



## COVID-19 and inequalities: Protecting the human rights of migrants in a time of pandemic

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Since its outbreak, the COVID-19 crisis has sharply exacerbated the structural inequalities that characterize the socioeconomic system of European countries, including Italy, disproportionately impacting people most affected by discrimination and social exclusion. At the same time, as this paper aims to highlight, the emergency measures adopted to address the current health crisis seem to build on and foster inequalities, by exposing vulnerable people such as migrants, to the risk of being subject to further forms of discrimination and fundamental rights violations.

By focusing on the Italian context, this paper explores the human rights violations that migrants systematically experience and that the current health crisis is unveiling and, in turn, producing. In particular, we look at these dynamics by taking into account four issues/dimensions: the access to essential services and benefits, such as food vouchers; working and living conditions; conditions in reception and detention centres; and the denial of entry to reach ports of safety.

### Access to essential services and discrimination

Since the beginning of the COVID-19 crisis, Italian municipalities have provided food vouchers for socially and economically vulnerable people during this challenging time. However, many municipalities have issued such vouchers only to those who are nationals or regular residents, or holders of long-term residence permits. Many NGOs and associations have contested this requirement, noting that this provision limits access to essential social services and goods,

for certain vulnerable groups such as migrants.<sup>2</sup> The Director of the National Anti-Racial Discrimination Office (UNAR) raised this issue in a letter to the President of the National Association of Italian Municipalities (ANCI), concerning the implementation of emergency food solidarity measures. The Director of UNAR called for municipalities to give special attention to the needs of those vulnerable people who are “more difficult to reach by social support interventions”.<sup>3</sup>

In line with this reasoning, the Regional Administrative Court (TAR) of L’Aquila<sup>4</sup> suspended the residency requirement set by the municipality’s announcement. Furthermore, the Tribunal of Rome recognized the right to the food vouchers of an undocumented migrant, highlighting that the only criterion for providing this benefit is the condition of vulnerability and, therefore, the needs of a person. The food voucher – as the judge argued – “has been established in the current health emergency to guarantee the most vulnerable people the opportunity to satisfy a primary need and a fundamental right such as the right to food”.<sup>5</sup>

As this decision of the Tribunal of Rome has clearly underlined, the current crisis has exacerbated the position of vulnerability of those persons that were already in a precarious condition, in particular those persons who worked without a regular contract and, therefore, without rights and safeguards, and who have now lost their jobs. These persons, who include many migrants, are now without the necessary resources to satisfy a vital need, such as nutrition.

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<sup>2</sup> E. Santoro, *Buoni spesa: un diritto fondamentale che non ammette discriminazioni di sorta*, [www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/index.htm?fbclid=IwAR1Vdggxzw\\_wNN8d0348qvF5D-jKqiwaBuS\\_Ym45d2SYmEy0-5mcZWqeTw](http://www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/index.htm?fbclid=IwAR1Vdggxzw_wNN8d0348qvF5D-jKqiwaBuS_Ym45d2SYmEy0-5mcZWqeTw).

<sup>3</sup> See [www.unar.it/emergenza-covid-19-lunar-scrive-allanci-no-a-ordinanze-comunali-discriminatorie-sugli-aiuti-alimentari/](http://www.unar.it/emergenza-covid-19-lunar-scrive-allanci-no-a-ordinanze-comunali-discriminatorie-sugli-aiuti-alimentari/).

<sup>4</sup> See [www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=tar\\_aq&nrg=202000124&nomeFile=202000079\\_06.html&subDir=Provvedimenti](http://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=tar_aq&nrg=202000124&nomeFile=202000079_06.html&subDir=Provvedimenti).

<sup>5</sup> See [www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/tribunale-roma-buoni-spesa.pdf](http://www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/tribunale-roma-buoni-spesa.pdf).

Referring to relevant case law of the Italian Constitutional Court, as well as to international standards, the judge of the Tribunal of Rome highlighted the universalistic character of fundamental human rights (such as the right to health) and the existence of a “minimum” core of these rights that cannot be violated and belongs to all people as such, regardless of their legal-administrative status. The constitutional principle of equality does not tolerate discrimination between citizens and foreign people with respect to the enjoyment of inviolable human rights.

With regard to the access to social services and benefits, the judge of the Tribunal of Rome pointed out that, as argued by the Italian Constitutional Court (ruling 187/2010), no differentiation is acceptable between citizens and foreign nationals when the service represents a “remedy intended to allow the concrete fulfilment of primary needs inherent in the same sphere of protection of a human person”. Similarly, such benefits must be provided to Italian nationals without discrimination, which means that they must be provided irrespective of their residency in a certain Italian region.<sup>6</sup>

The decision of the Tribunal of Rome has a significant implication, which goes far beyond its judgement. The decision highlights that a number of fundamental rights are at stake regarding the impact of emergency measures to contain the pandemic.

### Migrant labour in core sectors and exploitation

In Italy, like in other European countries, core and essential labour sectors, such as agriculture and domestic work, rely on the employment of a migrant labour force, which is diversified by nationality, gender and legal-administrative status.

Italians are generally reluctant to work as farmworkers, mostly due to hard and substandard conditions characterizing the agri-food sector. Indeed, as several studies have revealed, many migrant labourers employed in the agri-food sector in Italy work under harsh and exploitive conditions. Some of these

situations amount to cases of severe exploitation, trafficking, slavery or forced labour.<sup>7</sup>

As a recent study has underlined, the recourse to a flexible, cheap and low-cost labour in the agri-food sector is driven by an interplay of factors. At the same time, this system takes advantages of the inadequacies of European and national policies on migration, asylum and labour mobility.<sup>8</sup>

Significantly, for the first time after the onset of the COVID-19 crisis, farmworkers, and in particular, migrant workers, have been “recognized” as essential workers needed to feed EU countries including Italy.

By highlighting the fact that Italian farming depends to a large extent on migrant labour, national farming associations have raised the alarm about wide scale labour shortages, especially with respect to the labour force from Eastern European countries, as a consequence of border lockdowns. According to official data, around 370,000 seasonal migrant workers will be missing this year, mainly from Romania, Bulgaria and Poland.<sup>9</sup> A high percentage of food production on Italian land relies on the labour of these migrant workers, especially of Romanians who constitute the largest group of agricultural workers in Italy.<sup>10</sup>

A consequence of the lack of an effective entry system for third-country workers meeting labour demand in agriculture, has been offset by asylum seekers, refugees and undocumented non-EU nationals. However, measures aimed at containing the current pandemic, by establishing high mobility restriction and controls, have prevented many of these migrant workers, in particular those without a residence permit or a regular contract, to move and look for job opportunities.

<sup>6</sup> E. Santoro, *Buoni spesa: un diritto fondamentale che non ammette discriminazioni di sorta*, [www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/index.htm?fbclid=IwAR1Vdgxxwo\\_wNN8d0348qvF5D-jKqiwaBuS\\_Ym45d2SYmEy0-5mcZWqeTw](http://www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/index.htm?fbclid=IwAR1Vdgxxwo_wNN8d0348qvF5D-jKqiwaBuS_Ym45d2SYmEy0-5mcZWqeTw).

<sup>7</sup> See A. Corrado, F.S. Caruso, M. Lo Cascio, M. Nori, L. Palumbo and A. Triandafyllidou, 2018, *Is Italian Agriculture a “Pull Factor” for Irregular Migration – And, If So, Why?*, Open Society European Policy Institute.

<sup>8</sup> Ibid.

<sup>9</sup> See [www.osservatorioagr.eu/approfondimenti/coronavirus-manca-nelle-campagne-la-manodopera-straniera-2/](http://www.osservatorioagr.eu/approfondimenti/coronavirus-manca-nelle-campagne-la-manodopera-straniera-2/).

<sup>10</sup> CREA, *Il contributo dei lavoratori stranieri all'agricoltura italiana*, 2019.

In addition, in some areas of Italy, such emergency measures have had the paradoxical effect of undermining the illegal gangmaster systems – such as the so-called “caporalato” – which in some regions of the South of the country, constitute the main channel of recruitment and transport of the migrant labour force. Without the “caporali” it is difficult for many migrant farmworkers to move and to go to work in the fields. As a consequence, many workers are stuck in the informal encampments and ghettos where they live, without any possibility to work. In some areas, the “caporali” have organized, within their plots of land, small informal encampments for migrant workers in order to control these workers, avoid their long distance transportation to escape police controls.<sup>11</sup>

In this context, the degrading living conditions of migrant farmworkers, especially in the South of Italy, raise even more concerns in a time of pandemic. Indeed, many migrant workers live in isolated and crowded outbuildings, in tent cities or in slums, without essential services such as access to water and sanitation. Here, the spread of the Coronavirus could have dramatic effects.

In the light of this situation, what have been the institutional reactions and proposals?

National farmers’ organizations such as “Coldiretti”, and right (and far right) wing parties have called for the recruitment of pensioners, students and unemployed nationals. The main idea behind this proposal seems to be (poor) “Italians first” but without changing the working conditions in this sector.

Trade unions and civil society organizations, on the other hand, have called for the rapid implementation of regularization mechanisms for migrants in irregular conditions. The current Italian Minister of Agriculture has immediately expressed her support for a regularization of undocumented migrants. However, the first draft of the Government decree on regularization has a number of limitations. In particular, it only applies to irregular migrants in the agri-food sector, leaving out all the other undocumented migrants, workers and non-workers.

The current draft of the Government decree on regularization, therefore, does not apply to important categories such as migrant domestic workers, which constitute a high percentage of domestic and care work in Italy.

Since the mid-1990s, Italy has addressed the inadequacies of its family-based welfare and care system by outsourcing care work to migrant workers,<sup>12</sup> especially women, coming from Eastern EU countries (particularly Romania and Poland) and non-EU countries (particularly Ukraine, the Republic of Moldova, Philippines, Peru and Ecuador). According to official data, in 2018 over 70 per cent of registered domestic workers were foreigners and 88 per cent were women.<sup>13</sup> These estimates, of course, do not take into account undeclared work, which even in this sector, like in agriculture, is highly widespread, especially with respect to migrant workers.<sup>14</sup>

Migrant domestic workers have increasingly replaced unpaid care by local women, “accepting” work under substandard and exploitative conditions.<sup>15</sup> While exploitation mainly consists of excessive working hours and low salaries, it can often involve more subtle and severe forms of abuse. Indeed, the combination of a lack of regular contracts, in-kind payments regarding food and accommodation, irregularity of workers’ residency, cohabitation and heavy dependence on the employer and their relatives, fosters forms of exploitation – even severe exploitation – and is sometimes coupled with sexual or other forms of abusive behaviour.

In the current health emergency, it has become difficult for many domestic workers, living outside the home where they work, especially those without a residence permit or a regular contract, to go to a family’s house to provide care and housework. Moreover, providing domestic and care support has become risky for both the workers and the recipients, in terms of the risk of infection from the COVID-19 virus.

<sup>11</sup> G. Foschini, Tra i braccianti di Foggia sequestrati dai caporali, la Repubblica, 27 April 2020.

<sup>12</sup> Bettio, F., A. Simonazzi, and P. Villa (2006). Change in care regimes and female migration: The “care drain” in the Mediterranean. *Journal of European Social Policy*, 1(3):271–285.

<sup>13</sup> See [www.inps.it](http://www.inps.it).

<sup>14</sup> Over 2 million domestic workers in Italy 1.2 million are undeclared workers. See [www.filcams.cgil.it/il-manifesto-cura-italia-colf-badanti-2-milioni-senza-tutele/](http://www.filcams.cgil.it/il-manifesto-cura-italia-colf-badanti-2-milioni-senza-tutele/).

<sup>15</sup> L. Palumbo (2017), *Exploiting for care: Trafficking and Abuse in domestic work in Italy*, *Journal of Immigrant & Refugee Studies*, 15(2):171–186.

As for live-in domestic workers, many of these have currently lost their jobs and accordingly their housing as a consequence of the COVID-19 crisis, and due to the high mortality of elderly persons. This seems to be particularly true in the northern Italian regions, such as Lombardy, which is the most affected by the corona virus and has the highest number of registered domestic workers.<sup>16</sup>

On the basis of these considerations, and given the importance of care work, especially in a time of a health emergency, it seems to be a paradox that the Italian Government decree presented in March 2020, named “Cura Italia” (i.e. “Care for Italy”) and concerning the financial support package for crisis-affected workers, does not cover domestic workers. Furthermore, the current migrant regularization proposal does not apply to migrant domestic workers in an irregular situation.

While being a “fundamental aspect of human life”<sup>17</sup> necessary for the well-being and reproduction of a society itself, domestic and care work is undervalued and not seen not as a priority.

Regularization of undocumented migrants in this field, like in other sectors (including agriculture), is urgent and necessary, to ensure migrants’ access, without discrimination, to health-care services.

On the other hand, regularization is not the solution to fighting exploitation. Exploitation, including severe exploitation, occurs even in the cases of EU nationals, asylum seekers or migrants with a residence permit and, thus, irrespective of the legal-administrative status of a person.

What is also necessary is the implementation of other policies aimed to improve the wages, rights and living conditions of migrant workers employed in those sectors, such as agriculture and domestic work.

### Inadequate health care and unsanitary conditions in reception and detention centres

As in the case of migrant domestic workers, and despite the acknowledgment of the key role played by migrant workers in the provision of essential goods such as food, no urgent decrees adopted by the Italian Government to contain the COVID-19 pandemic have explicitly dealt with the issues and needs of the migrant population. In particular, the requirement to stay at home as the essential measure to prevent contagion, does not deal with all the situations in which people are in homelessness, or live in overcrowded reception centres for asylum seekers, or in equally overcrowded informal settlements, and in migration detention centres.

Many migrants in reception centres live in crowded conditions, sometimes without basic hygiene, which may threaten their safety. In this context, it is almost impossible to apply health and physical distancing measures and to protect both guests and social workers from the risk of being infected by the virus. For instance, in one of the main centres in Bologna, there are more than 200 migrants who sleep in dormitories with five or even ten people, with beds close together. Many of these rooms do not even have windows. Some guests sleep in containers, which are also overcrowded and without windows. The canteen is shared.<sup>18</sup>

Moreover, as a consequence of the COVID-19 crisis, there has been a reduction in the number of social workers and cultural mediators in the reception centres. Many of these staff, working in difficult conditions, have taken holidays or parental leave, others became sick.<sup>19</sup>

At the same time, being isolated in these centres and afraid of being expelled from the reception system, migrants are currently prevented from reporting violations and looking for legal assistance and support.

On 13 March, when the health emergency had just exploded, some associations from Bologna denounced the degrading and unsafe conditions of many reception centres, asking relevant authorities

<sup>16</sup> See <https://discoversociety.org/2020/04/16/we-are-all-affected-but-not-equally-migrant-domestic-workers-in-pandemic-times/>; See also [www.internazionale.it/notizie/2020/03/24/colf-badanti-coronavirus](http://www.internazionale.it/notizie/2020/03/24/colf-badanti-coronavirus); see also [www.ingegnere.it/articoli/verso-una-democrazia-della-cura](http://www.ingegnere.it/articoli/verso-una-democrazia-della-cura).

<sup>17</sup> Tronto, J. C. (1993). *Moral boundaries, Political arguments for an ethic of care*. London, UK: Routledge.

<sup>18</sup> See [www.asgi.it/asilo-e-protezione-internazionale/coronavirus-asilo-bologna/](http://www.asgi.it/asilo-e-protezione-internazionale/coronavirus-asilo-bologna/).

<sup>19</sup> See [www.zic.it/gli-invisibili-dei-centri-di-accoglienza-per-migranti-ai-tempi-del-coronavirus/](http://www.zic.it/gli-invisibili-dei-centri-di-accoglienza-per-migranti-ai-tempi-del-coronavirus/).

to identify alternative adequate accommodation in order to ensure the health of both migrants and social workers in these centres.<sup>20</sup>

Similar concerns have been raised about the inadequate health care and unsanitary conditions in administrative detention centres, where necessary physical distancing and health measures are impossible to apply. In March 2020, the Tribunal of Rome and the Tribunal of Trieste did not authorize the extension of the detention of three asylum seekers at detention centres, making also reference to the measures adopted at the national level to address the ongoing health emergency. As the judges of the Tribunal of Rome have pointed out, “deprivation of personal freedom in confined spaces would make it difficult to guarantee the measures envisaged to guarantee the health of individuals”.<sup>21</sup>

On 7 April, a message from the Head of the National Department for Civil Liberties and Immigration drew the attention of local prefectures, to the need to adopt emergency health measures in the reception centres as well as in detention centres. However, at the time of writing, nothing has effectively been done to guarantee the implementation of these provisions.

In this scenario, migrants’ protests are on the rise. In the administrative detention centres in Gradisca d’Isonzo, Friuli Venezia Giulia and in Ponte Galeria, in Rome, migrants fearing for their health asked to be released.<sup>22</sup> Migrants detained in such facilities did not commit any crime and do not constitute a danger for security, but are simply waiting for deportation. The Government should thus explore urgently alternatives to detention, such as community-based solutions for accommodation and care.<sup>23</sup> If such alternatives cannot be found, in the context of the current health emergency, migrants in administrative detention should be released, based on a comparison of the rights at stake.

<sup>20</sup> See [www.asgi.it/asilo-e-protezione-internazionale/coronavirus-asilo-bologna/](http://www.asgi.it/asilo-e-protezione-internazionale/coronavirus-asilo-bologna/).

<sup>21</sup> See [www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/tribunale-roma-buoni-spesa.pdf](http://www.altrodiritto.unifi.it/adirmigranti/buoni-spesa-diritto-fondamentale/tribunale-roma-buoni-spesa.pdf).

<sup>22</sup> G. Merli, Gradisca, il virus entra nel Cpr. Paura tra i migranti: “liberateci”, Il Manifesto, 27 April 2020.

<sup>23</sup> Felipe Gonzales Morales, UN Special Rapporteur on the human rights of migrants, US: Migrants “held for processing” should be released from COVID-19 high-risk detention centres, OHCHR Press Release of 27 April 2020.

Lastly, it is worth mentioning that the Italian Government has recently established that all expiring residence permits are extended until 15 June of this year. However, there is no indication of what will happen after that date. As it has been highlighted, most of these cases concern non-renewable permits and currently it is difficult to convert these into work permits.<sup>24</sup> Moreover, according to the “Security Decrees” passed by the former Minister of Interior Matteo Salvini and never abrogated, after 30 June 2020 all the permits on grounds of humanitarian protection will expire and will not be replaced by other types of permits. As a consequence of these concurrent factors, there is a high risk of a significant growth in the number of undocumented migrants.

### Closing the ports on grounds of public health

After encouraging steps taken by the Minister of Interior Luciana Lamorgese, fostering hopes on the necessary changes in the approach to the policy of “closed harbours” adopted by the former Minister Matteo Salvini, the Ministerial Decree n. 150 of 7 April 2020 stated that Italian ports will remain closed for search and rescue operations carried out by foreign ships outside the Italian Search And Rescue (SAR) zone during the COVID-19 emergency. The justification for such a restrictive measure is the protection and efficiency of national health structures and facilities dedicated to the containment of the pandemic and COVID-19 patients.

Such a justification is inconsistent both as a matter of fact and as a matter of principle. As a matter of fact, some hundreds of migrants arriving in Italy by sea would not endanger the national health-care system. More importantly, in case of danger at sea, the right to life must prevail. The decree also mentions as a justification that in times of pandemics, migrants should be protected from contagion and the potential risk migrants would be exposed to in Italian ports during the pandemic. Ironically, however, migrants’ right to health is invoked to deny disembarkation, and therefore to deny the protection of their right to life and health, which are actually at stake in cases of protracted navigation in overcrowded ships, and in bad hygienic conditions.<sup>25</sup>

<sup>24</sup> See [www.zic.it/gli-invisibili-dei-centri-di-accoglienza-per-migranti-ai-tempi-del-coronavirus/](http://www.zic.it/gli-invisibili-dei-centri-di-accoglienza-per-migranti-ai-tempi-del-coronavirus/).

<sup>25</sup> A. Algostino, Lo stato di emergenza sanitaria e la chiusura dei

Although this short article does not allow for a thorough analysis, it should be recalled that the denial of a port of safety is in violation of fundamental rights such as the right to life, the prohibition of inhuman and degrading treatment, the right to seek asylum, and the principle of non-refoulement. In addition, fundamental rights cannot be denied on the basis of a ship's nationality, or according to the place where a rescue took place. Regarding migrants' right to health, there are means to protect their health after disembarkation, including COVID-19 testing and quarantine.

The potential multiple violations of international, maritime and human rights law are therefore clearly evident. In fact the Decree n. 150/2020 seems to go back to the approach according to which migrants arriving by sea constitute a threat for the national community and must be stopped at any cost.

### Concluding remarks

The COVID-19 emergency must be addressed keeping in mind that measures adopted should not exacerbate existing inequalities. If the pandemic is not addressed with measures targeting the most vulnerable and socially excluded, the consequences will be devastating for the migrant population. Structural inequalities, as the experience of other countries shows, will significantly limit the effectiveness of measures taken to contain the spread of the virus.

The best way to combat the COVID-19 pandemic is to recognize and protect the rights to health of every single person, regardless of whether she/he is a national, a regular migrant, an EU citizen or an undocumented migrant. Full access to health care must be ensured to every migrant, as to every national. However, migrants' access to essential

services is today hampered by the irregular residence status of many, who do not dare to ask for help for fear of detention and deportation.

This is the reason why regularization of undocumented migrants is a necessary and urgent measure. Regularization must cover all the migrant population, regardless of whether a migrant is useful in terms of their productive role in the labour market or not. Women joining their husbands and not working, women fleeing domestic violence, domestic workers losing their jobs because of the death or impoverished circumstances of their employer, for example, should not be ignored or left behind. It is worth highlighting that such problematic situations largely concern women.

However, as we have stressed, regularization is not the only response, and above all it is not enough to prevent and combat the exploitation of migrants. The COVID-19 emergency, and all the issues that the pandemic has made evident, and simultaneously has exacerbated, should induce profound changes regarding the same approach to migration and social inclusion policies, by taking human rights seriously.

First, safe and legal entry channels should be established, to offer real opportunities for regular migration. Second, the link between the residence permit and the labour contract should be removed: this is in fact a driving factor of exploitation and abuse, as any legitimate request of workers to their employers, such as the request of regular payment of salaries, could lead to the loss of their residence permit and their fall into irregularity and even worse exploitation. The COVID-19 emergency could offer the opportunity to change the perception of migrants as a "security threat".

At the same time, since vulnerabilities are not only created by irregular status but stem from poverty, illiteracy, social exclusion and discrimination, which are widespread also among EU citizens, prevention of exploitation requires, first and foremost, to ensure respect for labour rights.

Today it is clear that respecting the rights and dignity of migrants, irrespective of their position in the economic system and in the social hierarchy, is essential to promote the principle of equality and respect the rights of everyone. ■

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porti: sommersi e salvati, in *Questione Giustizia, Diritti senza confini*, 21 April 2020.