

A Summary: Italian Law Combating Severe Labour Exploitation in Agriculture

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The last two decades has witnessed rich reflections on the debate about labour exploitation in the ‘AgroMafie’ and the ‘Caporalato’¹. Activists, academics, policy makers, NGOs and other interested human rights bodies, perceived crisis of labour law as a form of protection in the Italian agricultural fields and since began to question its future. At the root of the debate was the role played by the ‘caporale’ which is technically the pivot of the ‘AgroMafie’.

The new law, *article 603 bis* of the Italian Criminal Code (enacted on 4th November 2016) is the law that established legal tools in combating severe labour exploitation in agriculture, of which most victims² are migrants. The adoption of the legislation has represented a milestone in the fight against severe labour exploitation of workers in the agricultural fields. The new legislation most specifically widens the ‘caporalato’ sanctions (*Law Decree No. 138/2011*) introduced for employers in 2011 in the Penal Code. So, in a way, the new law shows a recent evolution of the Italian Criminal Law countering ‘*caporalato*’.

This new law on illicit intermediation and labour exploitation (the so-called ‘caporalato’ provision *art. 603 bis*,- has broadens the legal dimension/attention on this widespread labour exploitation in Italian agriculture³: a phenomenon that is masterminded mostly by the ‘caporalato’ who illegally recruit people mostly migrants to work in the agricultural fields usually below legal standards of

¹‘Caporalato’ is the Italian word for illicit intermediation and labour exploitation (usually an illegal activity performed by the ‘caporale’ the gang master) most common in the agricultural sectors in South Italy but also throughout the country. It is a criminal act punishable for a minimum period of 1 to 6 years of imprisonment and a fine of €500 to 1.000 for each recruited or employed worker (*603 bis*).

This new legislation aims at the gang masters’ sanctions introduced for employers in 2011 in the Penal Code to address the ‘Caporalato’, as explained before, is a form of agricultural labour exploitation characterised by lack of protection or the denial of fundamental human rights or aggravating/below standard living conditions.

Henceforward; to carry out organised intermediation activities, to recruit workers or labour force, or organising any work involving exploitation of workers by means that involve violence, threats, or intimidation, and consequently taking advantage or control of the state of need(s) or vulnerability of workers are punishable conducts under both provisions (*Law Decree No. 138/2011* and *art. 603 bis* of the Italian Criminal Code, 2016 respectively.) The entire illegal enterprise is referred to as AgroMafie which constitutes the works of the different gang masters (‘caporale’).

²The term *victim* generally refers to all **workers in need**, whether regular and irregular migrants, or EU citizens or even Italians. Here, the *actor* of this particular crime could be the labour broker (i.e the ‘caporale’ or the gang master) or the employer who take advantage of the workers’ state of need(s) or vulnerability and exploit them. Many victims of this phenomenon are migrants who could not enter into the regular labour market in Italy either because of lack of information on the labour market or regular documents and required professional skills. The regular job market information are generally lacking or difficult to access and most migrants end up in the so-called ‘AgroMafia’.

³Law Decree No. 138/2011 of the Italian Penal Code was actually the first time the crime of illicit intermediation and work exploitation was introduced and criminal prosecutions established. *Art. 603 bis c.p.*, is an improvement (since the phenomenon was given legal attention in 2011) and provides for ‘criminal’ liability of the employer's company.

labour conditions. The atmosphere of this phenomenon is characterised by zero hours, low pays, and slavery like conditions and consequently a lack of protection and a denial of fundamental human rights.

Indicators of exploitation (art. 603 bis par.3)

This law (*art. 603 bis*) established the indicators of exploitation as: (a) the systematic payment of salaries/wages that are undesirably below the level established by national or local collective agreements or anyway lower than the amount and quality of worked performed⁴; (b) continuous violation of regulations on working time⁵, compulsory leave, weekly-off and holidays; (c) violations of safety laws and the general hygiene⁶ in the workplace that exposes workers to risks (health and safety) consequently; (d) controlling workers to extremely degrading working conditions, surveillance methods or housing conditions⁷.

While this crime could be performed by only the ‘caporale’ in the Law Decree No. 138/2011 of the Italian penal code, clearly, *art. 603 bis*, aims at both the ‘caporale’ and the exploiting employer, whether or not there was any intermediary activity.

It is also important to emphasize that in the previous *Law Decree No. 138/2011*, the punitive measures for the ‘caporale’ can only come and only if in case of an organised intermediation activity. In the new provision, however, the role -intermediation- of the ‘caporale’ is not said to be necessarily regular stable and organised. It can be irregular, highly unstable and unorganised⁸.

Punishable conducts (art. 603 bis)

The punishable conducts are: (a) recruiting workers on behalf of third parties under exploitative conditions, usually taking advantage of their state of need(s); (b) the employment of workers under

⁴In Italian Constitution, Sect. 36 provides for the right of liveable wage of each worker and the family. Although the Italian law provides no statutory minimum wage, workers are generally protected by a minimum wage agreement that is agreed upon collective bargaining and a judge could fix a minimum wage upon request. However, in that instance, it would be binding on the parties to an individual contract of employment.

⁵ The Act no.692 of March 1923, provided that the hours of work (by employees) must not exceed 8 hours a day or 48 hours a week. Later with the introduction of Act no. 196/1997, Sect. 13, the number of hours is changed to 40 a week. Though collective agreements determine the normal weekly working hours/time and also regulates occasional overtime arising from exceptional reasons which cannot be met by hiring an additional worker. Act 623, of 1923, provides that overtime must be paid with an increase of not less than 10 per cent (and not more than 30 per cent) over the regular rate. See also Act no.25 of 1999 (Special pay increases), Act 63/2000 (*part-time work*), and Sect. 10 of Act 300/1970 (*Statute of the Workers' Rights*)

⁶ According to [Observatory Placido Rizzotto](#), 60% of around 400,000 irregular workers in 80 agricultural districts across Italy do not have access to clean water nor sanitation services.

⁷ This list is merely illustrative: usually, a single violation is not considered relevant, the violence inferred to regular practice.

⁸ To carry out organised intermediation activities, to recruit workers or labour force, or organising any work involving exploitation of workers by means that involve violence, threats, or intimidation, and consequently taking advantage or control of the state of need(s) or vulnerability of workers are punishable conducts under both provisions (Law Decree No. 138/2011 and art. 603 bis of the Italian Criminal Code, 2016 respectively.)

exploitative conditions, usually taking advantage of their state of vulnerability (need)⁹.

Sanctions/Punitive measure(s) (art. 603 bis)

The punitive measures are proportionate for both cases (1 and 2 below)¹⁰;

- (1) 1 to 6 years of imprisonment and a fine of €500 to 1.000 for each recruited or employed worker;
- (2) 5 to 8 years imprisonment and a fine of €1,000 to 2,000 fine for each recruited worker if the crime, that is, such forms of employment or recruitment are committed by means of violence, intimidation or threats¹¹.

Under *paragraph 4*, these *particular degrading or aggravating* conditions are that;

- (a) the number of recruited workers is/are more than three;
- (b) one or more recruited persons are minors (of non-working age);
- (c) the offence has been committed exposing exploited workers to seriously dangerous situations, given the characteristics of the tasks to be performed and working conditions¹².

Relevant Proceedings

Furthermore, Article 603 *ter* CC explicitly also gives other measures in especially severe accessory punishments and requires: (1) disqualification from managing corporations and enterprises; (2) disqualification from entering into contracts with the public administration for works, ([cittimo fiduciario] fiduciary task-work contracts, contracts for the supply of works, goods or services, and related subcontracts); (3) exclusion for a period of not less than two years – and up to five years (from when the fact is committed by a repeat offender under Article 99, para. 2, n. 1) and n. 3) – and

⁹This new legislation aims at the gang masters sanctions introduced for employers in 2011 in the Penal Code to address the ‘Caporalato’, a form of agricultural labour exploitation characterised by lack of protection or the denial of fundamental human rights or aggravating/below standard living conditions. Henceforward: to carry out organised intermediation activities, to recruit workers or labour force, or organising any work involving exploitation of workers by means that involve violence, threats, or intimidation, and consequently taking advantage or control of the state of need(s) or vulnerability of workers are punishable conducts under both provisions (Law Decree No. 138/2011 and art. 603 *bis* of the Italian Criminal Code, 2016 respectively.)

¹⁰ The law is not discriminatory of whether or not the victim (worker, employer or intermediary (‘caporale’) is a third country national, EU citizen or Italian.

¹¹Art. 22, par. 12 *ter*, Consolidated Immigration Act applies additional sanction in the payment of the cost of the deportation of the illegally employed. (See also Art. 24, para. 6 Consolidated Immigration Act).

¹²The [Observatory Placido Rizzotto](#), provides that statistics of around 400,000 irregular workers around 80 agricultural districts across Italy are in conditions of exploitation. It states that these victims (workers employed by the ‘caporale’ work between 8 to 12 hours a day characterised with little or no rest day, nor breaks and with payments seriously below legal wages -usually up to 50 per cent underpayment or illegal deduction.

also from loans, grants, subsidies, and benefits from the State or other public bodies and or from the European Union relevant to the field of activity where the exploitation took place¹³.

Other relevant criminal provisions

In explaining art. 603, it is relevant, if not unavoidable, at least in juridical terms, to reference other corresponding or accompanying legislations for example: Art. 600, of the Italian Criminal Code on “*Reducing or holding a person in a condition of slavery or servitude*” which is explained as: (a) to exercise over a person powers corresponding to those of the right of ownership; (b) to reduce or hold a person in a state of continuative subjection (realised through violence¹⁴, threat, deception, abuse of authority or profit from a situation of vulnerability, physical or mental inferiority or a situation of necessity, or by the promise or payment of sums of money or other advantages from who has authority over the person), forcing the victim to perform work (or sexual services or to beg or to perform any other illegal activity that involves) exploitation (or to undergo organ removal.)

Clearly, the legal interpretation of *art. 603* is distinct from that of *art. 600* and so do the punitive measures¹⁵, however, the two (articles) are very close on the one side contextual (a) exercising of illegitimate power (in this case by either the ‘caporale’ or the employer), and on the one other side, substance, which means (b) reducing a person in a state of subjection or exploitation by using advantage of their state of needs or vulnerability.

CGIL’s field study of 80 agricultural districts¹⁶ confirmed between 400,000 to 430,000 irregular workers in agriculture and majority being potential victims of ‘caporalato’. The study further affirm up to 100,000 workers under exploitative conditions and serious vulnerability in the agricultural sector and are potential victims of the ‘AgroMafie’ and ‘Caporolato’.

¹³ Corporate ‘criminal’ liability is provided by Art. 25 *quinquies*, Legislative Decree No. 231/2001. Sanction: monetary penalty from 400 to 1000 quotas.

¹⁴ Violence or threat constitute an aggravating circumstance under both art. 600 and 603.

¹⁵ Punishment ranges from 8 to 20 years of imprisonment with a fine from 400 to 1000 quotas. Corporate ‘criminal’ liability, Art. 25 *quinquies*, Legislative Decree No. 231/2001

¹⁶ These districts are scattered throughout Italy, caricatured with makeshift camps, usually known as ghettos that serve as home for thousands of migrant workforce, usually exposed to serious health and safety risks: lack of running water, basic sanitation and electricity.

Different forms of ‘caporalato’

According to CGIL’s study, almost everything revolves around the work done by the different ‘caporale’ as far as the complex chain of connection in the AgroMafie is concerned. Illustratively the ‘caporalato’ basically functions in this manner;

- A) ‘Caporale’ (gang master) worker: this gang master is the one who organise the team and is responsible for transportation and sometimes works with the team. It is the so-called black boss (‘Caponero’).
- B) ‘Caporale’ (gang master) Taxi Driver: is responsible for transportation as his only mean for income.
- C) ‘Caporale’ (gang master) Seller: this gang master organises the team and imposes the sale of basic necessities, and in certain cases, also provides accommodation.
- D) ‘Caporale’ (gang master) tormentor: this gang master uses systematic violence, subtraction of documents and imposes unworthy housing conditions exposing to healthy risks and safety.
- E) ‘Caporale’ (gang master) CEO: this gang master assume the role of the general manager. He/ She manages the entire collection campaign and maximises profit for the entrepreneur through illegal practices.
- F) ‘Caporale’ (gang master) Mafia: perhaps the most scary criminal of all. This gang master conspires or collude with also organised crime, human trafficking, fraud for false documents and INPS, extortion (or relationship with the entrepreneur of an extortion nature) , recycling etc. ‘Caporalato’ is just one of his/her activities.
- G) The Collective ‘Caporalato’ (gang master): It uses legal forms to disguise illicit manpower intermediation

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