Research group**

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# ***Slave Labour. Some aspects of the phenomenon in Italy and in Spain***

**by F. Carchedi<sup>1</sup>**

## **1. Introduction**

### **1.1 The object of the research**

The research report which follows is the final result of the inquiry carried out by the *Federation of Protestant Churches in Italy* (FCEI) under the title “*Slave Labour. Some aspects of the phenomenon in Italy and in Spain*”.

The research was under the European project *Combating Trafficking in Human Beings – Going Beyond*) carried out by the *Churches' Commission for Migrants in Europe* (CCME) and funded by the European Commission.

The research has also focused on Spain because the FCEI, the Italian partnership of the project, was the focal point responsible for sub-regional research.

The inquiry began in June 2009 and finished in June 2010 and started from the observation that in the recent years serious forms of exploitation have emerged, either through coercive forms of prostitution that through forced labour in various European countries. The victims – in the case of labour exploitation (which represents the object of the enquiry) – are migrant workers of both sexes who come to Europe to find greater serenity and the possibility of improving their own life conditions.

We are facing a particular social phenomenon, because in the most extreme manifestations it can appear as a new form of slavery, because the relations between the actors involved are characterized by coercive practices (put in place by traffickers without scruples) with the aim of producing forms of subjection and servitude leading to serious exploitation and, for some intrinsic similarities, to slavery. We can also use the term “semi-slavery” which we guess it is closer to the new forms of subjection, configurable as new forms of slavery, in this historical phase<sup>2</sup>. Transnational criminal organization, deeply involved in these new forms of slavery, more and more invest the profits of human trafficking in illegal activities with high economic gain (in particular, in the weapons and drugs trafficking). But whilst the criminal organizations – in as much as made up of professionals – remain the same over a period of time (with marginal forms of turnover), their victims can instead change, both from the numerical and socio-demographic point of view and from the type of exploitation in which they are entrapped.

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1 The research report has been drawn up by F. Carchedi, with the exception of Chapter 6 drawn up in collaboration with Prisca Giaiero.

2 “The nature of the slave relationship – says Kevin Bales - has changed radically. The new availability (of slaves) has increased dramatically the profit which can be gained from a slave, reduced the duration of the normal relationship (...) and made less relevant the question of legal ownership (...). The slaves are a “use and throw” commodity, they are mostly short term. Some only for a few months. It is simply not convenient to keep them when they are not immediately used”. See K Bales, *I nuovi schiavi. La merce umana nell'economia globale*, Feltrinelli, Milano, pp. 19-20. In this last page, Bales proposes a prospect where he compares the “old” and the “new” slavery. An integral prospect with the results of a survey carried out by the Fondazione Internazionale L. Basso and published by F. Carchedi, G. Mottura and E. Pugliese, *Lavoro servile e nuove schiavitù*, Milano, 2004, pp. 32 et seq.

In fact, these enslaving practices – involving adults and minors – can be activated in a limited way and circumscribed by episodes (few days/few weeks), sometimes for longer periods, several months or years) and sometimes also for an even longer time (very difficult to define) through diverse means of exploitation. In these cases, the will to resist of the persons involved is subjected so far as to take the form, paradoxically, on a superficial glance, of relations based apparently on free choice and substantial acceptance (because they interiorize the persecuting will of the exploiters and do what they ask).

At the present time – not only in Spain and Italy, obviously – the servile condition and the semi-slave condition tend to become *de facto* situations which arise in marginal areas of social organization. Not being a condition legally recognized by the institutions as happened with State regulations of racial character (the so-called “*slave-ocracies*”)<sup>3</sup>, it occurs in marginal gaps of the society and in a totally illegal manner, and is therefore strictly punishable under current laws.

The negative social pressure which affects these practices of submission by violence and radical exploitation leads the phenomenon being hidden and camouflaged into questionable social practices, but in some way almost tolerated, as for example black labour (in its various forms) which involved many migrants also in its most serious manifestations.<sup>4</sup>

This work is proposed by companies and accepted by workers without any contract. We are facing with working relationships based on informal contacts, without insurance and security guarantees in the workplace. The irregular migrants (without stay permit) in accepting these forms of work risk serious exploitation. On the one hand because they are working without a contract and without a contract cannot ask for the stay permit, and *vice versa*; on the other hand because they cannot claim rights as workers, except in cases where physical violence is suffered and they therefore remain victims of serious labour exploitation. In these cases, they can benefit from social protection.

## **1.2 The objectives pursued, the methodological criteria and the structure of the research report**

The objectives pursued were three: **a)** analysing the theme of serious exploitation and slave labour, both on the basis of what has already been done in Italy (not much, in truth), and on the basis of what we have learned in the course of the enquiry itself; **b)** reflecting on the life conditions of the trafficked victims – persons of foreign origin – and defining, on the basis of these reflections, the indicators which permit to intercept and understand when they are involved in serious forms of labour exploitation; **c)** reporting the evaluation

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3 For an historical view of the slave phenomenon, see amongst others - Jean Andraeu, Raymond Descat, *Gli schiavi nel mondo greco e romano*, Il Mulino, Bologna, 2009, Patrizia Del Piano, *La schiavitù in età moderna*, Laterza, Roma/Bari 2009. Eugene G. Genovese, *L'economia politica della schiavitù*, Einaudi, Torino, 1972

4 Black labour creates forms of disloyal agreement between companies (it affects work costs, security systems, and therefore prices system) and various forms of falsification of industrial and commercial products as it occurs without any respect for regulations, not only contractual and of unions (with obvious financial and fiscal repercussions). It creates irresponsible tensions in civil and social relations in the local communities. Black labour, in synthesis, in the extreme case, corresponds to semi-slave labour. This thesis has been exposed by F. Carchedi, G. Mottura and E. Pugliese, *Lavoro servile e nuove schiavitù*, Milano, 2004, pp. 14-15 et seq.

by experts of the phenomenon as key-witnesses (they are from social services, trade union organizations, police, local and national institutions).

This framework, purely qualitative (the quantitative aspects were not considered because, at the moment, there are no official data), covered all the inquiry carried out in Italy and in Spain. Nevertheless, it should be noted that in Italy the cases of slave labour (according to the social protection given to the victims through the art. 18 of the Decree Law n. 286/98 and the art. 13 of the Law n. 228/03) amount to 750 persons (as June 2010). In Spain – according to the data acquired by the *Comisiones Obreras* – the cases amount to about a thousand. The methodological criteria used were those of field enquiry, carried out with interviews to obtain the data and information on the subject under review.

To obtain the information from experts, an “open questionnaire” was drawn up, with the objectives/hypotheses forming the base of the research. The interviews carried out (generally using a recording machine) assumed an in-depth character since – as the forms were open – it was possible to give adequate space to the description and evaluation by the interlocutors. The number of interviews thus carried out was 24 in Italy and 22 in Spain, for a total of 46 persons (see the Attachment 1a and 1b for more information).

We must add 5 interviews carried out by the Association Parsec based in Rome and another 5 provided by the Immigration Department of the *Comisiones Obreras* in Barcelona (provided from its archive of reports from workers who have denounced the employer for “serious labour exploitation”). In synthesis, we obtained 56 interviews: 46 from privileged witnesses and 10 from victims of trafficking.

The structure of the report is divided into three parts: the first is common to both countries, since the principal supra-national regulations are analyzed (international Conventions and European laws), a second part covers the Italian aspect and a third part the Spanish aspect.

The report is composed – after the introduction – of 7 chapters, regarding the regulation questions (Chapter 2), and those relating to the indicators to identify victims of trafficking and slavery (Chapter 3). These chapters are common to both countries analyzed. In chapter 4 (the Italian case) the causes and methods of entry into practices of subjection and the life conditions of the victims are discussed.

Chapter 5 collects short stories of victims who have benefited from the protection program. Chapter 6, concerning the Italian situation, reports the evaluation and comments collected through the interviews with privileged witnesses. Finally, chapter 7 describes the Spanish situation (the Spanish case) as it emerges substantially from interviews carried out in Barcelona, Granada/Almeria and Madrid. In the Spanish part, short stories of victims are also included. These stories are received from the Immigration Department of the *Comisiones Obreras* in Barcelona and concern people who have denounced their employers for serious exploitation.

## 2. The legal situation. Definitions, the servile and semi-slave condition

### 2.1 Servility and slavery<sup>5</sup>

The socio-economic and psychological status which is created between different persons, where some hold domination and decision-making power over others, could be defined as servile condition. This is a structured dependence, often “traditionalist”, based at the same time on exploitation and protection and care of the subjected persons.<sup>6</sup> The domination in these cases is not generally based on violence, but on seeking agreement, on blackmail (explicit or implicit, and also affective) and on trickery that influence the methods of negotiation in order to perpetuate the subjection. Moreover, the physical nearness (in contrast with the psychological distance) and cohabitation play a specific role.

In other words, these relationships can arise and develop within socio-economic structures where exist a “culture of family relationships”: both between members of the same family (even if of diverse levels) or between strangers, in the sense that they enter into the structural ambiance of the family and assume the character of family relationships (unskilled domestic and care work). These working relationships can be based on pre- or post-contract principles and connections: that is when the family links (and those of belonging to the community) are considered stronger and more binding than those contained in formal labour contracts (therefore the contract is given only by an orally agreement).<sup>7</sup> In the first case, the relationships are always blocked before the formal and manifest negotiation; in the second case, they elude negotiation on the basis of moral argument within the relationship itself (and thus manageable by the stronger characters).<sup>8</sup>

On the other hand, the semi-slave condition can be defined as that condition in which the exploitation includes those relational situations based on unopposed domination and complete coercion. Therefore, the main characterizing factor is the lack of liberty (to belong to a community able to forestall the subjection)<sup>9</sup>, that is, the lack of any form of negotiation

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5 For an analysis of the terms *slave/slavery* and *servant/servile* in Greece and Ancient Rome cf Jean Andrieu and Raymond Descat, *Gli schiavi nel mondo greco e romano*, Il Mulino, Bologna, 2009, in particular Chapter 1, “What is a slave?” pp.13-24. Whilst for those related to the “glebal servitude” cf Pietro Vaccari, *Le affrancazioni collettive dei servi della gleba*, Institute for International Political Studies, Officine grafiche Amedeo Nicola e C., Varese-Milano 1939. The servants of the glebe were peasants and crafts people who had “limited freedom (...) and responded to the obligation of fidelity”, that is “to obedience to the orders of the landlord, through work and duties decreed by him”. In this way, they stayed “under the burden of servile subjection” (...). Cf pp 11-14. To compare slavery in America and Russia cf Peter Kolchin, *Unfree labor. American slavery e Russian serfdom*, Harvard University Press, Cambridge-Massachusetts and London - England, 1987, pp. 103 e ss.

6 Fabio Viti, *Schiavi, servi e dipendenti*, Raffaello Cortina, Milano 2007, p XI

7 Francesco Carchedi, Giovanni Mottura, Enrico Pugliese, *Il lavoro servile e le nuove schiavitù*, Franco Angeli, Milano 2003, p.13

8 For F. Viti, linking up to other intellectuals, “the opposite of slave status does not mean being free of every social duty, but possessing family links which can protect the alienation of reduction to slavery, requiring however a lesser or greater subjection to family logistics. That is, the antithesis of slavery is not freedom (understood) as autonomy, but rather freedom (understood) as belonging” to a community or a State which defends its citizens and does not allow their reduction into slavery or similar conditions. In substance, it is the lack of community or State protection (as is more common in contemporary society) which permits – and can facilitate – reduction into slavery.” Cf F.Viti *Dipendenza personale, lavoro e politica*, Edizioni Il Fiorino, Bologna, 2008 pp 168-169

9 Idem, pp.168-169

with the exception of that necessary to guarantee a certain survival and continuation of the relationship.

In fact, the excessive psycho-physical deterioration in the subjected persons would invalidate any perpetuation of exploitation. In this type of relationships the characteristic seems to be the distance between the two parties, distance necessary to maintain the relationship on the lines of a complete forced subjection of the victims.

In this type of relationship there is however a structural contradiction, because on the one hand the traffickers/exploiters need to make their victims docile to control them better and reach such a condition to obtain rapid results and profits, on the other, they need not to degrade the source of gain too much (the subjected persons), making it thus progressively passive and unable to produce further riches.

The point of equilibrium between the practices of intensive exploitation and those intended to perpetuate domination of the victims should be determined when the actors involved (whether willing or not) reach a reciprocal convenience: the one (becoming silent and non-conflictual) in order not to submit to further violence and the other not to render irreversible the negative effects of the process of forced subordination so as not to provoke eventual reaction on the part of the victim.<sup>10</sup>

Maintaining this equilibrium implies, on the part of the exploiters, a certain reasoning and forethought which they often do not have just because they are “criminals”; on the part of the victims, however, it implies constant searching to escape from the situation through laborious and complex means, first within themselves and then making the break externally (once they have become aware of being able to manage it).<sup>11</sup>

## 2.2 References to supra-national legal regulations

The UN Convention against Transnational Organized Crime (Additional Protocol against trafficking in human beings, Palermo, 2000) represents at the international level, the latest result of a process which began in 1926 with the Geneva Convention of the Society of Nations on the prevention and abolition of slavery and slave trafficking. This was followed by the ILO Convention of 1930 (n.29) on forced labour and by the Supplementary Convention (to that of 1926) of the UN of 1956 – which extends the cases of crime – as well as that on child labour of 2000 – always of the ILO. Lastly, Convention n.197 of the Council of Europe on combating trafficking of persons, undersigned by the European countries in Warsaw on 16 May 2005 (and ratified by the Italian Government in July 2010).<sup>12</sup>

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10 Francesco Carchedi, Giovanni Mottura, Enrico Pugliese, *Il lavoro servile e le nuove schiavitù*, Franco Angeli, Milano 2003, p.15

11 In this regard, the process of detachment illustrated by R. Sennett, in *Autorità, Subordinazione e insubordinazione: l'ambiguo vincolo tra il forte e il debole*, Bruno Mondatori, Milano pp. 120 et seq is interesting, where it affirms that the process of detachment from subjected and violent conditions comes when the separation from his/her external obedient figure and his/her internal disobedient observer matures in the “victim”. That is “the victim outwardly plays the part of obedience, whilst the internal self refuses to believe that which the external self is doing”. This takes place until the internal self wins and reduces, therefore the external self and thus can rebel. The conflict is progressively the breakdown of the relationship of severe dependence.

12 The Convention of Warsaw was ratified by the Italian State with law n. 108 of 2 July 2010 (“*Ratifica ed esecuzione della Convenzione del Consiglio di Europa sulla lotta contro alla tratta di esseri umani*”, signed in Warsaw on 16 May 2005. It foresees also an adjustment of the internal regulations.(10GO131). The law

The 1926 Convention (art. 1) defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”, on the part of others with the aim of exploitation.<sup>13</sup> The ILO Convention (n. 29/1930) on “Forced or Compulsory Labour”<sup>14</sup> defines in art. 2 as forced and compulsory “all work and service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

The definition is made up of concepts of particular importance, since it affirms that forced labour can be “all work or service” (nothing excluded) “imposed” (that is requested by force) on “any person (irrespective of gender, age or other personal characteristics) with the “menace of any penalty” (that is with obligation to carry out the requested activity) since the worker has not “offered himself voluntarily” (and therefore his work is the direct or indirect result of a menace).

This last aspect reminds one that the entry into status of subjection by the victims – and therefore coercive labour – may happen already by force, i.e. it represents the result of extortion-means of recruitment. In other words, the violent labour recruitment corresponds to forced subjection of the victims.<sup>15</sup>

This configuration of enforced labour makes it – in this historical phase, at least in Europe – very difficult to pin down, precisely because the forced recruitment has taken a non violent form, due to vulnerable conditions. The ILO, in addition to this specific Convention, has promoted another –the C182/1999, aimed to the elimination of worst forms of child labour, which completes the arrangements to combat slave practices (sexual, labour-related, begging for third parties, involvement in armed conflicts, etc.).<sup>16</sup>

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is made up of 4 articles, the third of which is that which foresees changes in the penal code, in particular comma 3 of art. 600, comma 2 of arts. 601 and 602 respectively. Also, the same art. 3 foresees that minors under 18 must be considered as victims. For adults the crimes which they may suffer are: A) Exploitation of prostitution and removal of body organs, B) Serious danger of life or psycho-physical or psychic integrity. With such dispositions, furthermore, the convictions foreseen in arts. 600, 601 and 602, that is “reduction into slavery” (see also Law 228/03) are increased from a third to half.

13 The Supplementary Convention on the prevention and abolition of slavery and of slave trafficking tends, on one hand, to define better the counter-actions (arts. 3, 4, 5, 6) and, on the other, extends the cases of reduction to slavery, adding forms of service derived from contraction of a debt (as a commitment taken by a person to carry out work for another who exercises control without defining the means of restitution), “servitude” (a condition characterized by work carried out by a person not free to change his status), forced and servile marriage (sexual and reproductive subjection by a man on a woman, in unequal conditions), the sale of minors for exploitation or child labour carried out in a binding manner (cf art. 1)

14 International Labour Organization, “C29 *Convention on Forced and Compulsory Labour, 1930*” adopted 30 June 1930. In another Convention (“C81 – *Convention on Labour Inspection, 1947*”) proposals to activate labour inspection systems were adopted on 11 July 1947).

15 This concept recalls Black Slavery as it was known in the 18th century (the last country to declare slavery a crime was Brazil in 1888). This was followed by the Papal Bull “*In Plurimis*” of Leone XIII of 5 May 1888 Recruitment by raids (of civilians or defeated military), forced transport and violent and continued subjection in situations of captivity or semi-captivity or in any case strongly based on totalitarian regime. Slavery is compared to right of ownership as absolute right *par excellence*. See Peter Kolchin *American Slavery*, Penguin Books, London 1993 pp 57 and 58. The author speaks of the power of the slave owners who, after having recruited or acquired them, apply “draconian measures” to maintain order on the farms, including heavy corporal punishment and amputation of fingers, hands or feet as well as castration and burns on the body and branding with hot irons. Leone XIII in the above mentioned Bull defined slavery “a shame to be eliminated”, “an abyss of degradation”, “barbarous oppression” and “vile market of men” see Patrizia Del Piano *La Schiavitù* pp. 66 et seq. In [http://www.vatican.va/holy\\_father/leo\\_xiii/encyclicals/docum\\_ents/hf\\_lxiii\\_enc\\_05051888\\_inplurimis\\_it.html](http://www.vatican.va/holy_father/leo_xiii/encyclicals/docum_ents/hf_lxiii_enc_05051888_inplurimis_it.html)

The Palermo Protocol, taking up again and extending the area of application of crimes concerning trafficking in human beings (foreseen in the previous Conventions) – and the consequent conditions of slave-like subjection which it leads to – defines, in Art. 3, “forced labour or services, slavery or practices similar to slavery”, those practices of servitude which are obtained not only by use of force but also with other forms of coercion. These last are identifiable in fraud, deception and abuse of power or of a vulnerable position of the persons involved. Aspects which can be present both in the phase of recruitment/transport (and therefore organization of the travel including eventual hospitality/reception/lodging), and in the means whereby these operations are governed/managed (use of threat or use of force, as well as exchange and purchase of services involving fraud and trickery, etc.), and also in the illegal purposes (be they realized or not) which the traffickers/exploiters use in operating these practices.

The Palermo Protocol is followed, at European level, by two provisions of a certain regulatory relevance: the Decision 2002/629/Jha<sup>17</sup> and the Directive 2004/81/CE<sup>18</sup>. The first one, specifically aimed to combat trafficking in human beings, in particular on sexual and labour exploitation, considers irrelevant the agreement of the victim to the exploitation – even if obtained through third parties with simple influence or pressure or offer of money (art. 1); it adds the objective of harmonizing such crimes at European level (art. 2) and the judicial cooperation between member countries. The approach of the Decision is substantially repressive, since it tends to discourage (and persecute) irregular immigration, notwithstanding the eventual condition of the victim which can mean at the same time the irregular immigrant. The second, on the other hand, foresees the issue of a stay permit to foreign citizens when they are found to be victims of traffickers: be it because they are exploited, or because they are involved in aiding and abetting the traffickers (art. 9). The spirit of the Directive is of a reward nature and therefore substantially different from the Italian regulations on the matter (e.g. the spirit of art. 18 of Decree Law n. 286/98).

A step forward – in terms of supranational regulations – is provided by the Warsaw Convention mentioned above, based on protection of fundamental rights of the victims.

The Convention, which is fairly complex, foresees, among other things, appropriate social assistance and medical/psychological care for the victims as their vulnerable condition is recognized and therefore they are nonpunishable.

The wording in part contrasts with the other European arrangements, since the victims, in this Convention, have a central role characterized by social protection interventions.

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16 International Labour Organization, “*C182 Convention on the worst forms of Child Labour 1999*”, adopted 17 June 1999, came into force on 19 November 2000. The objective of the Convention is to combat – through laws and arrangements of States signatory to the Convention – any activity which by its intrinsic nature or by the circumstances and methods with which it is carried out could present risks for the minor or endanger his/her health, security, psycho physical morality and stability. Cf particularly arts. 3 and 7.

17 Decision of the Council of Europe on “*Combating Trafficking in Human Beings*” Dec. 19-7-2002, n.2002/629/JHA, in G.U. E.U. of 1 August 2002 n. L203.

18 Council of Europe Directive (2004/81/EU of 29 April 2004), on “Residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities”.

## 2.3 References to Italian legal regulations

As concerns national regulations to counter semi-slave labour, it must be said that over the last ten years our country has followed up the indications set out in the Palermo Protocol issuing law n. 228/2003 (“Measures against trafficking of persons”)<sup>19</sup>. But that – even now – has not resolved some basic questions, since the Protocol itself, does not define forced labour (only in an indirect manner) and therefore the clearer definition remains that of the ILO Convention (C29 of 1930). In the Protocol, in fact, forced labour is described as one of the possible results of exploitation (also “serious exploitation”) to which migrants, who fall into the nets of the trafficking of persons, can be submitted. The confines between the various forms of exploited labour, therefore, are not easily defined. That means, from a penal point of view, that it is almost impossible to prosecute these modalities of exploitation which do not come specifically under cases defined by current laws<sup>20</sup>.

In fact, the ways of describing exploitation are many and together form a gray zone which falls between labour exploitation (alone) and labour carried out in a forced/coercive manner comparable to slavery (or “power corresponding to right of ownership”, as set out in art. 1 of 228/03). In practice, only in these latter cases the conduct of the employer without scruples assumes the characteristics foreseen in crimes of trafficking or reduction into slavery. As a consequence, only in these cases, the arts. 600, 601 and 602 of the Penal Code can be applied.<sup>21</sup> Art. 600, specifically, defines a case of crime applicable both to slave-like and servile methods, that is to those “powers” imposed on another person similar to “ownership rights” and to those which reduce or maintain another person in a “state

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19 Law n. 228 of 11 August 2003, “*Misure contro la tratta di persone*” in G.U. n.195 23/8/2003.

The law foresees relevant changes in the field of penal and procedural law redefining the crime of reduction into slavery or servitude. Such a definition imposes harsher sanctions on criminals and widens the number of crimes addressed by law n. 75 of 1958, art. 3 (also called “Legge Merlin”). Law n. 228/03 also introduces the crime of criminal conspiracy, already envisaged by article 416 of the Italian Penal Code, widening its applicability to cases of trafficking, exploitation and reduction into slavery. Alignment with the Palermo Protocol requirements is evident considering the tendency to protect “individuals' dignity” as an undisposable good, namely a good which is not at disposition of its owner's will. The crime of trafficking is prosecuted by 8 to 20-year detention, the sentence being increased by a third if victims are minors. Till now these sentences have been mainly served in cases of severe sexual exploitation, while jurisprudence is still getting into shape in the field of slave and semi-slave labour exploitation. Jurisprudence tends to differentiate between the crime of trafficking for sexual exploitation and the one of trafficking for labour exploitation, regarding the latter existing inconsistent interpretations. For instance, Italian law does not codify the length of the reflection period before lodging a complaint. Law itself (art. 18 of the T.U. n. 286/98 ) foresees a two-fold procedure for the social protection of sexual exploitation victims which cannot be used in cases of labour exploitation. Generally, as reports of severe labour exploitation follow serious accidents in the workplace, victims need to decide right away whether to lodge a complaint or not before the police comes into play at the emergency ward (see Simona La Rocca, *Tratta, lavoro forzato e grave sfruttamento lavorativo: legislazione e politiche poste a contrasto*, in Francesco Carchedi *Schiavitù di ritorno. Il fenomeno del lavoro gravemente sfruttato: le vittime, i servizi di protezione, i percorsi di uscita, il quadro di riferimento*, Maggioli, Roma, 2010, Chapter 6, pp 185-186.

20 David Mancini, *Il quadro normativo di riferimento: efficacia e prospettive*, in Federica Dolente (care of), *Il lavoro schiavistico nel Lazio, rapport di ricerca del Progetto Right Job, Cooperativa Parsec, Roma, p. 30.*

21 Art. 1 of Law 228/03 – which modifies art. 600 says “Reduction or maintaining in slavery and servitude”, art. 2 which modifies art. 601 says “Trafficking of persons” and finally art. 3 which modifies art. 602 says “acquisition and alienation of slaves”.

of continual subjection<sup>22</sup>, forcing them to work, to sexual activities, or to begging, or other activities which result in exploitation”.

In art. 600, therefore, the sanctions can be imposed on those employers who in setting up asymmetrical working relationships (especially favourable to themselves) do not accept any interference on the part of the workers involved and do not accept any mediation to counterbalance even minimally their exclusive power. Following this position, another emerges, which – although seeming less drastic – aims nonetheless to exploit the work of others in a continuous way, in violation of the current labour regulations. For example, “the activity of irregular mediation in the work placements”<sup>23</sup> – defined in art. 18 of Decree Law 276/2003 – practice that is found still in the building and agricultural sectors<sup>24</sup> with the presence of local “bosses”.

With regard to the exploitation of migrants, the crimes foreseen can be found in art. 12 (comma 5)<sup>25</sup> and art. 22 (comma 12)<sup>26</sup> of the Decree Law, but they are sanctioned in an inadequate manner since the fines foreseen are neither congruous nor in proportion to the serious exploitation to which some migrant workers are subjected.<sup>27</sup>

For some years (from 2007 on) the Department of Equal Opportunities (with direct responsibility for the fight against trafficking in human beings) has put forward the possibility of offering social protection to the victims of forced labour, on the basis of art. 18 of Decree Law and of art. 13 of Law n. 228/03 (mentioned above). Art. 18 offers, amongst other things, the possibility of acquiring a stay permit “to allow the foreigner to withdraw from the violence and the subjection of criminal organizations and to participate in a programme of assistance and social integration.”<sup>28</sup> The stay permit (for a period of six months, but renewable for various reasons) is issued (in an unhurried way) when it is ascertained that there is a “situation of violence and serious exploitation (of the victim involved) ... and concrete danger for his/her safety”.

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22 The concept of continuity attributed to subject/exploitation seems limited for all those jobs which are carried out for brief periods, for example in agriculture during harvest of products or in temporary jobs which may last only a few days. In these cases acute forms of exploitation or slave-like subjection are possible, even if, in fact, they are limited to a few days or weeks of work. The intensity of exploitation could be particularly virulent because the exploitation is for a short/very short period.

23 One thinks to the phenomenon of workers recruitment in an indirect way, that is when persons not connected with the Employment Centres or recognized temporary agencies are used. In these cases, in the last ten years, traditional methods of recruitment have returned, that is the so called “bosses” paid directly by irresponsible/dishonest employers.

24 Decree Law 276 of 10/9/2003 “Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alle legge 30 del 14/2/2003 in G.U. 235 of 9/10/2003” – Supplemento Ordinario 159 art. 18 (“Penal sanctions”) in comma 1 “punishes ... the illegal exercise of activities of mediation ... with arrest ... and confiscation of the means of transport”, whilst art. 19 (“Administrative sanctions”) punishes editors who publish job announcements through unauthorized media (cf also art. 9, comma 1).

25 Cf art. 12 comma 5 Decree Law 286/1998 which says “whoever in order to gain unjust profit from the illegal condition of the foreigner or in the area of activities punishable by law under the present article, encourages their stay in the State territory”

26 Cf art. 22, comma 12 Decree Law 286/1998 which says “The employer who uses for his own purposes foreign workers without the stay permit foreseen, under the present article, or those whose stay permit has expired or been revoked/annulled, or renewal of which has not been requested, is punishable with arrest from 3 months to one year with a fine of Euro 5,000 for each migrant worker.”

27 Simona La Rocca, *Tratta, lavoro forzato e grave sfruttamento lavorativo. Legislazione a confronto e politiche poste a contrasto* in Equal Opportunities Department, *Il lavoro gravemente sfruttato. Le vittime, i servizi e le norme*, Research report, Rome March 2010 pp. 147 et seq.

28 The arrangement is intended to protect “the foreigner”, man or woman, also of minor age.

Access to the protection programmes has never been easy – both for reasons of sexual and labour exploitation. Currently (June 2010) it is further reduced due to the restrictive revision of art. 10 of the Decree Law (mentioned above). The art. 10bis<sup>29</sup> – which institutes the crime of “illegal entry and sojourn in the State territory” - places the status of the victim in a marginal position, emphasizing instead the status of irregular sojourn. This last condition makes the foreigner immediately expellable (and subject to a fine) irrespective of his/her real living, social and work situation. In these cases, that is in the presence of semi slave labour, there is a paradoxical situation: the victims are persecuted (*de jure*) and the exploiters/traffickers are assisted (*de facto*). The worker, in practice, is not encouraged to denounce the exploiter and therefore does not alter the *status quo* in which he/she finds him/herself, often collaborating with the exploiter to hide the irregular condition.<sup>30</sup>

Such an arrangement does not seem compatible – let alone with the Italian Constitution<sup>31</sup> – with what is set out in the Warsaw Convention (cf art. 10)<sup>32</sup> which foresees a clause of non punishability for trafficked persons and with the Palermo Protocol (cf art. 5) which excludes criminalization of the migrant simply because he has entered the State irregularly. The administrative sanction – through an amendment, therefore – is an obvious *escamotage* to get around the Constitutional wording relating to “principle of equality” and of “non punishability” of the victims of trafficking.<sup>33</sup>

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29 Art. 10bis of Law 94 of 15/7/2009 (*Disposizioni in materia di pubblica sicurezza*) introduces as autonomous assumption of crime, attributed to the competence of the justice of the peace, the conduct of illegal entry or stay in the State territory on the part of the foreigner. Such conduct is punished with a fine of Euro 5,000 to 10,000 and excludes thus detention. This appears particularly hard however if one thinks that generally persons in an irregular situation do not have such large sums. Such lack of availability is in effect preparatory to the expulsion of persons not able to pay the fine. Cf Paolo Scogliamiglio *Commento organico alla Legge 94 of 15/7/2009* Edizioni Simone, Napoli 2009, pp 39-40

30 Giovanni Cannella *La condizione giuridica dei lavoratori migranti dopo il “pacchetto sicurezza”* in F. Carchedi, F. Carrera, G. Mottura, *Immigrazione e sindacato. Lavoro, cittadinanza e territori*, Ediesse, Roma 2010, pp.46-47.

31 D. Mancini *Traffico di migranti e tratta di persone. Tutela dei diritti umani e azioni di contrasto*, Franco Angeli, Milano 2008, p.128 et seq.

32 As mentioned earlier, the Warsaw Convention has been ratified through the Italian Law n. 108/10.

33 According to Giancarlo Ferrero, ex District Lawyer of the State for Piedmont (up to 2007), “the crime of entry and stay of irregular immigrants in Italian territory constitutes a serious offence to our juridical civility and violates the most elementary criteria of an acceptable legislative system”. For further elaboration, cf Giancarlo Ferrero *Contro il reato di immigrazione clandestina* Ediesse, Roma 2010 (the incipit is in the Foreward at p. 15).

## 2.4 References to Spanish legal regulations

The Spanish ratification laws which adopt the Convention on Transnational Organized Crime and the two Protocols added in Palermo (2000) were issued in February 2000 and February 2002 and published in the *Boletín Oficial del Estado* (BOE), respectively between September and December 2003.<sup>34</sup> But notwithstanding the ratification – as in the Italian case – there remain areas of non clarity and terminological confusion within the regulatory system: the definitions, the adjustment/harmonization of the cases of crime foreseen, the regulatory orientation centred almost entirely towards those who offend and much less towards those who are offended, that is the victims, the fragility of the social protection granted at local level not so much formally but concretely (Accem, 2006)<sup>35</sup>

The Spanish regulation also, like the Italian, has two important levels of intervention: State intervention (responsible for immigration policies) and regional intervention (responsible for socio-economic and cultural-educational integration policies). The *Ley Orgánica 4/2000*<sup>36</sup> (which extends the rights of migrants, foreseeing also equality of treatment and the principle of *igualdad*, in respect of previous regulation, the *Ley Orgánica 7* of 1 July 1985 from which it was excluded) has been integrated by another (the n. 8, always in 2000), in that some of the articles were considered unconstitutional. In other words, even foreseeing the figure of the foreigner as having rights, at the same time, he was injured in contrast with the constitutional rights.

This regulatory framework should be integrated primarily by the provisions of Regulation 2393/2004<sup>37</sup> detailing the rules contained in the *Ley Orgánica 4/2000*.

In addition, the *Ley 4/2000* has recently been further amended by the *Ley Orgánica 2* of 11<sup>th</sup> December 2009 (published in BOE n. 299 of December 12<sup>th</sup>, 2009)<sup>38</sup>. Currently, the relevant bodies are working to reform the Regulation 2393/2004, to adapt to the changes introduced by the *Ley Orgánica 2/2009*: it is expected that this Regulation, once adopted, will amend some provisions of law mentioned above<sup>39</sup>.

The *Ley 4* according to a trade-unionist of the *Comisiones Obreras* who were interviewed (**interview 20**) “notwithstanding the integrations which took place, is still the basic reference law. This foresees three ways of staying in Spain, under the artt. 29-32 and the art. 25 (of the Regulation). The first, through acquisition of the stay permit for *estancia* (for

34 The first ratification is of 21/2/2002 and published in the *Boletín Oficial del Estado* n.233 of 29/9/2003, 18040 – “Instrumento de ratificación de la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional hecho en Nueva York el 15/11/2000”. The second is of 21/2/2000 and published in the *Boletín Oficial del Estado* n. 296 of 11/12/2003 22719 – “Instrumento de Ratificación del Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres e niños, que complementa la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional, hecho en Nueva York el 15/11/2000”

35 Accem, *La trata de personas con fines de explotación laboral – Un estudio de aproximación a la realidad en España*, Industrias Graficas Afanias, Madrid, 2006, pp. 54-55

36 *Ley Orgánica 4* of 11/1/2000 *Derechos y libertades de los extranjeros en España y su integración social* <http://noticias.juridicas.com/base-datos/Admin/lo4-2000.html>

37 *Real Decreto 2393/2004, de 30 de diciembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*, [http://noticias.juridicas.com/base\\_datos/Admin/rd2393-2004.html](http://noticias.juridicas.com/base_datos/Admin/rd2393-2004.html)

38 *Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*, <https://boe.gob.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19949.pdf>

39 In October 2010, the Regulation has not yet been launched. It is believed that this can happen in the next months.

transit, tourism, family or study reasons) with a maximum duration of three months...then when this expires (second method) one can ask for a stay permit for *permanencia continuada* (continuing residence) for 5 years, and finally (third method) one can ask for indefinite residence beyond 5 years. The law foresees another possibility: that of acceding to the definitive regulation for those who intend to stay permanently in Iberian territory.

In practice, he continued, "everything rotates around the principle of stabilization, or better to encourage, although not obviously, under conditions of good behavior and no-danger and violence, for demographic reasons - the final settlement"<sup>40</sup>

The *arraigo* (which we can translate as "put down roots") is the juridical concept which underpins the procedure of acquisition of residence which can be for "labour" or "social" reasons as foreseen in art. 45 (comma 2a and 2b) of the Regulation 2393/2004.

In the first case, an authorization for residence is granted when the applicant can demonstrate a continuous stay for two consecutive years (subject to absence of charges of a penal nature in Spain and also in the country of origin) and a reference for a work carried out for a period not less than one year. In the second case, an authorization for residence is granted for family reasons (and absence of pending charges, as above) and a stay of at least three years, of which one carrying out demonstrable work activity<sup>41</sup>.

Art. 45<sup>42</sup> is important because, as well as foreseeing the grant of the *arraigo*, it foresees the possibility to acquire an authorization "for humanitarian reasons" (comma 4) when:

- a) the foreigner is a victim of racial or anti-Semitic discrimination, of domestic violence or trafficking, understood as irregular entry in the national territory (as set out in art. 318 of the Penal Code). This last aspect acts as a *relais* between the laws which regulate the presence of migrants and the trafficking of persons for serious labour exploitation (or other).<sup>43</sup>
- b) the foreigner who is a victim of serious illness and who asks for this reason for specialized health assistance due to the impossibility of returning to his/her country of origin. Without this assistance he/she could suffer serious risk to health and indeed to life.

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40 The provisions will change with the entry into force of legislative additions provided by the *Ley Orgánica* 2009 of 11<sup>th</sup> December (published in BOE n. 299 of December 12<sup>th</sup>, 2009) that reform the Law 4/2000. In particular, the "*istanicia*" - a stay for a short period into the Spanish territory - will be granted only for study reasons. Thus, there will be two types of granting of residence and it will be submitted, for renewal, to the demonstration by the foreign citizen, to have sufficient means of subsistence to stay: the *residencia temporal* (from three months to less than five years) and the *residencia permanente* - subject to the conditions of economic self-sufficiency - for those who require to stay in Spain permanently. In both cases, it is necessary the "good behavior", especially for more serious crimes. Cf. respectively, art. 30, 31 and art. 32, as well as art. 28, paragraph 3 of the *Textos comparados* realized by the *Asociación Abogado de Europeos inmigración y extranjería* (Abedie).

41 Even for these procedures are expected changes more restrictive. For example, in addition to greater attention to criminal conduct are also subject to controls on the side of paying taxes, for both employers and workers, cf. art. 31 paragraph 7.

42 Cf *Regio Decreto* n.2393 del 2004 that changes the Regulation of the *Ley Orgánica* n. 4 of 26/3/1984.

43 In this regard, to distinguish better the articles of the Penal Code, we refer to *Accem La trata de personas* pp. 55 et seq which analyses the different interrelationships which arise between the different "Organic Laws", the wording of the Palermo Protocol and the Spanish Penal Code

- c) the foreigner, who risks for his/her personal safety or that of his/her family coming back to hi/her country of origin to ask for the visa, may obtain an authorization to benefit from temporary residence or residence allowing the possibility to work.
- d) the foreigner who collaborates with the administrative authorities, the police, tax and judicial officers – in the presence of reasons of public interest or national security – and whose stay therefore is indispensable. In these cases he/she may obtain temporary residence or residence with the possibility to work.

A researcher of the *Collectivo Ioe* affirms: “the arrangements under art. 45 – and particularly those relating to the concession of residence for humanitarian reasons – are those most used to protect victims of serious labour exploitation. In this respect, it is even important the art. 31 because it foresees grant of *residencia temporal* to the foreigner women victims of gender violence. Even if this is not easy, because not always – not to say never – for example, it is possible for foreigners to demonstrate that they have carried out an occupation for a complete year and therefore accede to the *arraigo* (for social and labour reasons); or, to collaborate in denouncing employers who avoid taxes or who exploit them seriously. In these cases, that can happen only if the complaint against the criminal employers comes from a group of workers, because they can in turn witness their condition of serious exploitation.

For individual workers, that is those who have a double relationship with the employer, although not able to involve their colleagues in witness, the proof that demonstrates the exploitation is almost impossible. Unless there are verifiable signs of violence or obvious crimes of any kind” (**interview 1**).

### 3. From the concepts to the indicators. How to identify the victims

#### 3.1 The indicators of ILO-EC<sup>44</sup>

An aspect of the current debate turns on the indicators that can help to identify the victim. This aspect of the problem can assume a distorted character since the indicators can be set out in a quantitative manner (how many indicators should there be to define semi-slave exploitation?) and qualitative (one only relevant indicator can be more than enough to define the semi-slave condition?).

To such questions the ILO has offered a significant reply, subdividing, in the first place the indicators of trafficking on the basis of age of the victims (adults and minors), and secondly on the basis of the type of exploitation, that is sexual or labour oriented. Such categorization was then articulated through a series of concepts/indicators which specify the modality of recruitment (at the moment of decision of the person involved to emigrate) and of exploitation, once settled in the destination area.

The indicators, concerning the methods of recruitment and exploitation, are then subdivided into “strong”, “medium” and “weak”, where the first are characterized by violence and manifest coercion, the second by aggressive practices and threats, whilst the third represent ambiguous and unclear situations, which however play a considerable role in the subjection/exploitation of the victims.<sup>45</sup> According to the ILO, with the aim of facilitating identification of the semi slave condition and therefore of identification of the victim, such indicators offer an empirical view of recurring concepts/aims in the counter-regulations, like “fraud”, “trickery”, “abuse of vulnerable condition”, “serious exploitation”, “forced labour”, “slavery or practices similar to slavery”, “servitude”, or (adding concepts found in the Italian regulations) “reduction into slavery and servitude” or “powers similar to right of ownership” or “danger for his/her own safety”(as set out, in fact, in Decree Law 286/98 and art. 1 of Law n. 228/03).

Between black labour and slave labour, as indicated above, there are many other forms of working relationship. Their intermediate character is defined on the basis of the diverse modalities of exploitation which – for this reason – the current regulations of the different European countries (and extra-European) are unable to catalogue. In synthesis, with a little forcing, we can say that there are atypical jobs also in the sphere of serious exploitation and in semi slave labour. Thus, to establish, also through successive approximations, what are the characteristics of these working relationships and then the indicators which allow us to identify a person who finds himself/herself in these specific conditions, becomes particularly useful in orienting social and juridical operators to define (or not) a victim of serious labour exploitation and activate procedures of social protection.

In other words, to verify, through interviews carried out by specialized personnel, if one is faced with a victim of serious exploitation or forced labour, and therefore a person with the

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44 ILO (International Labour Organization), EC (European Commission)

45 Cf ILO-European Commission, *Operational of trafficking in human beings*, September 2009 (revised version), Geneva, p. 3. The indicators proposed are in our view unbalanced in the methods of recruitment and therefore on what happens in the departure country. The indicators of exploitation, coercion and abuse of vulnerability at the destination (or that which happens in the arrival countries, for example in Europe) show what the conditions characterizing forced labour can be.

right to follow a special programme of social protection on the basis of current regulations, or only faced with a worker who has been illegally employed in a company or a building site by irresponsible and fraudulent employers.

## **3.2 Possible extensions and integrations**

### **3.2.1 The multiple vulnerability**

The concepts/aims mentioned above, however, can be split into further dimensions: from the social dimension to the economic, from the political dimension to the juridical, as well as the cultural and psychological dimensions. Nonetheless, it is the lack of freedom and social movement on the one hand and the non-belonging of the persons involved to a community which protects them and looks after their psycho-physical integrity and corresponding human rights and anyway citizenship of the other, which determines the servile and semi slave condition. The lack of liberty and, at the same time, the lack of protection generally – resulting in our case from the weakness of the citizenship rights (linked directly to the political-institutional will) – as well as the juridical regulations and insufficient practices to counter serious labour exploitation, expose the most vulnerable migrants to social pressures of much intensive inferiority.

These pressures are also characterized by being continual and insistent to the point that they can push these workers also into socio-economic and existential situations difficult to manage, and they therefore risk servile subjection. From this aspect, in a consequential manner, it is possible to define an articulation of the variables/indicators which typify the condition of the victim of forced labour according to the specific dimensions in which the victim may find himself/herself. In synthesis, accepting the multi-dimensional aspect of the vulnerable condition – and therefore describing it as a shameful and multiple condition<sup>46</sup> – it is possible to set out the variables/indicators which identify the condition of the victim of forced labour also in another way (in respect of the ILO/EC proposal), as reported, synthetically, in the Tables which follow.

### **3.2.2 The political and juridical dimension**

The political and juridical dimension (Table 1)<sup>47</sup> – and the corresponding conditions/indicators- are important because often the victims of serious labour exploitation are without stay permit.

This can arise because the foreign workers were without permits on first entry, or because they have lost them, as they have expired. The stay permit arrangements foresee maintenance criteria which is not easily achieved. In these cases, as happens in Italy, and also in Spain, the possibility of renewal of the stay permit is related to the existence of a labour contract. The lack of this provokes, for some foreigners, obvious forms of subordination:

46 Dutch National Rapporteur, *Trafficking in human beings*, Fifth Research Report, Wolf legal publishers, The Hague 2007, pp 153-154

47 In Table 1 the list of indicators proposed in 2005 by the Fondazione Internazionale Lelio Basso is presented (cf F. Carchedi, G. Mottura e E Pugliese, *Lavoro servile e nuove schiavitù*, Franco Angeli, Milano, pp. 21-22) with integrations made on the basis of the survey of the Dept. of Equal Opportunity *Il lavoro gravemente sfruttato. Le vittime, i servizi di protezione, le norme* and those made on the basis of the results of the present survey.

on the one hand because the foreign workers are obliged to accept – in an exclusive manner – the “rules” laid down by their employers who employ them because they are easily bribed (“you don’t have documents and therefore I can denounce you/expelled you”); on the other, because the employers can use the workers promising them that when the occasion arises they will be able to regularize them and therefore impose unilateral and arbitrary conditions at least until the formal regularization is possible (“you must have patience, we will regularize your position”).

Finally, the employer can withhold quotas of the worker’s salary on the basis that in order to regularize him/her it will be necessary to pay, therefore it is necessary to put together the money which will be used for the expenses to acquire the stay permit (“we will start to put aside the money which will be needed to obtain the stay permit/stay card”). Moreover, with regard to the absence of the labour contract (or the existence of false contracts), there is evasion of tax and pension contributions. These aspects of the working relationship can be gathered in the area of false promises, trickery and fraud with the aim of exploitation of the persons involved.

**Table 1 – Political and juridical dimension. Conditions/indicators which define servile and semi slave labour**

Political dimension <b>Conditions/indicators</b>	Juridical dimension <b>Conditions/indicators</b>
a. civil/political invisibility	a. lack of valid stay permit/identity card/ passport
b. non recognition of status/interiorization of regulations	b. juridical vulnerability/irregular status
c. little institutional representation	c. confiscation/withdrawal of documents and impossibility to use them
d. lack of/little collective participation	d. impossibility to accede to “amnesties”/false promises by employers
e. lake of right to vote/non eligibility	f. difficulty to plan return home
f. absence/little advocacy	g. inability to denounce/blackmail because of irregular status
g. little or no possibility of obtaining juridical citizenship	h. absence of labour contracts/presence of false labour contracts

Source: Fondazione Basso, *Lavoro servile e nuove schiavitù*, Roma, 2005; Dept. For Equal Opportunities, *Il lavoro gravemente sfruttato. Le vittime, i servizi di protezione, le norme*, 2010; Federation of Protestant Churches in Italy *Lavoro da schiavi. Alcuni aspetti del fenomeno in Italia e in Spagna*, 2010.

### 3.2.3 The social and economic dimension

The social and economic dimension (Table 2) – and the corresponding conditions/indicators – is closely connected with the previous one, and has an equally significant function. The vulnerable condition depends also on the isolated situation in which these persons can find themselves among the community they belong to and the native community. These persons live also a situation of exclusion and social disadvantage, characterized

also by manifest signs of physical degradation (poor clothing, under-nourished, uncared and shabby aspect, etc.). This exclusion can also be evident in the workplace, isolating the foreign workers, controlling them and limiting their freedom of movement, as well as locking them into the places where they work or sleep. Linking these conditions/indicators to the very low daily pay (Euro 2/3 an hour) or the weekly pay with the long working hours (10 or more hours a day) - and adding threats and obvious forms of violence, we can clearly see the forced dimension. This last condition destroys any possibility of mediation/negotiation between the parties, creating unbalanced relationships in an exclusively way in favour of the employers and “bosses” (where they exist).

**Table 2 – Social and Economic Dimension. Conditions/indicators which combine in the definition of servile labour and semi slave labour**

Social dimension <b>Conditions/indicators</b>	Economic dimension <b>Conditions/indicators</b>
a. marginalization and exclusion	a. lack of resources/extreme need to work
b. isolation and loneliness	b. acceptance of relationship for reasons of survival/ extreme needs
c. dependency due to lack of sociality and lack of community network	c. pay equal to a third of official rate in category/below poverty level
d. blackmailed condition/uncritical dependency	d. irregular payment/continual partial payments & falsification of amount due
e. absence of collective protection	e. 10/12 working hours or over per day/heavy workload, little or no rest
f. absolute need to stay in relationship despite subjection	f. board and lodging inadequate and considered part of salary
g. poor lodgings within place of work	g. little or no possibility of negotiating contract/absence of pension contributions
h. control/supervision overnight	h. indebted situation
i. threatening control/supervision during work the work time	i. dual/small groups working relationship/piecework
j. closure blockage of lodgings/workplace to keep them in or limit their movements	
k. old clothing/manifest undernourishment	

Source: Fondazione Basso, *Lavoro servile e nuove schiavitù*, Roma, 2005; Dept. For Equal Opportunities, *Il lavoro gravemente sfruttato. Le vittime, i servizi di protezione, le norme*, 2010; Federation of Protestant Churches in Italy *Lavoro da schiavi. Alcuni aspetti del fenomeno in Italia e in Spagna*, 2010.

### 3.2.4 The cultural and psychological dimension

Finally, the cultural and psychological dimension (Table 3) – and the corresponding indicators – of workers involved in serious exploitation, can contribute to halting the growth and development of the capacity to read the Italian reality, making more difficult the social relationships. The lack of knowledge of the rules relating to the labour market, the lack of knowledge of the rights and duties which regulate professional activities, the lack of know-

ledge of safety measures and standards, all limit the capacity of social and legal self-defence of the most vulnerable and disadvantaged workers.

We must not forget the various forms of self-representation which each migrant produces, comparing necessarily the work experience and the life conditions gained in the country of origin with that which instead he/she finds in Italy. In other words, migrants know very well the conditions in their country (often very hard)<sup>48</sup>, and so they consider the working and living condition in Italy like a clear qualitative improvement. This sets off in particularly vulnerable foreign workers a feeling of sympathy towards the employer, a sort of gratitude towards the “exploiter-benefactor”, as a unionist pointed out. **(interview 19)**

**Table 3 – Psychological and cultural dimension. Conditions/indicators which combine to outline servile and semi slave labour**

Cultural dimension <b>Conditions/indicators</b>	Psychological dimension <b>Conditions/indicators</b>
a. acceptance/trust in the verbally established agreement	a. reduction into status of subjection/fear
b. incapacity to decode the level of exploitation/ continual comparison with conditions experienced in country of origin	b. pseudo-voluntary subordination/subjection
c. lack of knowledge of rules and working conditions and regulations	c. docile dependency/low behavioural reactivity
d. lack of referees/institutions and inability to legitimize rights/protect themselves	d. status of stress dependency/trauma
e. continuing resistance and self-control so as not to damage the working relationship which is however retained essential	e. stagnation and emotional block/incapacity to fight
f. seeing the subjective status as temporary/transitional	f. victim/perpetrator syndrome
g. fatalism/passive waiting for possible work improvements	g. servile behaviour, following will of employer
h. uncritical trust towards employer, considered also benefactor	h. search for freedom space internally/outward behaviour condescending
	i. justification/defence of employers/"bosses"
	j. self-denouncing to exonerate employers/"bosses"

Source: Fondazione Basso, *Lavoro servile e nuove schiavitù*, Roma, 2005; Dept. For Equal Opportunities, *Il lavoro gravemente sfruttato. Le vittime, i servizi di protezione, le norme*, 2010; Federation of Protestant Churches in Italy *Lavoro da schiavi. Alcuni aspetti del fenomeno in Italia e in Spagna*, 2010.

Such situations of exploitation can slow up the realization of the anomalous and dangerous condition which these workers are living. They therefore stay in these conditions for a fairly long time, that is until the eventual break of the slave relationship which happens for diverse reasons (as we shall see below). The self-perception of the person seriously exploited or in slave-like condition is therefore necessary in order to mature reactions to reject and take Trade Union against the exploiters.

<sup>48</sup> Dept of Equal Opportunities *Il lavoro gravemente sfruttato. Le vittime, i servizi di protezione, le norme* pp. 33 et seq.

### 3.2.5 The deprivation/limitation of social freedom

The presence or absence of such indicators – and the combination of the same – determines also the level of submission of the victims. From this perspective, the deprivation/limitation of social freedom (imposed with violence) – and therefore freedom in absolute terms – occurs when there are greater corresponding variables/indicators in one or more specific dimensions.

Conversely, there is a deprivation/limitation of freedom depending on the type of variable missing and the weight which each of these can play on the individuals involved.

The weight of each indicator, in fact, can only be relative, since it depends on the incidence and importance it assumes in changing the behaviour in the workplace of the individual or group of persons working for the same employer.

Such evaluations are however the result of the meeting between what the social, judicial and inspection operators who interact with the victim/potential victim find.

It is from this identifying/investigatory report that the different weights which each condition/indicator has on the subjected persons can emerge, and defines the slave-like situation. At the same time, it determines the identification and therefore the status of the victim.<sup>49</sup> The identification of the victim is a process which several professional figures activate – and share – jointly, on the basis of current regulations available, as well as reciprocal trust.

The evidence of the deprivation/limitation of freedom inevitably defines the semi slave condition in the strict sense (considering the person as a “piece of property”) together with the impossibility of self-defense (on the part of the worker) or general defense (on the part of the community or rather on the part of the State and its institutions). The inclusion of the violence factor, for example (“strong indicator”, according to the above mentioned ILO/EU description) determines for certain the enforced subjugation of the worker and therefore the slave condition.

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49 In this regard the subdivision of the indicators proposed by the ILO (mentioned above) must not be considered immovable, that is the attribution of strong, medium, weak indicator is the joint result of what the victim expresses and what the operators (social, judicial and inspection) identify on the basis of knowledge that is gradually acquired. The weight of each indicator is the result of a process of joint and responsible attribution between those who have relations with the victims/potential victims and therefore can change weight depending on the characteristics of the individual victims/potential victims.

## 4. The Italian case. Some aspects of the phenomenon

### 4.1 The main reasons for entry into conditions of serious labour exploitation, the work sectors and the conditions experienced

#### 4.1.1 The debt contracted

One of the principal reasons for entry into circuits of servile work and semi slave exploitation is debt.<sup>50</sup> Indebtedness which the candidate for emigration enters into (alone or with the family) with third persons or with an organization specialized in satisfying such need to meet the expenditure for transfer abroad. The method by which the recruitment comes about therefore – which could start from the need to move abroad (the candidate contacts the organization) or from promotion to move abroad on the part of the organizations (in the sense that they recruit those who want to leave) – will influence the subsequent course of action.

From data in a recent survey carried out by the Dept. for Equal Opportunities<sup>51</sup> emerges that the debt for the acquisition of resources to emigrate represents some 40% (of the total of 291 cases covered in the survey). Of this amount (equal to 121 individual cases), half of those involved became indebted with “relations/friends” (22%), the others with strangers. In these cases 13.8% became indebted with persons specialized in the emigration of compatriots, or with specialized work agencies and with job intermediaries defined as “bosses” (in the sense that they gain in an aggressive/violent manner on the activity provided ). The remaining 3.4% however becomes indebted with employers in Italy (typical in the case of Chinese workers, but also a number of Romanian and Moroccan workers). In synthesis, on the basis of these data, about half of those who replied to the questionnaire were already in a socially vulnerable condition at the moment of emigration, because they left with a debt to pay.

The debt can be incurred: a) to pay the travel and the documentation necessary to enter the emigration country; b) to pay for a job once arrived at destination; c) to obtain the documents necessary to stay once entered in the country of destination; d) to open a commercial activity or to pay for health needs of family members. The migrant, in negotiating the debt, may play an active or passive role, on the basis of the will or lack of will which he assumes and maintains both in the contact/recruitment phase and in the phase of negotiation of the emigration conditions.

The recruitment therefore, as foreseen also in the Palermo Protocol, can be characterized as voluntary (*smuggling*, that is with conscious purchase of a travel permit sold by illegal organizations) or involuntary (*trafficking*, that is through coercion) or in a fraudulent manner (with trickery, cheating and deceit) on the part of the organization dealing with the

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50 A curiosity: the first colonial migrants who arrived in North America from Ireland, England and Germany – around 1660 – contracted a debt with the landowners who would have employed them on their estates and in their industries to cover the expenses of the ship voyage. Once arrived – to repay the debt – they became servants for at least five years or more, which was the equivalent, for P. Kolchin, of essentially becoming slaves. See Peter Kolchin, *American slavery*, Penguin Book, London, 1995, p. 9.

51 Department of Equal Opportunity, *Il lavoro gravemente sfruttato. Le vittime, i servizi di protezione, le norme*, research report, Rome, March, 2010, pp. 32 et seq. The survey in question has detected 750 cases of people nationally have benefited from the Italian social protection for labour exploitation and severe reduction for the sake of slave labour on the basis of current regulations.

transfer. In such a way that, once arrived in Italy, the enforcement and state of continuous exploitation is set up. In such departure situations the debt plays an almost intermediary role between the initial will to depart and the subsequent enforcement, so that it becomes like a sword of Damocles over the head of those directly involved.

In fact, repayment of the debt is the motive for subjection on the part of the debtor, since it puts him/her in a state of objective vulnerability for difficulties which can arise in collecting the amount requested and above all for (eventual) interest maturing on the debt in an exorbitant and exponential manner (reaching levels of usury). Finally, because the creditor, when he turns into usurer does not generally ask for repayment of the debt but the possibility of exploiting the debtor for a fixed or longterm period, making him/her pay only by installments (not necessarily exorbitant) at regular intervals - installments which go to pay a kind of rent for the sum received but which do not touch the amount of the original debt. This in fact remains constant and weighs heavily over time, also when the rental installments have covered a good part of the original sum.

Violence comes in on the part of the creditor – often backed by a criminal organization – to impose rules and behaviour to increase the capacity of the debtor to produce money in view of the coercion he has undergone. In these cases it is possible that usury methods are brought in and therefore the debtor has to work to pay the interest installment. The work may be offered by the credit organization, activating a vicious circle: the organization is creditor of a sum of money, forces the debtor to work to pay it off, cashes in the installments regularly, keeps the debtor in a state of subordination which ties him to the organization. In this case also there can be a kind of servile labour or semi slave labour, on the base of what is set out previously.

The debtor situation is an important variable also in the type of exploitation which the delinquent organization decides to activate: prostitution for women and enforced labour for men. This applies also to age: begging for women and men generally, prostitution for the former and work for the latter.

#### **4.1.2 Sectors and productive areas**

The economic crisis of recent years and the processes of deregulation of the labour market push sectors of employers to unload on the workforce a part of the business costs<sup>52</sup>. It is not only a case of small/very small companies, but also larger ones. It is adopted a network of contractors system flowing from companies placing orders to those executing them, with other intermediate stages. The contractors in the network, sub-contractors, and sub-sub-contractors, etc. transfer parts of the order to other companies until they arrive – in the last analysis – also to the "bosses" where the company which has to carry out the work is managed by businessmen who are socially irresponsible and also delinquent.

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<sup>52</sup> A trade-unionist who was interviewed affirms (**interview 3**): "the sectors of semi-slave labour cannot be considered residual, or as the remains of the process which is disappearing. On the contrary, they are sectors which show it – and sometimes develop it – in that effect of the process of deregulation of the labour market. Therefore they are parts of the labour market which are born, produced and reproduced, since they carry out a specific function: they are hidden social shock-absorbers which allow these productive sectors to reduce the stress of competition and economic turbulence. They are a remedy, a relief intervention, for those companies which otherwise would not be able to survive the crisis. But in this way the crisis is unloaded on the workers, on those who are most fragile – therefore foreigners – whose capacity to negotiate is very low or totally absent".

Such companies can be of diverse size (of staffing or productive capacity) and can employ local workers and foreigners. These last, in general, are more flexible, and often more vulnerable (particularly due to lack of stay permit) and in many companies they are the ones who carry out the lesser duties.

The irresponsible or delinquent employers, particularly those who operate in sectors where demand varies widely (building, tourism, agriculture, etc), know this kind of work offer, stimulate it, promote it and adapt it to their own productive needs. Employing this labour illegally, they reinforce the black labour production system which ignores on the one side national contracts in the category and on the other the right of the worker to safety in the workplace (both in the sense of temporal continuity and in that of psycho-physical integrity).

In this way they nourish and directly reinforce black market work and the tendency to irresponsibility of other companies in the same productive sector, through rivalry and widespread use of company attitudes based on the false conviction of being in this way more competitive in the market concerned.

This type of relationship is evidenced not only in seasonal employment, even if it is in this area that it assumes alarming proportions, because violence is imposed by the employer due to the short productive cycle and the need to complete it in limited time, but at the same time affects those productive sectors which remain constant throughout the yearly cycle.

In this type of work relations are aggravated by the continual prevarication of the rights of the worker. Employers take advantage of the fact that the workers are foreigners, perhaps without stay permit, or seeking any kind of work just to survive; conditions which determine a state of social vulnerability and therefore a particular openness towards even severe exploitation.

The vulnerability – often of multidimensional type, that is economic, social, cultural, linguistic, psycho-physical, etc. – can produce excessive dedication and trust on the part of the foreigner towards the employer. The employer, taking advantage of the situation of extreme weakness of the worker, sets in motion mechanisms to subjugate him radically and limit considerably his freedom of movement and ability to negotiate working conditions. In these cases the will to resist of the persons involved (adults and minors) is undermined so far as to create, paradoxically, relationships based on apparently free choice and on the substantial consent of the worker. The condition of enforced labour tends to arise in a de facto situation (that is not covered by legal regulations) which finds space in marginal areas of social and productive organization and therefore manifests itself in a totally illegal manner.

#### **4.1.3 The conditions experienced by workers**

The conditions experienced by workers – on the basis of information received (both from interviews carried out and from literature on the subject) – can be gathered into an area comprising forms of severe exploitation (which is not, as already said, the exploitation of “black labour”) and forms of slave-like subjugation (with threatening and violent practices). Violence suffered in the working relations often includes the possibility, on the part of employers or “bosses”, to control and supervise the workers. Control therefore operates as

severe exploitation, and in extreme cases sets up a semi slave work relationship, in that the intensity and depth of such control does not allow a way out of the relationship on the part of the worker. There would not be servile conditions without the control and direct supervision, sometimes threatening, of the foreign workforce.

The discipline, supported by threats and violence, maintains constant production and thus without variations of a kind which could compromise the production program. Therefore “there are no men or women in chains”, affirms one of the interviewees (**interview 24**), “there is no one who cannot move or leave their workplace. This possibility is foreseen, but not easy to carry out. In practice there are men and women psychologically subjected to the need of work, either because they are without a stay permit and therefore to stay in a “protected” place avoided by the Police (since it is a workplace) can be convenient for the worker; or because the state of submission is due to the fact that the workers have left their documents in deposit with the employers.

This deposit can be voluntary (“for fear of losing it or having it stolen”) or involuntary, since it is requested by the employers or their “bosses”. In both cases, however, the documents in the possession of the employer can be a means of fierce blackmail.

The production programmed or programmable imposes very particular timing and work methods. In agriculture, for example, but also in the building trade, the production – in the first case the harvest and in the second the consignment dates for the building constructed – is dictated by procedures of work/execution which can be very far from the normal put in operation by Italian workforces. The particular nature of such work/execution – for example to satisfy peak agricultural production periods on one hand and the early consignment of the building on the other, is demonstrated by the need to be prompt: harvest strawberries in April and May, watermelons from June to August and oranges between late September and early November (that is the “first fruits” which are sold at “golden prices”, as a Calabrian trade-unionist expresses it) (**interview 10**); or consign a work-shed or a house/apartment block, a factory building or a stretch of road, in a few months, sooner than expected.

In this last case the work technique, described by another trade-unionist (who worked for long years in the construction business) (**interview 23**), is focused on the extension of the working day/week and the introduction of work sectors by piecework (concentrated in the nerve centres of the construction process). While the pieceworkers earn what is due to them (excellent relationship between number of hours work and unit cost per hour), the other workers – mostly foreigners – are involved in a work process with high intensity of labour for a timetable usually longer and with a pay packet proportionately lower. In agricultural work and building work the duo determined by long hours and low /very low pay determines the specific level of exploitation. The conditions worsen with the addition of violence.

Violence is used by the employer and his “bosses” by necessity. Necessity determined when the work time imposed blows (“harvest everything within a certain number of days to beat the competition, especially with the first fruits in agriculture because they are well paid”) (**interview 10**) because the pressure is too great and therefore the harvesters can start lamenting. Laments which may prefigure possible abandonment of the field and therefore of the harvest. At the height of the harvest, the employer certainly cannot allow defections on the part of the workers engaged, because it is not always possible to replace them quickly. “If you think of a field of tomatoes or strawberries ... if the harvesters sit

down – which with foreign workers is unlikely to happen – the field would be ruined in the space of a few days”, says the same trade-unionist.

“To avoid this” – he continues “the employer during the work may increase the rate of hourly pay a little or threaten the workers brutally – particularly the irregulars. In the first case he might (also) recoup what he has paid out to calm the protest, making them pay for the water in his field used by the harvesters to quench their thirst (up to that moment free), but in the second case he must use violence and engage the "bosses" – or mobilize his supervisors/controllers – who do it for him” (**idem**). Such a mechanism – with little procedural differences – is present also in the building trade and in any other activity which sees foreign workers employed in a vulnerable condition, engaged to satisfy production peaks or ordinary activities with high workload and long hours (as the micro-stories which follow indicate).

Moreover, around the “racket of the workers” – as it is defined by another interviewee (**interview 24**) – there is a sort of war to capture the workers, especially in the areas where there is generally no regular supply of immigrant workers. And in addition, there is a sort of war to make them stay in the job to avoid the hard conditions in which they are forced to work operate as an encouragement, which can push them to flee, to run away from these employers. This happens in building work in mountain or isolated areas and also in agricultural areas far from inhabited centers”.

## 5. Micro-stories of victims

What follows is a synthesis of cases of victims<sup>53</sup> of serious work exploitation gathered during interviews with social operators who have (or have had in the last six months) direct contact with these same persons. The cases are reported with some necessary modifications. The names given are initials, but the initials do not correspond to real names. This exchange of initials is required so that the persons cannot be recognized. The brief biographical stories focus on the socio-anagraphical and demographical characteristics, as well as on the journey and the amount of debt contracted on departure. Furthermore, consideration is taken of the forms of exploitation suffered and the methods by which the victim has succeeded in escaping from the mechanism of exploitation.

### 5.1 Chinese lady (L.L.)

L is a lady aged 46 who comes from the city of Liaoning, in the north of the Chinese People's Republic. She arrives in Italy in 2005, having made a payment of Euro 7,700, obtained from loans from acquaintances, to a compatriot who organizes trips to Europe providing entry visas as well. She flies from Peking to Paris with 40 other compatriots who are travelling for the same reason.

A tourist guide accompanies them. From Paris they then take a train for Italy and arrive in Milan. Once they are in the city the guide contacts a compatriot who finds L work as a live-in cleaner in a Chinese family who pay her Euro 500 a month. For this operation, he asks a payment of Euro 500.

Over the years, L changes jobs often; a number of these jobs are in the restaurant trade where she works long hours for little money per month. Often then she is forced into prostitution in private houses in North Italy, exploited by her compatriots. And it is precisely during operations on the part of the Police Commissariat in Chiavari to combat exploitation in prostitution that L is approached by the police and decides to denounce her exploiters. Following the declaration, L obtains a stay permit for humanitarian reasons (ex art. 18 of Legislative Decree 286 of 1998).

### 5.2 Chinese lady (J.C.)

J is a lady aged 40 and comes from China. She arrived for the first time in Italy in 2005 after having lost her job in her own country. Like many of her compatriots who decide to emigrate, J goes to a compatriot in her city who organizes such trips to Italy for payment. In fact she pays the man Euro 7,500, collected by loans from friends. J travels by air from Peking to France with 15 other people. On arrival in Paris, a compatriot is waiting for them and accompanies them to a bus which will take them to Milan. At the Central Station in Mil-

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<sup>53</sup> The micro stories concern foreigners who have benefited from the social protection foreseen under art.18 of the Decree Law (n. 286/98) and have been collected through the help of the Parsec Cooperative of Rome which runs a project for victims of serious work exploitation for the Lazio Region (Dept. of Social Affairs) and the Dept. for Equal Opportunities of the Presidency of the Council of Ministers. This project is called "Right Job" and started in 2004; up to June 2010, some 40 people have been assisted.

an, another compatriot is waiting for them according to plan. J is told that for Euro 300 she can have a job immediately and a place to sleep at the home of another compatriot businessman. J accepts the “package” and settles in. She works for various families for over a year. After that she works for some 8 months in a Chinese restaurant.

She works from 12 to 15 hours a day for Euro 500 a month. She sleeps and eats in an apartment set up as a dormitory, paying Euro 200 a month. To improve her work situation she tries to find a job autonomously through businesses managed legally by Chinese, but not having a stay permit she cannot hope for a regular contract. Like many of her compatriots, therefore she falls into the net of prostitution working for several employers in different houses in North Italy for some time. One day J is approached by the police during action against prostitution exploitation. Thus J, tired of injustice, decides to denounce her exploiters: both those who exploited her sexually and those who exploited her at work. In this way J obtains a stay permit (ex art. 18 of legislative decree 286/1998).

### **5.3 Moroccan man (B.E.)**

B is 39 and comes from Settat, in Morocco, a very poor city which he leaves in 1990 to move to Casablanca, where he works for 13 years in a fruit and vegetable market but with a very low salary. In 2002 B meets by chance a man who suggests him go to Italy where he would be able to find a regular job and earn well. After initial doubts, his precarious economic situation makes the young man decide to accept the proposal. Having given his agreement to leave, B gives the man copy of his identity document and some photos. However, 4 years pass before B is contacted again; he continues to work in the market and forgets the proposal that had been made to him. Suddenly, in December 2006, he again sees the man, who informs him that he has obtained the *nulla osta* for Italy and asks him for Euro 9,000 for services rendered.

In order to collect the sum necessary B's family have to sell all they possess. He gives the sum to the man who to reassure him shows him a folder full of “stay permits” which he begins to distribute to other people. B leaves at the beginning of 2007, the travel expenses for the journey, made almost exclusively by bus, are at his expense. He arrives in Macerata where he meets the brother of the intermediary who accompanies him to an abandoned house, without light, gas, running water or even a bed. In this shack there are also other people, placed there by the same person. The day after his arrival the man makes B sign a phantom work contract and then disappears and leaves him without any possibility of help so that he is forced to live by begging.

After two months the man reappears in the shack and finds B at the limits of resistance and decides to transfer him to a shed near a big mill. The area, without minimal essential hygiene, is shared for 5 months with 5 other irregular foreigners of Tunisian and Algerian nationality. From time to time, some 12 days each month, B is taken by a Romanian boss to work with others in an agricultural establishment belonging to a very rich man well known in the area to commission recruitment of workers to be used and exploited in the nearby countryside. In the establishment B has to cut salad plants from 7 in the morning to 6 in the evening earning Euro 20 a day, which is paid at the end of the month. During this part time employment, B sees the intermediary speak with the owner of the establishment to plan new arrivals and new work contracts.

In the meantime, with the approach of the expiry date of the stay permit which he had however obtained, B is forced to go back to the man to ask for the renewal. The man promises his help and, in exchange for Euro 1,500, he obtains a new contract. The work contract is false as, obviously, are also the salary slips relating to the previous year (required in order to obtain renewal of the stay permit) and in return for another Euro 400 B receives also a false lodging contract. Exhausted by the difficulties encountered and from the repeated exploitation, thanks to some of his compatriots, B goes to the police office of Pescara. He is received and inserted in a program of assistance and social integration which enables him also to obtain the stay permit (ex art. 18 mentioned above). B makes a statement and denounces those who have exploited him. Due to the traumatic stress B is admitted to hospital.

#### **5.4 Moroccan man (S.A.)**

S is a man aged 38 and comes from Morocco where he lived with his wife, 3 minor children and his mother. In his country he carried out temporary jobs which did not enable him to provide adequately for his family so he was always on the look-out for an activity which would enable him to earn more. During a work period in Tangier, S met compatriots who suggest he came to Italy where, they said, it is easy to find work, earn well – so much so that one of them is also owner of a building company in the province of Varese. They will look after the journey and find him a job, and for services rendered they ask Euro 6,000 which S obtains by selling family goods and contracting debts. He leaves in October 2003, embarking with other compatriots in the same situation with false documents for France. There, he finds a compatriot is waiting for him, accompanies him to a train bound for Milan and gives him a phone number to contact someone else. He meets this person who accompanies him to a house where he can stay, always with the other compatriots, paying rent to the contract holder.

Through the people who brought him to Italy, he is inserted in a work cooperative owned by a compatriot. S works up to 10 hours a day without ever being paid. He receives only a little money to buy food and other necessities. They tell him that the main part of his salary will be kept to be used to present the request for “regularization”, when possible. This is never done. After years of this life, on the suggestion of a Moroccan friend, in 2009, S goes to the police office in Varese to make a statement of serious work exploitation, following which he is inserted in a social protection program and obtains a stay permit for humanitarian reasons. On several occasions S is threatened and has suffered aggression on the part of those he denounced. The investigations (June 2010) are not yet completed.

#### **5.5 Pakistani man (M.D.)**

M is a man aged 61 who comes from the village of Kharian in Pakistan where he lives with his wife and four children, 3 boys and a girl. The eldest has stopped studying and doesn't work, the other 3 children still study. For 20 years, M has worked in Kuwait as floor-layer and then he returned to Kharian. One day his neighbor to whom he has confided his worries and economic difficulties, suggests that he go to work abroad again. The neighbor's son, well known in the village, would get him the visa and a job in Italy with a transport company. He is asked to pay Euro 8,000 altogether, he doesn't have to worry about any-

thing. M manages to collect a part of the sum his neighbor's son has requested, but without the whole amount he cannot leave. M gets into debt with his relatives to reach the whole sum needed.

Obtaining the visa in December 2004, M leaves for Milan with other persons, and finds his neighbor's son awaiting him. He takes him to a small town in the Hinterland of Milan and lodges him, together with 20 others, all of Pakistani origin, in a large house. Some months pass before M begins to work. He starts as a general laborer in a meat factory in the area and then, in April, he is sent to Bologna to work for a building company. After 2 months he is sent away due to lack of work and goes to Naples to be a street salesman. He shares lodgings with compatriot friends of the intermediary. This man, after a short time, calls him back to Tirano to do temporary work.

M has never signed a work contract. For some time he works in companies as a replacement for those who are away. The salary varies and never exceeds Euro 450/500, always paid in cash. This figure is the result of a deduction of Euro 220 for rent, expenses, food and the obligatory payment of Euro 10 a month to buy a coffin in case of death. The lodging situation however is not of the best. Often the number of inmates is high, many people sleep on the ground and the heating doesn't work. Furthermore, there is a frequent changeover of people, as a result of the continual moving around by the intermediary to avoid police controls.

The intermediary has nominated four chiefs: the Head of House who controls order and cleanliness; the Head of Discipline who looks after conflicts and ensures respect of the rules; the Head of Work who organizes the work activity of all in the absence of the intermediary; the Head of Kitchen. It is the duty of the Heads to refer to the intermediary any problem which arises. This organization creates a climate of submission worsened also by a series of punishments which go from further deductions from pay in the form of fines up to dismissal and being sent away from the house. But M is tired of undergoing all these impositions and decides to rebel and denounce the situation to the local Police.

The local Police contacts an organization which works in the field and they insert M in an Emergency Help program (art.13) and manage also to find him a job which enables him to renew his stay permit. M's family is threatened because he denounced the intermediary.

## **5.6 Pakistani man (R.A.)**

R is a Pakistani boy who arrives in Italy in May 2007 with a regular *permit* for subordinate work to improve his socio-economic situation and that of his family. He arrives directly in Bergamo where he works for some months as a domestic and then, on the suggestion of a compatriot moves to the province of Sondrio to work in a company managed by another compatriot, with the promise of a well paid job, a permanent contract, board and lodging. Once he arrives, R realizes straight away that things are not as promised. The house is in very poor condition: about 20 people live there, squashed into few rooms, on mattresses without sheets, there is no heating and glass is missing in the windows. In the house some compatriots have the duty of controlling all the others, respecting the rigid rules of the house. In case of misbehavior, they are forced to pay a fine, indeed threatened with being sent away at any moment.

His work is in a food company for the preparation of meals for factory canteens. He doesn't have a real job, he is a fill-in who works from 7.00 to 20.00 with a short break of half an hour. He is not given copy of the work contract and the payment is Euro 5 per hour paid illegally by the owner of the company. The first month he is not paid because it is considered a sort of deposit for the company. Fortunately the company is inspected by the local Police who when they discover the serious exploitation of the workers arrange for the arrest of the owner. The exploited workers are placed in a social protection program foreseen in art. 18 of legislative decree 286/98.

## 6. Analysis of the interviews. The migratory journeys, settlement in new country and social actors involved

*by Francesco Carchedi and Prisca Giaiero*

### 6.1 Routes and migratory journeys

Migratory journeys which characterize the victims of severe labour exploitation are generally those which migrants take to reach Europe and in particular Italy.<sup>54</sup> On this point many of those interviewed are agreed. In fact, there would not seem to be particular routes for those who will then be subjected to inhuman and slave-like labour conditions. A researcher of Parsec in Rome affirms (**interview 7**): “there are no special routes used by those who will be exploited for work. The only particularly severe experience which we can describe as recruitment on both shores (that is an organization which recruits in the areas of migratory exodus directly with a company seeking labour in the immigration areas) is that of ‘Promised Land’. This is the name given to the inquiry carried out by the Bari District Anti Mafia Organization against employers in Apulia who seriously exploited groups of Polish workers during the harvest period” (**idem**).

“The ‘migratory model’” – continues the same researcher – “is the classic one: leaving to improve one’s working conditions, choosing persons experienced in migrant transport, one pays dearly, leaves home and reaches Italy, often in an irregular manner. The reduction into slavery happens here, once over the frontier and into Italian territory. In other occasions, now we know, the conditions of hard work can begin even before crossing the frontier, since the traffickers ask extra money to continue the journey, and therefore the migrants are forced to work hard to collect the last sums to get into Italy or another European frontier country like Germany, Austria, Greece or Spain.” (**idem**)

It must be remembered, however, as a Modena University professor affirms (**interview 14**) that “in the case of Chinese workers, or at least some of them, there is the so called “both shores” recruitment, since when these people arrive they are placed in specific companies. In fact for these workers the placement is already fixed before arrival in our country ... especially for those who arrive from the more traditional regions of exodus like Shejiang and in particular the city of Whenzou (the capital of the region).

Other groups like those who arrive from ex Manchuria (provinces of Liaoning, Heilongjiang and Jilin) follow a less structured migratory model. In the sense that they arrive without knowing clearly where they will work. The search for a job happens once they have arrived in Italy by the usual methods, that is those of “passing the word” within the community or a more restricted circle of compatriots”. (**idem**)

The routes, with the exception of those mentioned, particularly for those who come to work, appear very similar.

“The routes which sometimes change, and follow parallel journeys which are more hidden and identifiable, are those set up for the transport of women (especially vulnerable women and children) destined for the prostitution market; they can be Romanian or Nigerian” affirms an operator at the Women in Movement Association of Pisa (**interview 13**). “For ex-

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<sup>54</sup> Cf IOM Across Sahara. Libya & Niger. Guidelines for the formation of police operators, Ministry of Interior Rome 2007 pp 47 et seq

ample in Pisa,” – she continues –“there are also fair sized groups of Senegalese, and among them little groups who practice illegal trade and sell false products, who are seriously exploited by “bosses” who belong to the same community. These in turn are subjected by Italian “bosses” who have the power to activate all the supply channels, transport, placing of products and the sales program.”

“The sellers are for the most part permanent, but some arrive in Pisa during the summer directly from Senegal, particularly from Dakar, following ordinary routes, and they are those who are the most exploited of all.

There is a sort of commercial corporal-ship: the last arrivals pick up workloads which are heavier than the others, for the most part the elderly. They are those who get up very early to go and load the products, take them to Pisa and put them out in Piazza dei Miracoli, and then carry out all the sales process up to late in the evening. In summer, they sleep in cars and transport trucks, or outdoors under the plants in the gardens so as to be ready around 2/3 o'clock in the morning to go and fetch new supplies, pay for the goods sold and carry out all the work which such activity brings.” **(idem)**

The routes therefore keep changing and differ only in the case of women and minors trafficked with the aim of sexual and labour exploitation. In the case of minors, then, as an official of the Dept. of Equal Opportunities recounts **(interview 1)**: “the routes are mostly clandestine, no one knows them, no one talks about them and even the judicial authorities have difficulty in intercepting them. The fact is that in every country children are generally protected and their illegal and enforced transport would not pass unobserved. For this reason, the traffickers dealing with minors always follow new routes and invent thousands of tricks to avoid to be intercepted by the police and security personnel. Especially, near the European countries and at their frontiers, whilst waiting to cross the sea to land in Italy or Greece, as witnessed by some independent international organizations (e.g. the International Organization for Migration or Doctors without Frontiers or Amnesty). This is the case in Tripoli (Libya) or Tangier (Morocco), or Belgrade.”

## **6.2 Settling in and the practices of subjection**

Arrival in Italy for some of the migrants means going out immediately to search for any sort of work activity. This happens principally through intra-community channels. In this regard a lot of the migrants contact compatriots in places where some of the community usually meet, say that they want to find a job and begin to talk with those they encounter. “What can you do and how much do you want to earn?” they say, according to a person interviewed in Bari – “and above all are you ready to pay if we find you a job?” “How much does it cost to find a job?” replies the newly arrived migrant. “It depends: to work in a home as domestic Euro 200/300 is enough, but it might reach Euro 500 – depending on the kind of family and the duration of the work offered; for a job in the fields a week’s pay if the work lasts a couple of months or a whole month’s pay (some Euro 700/800) if the job is for the whole season (some 5/6 months).”**(interview 2)**

Being vulnerable means accept these proposals. “Sometimes to guarantee that the aspiring worker keeps the promise to pay the work he receives from the “boss” they take his documents, usually the passport. In this case, the vulnerability increases”, says the same person. **(interview 2)** “It increases because without a passport you can be blackmailed,

because you are not identifiable, neither by the police (and therefore you can be taken to the police office), nor by the services in case of need. The passport is the only valuable item held by foreigners who have just arrived, both because you can return home if the situation becomes impossibly, hard and dangerous, and because if you find a job you must show the document to the employer, and if there is a control check by the Police by showing the document it finishes there without further complications.”

To buy a job means also to become indebted. If you arrive without a previous debt you become debtor to a compatriot, if you arrive having already contracted a debt this tends to increase. “The debt conditions the first months, those which are often decisive to get an idea of settling in and some success in the migratory project. If the job offered is good – in the sense that it is paid more or less regularly – the debt is soon extinguished. If the job offered is not good, or is not paid, or payments are slow and erratic – the debt becomes a trap for the worker” says a unionist (**interview 3**). “The motive is simple”, he continues “to pay a debt installment in precarious working conditions means trusting those who promise you help to get out of the situation you find yourself in. It means, for example, accepting a lodging together with others, and paying a lot for it. It means accepting other little loans to pay a bit of the original debt. It means in practice accepting the usurers’ interest and paying them monthly without ever touching the original debt.”

To slip into circuits organized by people without scruples – Italian or foreign, often of the same nationality as the victims – is then not so difficult. The need to produce an income, the need to pay the debt contracted, the need to send money home (since this is the principal motive for the emigration) and the need to have some sort of lodging, exposes many migrants to risky situations and to accepting bad and poorly paid conditions of work. “The vulnerability is just this” says the same unionist (**interview 3**). Settling in the city where he/she has chosen to look for a work is not an easy process. It is a process which can be characterized by emotional and existential highs and lows, economic highs and lows, and highs and lows determined by the people one meets and the quality of the relationships, with highs and lows regarding the continuity of work or lack of it and the treatment received”. (**idem**)

The low salary, the long working hours and the quality of the lodging are the variables which can render the work difficult and painful, from the point of view of exhaustion and stress, the condition in which the migrant is forced to live and the possibility of keeping in good health and therefore able to continue to work. It is often a work for a day or a few days, followed by other jobs with the same time frames. “Bits of work here and there of short duration” says a researcher (**interview 22**). “Very flexible work and for a long period through an agricultural season or a tourist season, or in the construction of a house or building or part of it, passing from company to company and changing employers and work situations”.

These companies can be within the same productive sector or indeed diverse, therefore as well as changing company one changes sector, and therefore type of work and colleagues. “The characteristics of the jobs stay the same: long hours of work, at low pay, work which does not allow rental of a suitable lodging. In such conditions” – says an operator interviewed “the subjection and the severe exploitation are part of the structure of these productive sectors. It is difficult to escape unharmed” (**interview 9**). “Often it is the logic of the sub-contractor which makes these jobs so hard” affirms the same person “From sub-contractor to sub-contractor a chain of business links is created which gets

gradually harder for the foreign workers, until they arrive at the “boss” who finds work at extremely low rates”.

“The last company” – continues this person “that is the final one where the work must be done, will get the job only because it will cut costs to the maximum. Costs which involve not only groups of migrant workers who really need to work ... because, beyond this group, there are always those who lose the job and become unemployed. This person – especially in recent years – if he/she cannot find another job which allows him/her to renew the permit, risks falling into black labour and then his juridical position becomes chronic. Such difficulty is even more evident with the introduction of the so-called crime of illegal immigration (cf. art. 10bis, Law 94/2009), since non payment of the fine (a sum between Euro 5/10,000) can set off a process of marginalization and push this group of workers into the clutches of slave-labour.” **(interview 14)**

### 6.3 Characteristics of the victims and ways of escape

The victims of slave labour – according to the data of the Dept. for Equal Opportunities (which relate to those taken in care under the current protection regulations)<sup>55</sup> are for the most part men of an age between 31 and 40, whilst for the female minority the age range is mostly over 40. This is an age which puts these women in a position of greater risk of blackmail, both because they cannot easily find work, and because they often do not speak good Italian, and because the responsibility for their children (frequently left in the country of origin) becomes a factor of further dependency. Another difference appears significant: the male component has a percentage, even if not high (some 7-10%) of persons aged around 20 (out of 291 cases) compared with the female component.<sup>56</sup>

On the basis of the same data it can be seen that the nationality of the majority of the victims involved is from Europe: Romania, Poland, and the Moldavian Republic – followed at some distance by Morocco and Egypt. From Asia the nationalities most involved are India and China, whilst for Latin America, Brazil. There are also, even if to a lesser extent, persons from West Africa (Nigeria and Ghana for example). It concerns countries which we can describe as of old immigration (China, Morocco, Tunisia, Pakistan, Bangladesh) and countries on the other hand of new immigration (Romania, Moldavia and Ukraine), but both are struggling with forms of severe exploitation. As regards, the new immigration countries, it is a question of the first migratory wave which do not fall into the intra-community nets: either because they are not sufficiently organized or because it concerns groups which are in the margins of their communities.

The arrival of the victims at the social protection services – as affirmed by an official of the Dept. for Equal Opportunities **(interview 18)** “is determined by the effects of the investigative work carried out by the judicial police and secondly by that carried out by the trade-unions and friends/acquaintances of the victims themselves. The inspections in the workplaces determine the principal way out of slave-like subjection, and accidents on the job which arise due to the very poor conditions of safety in which these workers are forced to work. The accident – by paradox – is one of the ways which help these workers to escape

55 The reference is to art. 18 of T.U. 286/98 and art.13 of Law 228/03 cited elsewhere

56 It seems that at this moment there are not persons under 20 years of age, that is not minors. Also because minors, when they are severely exploited, are accommodated in local social service centres and therefore do not go to the services of social protection, often managed by Ngos (at least in Italy), since these last are intended to respond to the needs of adults.

from the slave circuit” (**idem**). At national level, it is calculated that about 15 organizations (in convention with the Local Authorities and the Department mentioned above) currently operate in protection of victims of labour exploitation.

#### 6.4 The role of the trade-union organizations

From the interviews with some trade unionists (both with national and local responsibility) they are fully aware of the phenomenon of labour exploitation among migrants, related also to extreme forms of subjection, and aware that this is a question which needs to be adequately dealt with. The CGIL official (**interview 19**) affirms that, on the basis of union estimates “about a quarter of the Gross Internal Product in Italy comes from black labour and illegal work, of which about a third is carried out by migrant workers (c. 1 million persons) without work contract and therefore without stay permit. The sectors most affected are: agriculture, building and domestic work. In all three of these sectors the “black labour” is about 50% of the overall workforce, and particularly widespread (some 90%) in the domestic sector, prevalently work by migrant women.”

This situation is not easily manageable, when the “institutional sensibility is not up to the situation” says another trade-unionist of UIL national office (**interview 5**). “The problems are of two types” he continues “the first derives from the fact that the local trade-unionists – that is those who operate in the areas where there is a high level of employment of seasonal foreign workers, often irregular – are afraid to intervene, because often it is a case of delinquent employers, linked with local Mafia groups. This renders the interventions of the trade-union sterile, because in these areas it is more the intervention of the police force which should be extended than the trade-union office, or at least both of them, with reciprocal support in respect of institutional roles. Secondly, as a consequence of the first problem, the trade-union must act at national level, precisely to defend on one side the integrity of colleagues in the territory (and therefore not expose them) and at the same time stimulate the national authorities to do more and in a continuous manner to reinforce the State presence in these areas.”

The corresponding national institutions of the trade-union organization are the General Inspectorate of Labour (under the Ministry of Labour and Social Policies), the Head Command of the Carabinieri for territorial controls and the Finance Police for the companies and their fiscal and contributory situation. The same trade-unionist continues “the intervention to be made should start from outside the trade-union organizations, because it is in the same time a political and institutional question – as regards the reinforcement of the controls on the businesses employing black labour – and trade-unionist. The objective is first of all to defend the foreign workers in possession of stay permits or that sector which periodically loses them, because on expiry, due to the interruption of the work relationship, they do not manage to find re-employment in another company”. (**idem**)

The difficulty of mobilizing the trade-union organizations in the territory or in the category – for example that of agricultural or building workers – arises, as mentioned, “from the wide fear created by the use of “bosses” without scruples and supervisors/slavedrivers on the part of employers equally without scruples and often conniving with the local criminal organizations, not only in the south but also in the north of Italy. An intervention, therefore, from within the trade-union is not practicable at the moment, precisely because of these violent reactions which the phenomenon generates; there could be serious risk for the phys-

ical safety of the trade-unionists working in the territory and in the more involved categories. It is a question of an intervention primarily by the judicial police: both to suppress the boss-system and the organization which support it and to reprimand the businessmen who take on foreign workers illegally” (**interview 5**)

“This particular situation”, according to another trade-unionist (**interview 20**), “is a reflection on the inconsistency and fragility of the labour policies focused on principles of flexibility, seen as a means of increasing the amount of regular work and reducing the “submerged labour”, as well as the lack – or better the emptiness – of specific regulations to combat the phenomenon of “black” or servile labour, and even more the extreme area configurable as “semi slave labour””. Furthermore, continues the same person “as well as a lack of labour inspectors at provincial level, there is a lack of public security officials specialized in business control to identify irregular situations, not only of workers but also of the methods used for personnel management, and administrative controllers able to identify forms of evasion, or fiscal elusion to the detriment of honest companies”.

## 6.5 The social protection services

What is the numerical total of these groups of seriously exploited and slave workers? It is not possible to know, since at the moment there are no monitoring organisms of the phenomenon able to estimate the number and define clearly the qualitative and quantitative characteristics. The lack of analyses still does not permit accurate evaluations, but notwithstanding this it is an incontrovertible fact that the phenomenon does exist and therefore all the related problems do exist. And they are serious. The instruments to combat the phenomenon are in part already foreseen and tested by the current regulations. For example, the well known arts. 18 and 13 (of Decree Law 286/98 and the Law 228/03 respectively) foresee positive social protection measures for the victims of severe labour exploitation (even if up to now they appear efficacious only for forms of severe sexual exploitation).

However, there are some non-profit organizations working in the field of severe labour exploitation. They started dealing with cases of trafficking for sexual exploitation and, from mid 2000s, they widened their experience in the field of labour exploitation.<sup>57</sup> Their work is supported by local Public Prosecutor's Offices (Procura and Police) and by Trade Unions and Local Authorities.

The special protection services, according to an official from the Dept. of Equal Opportunities who was interviewed (**interview 1**) “are in operation since 2007, in that – at that date – the assistance program for the victims of forced labour was set up”. In this way the services “can offer help and social support as foreseen in the current regulations and on the basis of economic resources available in these regulations. At December 2009, some 800 persons had been assisted at national level. But they are still not able to operate to best advantage. We can say that we are still in an experimental phase – at least from the point of view of setting up an integrated system between the various actors (as for sexual exploitation, that is) – also because the economic resources are not sufficient (they have

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57 The most well-known organisations, both public and private, working in the field of trafficking are: the Association Comunità Papa Giovanni XXIII (of Cesena), the Association On the Road (of Ascoli Piceno), the Municipality of Reggio Emilia, the Municipality of Venice, the Consortium for Social Services of Ravenna, the Cooperative Dedalus (of Naples ), the Cooperative fight against marginalization (of Milan), the Cooperative Parsec (of Rome), the Association women in movement (of Pisa), the Provincial Administration of Foggia, the Provincial Administration of Genoa and the Provincial Administration of Lecce.

stayed the same for some 10 years) to respond to the needs of these victims”. The interventions provided, partly activated by experience with the protection of groups of sexually exploited women, are synthesized in Table 4.

The interventions, based on what emerged from some interviews with social operators in the sector are subdivided, in general, in the reception phase with analysis of needs, taking into care (socio-sanitary and legal assistance) and dismissal (when the taking into care is also residential). In some cases the services, especially those with greater experience, manage also to guarantee the victims a new job using the social networks present in the cities where they operate; or, a wide practice at present, they manage to insert the victims in formation/qualification courses, both by producing curricula vitae and then a professional identity, and through orientation activity and search for a new work activity.

“The persons taken into care for severe reasons of labour exploitation”, says the official mentioned above, “are in general more collaborative towards some groups of women assisted by the services for sexual exploitation. The trauma are diverse one from another, so that for the workers to program a series of interventions seems, on the basis of current knowledge, simpler. In fact in the search for lodgings to host these workers there is not in general the problem of secrecy, except in marginal cases, as there is no need to protect too much the collective lodgings where the users are invited to live if they wish. For example, those who run away from the services are very few, since there is little danger, as there is for women sexually exploited, of the revenge of exploiters. Revenge and threats are found but seem at the moment to be physiological.” **(interview 1)**

We can add that often these distortions - as is clear from other interviews – are aimed to intimidate the employee to confirm the charges against the employer in the hearing in the local courts.

**Table 4 – Types of intervention carried out by the social protection services**

Socio-sanitary and assistential interventions	Legal interventions
<ul style="list-style-type: none"> <li>- reception/listening to needs</li> <li>- referral to local public/private specialized social services</li> <li>- use of health/psychiatric services</li> <li>- use of socio-assistential services</li> <li>- use of psychological/self-help services</li> <li>- cultural/linguistic mediation</li> <li>- provision of small sums of money</li> <li>- protected transfer to another city</li> </ul>	<ul style="list-style-type: none"> <li>- legal/administrative advice and assistance</li> <li>- accompaniment to Court hearing</li> <li>- civil representation</li> <li>- processing of documents/files</li> <li>- family reunion</li> <li>- assisted voluntary return to country of origin</li> <li>- acquisition of stay permit (arts.18 or 13 or other)</li> <li>- protection as a collaborator of justice</li> <li>- emigration to a third country</li> </ul>

<b>Lodging assistance</b>	<b>Training/Educational assistance</b>
<ul style="list-style-type: none"> <li>- collective/dormitory lodging</li> <li>- emergency bed accommodation/local network</li> <li>- lodging in contract hotel/pension</li> <li>- protected family lodging (for most severe cases)</li> <li>- autonomous house/apartment</li> <li>- lodging with a safe family</li> <li>- lodging with friends with detached protection</li> <li>- analysis of competencies</li> <li>- preparation of curriculum/portfolio</li> <li>- strengthening of work identity</li> <li>- selection of work opportunities</li> <li>- active search for a job</li> <li>- training/stage at workplace</li> </ul>	<ul style="list-style-type: none"> <li>- Italian language courses</li> <li>- educational/obtention of licence courses network</li> <li>- training course over 300 hrs</li> <li>- alphabetization course</li> <li>- improvement of informatics competency</li> <li>- procedures for homologation of diplomas/degrees</li> <li>- identification of company to send work application</li> <li>- accompaniment to interviews</li> <li>- motivation for acceptance of work</li> <li>- accompaniment to company/protection</li> <li>- support during work experience</li> <li>- setting up/strengthening autonomous work</li> </ul>

## 7. The Spanish situation. Some aspects of the phenomenon

### 7.1 Severe labour exploitation. The employment sectors and the living conditions

#### 7.1.1 Territorial contexts and living conditions of workers

The phenomenon of severe labour exploitation and semi slave labour in Spain tends to assume similar characteristics to those in Italy, since the productive structure of the sectors where it occurs mostly are largely the same. Enrico Pugliese<sup>58</sup> has defined the models which describe the migratory question in South European countries, as “Mediterranean”, distinguishing them from those in North Europe by the structural persistence of the irregular arrangements. These irregular situations are such that – and one tends to remain them such – because only in this way they can be functional for the productive areas in which they are continually located. Areas which – for this reason, perpetuate working relationships following traditionalist methods based on black labour and formalized only by “verbal contract”, as commented by a unionist interviewed (**interview 2**)

“We must however clarify one point”, said the same unionist, “black labour and severe labour exploitation did not arrive in Spain with foreign immigration ... it was present historically, as in other Mediterranean countries. The substitution in these productive areas of local workers by migrant workers ... has not brought any change in the working methods. Indeed, whilst the locals tried to change these jobs asking for better guarantees, with their substitution – due substantially to the unions’ failure and the interruption of the generational changeover (precisely because of bad working conditions) – the migrant workers have objectively reinforced (not of their own will, therefore) the conservative tendency of these businessmen; tendency which is chiefly demonstrated through the continual repetition of the *status quo* of substandard working and living conditions which are the result.” (**idem**)

“This type of black labour is very widespread in Spain”, says a researcher of the *Colectivo IOE (interview 1)*<sup>59</sup>, even if it is difficult to establish the numerical entity ... and if we are faced with a residual and anachronistic tendency or a post-industrial review of working relationships, and therefore a new tendency of the same working relationships. The forms and methods which characterize these working relations seem to belong to the former concept, but their generalization, their capacity to perpetuate and be strengthened, and above all the impossibility of combating them – either on the part of the trade unions or the institutions – gives the idea that they are structurally characterized by a powerfully intrinsic and therefore unreachable force ... which makes one think that it is a tendency towards new non-trade union relations and not regressive methods which are disappearing. Old and new tendencies in working relationships can be manifested at the same time, and the margins to define one and the other are superimposed and confused. But if these relationships are not formalized, if the regulatory tension is lessened, if one does not continue to intervene in this direction, indiscriminate exploitation can only emerge in a continuing manner.”

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58 The concept of the “Mediterranean Migrant Model” is explained and discussed in the monographic enquiry edition – produced by Enrico Pugliese – *Rivista Trimestrale* n. 113, year XXIV, July/September, Edizioni Dedalo, Bari, 1996.

59 *Colectivo IOE Trabajo sumergido, precariedad e inmigracion en Catalunya Una primera aproximacion*, Research report, Madrid, June 2008 in particular chap.1 and 2

To combat “submerged” labour – and the methods of severe exploitation which it produces – says a unionist from Barcelona (**interview 20**), “it is necessary to understand the importance of the legislative changes introduced over recent years. For some years (since the regularization of 2005), in fact, it is possible to benefit the social *arraigo* and the labour *arraigo* ... they are strictly intertwined, since the first could be given by the authorities to facilitate the family reunion and the second to facilitate the emergence of “black labour” (under the conditions explained above).

In substance, on the one side those who have relatives already integrated (who will guarantee cohesion) can enter the country, and on the other, if they want to and succeed in finding a work activity which enables them to have the necessary means of subsistence and therefore to “put down roots”, they can apply for a continuing or definitive residence.

These are the possibilities and they are monitored by trade unionist organizations in collaboration with the Police with whom there are joint action programmes.”

According to almost all those interviewed, however, the use of these two regulations is not easy, since it is necessary to prove the validity of the affirmations of the complainants. “Submerged” labour and the marginal fringes which cover the hardest, most severe labour where the conditions are prohibitive, is manifested and develops particularly in the building industry, in the agricultural sector and in domestic work, as well as the restaurant/hotel trade. In these four sectors – for different reasons and with different characteristics – the work carried out by some foreign workers is characterized, as we stated for the Italian case, by long hours, salaries just above the poverty level, extenuating and continuous pressures and with little or no safety measures. “In a word”, as the trade unionist mentioned above continues, (**interview 20**) “it is slave labour. Call it what we will, but the reality in which these migrant fringes live brings back to memory slavery”.

“How far these fringes extend and how much they occur within the building trade, the agricultural or the domestic sectors, it is difficult to establish. But one fact appears clear”, as the interviewee continues, “we are facing a degeneration of working relationships which can be considered a new form of slavery.” “These workers”, another trade unionist from Granada says, (**interview 2**) “are mostly employed with false contracts ... obviously false, but which they are unable to recognize as such. They agree, for example, to work for Euro 1,200 a month but they receive only half, because “ – they are told – “the other half is needed to pay pension contributions. Every month they show them an apparently regular pay slip, with everything noted down, with stamps, and more stamps, initials and signatures, but it is all false. Everything is false and counterfeit. Even the moment of handing over the slip in the office, with secretaries and account clerks present is a part of a staged to circumvent the workers.”

“In recent years, however”, the same trade unionist says, (**idem**) “with the introduction of the *arraigo*, according to our point of view, the practice of cheating foreign workers with false contracts and false pay packets has been much reduced, since the worker saved both the documents and therefore they became sound proof against the employer. To avoid this, the irresponsible and untrustworthy employers now do not give any documentation. (...) Even if they have to sign the pay payment for Euro 1,200/1,500 whilst in effect they are given only Euro 600 or less. In these cases, it is difficult for the worker to denounce the employer ... unless the trickery involves several workers and therefore each can witness for the other. In this regard, we know that in the companies likely to cheat foreign workers – they tend to employ workers of different nationalities and stick and quarrel

with each other. Hierarchies are created between different national groups on the basis of greater or lesser subordination which they show to the employers' strategies to forestall and thus avoid the formation of solidarity."

### 7.1.2 Complaints of severe exploitation. Recurring motives and numerical entity

But how many are the registered cases of severe labour exploitation at present? To this question, obviously, the replies of our interlocutors were almost always vague. "No one can know, it is difficult to establish and no studies have yet been carried out with this objective", says the researcher of the *Colectivo IOE (interview 1)*. There have not yet been enquiries which have exposed severe labour exploitation therefore, even if, obviously, "submerged" labour is frequently studied. Also the concept of severe labour exploitation or semi slave labour (as emerges from the supranational regulations) appears little used, differently from Italy, where for some years there has been specific reflection (despite difficulties) in this area. Estimates therefore were not expressed by the Spanish experts interviewed (but this holds also for Italy, as we have stated above). However, notwithstanding the fact that many interlocutors were not able to give definitions or discuss the problem, the attention given by the trade unions seems fairly high.

The reason is given by a trade unionist from Barcelona (*interview 20*) "the biggest trade union organizations have signed a common action protocol with the State Police. This protocol has a national value and is based on an elementary principle: the migrant workers even if irregular can apply for the "*arraigo laboral*" (as mentioned) under the conditions provided by the current legislation ... and if exploited at work and subject to heavy labour and therefore exploitation is particularly serious...they can have a stay permit for humanitarian reasons. When the Police finds cases of this kind, they contact the trade union organizations and these – once they gained the information - last open a file, trying to favour the worker, on the basis of possibilities available in current regulations. The fact that the worker finds himself/herself in an irregular position – and he/she is obviously being exploited – sounds an alarm bell on possible inhuman treatment which is unacceptable to the trade unions. This situation can be subject of negotiation between the Union and the Police in virtue of the protocol".

"The examples of ill-treated workers, exploited in an inhuman way, without ever receiving a salary, and therefore who have never received payment for work carried out or who have been paid in an improper or threatening way by dishonest employers saying they will be denounced for theft or other invented crimes ... or for irregular stay ... are frequent and continuous", as the same trade unionist says. (*idem*) "In the last three years, that is more or less from the beginning of 2007 up to now (second week of May 2010) we have forwarded 800 declarations. In fact, currently (April 2010) we are following several cases of ill treatment in the workplace and of severe exploitation. The most glaring is a statement received by the Police from a small town just outside Barcelona about a Chinese employer who had around 70 compatriots shut in a large work-shed for over 12 hours a day". Another example, we are working on a statement submitted to the trade union by three Brazilian workers against a Spanish restaurant which employed them in a disgraceful way ... without paying them for more than five months".

"Another example" – continued the same trade-unionist from Barcelona ... "is that which involves four workers (two Moroccans, a Filipino and an Argentinian) who want to denounce

their employer because they work in a space without adequate air. The company produces chemical products and therefore the workers risk suffocation ... also because they are handling dangerous products without adequate protection: either for their hands, or to filter the air they breathe, or to wash themselves when the powders or liquids get on their clothes (...) Their clothes, according to the workers, should be protective of powders and liquids, but are of normal cloth and therefore unsuitable for the activity carried out" (**idem**). Similar situations have been found in Granada and Almeria (in Andalusia). A lawyer of the trade union organization for foreigners in Granada (**interview 15**) says "*sobra-explotado* persons (we would say super exploited in Italian) whom we are following - or have followed over the last 2/3 years – are about 300, almost all foreigners. The majority of these denounces – or is intercepted by the Police during inspections – diverse forms of exploitation or serious privation in carrying out their work, as well as manifest forms of labour discrimination, often reinforced by threats and violence ... If it is not exploitation it is anyway injustice and abuse which the employer enacts to cheat the worker".

"For example", the same interviewee continues, "the workers often reveal abuse regarding "social security" (*seguridad social*): they pay their own contributions or do not have a contract, they carry out long hours of work or working hours which a Spaniard would never accept ... they are in fact persons who can feel at a certain point that they cannot continue any more because of the exhaustion and the brutal treatment they receive. They submit and suffer for the discrimination they are experiencing: for example, lower salaries, longer working days than local colleagues and above all a fixed daily pay despite how many hours they may work. These methods set off forms of hyper- exploitation since, if the working hours are longer and the pay remains the same, the hourly cost tends to go down in an increasing manner producing slave situations."

In Almeria – on a lesser scale in comparison with Granada and Barcelona – the cases registered, counting the overall number of statements received by the trade union organisation for migrants, are about 150 (since 2007). To the question on describing the most recurrent social profile of the severely exploited migrant worker, the lawyer who deals with these statements says (**interview 22**) "the employee is a man aged between 30 and 50, coming from an Iberian/American background. And we do not yet understand why they come. We have many workers of Iberian origin, perhaps because it is easier for them to communicate in their own language the exploitation they are suffering. Most of them is without a stay and labour permit. They denounce the lack of salary payment for 6/7 months and then aggressive and threatening situations to reclaim the salary earned. They are building workers or agricultural harvesters, but also domestic workers."

"Another important social profile is provided by workers of other nationalities, particularly Moroccans and then Senegalese", adds the lawyer. "The reasons for the statements are however the same. No one wants to pay these workers. The payment terms generally registered in the statements are also over six months. The workers of these nationalities are generally younger than the Iberian-Americans, with an age of 22/25 years, sometimes 30/35 and to a minor extent from 45/50. In these cases, also they are without basic documentation. No contract, no guarantee. Completely "black labour". They can be dismissed from one day to the next". The third important group is that of the women. The women are Iberian-American or Moroccan – but also Chinese or Filipino – of age generally 35/40, ill-paid and with delays in monthly payments. They are blackmailed because they are women and subject also to insidious forms of courtship. In these cases also the blackmail can be accompanied by threats and violence, and they are thus easily dismissed".

### 7.1.3 Sectors and productive areas

Going into the question of the productive sectors where these disgraceful forms of work occur, we must repeat that the same sectors and areas are characterized for the fact that local people are also employed and not only immigrants. With a difference, however, as affirmed by a professor at the Autonomous University of Madrid (interview 10): "it is true that the migrant workers are found in the productive areas where there is "submerged" work like the local people, but the differences are substantial. The local people often accept a "black labour" condition, negotiating the salary and turning it in their favour. In the sense that they manage it in a way that the employer accepts their conditions, since they are expert and often qualified workers. Therefore the "black labour condition" is compensated by a suitable salary, adequate also to put some aside. The foreign workers, on the other hand, work in "black" because it is the employer who proposes such a relationship. That produces a kind of blackmail: take the job – under the conditions imposed by the employer – or leave it."

"This not a small difference" says the professor. "On one hand the choice of the local person comes within what we can define as a reciprocal and convenient solution, on the other a sort of pre-contractual imposition, of a fixed and immovable rule in order to be employed. In the sense that already in the work request is included, and therefore requested, subordination, and an asymmetrical relationship. In the first case, there is symmetry of intent and interests, in the second, structural imbalance in favour of the employer and therefore a marked inequality of interests. To the offer, in this last situation, that is of migrant workers, a reduction of respective interests in the conditions given is requested, that is in the nature of the profit plan foreseen by the employer. A request which can only attract vulnerable workers, who are disoriented and subject to blackmail because they want to carry out any sort of work just to receive a salary, even if it is modest and uncertain."

"This structural asymmetry in the request" affirms another professor of the same University, (**interview 21**) "can only be considered and practised in order to attract specific segments of the labour force which in this particular historical moment is represented by foreign workers, whilst in previous decades it was the peasant masses who came to the cities or big estates in search of a job. Now this continual de-structuring of the labour market – and the hard conditions which result – are helped by the strategy of sub-contracts. In Spain too this strategy causes continual distortion of the union dynamics. When a big company wins a contract, and sub-contracts it to a company or several smaller companies (even if they are specialized in certain operations) and then these to others, and others again, one arrives at the very small company which has the work carried out by workers without pretensions. These companies make wide use of "bosses" and of illegal intermediaries,<sup>60</sup> of workers without papers to gain more, of workers who have just arrived, because

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<sup>60</sup> Regarding "bosses" a trade unionist in Granada recounts "An impresario told me that he has problems in employing foreign workers because the Spaniards don't want to do this work any more, so how do I find foreign workers? He said that there were people who offered day workers or workers for a few days or for the time necessary. How many workers do you want? 40? 50? OK, how much will you pay me for them? And don't ask for papers and such things. Don't ask me anything, especially if they have a stay permit." These intermediaries get the foreigners together and bring them to work, according to the logic of the black labour market. So they have to be employed as "black workers", without guarantee or protection. Then the impresario says that it is not an efficient system of supply and demand, but it is not true. The offer is made by the Labour Office but in the open and with contracts in the category. The public labour system should provide workers, but the impresari don't use it because it is expensive. And if it is not used it seems inadequate, but it is not so. The impresari do not want to follow the laws and regulations of legal employment. To run to the "bosses" therefore is an alibi so as not to pay the workers according to the law" (**interview 2**).

they are disoriented and ready for anything, of vulnerable workers because they cannot manage to escape from the mechanisms of exploitation.”

The sectors principally involved in the recruitment of migrants are those already cited above: building, agriculture, hotel-restaurant trade and the domestic field. But obviously not all the foreign workers employed in these sectors are severely exploited. A unionist says (**interview 20**) “In the building trade the areas mainly involved with severe exploitation are those of earth-moving and transport of material, since they are activities often managed by businessmen close to the criminal organizations. Or in those areas where piecework in teams is used. A team, in general headed by Spaniards, engages foreign labourers and forces them to follow their productive pace, but without the corresponding benefits, especially in financial terms. Here the exploitation is obvious and reflects a horizontal division between those who make up the team, since the locals are at the top – the directors, those responsible for hyper specialized sub-teams surrounded by qualified operators – and below there is the generic workforce made up of foreigners.”

“These last”, continues the trade unionist, “but also other migrants employed in other parts of the building trade, are those chiefly exposed to accidents in the workplace because they do not know the safety regulations and the person in charge does not give them the information or the resources necessary to follow them. They work many hours more than they should and earn a lot less. The salary is always paid in cash at the end of the day. Every day of work is a story in itself. The continuity depends on many threads: on supine and servile subordination, on maintenance of pace of work imposed, on availability to work over the hours foreseen and seven days out of seven, or the work relationship will be terminated. Every day the worker has to win the right to work the following day.” (**idem**)

“The other areas of the building trade are finishing and cleaning. In this area also there is a lot of exploitation”, affirms a unionist in the construction industry in Barcelona (**interview 11**).<sup>61</sup> “Cleaning in an building is of primary importance. In this work both men and women are employed. The former, particularly in the removal of residue (wood, stone, pieces of iron, etc), the second in cleaning floors, windows and all those parts which will give the building a finished appearance. These activities can last days and days and even months. It depends on the size of the building. In such situations exploitation is very high, especially for the women because they must be in very uncomfortable positions, on ladders or kneeling for hours and hours to clean pavements and surfaces. The pay is miserable. In general it is piecework: so many windows at so much, so many rooms or floors at another sum. Everything is measured to produce the maximum profit possible and therefore salaries too are pared to a minimum.”

“The other important sector where there are many foreign workers is agriculture” a trade unionist from Almeria says (**interview 8**). “The agricultural sector, in the last two years, that is since the fall in the construction industry – caused by the American crisis, and re-

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61 Ricardo Domingo, responsible for the Construction Sector of Catalonia and for the *Comisiones Obreras* affirms: “In Catalonia – in 2008 and 2009 – more than 100,000 jobs were lost in the building industry, of which 25/30% those of migrants, some 25/30,000 persons). These workers were regularized by the amnesty of 2004/5 and employed in construction through the Labour Office. The contracts in the sector were 35,000/40,000 in Catalonia alone, whilst in the whole of Spain they reached some 600,000 persons. These jobs have almost all disappeared. Throughout Spain it is estimated there is a “submerged labour” in building of some 1 million persons, and the regularization brought over half of them into normal work by our estimates” (**interview 11**). Cf also Observatorio Permanente del Inmigracion, *Inmigracion y mercado de trabajo. Informe 2008. Analisis de datos de Espana y Cataluna*, n.16, Barcelona, 2009.

flected in Spain in a serious and violent manner – has become a refuge-sector for whole groups of migrants from the building sector.

This has brought a notable drop in the cost of work and a proportional drop in the living and working conditions. The salaries have dropped by up to 30% and the conditions have also worsened. The harvest sectors are those which most attract migrants because it is a safe job. But there is no advantage in such safety. Here truly the exploitation is high and continuous and without possibility of escape. No one speaks, among migrants. They are few in proportion to those. Those who denounce the exploitation are few. They are afraid not only of being sacked but also of being repatriated.”

The crisis in the building sector and the massive graft of migrants in the agricultural harvest sector – but also in the domestic one, in particular in the care and protection of elderly people and children – has caused, for various reasons, the return home of many foreigners”, as another Moroccan trade unionist in Almeria recalls (**interview 3**). “Some fringes of migrants, under the current law, could take an unemployment subsidy and return to his/her own country of origin. This strategy did not work much because it was not certain in order to be allowed to re-enter once the crisis passed. However, a lot of Moroccan families came back for seasonal harvesting, in particular women who had small children to care for in their country of origin. The call for women with children is one of the recent employment strategies used by farmers, because they are confident that once the harvest ends, the women will come back to their home to not live alone the small children of the family.”

#### **7.1.4 Micro-stories of victims**

Set out below are some short stories of foreign workers who have denounced their employers for abuse and severe labour exploitation. They are short stories gathered – as explained in the introduction – from the archives of the Immigrants Office of the *Comisiones Obreras* in Barcelona. As it will be seen, the methods of serious exploitation appear in the background and are not as obvious as the Italian cases. This comes from the fact that the regulations under reference are different: in the Italian case they relate to art. 18 and art. 13 (respectively Decree Law n. 286/98 and Law n. 228/03) where, although in a contradictory manner, the case of severe exploitation and reduction into slavery is foreseen, whereas in Spain one refers to the *arraigo laboral* and therefore the case of submerged work comes out more clearly.

The trade union officials interviewed in Barcelona, who have supplied the forms for the cases we report, have however pointed out that many of those who have made statements have done so because they were troubled and humiliated by bad working and living conditions. For this reason, from their point of view, the protagonists in these micro-stories can be seen as workers in semi-slave conditions.

#### **Gambian man (A.A.)**

A, a worker of Gambian nationality, made a statement to the Inspectorate of Labour because of his irregular working situation and the very poor living conditions. When he submitted the statement, he had already worked for a year and 8 months for the County of Santa Susana, cleaning the squares and gardens of the town, but without a regular labour contract and therefore without being registered with the Pensions Institution. The worker, who at the time of presentation of the statement, did not have a stay permit, had several

times been promised by officials at the County for whom he worked that his position would be regularized, and that he would therefore have access to the documentation foreseen under current regulations. In addition to the false promises and continued postponements of regularization (in Spain this is possible at any time; it is sufficient to have a work contract), the employee was working over the hours agreed verbally with the corresponding officials.

A worked at least 10 hours a day, but was paid only for 6 hours and in an irregular way after his insistent requests. Tired of this situation A, to prove what he intended to denounce, took photographs and produced audio material with the help of a recorder. The Spanish regulations, in fact, ask for incontrovertible proof to demonstrate the work carried out by employees. He offered, as foreseen under the regulations described above (cf para. 2.4 *infra*) to collaborate with the Inspectorate of Labour. Such collaboration is considered an action "in the national interest" and in exchange, just for this reason, the State administration responds with the stay permit if it is requested by the counterpart.

The Inspectorate of Labour proceeded with various inspections of the Gardening and Cleaning Service of the County of Santa Susana and confirmed the effective presence in the workplace of the Gambian citizen. In a later appointment, given by the Inspectorate to officials of the Gardens Service to receive the documentation requested in the earlier meeting, these officials in carrying out instructions forgot the documentation relating to the Gambian citizen. To specific questions, the officials of the County could not deny the presence "in the organigram" of the Gambian worker, and in doing so confirmed what had been denounced. The Inspectorate, once it was ascertained that the worker didn't have a stay permit (since he arrived irregularly and remained so) declared that they could not proceed with regularization of the working relationship, or the request for back pay submitted by the worker or the subsequent pension application. The Inspectorate's decision was to open a case of infringement by the County to employ workers without the necessary stay permit and verify if in carrying out the work there might be a penal case for the seriously exploited person. The case is still under way.

### ***Moroccan man (B.B.), Moroccan woman (C.C.)***

B and C are two workers of Moroccan origin – the first a man, the second a woman – who presented a statement to the Inspectorate of Labour declaring that they were irregularly employed and in inhuman conditions in a restaurant, B for at least 4 years, C for at least 2. Both offered collaboration in the investigations and asked in exchange to obtain the stay permit. Collaboration which, as already noted, the administrative authorities consider a question of national interest. At the moment of inspection in the restaurant the two workers were at their place of work, B said he was the cook and C said she had carried out the cleaning of the restaurant for some 2 years. The owner was also there in the workplace. To exonerate herself, she declared that the woman came only occasionally to do the cleaning and in any case only since a few days past.

As regards the cook, that is B, however, she said that he was her cousin, and that he lived with her since he was her guest and that he had only helped occasionally in the restaurant for three months.

She said that yes, B had lived in her house for 4 years but only recently worked with her for a few hours a day. The inspector confirmed the lack of registration of B and his compatriot C with INPS and found this situation embarrassing because the restaurant was not

small and therefore had a considerable number of guests. In subsequent meetings between the inspector and the restaurant owner the latter said she would like to make a compromise with B and the cleaning lady. She repeated the fact that B was occasionally also guest of her cousin and that the employment in the restaurant was recent and her intention was to regularize him as soon as possible. With regard to C she said she had worked in the restaurant for six months.

The restaurant owner did not present any document for B or C. Through her lawyers she declared that they had both disappeared from the day of the first inspection and that she did not know where to find them. The Inspectorate of Labour decided to open a case of infringement on the restaurant owner in order that both the workers could have the stay permit. The Inspectorate moreover informed B that, since he had been in Spain for 4 years, and working in the restaurant for over a year in conditions of severe exploitation, he could ask for regularization appealing to the *arraigo laboral* (as foreseen juridically).

### **Colombian woman (D.D.)**

D is a Colombian woman who denounced to the local tribunal of the UCRIF (*Unidad contra las redes de inmigración y falsificación documental*) of Barcelona her situation of irregular worker seriously exploited in a restaurant. She had known the administrator of the restaurant in Colombia and he asked her to transfer to Barcelona and work in his restaurant. D made her plans and decided to go to Spain and try out the proposed offer. She entered Spain from Portugal in an irregular manner and getting herself into debt. D is Colombian but obtained a Venezuelan passport and with this reached Barcelona. She called the restaurant owner and began to work for him at the restaurant. D worked hard, long hours every day. She slept little and was always tense, also because she didn't get rest enough. She worked in this restaurant – in prohibitive conditions – for some 18 months as a waitress.

The weekly work schedule was at least 46/50 hours. D didn't have documents, so she didn't have a stay permit nor (as a consequence) a labour contract. This was a verbal agreement. D was dismissed without any valid motive. She went to the Union and made a statement for severe exploitation. The tribunal ordered the restaurant to pay damages to the worker (since D was able to demonstrate she had worked for a whole year as the *arraigo laboral* foresees) but without the possibility of being re-employed because of the bad conditions suffered.

### **Paraguayan woman (E.E.)**

E is a woman of Paraguayan nationality who denounced to the Inspectorate of Labour her situation of irregular worker in a cook-shop. She said that she did not have a stay permit and had been working in that place for some 3 years. She had been promised that they would have regularized her work and stay position but it was never done. E felt she had been cheated and blackmailed. She worked long hours with the hope of being regularized. But this never happened. Speaking with a friend she thought about the possibility of using the *arraigo laboral*. Whilst she was thinking about it, the cook-shop was visited by the labour inspectors. The inspection confirmed the presence of the worker in the workplace together with the owner. But when they were questioned separately, the two versions did not accord.

For the inspectors the owner did not seem truthful. The worker offered her complete collaboration with the Inspectorate of Labour and asked that once the facts were confirmed she might proceed with the request for stay permit for collaboration with the public administration. The inspection confirmed the points in her statement and that E was carrying out this work with very long working hours and a very low daily pay. This was some Euro 25 a day for more than 12 consecutive hours. E's working relationship with this company had not lasted long, even if she had lived in Barcelona for over 3 years. However the inspectors informed E that she could benefit from the *arraigo social*, since she had been working irregularly and in severe conditions for over two years. E had kept useful evidence, not altogether official but in any case valid to demonstrate her long residence in Barcelona and the work she had been doing.

### ***Moroccan men ( F.F., G.G) and Moroccan woman (H.H.)***

F. and G. are two Moroccan men and H is a Moroccan woman. All three worked in a factory which produced beauty products and in particular perfumes. They worked also with other foreigners of Spanish nationality. The three of them were however treated differently. They worked much more than the others, with the hope of being regularized. This hope crumbled when after some years of false promises and disillusion they told their employer that they were fed up. They wanted to denounce the situation to the local authorities. The employer in response dismissed them brutally and counter-denounced them as irregulars.

The three workers were dismissed verbally (since they were without documentation) and were literally thrown out of the establishment also with blows and severe threats. Obviously, they never received any letter of dismissal. They went away and denounced everything to the Inspectorate of Labour. The inspections began in the company and the facts claimed by the three workers were proved true: very bad working conditions, minimal safety, etc.) The inspectors listened to the other workers who confirmed what the three denounced. The inspectors proposed a reconciliation to the employer, since the three did not want to give up their work. But this was not possible as the employer rejected the suggestion.

After various failed attempts at reconciliation the three workers decided to proceed with the denunciation and also obtained witnesses from other colleagues/workers. The request was, as indicated, to return to work, thus forcing the employer to re-admit the three workers on the conditions foreseen in the national contract and payment of compensation including the difference in monthly salary and payment of all the overtime worked. In addition, access to "temporary residence" for severe exploitation and therefore collaboration of "national interest".

### **7.1.5 Trade-Union action, the inspection bodies and the third sector**

The trade-union organizations and the inspection authorities are involved in the fight against "black labour" and the forms of severe exploitation. But it is not easy, for one or the other. The problem of exploitation of foreign workers is general and therefore requires trade union and inspection organization, as well as labour police, who are much stronger on an organizational plane. The trade union organizations, apart from the construction industry, are organizationally weak in agriculture, in the domestic and restaurant-hotel sectors, and they are therefore unable (as for that matter in Italy, but also in other European

countries) to produce an efficient system of self defense for workers. Even “the inspections of the regional work authorities” – recalls one interviewee (**interview 2**) – “are carried out at too long intervals, enabling dishonest companies<sup>62</sup> to get away with it, even dismissing those workers who might denounce them.”

“It happens” says another interviewee, the cultural mediator in Almeria (**interview 3**), “that some workers, in order not to lose their job, do not collaborate either with the trade union organizations or with the labour inspectors – and even less with the Police who are seldom considered sympathetically, as an institution in defense of foreign citizens. These foreigners think that they are already fortunate to work. They do not see their condition of exploitation, even when it is severe. They think, in fact, they are fortunate and that those who take them on, even without contract, are anyway benefactors”. “This attitude”, says the lawyer of the same Immigration Office in Almeria, (**interview 23**) “distances the foreign workers from the trade union and from other organizations which are intended help them instead to approach them. It is only the elite of the foreign workers who approach the union organization and register themselves, participating also in demonstrations and meetings in the category.”<sup>63</sup>

“In the more structured union organizations, however”, affirms the lawyer of the Immigration Office in Granada, (**interview 15**) “wide legal assistance is offered and also in case of need the internal social services come into operation and send the workers to local public services. These interventions, often coordinated with the local non profit structures, are important because, in addition to alleviating problems, they demonstrate the existence of a solid help network for immigration. If needed, this help network assists workers to denounce the severe conditions in which they find themselves. Such assistance activity is carried out with technically trained personnel, who are able to speak with them also in Arabic, English or French. Let us say to all those who approach the trade union that we are able to help them at various levels, especially on the legal front. The message that we always send is that which says: if you are dismissed do not sign anything and continue to work, reporting everything to colleagues and especially to the trade union lawyers.”

“The limits of union action in this sector are evident. The work carried out is of the classic kind”, says another unionist (**interview 4**), “also because it is what we know how to do and what by *mission* we must do. To make a quality difference we are trying to work in close collaboration with the Foreigners’ Offices in the towns and cities (the CITE’ network) and with the third sector non profit organizations. We are beginning to see the results because, for example, with a network of associations who help foreign women we have picked up cases of severe exploitation in domestic work, and this is encouraging because it is a sector where the union is historically absent”. “Yes, working with the trade union – we are only at the beginning” says an operator in an organization for foreign women in Barcelona (**interview 12**), we have found an important potential ally. Some cases registered with us due to ill treatment and violence against women at work and also reduction into slavery have been put together in a declaration supported by the trade union.”

“Collaborative relations between Caritas in Madrid (**interview 18**) and in Granada (**interview 5 and interview 16**) with the trade union organizations have not been consolidated” affirm some interviewees of the Catholic organization historically present in the immigra-

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62 On the social responsibility of company and the union debate of Fundacio Pau Solidaritat, *Responsabilitat social de les empreses*, Acti del convegno, Barcelona 15/16 December 2005, Barcelona 2006

63 Cf *Comisiones Obreras e Centre d’informacio por a treballadors estrangers Fem organitzacio de la immigracion en el sindicat*, Jornada de reflexio Barcelona November 2008

tion sector. “There are no specific reasons. The fact is that the distinction is still not clear in Caritas between “black workers” and severely exploited workers. The competence of the trade union is clear, but it is not easy to see how our organization and other similar ones can bring in their socio-assistential contribution. The severely exploited workers may have health problems, lodging problems, clothing problems, that is, aspects of their condition which we can help with. But we are still not able to mobilize ourselves in this area”. The same difficulties are noted by other non profit organizations in Madrid (**interviews 6 and 9**) and Granada (**interview 5**).

The official at Accem in Madrid (**interview 6**) mentions a change of climate among trade union organizations and non profit organizations. In reporting the results of a seminar on the theme (which took place in Madrid on 10 May 2010), she says “A joint working group with the union and the third sector has been set up to discuss together the semi slave phenomenon in the Madrid area and to put into action an awareness campaign called “*Por un trabajo digno, contra l’expotacion laboral*” (To work with dignity, against labour exploitation), addressed mostly to people of foreign origin.”<sup>64</sup>

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64 In the same day, as reported by the interviewee (**interview 6**), those present undertook jointly to draw up a protocol of intervention in the Madrid area with the union organizations, the third sector working with immigrants, the Consejo General del Poder Judicial (the district Authorities), the Fiscalia General (the Tax Police and the Tax Evasion authorities) and the Ministries of Labour and Immigration. It covers four principal points: a) to constitute a permanent network between the actors signing the protocol to plan strategies of joint intervention; b) to draw up an intervention plan to combat trafficking in human beings for severe labour exploitation; c) to give priority to the defence of human rights and social protection of the victims; d) to sensitize the foreign workers to use their own rights and to contact the civil rights organizations in Madrid. Respect of the trade union positions for dignified work, cf Fundacio pau i Solidaritat, *Treball digne, Comissions Obreres Catalunya*, Barcelona 2008.

# Attachments

## Attachment 1A

### List of privileged interlocutors in Italy

Interview N.	Name	Organization	City
1	Alessandra Barberi	Dip. Pari Opportunità	Roma
2	Antonella Benedectis	Cooperativa Oasi 2	Trani/Bari
3	Anselmo Botte	Cgil-Regionale	Salerno
4	Sergio Briguglio	Esperto immigrazione	Roma
5	Giuseppe Casucci	UIL-Nazionale	Roma
6	Mara De Felici	CGIL-Regionale	Foggia
7	Federica Dolente	Parsec	Roma
8	Oria Gargano	BeFree	Roma
9	Federica Gaspari	Parsec	Roma
10	Sergio Genco	Cgil-Calabria	Catanzaro
11	Melato	Uil-Agricoltura	Tortona
12	Simona Meriano	TAMPEP	Torino
13	Elena Mezzetti,	Ass.ne Donne in Movimento	Pisa
14	Giovanni Mottura	Università di Modena	Modena
15	Isabella Orfano	On the Road	Roma
16	Ornella Obert	Gruppo Abele	Torino
17	Mirta da Prà Pocchiesa	Gruppo Abele	Torino
18	Valerie Quadri	Dip.Pari Opportunità	Roma
19	Piero Soldini	Cgil-Nazionale	Roma
20	Angela Scalzo	Uil - Nazionale	Roma
21	Lorenzo Trucco	ASGI	Torino
22	Mattia Vitiello	Istituto Ricerche sulla Popolazione-Cnr	Roma
23	Alfredo Zolla	Cgil-Lazio	Roma

## Attachment 1B

### List of privileged interlocutors in Spain

Interview N.	Name	Organization	City
1	Walter Actis	Collectivo IOE	Madrid
2	Enrique Barrillero A.	Commissione Obrera-Agricoltura	Granada
3	Hamida Belacia	Centro Immigrati	Alemeria
4	Carles Beltram	Commissione Obrera-Immigrazione	Barcellona
5	Sofia Blasco Amairo	Caritas - Immigrati	Granada
6	Reyes Castillo	ACCEM-Madrid	Madrid
7	Pierangela Contini	Università di Granada	Granada
8	Luisa Consales	Commissione Obrera-Immigrati	Alemeria
9	Rosario De Gorostegui	As.ne Agoje	Madrid
10	Ramon De Alos-Moner Vila	Univerità Autonoma di Barcellona	Barcellona
11	Ricardo Domingo	Commissione Obrera - Costruzioni	Barcellona
12	Helga Framtermesky	Ass.ne Solidarietà Donne immigrate	Barcellona
13	Javier Garcia Castano	Università di Granada	Granada
14	Mohamed Hilal	Coordinatore Servizio Città	Barcellona
15	Mercedes Lopez Fonzeca	Avvocato – Centro immigrati	Granada
16	Josè Maria Garcia Trevijano	Caritas - Immigrati	Granada
17	Sonia Parrella	Univerità Autonoma di Barcellona	Barcellona
18	Francesca Petrilligeri	Caritas - Madrid	Madrid
19	Nuria Rico	Commissione Obrera	Madrid
20	Gassan Saliva	Commissione Obrera - Immigrati	Barcellona
21	Carlota Sole	Univerità Autonoma di Barcellona	Barcellona
22	Oscar Sojo	Avvocato – Centro Immigrati	Alemeria

## **Attachment 2**

### ***Federation of Protestant Churches in Italy***

#### **Form for Privileged interlocutors**

##### **“Slave Labour. Some aspects of the phenomenon in Italy and Spain”**

1. In your opinion, in the area where you work, are there situations of serious labour exploitation and semi-slave labour, meaning by these terms work carried out in conditions of subjugation on the part of adults of foreign origin? That is, when the foreign worker, due to such subjugation, cannot withdraw voluntarily and without endangering the “work relationship”? Work which is characterized also by the absence of documents (or the withdrawal of such documents by the employer): passport, absence of written contract, definition of hours of work, ambiguity or unilateral discretion (on the part of the employer) on the salary. Or for payment equal to one third of that which is normally foreseen for a similar legally employed person (be he/she Italian or foreigner)?
2. As regards this serious exploitation, can you explain, on the basis of your experience, how it began, how it developed and how long it lasted on average over time? Can you tell us, moreover, what are the methods of recruitment on the part of the exploiters? Can you describe the mechanism of demand and offer in this specific type of work? Are there specific places in your city where this type of negotiation is possible (and visible)? What are the mechanisms for perpetuating this kind of work characterized by such methods of severe exploitation? Can you give examples on the basis of your firsthand experience?
3. To what extent do you think the phenomenon exists at local level (city of interview)? What is, in your opinion, the numerical extent of the phenomenon at local level? To arrive at this estimate, what is your definition of “semi slave labour”? Which are the communities most involved in this type of basic exploitation? Do you think there are particular motives which inter-relate with these communities? Can you specify the criteria of calculation used – or state the sources from which this information comes – to define these estimates? In relation to 2/3 years ago, does this phenomenon seem to you increased, remained the same, or decreased? Can you explain the principal reasons (in relation to the reply given).
4. How widespread is severe labour exploitation, on the basis of the various Italian (and Spanish) geographic/territorial areas? For example, how widespread in the North, Centre and South of Italy? Furthermore: what are the specific aspects of the phenomenon in each of the areas mentioned? What relationship is there in the labour market at regional level – and inter-regional – and the various forms of severe exploitation? Are there correlations between type of exploitation and particular national groups? For example, Romanians in building sector and Moroccans in agriculture, or Pakistanis and Indians in animal husbandry for meat or milk?
5. Which are the sectors most involved? Can you specify how the exploitation works in agriculture (or in particular aspects of the sector, such as harvest and marketing of fruit and vegetable products)? And in industry: manufacturing and building? And in

seasonal tourism and the restaurant/hotel sector? Is there serious exploitation in the “ethnic economy”, that is that which is carried out exclusively by the foreign businessmen, for example the Chinese (in some areas of leather and textile handcrafts) or Romanians (in building)?

6. Are there organizations in your city which intervene in this particular sector of exploitation? Do you – or your organization – have contacts with the Local Prosecutor’s Office, with trade union organizations, in order to counter this phenomenon? How does the detachment from the semi-slave subjugation operate? Are there examples in your city? What are the principal crimes which are attributed to criminal businessmen?
7. How can local networks be created to combat this very consistent phenomenon? Which are, in your opinion, the institutional and non institutional actors who should be involved? Can you explain an hypothetical example to combat this serious social problem? What do you think one can do about it in the immediate future?

## Attachment 3

### *Federation of Protestant Churches in Italy*

#### Form for short life stories

##### **“Slave labour. Some aspects of the phenomenon in Italy and in Spain”**

Describe: age, sex, study qualifications, country of origin and region/city of origin/birth, family situation (wife/husband, children, other relatives)

Describe: work carried out in home country (or other activity: student, unemployed), place of work, work sector (where you worked before leaving or – if ex unemployed – where you worked before unemployment) or study programme, satisfaction/dissatisfaction with work carried out/ study carried out.

Describe: reasons for decision to leave, presence of contacts/lack of contacts in the city of arrival/migratory choice (latest arrival point, or city of interview), migratory project: what did you think of doing (work activity or study), how did you think of doing it (settlement strategy), with whom did you think of doing it (links, community social networks, etc.).

Describe: methods of recruitment (on the part of third persons) or personal choice to leave, voluntary departure (*smuggling*, voluntary departure until arrival in Italy) or involuntary (*trafficking*, involuntary until entry into Italy and beyond), or voluntary departure which became involuntary: a) during the journey (intermediate countries), b) once the frontier was reached, c) once you arrived in Italy, d) some time after you arrived at your destination (city of first settlement or last city, that is where the interview takes place).

Describe your journey and arrival in Italy and/or in the city of interview. Expenditure for the journey and expenditure for first settlement: debt (with relatives, friends or intermediate third persons). How much has this debt affected the subjugation pressure and the process of enslavement by the employer? How did you enter into contact with the semi-slave labour circuit and how did you become entrapped?

Describe: once you entered into this mechanism, how were your working relationships, what are the particular characteristics, what are the most widespread forms of subjugation, how do you feel in such conditions, what do you think about it and how do you relate to the other workers in the same conditions? What do you see and how do you feel about the situation around you? Where did you live, who did you live with?

Describe: when the counter reaction takes place – and how does it develop: that is, how do you escape from the semi-slave labour relationship. What have you done specifically (the person interviewed)? How did you come into contact with the services, with the police, with other friends who have helped you to escape? Has a statement been made to the police? How did it come about? After how long was the decision/the real possibility of escaping from such an exploitation situation?

Describe: what are you doing now precisely? Are you working, with whom, and how? Have you received a social protection permit? How? What are your immediate plans? How do you think of achieving them?

## **Attachment 4**

### ***Federation of Protestant Churches in Italy***

#### **Form for analysis of experiences of good practice**

#### **“Slave labour. Some aspects of the phenomenon in Italy and in Spain”**

##### 1. Background of the service

Brief analysis of the local territorial context: visibility and development of the phenomenon of trafficking in human beings and in particular women and children (male and female) with the aim of severe labour exploitation. The start of your intervention and the motives for this. The territorial responses in prevention, social protection and combating criminal organizations, as well as the socio-economic and cultural re-integration of the victims. And in parallel the role of your organization, its position in the range of civil services in the geographical area.

##### 2. Development and philosophy of the service in respect of the specific phenomenon of trafficking of persons: women and children

- start of the experience in the field of trafficking in human beings with the aim of labour exploitation
- the various phases which characterized the intervention in the local area (and more widely/regional and national)
- the relationship between the definition given and the policies and cultural orientation of the service, the role of other local services and social networks in the area which are mobilized to reinforce the overall interventions
- the existing regulations to which reference is made for interventions by the organization
- indicators normally taken into consideration to identify the victims of severe labour exploitation

##### 3. Organizational aspects

- membership/or not of federations, coordinating bodies, and local/national/international networks and political and cultural position in these in favour of integration
- is the organization/service linked with local/national/international public bodies? If so, specify how the convention works
- number and qualifications of operators involved (specifying those particularly related to problems of minors), organizational framework, attention to training of oper-

ators, management methods of the service/organization. Role of paid operators and role of voluntary operators. For the latter, specify: type of involvement in terms of time (weekly timetable), continuity (whether they carry out activity on a regular, continuous or occasional basis), the sector undertaking (where they are employed), training, and methods of recruitment, etc.

#### 4. User reference and activity carried out

- number of users of the protection regime and others from the start of the service (start/present) (create a synthesis table and comment on it);
- services/activities carried out, in the development phase, under the regime and at the present time. Specify: methods of entry for use of services, nationality and basic characteristics (sex, education, civil status), age group (adults or minors), principal juridical condition, attachment or not to the service on the part of the users, results obtained, satisfaction/efficacy foreseen/obtained;
- lastly, what are the three most common psycho-social profiles of the persons taken in hand and assisted in the protection programmes?

#### 5. Problems and proposals for change

- What are the principal aspects currently under discussion in the organization regarding methods of social, family and labour reintegration of the trafficked persons (describe briefly two in order of priority).
- With reference to these reflections: what are the strengths and weaknesses of the organization in confronting the phenomenon?
- In addition, what are the main difficulties – at general policy level – encountered in developing projects of social, family and labour integration of the persons exploited once they have been “recovered”?
- What are your proposals for developing operations and social policies in the sector, from the preventive aspect, from the aspect of social protection and combating criminal organizations, and also from the aspect of social and labour reintegration?