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RESEARCH ARTICLE

Amnesty for whom? How the invisibles became essentials.

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ABSTRACT: The article analyses the new law decree on regularisation introduced in Italy during the Covid-19 crisis, which subsumes human rights protections for *sans papiers* to the economic imperatives of labour market needs. The new law decree in fact seems to be in line with a more utilitarian logic, oriented towards the preservation of productive sectors at risk. Apparently, those who up until now have been invisible, neglected, and forgotten have suddenly become essential, at least in the numbers necessary to provide for the needs of the labour market. The work presented here examines the Italian context before, during and after the application of the amnesty, which saw the regularization of a limited number of migrants working in the agricultural sector. We intend to argue here that the regularization put into practice by the Italian government must be critically challenged, both in the premises and in the effects produced.

KEYWORDS: Italy, agricultural sector, migrant workers' rights, Covid-19, amnesty

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1. Introduction

In Italy recently the public debate has focused on the necessity of state interventions to manage the shortage of migrant workers in the agricultural, domestic, and care work sectors. Workers who this year, due to the closing of the borders in light of the pandemic, cannot lend their labour force to these industries. In order to avoid the labour shortage, the Italian Government has decided to proceed with the regularisation of a certain number of *sans papiers*, undocumented migrant workers, already present in Italy. This article analyses the new law decree on regularisation introduced in Italy during the Covid-19 crisis, which subsumes human rights protections for *sans papiers* to the economic imperatives of labour market needs. The new law decree in fact seems to be in line with a more utilitarian logic, oriented towards the preservation of productive sectors at risk.

The article here presented is structured as follows. Firstly, it takes into account the legal framework which provides a general understanding of migrant workers' rights, both at the international, the European and the national level; the aim here is to underline the presence of a comprehensive legislative context that should safeguard the rights of migrant workers, regardless of their legal status. Secondly, it reports and analyses the conditions of migrant workers in the agricultural sector before the Covid-19 crisis; the aim is to demonstrate how different forms of exploitations were already well known by the Italian Government even before the pandemic. Particular attention is given to the right to health, how it is articulated in the Italian legislation and how it is applied to migrants. Thirdly, it takes into consideration the period before the summer of 2020: the measures initially planned to deal with the shortage of labour in Italy, although promoted with the aim of safeguarding the health of those who would not have had access to healthcare during the pandemic, have instead, from the outset, proved to be oriented towards safeguarding the agricultural sector in economic terms. Fourthly, it analyses the amnesty contained in Article No. 103, which provides for the regularisation of those on Italian territory in a situation of irregularity. Lastly, it takes into consideration the requests and complaints of those who, personally involved, found the amnesty to be completely ineffective.

2. Legal framework: migrant workers' rights

There are numerous instruments to safeguard the rights of migrant workers in agriculture, both at the international level - by international organisations such as the United Nations (UN), and the International Labour Organization (ILO) - and at the level of the Council of Europe (CE). As far as Italy is concerned, however, the regulations still in force do not always reflect international and European agreements. The analysis here proposed brings up the most relevant regulations, intending to highlight how the migrant workers' rights have been historically the subject of several internationally recognised regulations. In order to better understand the next paragraphs, it is necessary to make a terminological clarification. With the term regular migrant, we mean here the subjectivities that have obtained a work permit (temporary or permanent); a regular migrant can also be defined as a seasonal worker if the permit they possess is temporary. The term irregular migrant refers instead to those who occupy an irregular position in the host country, and who technically violate the rules on entry and stay in the national territories; in the analysis presented here, the term *sans papier*, literally without documents, is preferred to the term irregular¹.

2.1 International level: ILO and UN conventions

The rights of migrant workers have historically been widely recognised internationally. Nevertheless, the recognition of certain rights does not automatically make them accessible and respected, because there is no unified and effective decision-making centre competent to govern migration at the supranational level. Since their foundation, the UN and the ILO have intervened on this issue, and due to the long-standing lack of agreement between States, they have created a fragmented discipline. In this regard, two are the conventions that have in first place affirmed the rights of migrant workers, both promulgated by the ILO. The first one, known as the Convention No. 97, is the *Migration for Employment Convention (Revised)*, and has been adopted

¹ The choice here specified of the use of the term *sans papiers* rather than *irregular* political. With the term *irregular*, the focus is on the subjectivity taken into consideration, and the attribute becomes an integral part of the person taken into account. We intend instead to argue here that the condition of irregularity should not be understood as a dependent - and therefore caused - by the subjects examined; on the contrary, irregularity is the product of inefficient regulations that reproduce exclusionary and stigmatising power dynamics, towards those who are considered irregular.

in 1949. The Convention contains a coherent set of rules on the governance of the migration phenomenon and the equal treatment of migrant workers. It not only requires that they be provided with free care services and information obligations but also suggests for a broad application of the principle of equal treatment for foreigners who are in a regular position in the host country, covering areas other than employment conditions. The second one, known as the Convention No. 143, is the *Migrant Workers (Supplementary Provisions) Convention* and has been adopted in 1945. Article No. 1 of Convention No. 143 establishes the obligation of each Contracting State to respect the fundamental human rights of all migrant workers, whether the legal or irregular status. Moreover, it introduces the principle of the *Equality of Opportunity and Treatment* of migrant workers, where is specified that the mere loss of their employment cannot determine the irregularity of their position and they are entitled to enjoy equality of treatment with nationals. Both Conventions have been ratified by Italy². In addition to the above-mentioned regulations, it should be remembered the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW), adopted in 1990 by the United Nations General Assembly and entered into force in 2003. The ICRMW was promulgated to consolidate the existing legislation promoted by both ILO's conventions: on one hand, it recognises to all migrants the human rights granted to foreigners by general international law and international instruments for the protection and safeguard of human rights. On the other hand, the ICRMW is in this sense a sign of the central role of the UN in supranational regulatory intervention in the field of migrant workers (Rosafalco 2018). Neither Italy nor any other Member State of the European Union (EU) has yet ratified the ICRMW.

2.2 European level: Council of Europe directives

Concerning the European level, the EU has given special attention to the phenomenon of irregular mobility within the state members. For the work presented here, are analysed three main regulations. Firstly, the Directive 2009/52/CE, promulgated in 2009, which introduces minimum rules on sanctions and measures against employers who employ third-country nationals whose residence is irregular. The norm here reported provides a complex system in which there must be a plurality of sanctions - for example, of a financial, criminal and restrictive nature - against employers who employ illegal workers, not from EU (Chiaromonte 2015). Secondly, the Directive 2011/98/CE, promulgated in 2011, which concerns the so-called single residence and work permit. The directive here analysed defined a single procedural model: the migrant worker is therefore given the permit that legitimises both the presence and the working activity within the single state member of the EU. Thirdly, the Directive 2014/36/CE, promulgated in 2014, which is particularly interesting because it shows ambivalence in the treatment of labour migrants by the EU: on one hand, seasonal immigration is recognised as useful and is stressed from the outset the centrality of the guarantee of the dignity of foreigners as persons and as workers; on the other hand, however, the directive it is extremely rigorous for the possibility of stabilising those who come to Europe, as they are theoretically only supposed to remain there temporarily (Chiaromonte, Ferrara and Malzani 2019).

² Italy ratified the Convention No. 97 on 2 August 1952 with the Law no. 1305/1952, and the Convention No. 143 on June 1985 with the Law n. 158/1981.

2.3 National level: migrant workers' rights in Italy

As regards the national level, in Italy, the directives and conventions mentioned above have not always been ratified or consistently applied. In this regard, in 2003 the Council of Europe approved the Recommendation No. 1618, *Migrants in irregular employment in the agricultural sector of southern European countries*: the document addresses, among other countries, also to Italy. The report describes the general picture of the exponential growth of irregular employment in agriculture of seasonal migrant workers, regular and non-regular, and their extremely low working and living conditions in southern European countries. In particular, the report focuses on how the undeclared employment of migrants deprives the workers of access to social security and exposes them to exploitation and the arbitrariness of employers. The analysis of the situation in Italy underlines how the black economy and irregular work, which have been a feature of the Italian system, facilitate the illegal employment of migrant workers, often irregular, in agriculture (De Pasquale 2014). The conditions of exploitation highlighted in the report are to be found in the insufficient legislation in Italy, which does not effectively protect migrant workers. Despite the annotations made by the Council of Europe, Italy, therefore has never diligently transposed the European directives mentioned above³ (Chiaromonte 2013). The national norms in force refer to the *Testo Unico sull'Immigrazione* (TUI), also known as Legislative Decree No. 286/1998. This legislation provides for two different approaches: the first establishes general limits, regulating the *macro*- phenomenon of the influx of foreigners. The second, on the other hand, provides for procedures for the entry into Italy of the individual migrant and is made up of limits that pertain to a so-called *micro* dimension. This regulatory reference is to be considered inefficient, as it is based on a further policy document, to be renewed every three years, but which has not been longer amended since 2004 (Rosafalco 2018).

Nonetheless, there is another discretionary instrument, used by the Italian Government to specifically regulate the entry of foreign workers. To plan the composition of the migratory flows towards Italy, the TUI provides for the annual issuing of a further decree of the Council Presidency, usually defined as the flows decree. Apart from being an instrument susceptible to the decision of the Council of Ministers, the peculiarity of this regulation lies in its curious application. It should be an instrument used *ex-ante*, dependent on labour market needs and thus necessary to regulate entry flows according to the need, in numerical terms, of workers. In reality, it has become a tool used *ex-post*, adopted once a year by the Italian Government (Chiaromonte 2015). The flows decree is thus used when at a certain point it is necessary to regularise a certain number of migrants, who are already on the territory but in irregular terms. These regularisations, also called amnesties, are a striking example of how worker migrants in Italy have been far from being considered as beneficiaries of rights. The question is not only about deciding who is entitled to a residence permit for work purposes within EU, but also about recognising in which work sectors migrants are needed - therefore welcomed - and, above all, which rights these workers will benefit from (Dell'Olio 2002; Anderson 2010). Before the Covid-19, the measure of regularisation of migrants staying irregularly in Italy had been the subject of the agenda voted on December 23, 2019, by the Chamber of Deputies, when the budget law has been approved. The issue had then raised again by the Minister of the Interior, Luciana Lamorgese, on January 15, 2020, only to be shelved again.

In conclusion, it can be argued that the regulations in force, at international, European and national level, if on the one hand are well codified and present in the normative systems, on the other hand they are rarely

³ As directives, the legislative instruments mentioned above contain only common objectives: it is then up to the individual Member State to introduce these rules into its legislative system, in accordance with the European reference framework.

respected and applied. As far as the specific Italian case is concerned, in the next paragraphs are taken into consideration the material conditions of migrants working in the agricultural sector.

3. Before the pandemic: what the normality was

Before analysing the Italian government's reactions, and specifically the publication of the amnesty considered here, it is necessary to refer to migrants' working conditions in the agricultural sector well before the Covid-19 crisis highlighted their precariousness. Precisely because the pandemic we are facing involves everyone's right to health, regardless of their legal status and belonging to a specific state, we consider it essential to refer also to the right to health, recognized by the Italian state to all those who are on the territory. The analysis here reported and divided as follows: firstly, are taken into account the conditions of exploitation of those who work in the agricultural sector in Italy; secondly, are considered the channels of access to the Italian national health system by migrants - regardless of their legal status and employment – before the Covid-19 pandemic.

3.1 Exploitation in the agricultural sector before Covid-19

In January 2020, Hilal Elver, a United Nations Special Rapporteur on the right to food, made a public statement - to be followed by a special report, not yet published - regarding the Italian food system. The document clearly shows how the precariousness of migrants in the agricultural sector is a tangible reality - and the exploitation was the normality long before the Covid-19 crisis. We consider Elver's report particularly important, for the purposes of the analysis presented here: it summarises, frames and outlines the working conditions of migrants (regardless of their legal status) in Italy at a precise historical moment, just before the pandemic. The research was in fact carried out during January 2020, and for this reason it is exceptionally updated and well representative of the facts. As far as the condition of exploitation is concerned, Elver affirms that *“regardless of sex, age and nationality status (...) agriculture workers are exploited and underpaid”*. Regarding the wage paid to those employed in the agricultural sector, Elver says: *“It was widely reported (...) that the number of maximum hours of work per day defined by law are often not respected; minimum wage are frequently not paid, even if agreed before the harvest season starts – this is particularly true and severe for migrant workers, especially if undocumented and present in Italy without a valid permit, which leaves unprotected and unable to report any abuse; safe practices in the use of pesticides are not implemented and safety gear not offered to workers.”* And then again, regarding the possible number of irregular migrants in the Italian territory: *“There are now an estimated 680,000 undocumented migrants, twice as many as only five years ago. There has also been an increase in the number of rejected asylum requests (an estimated 80% in 2019 compared to 67% in 2018).”*

The conditions of exploitation of migrant workers in the agricultural sector are therefore not a recent phenomenon in Italy. There are many scholars and researches that have examined the dynamics of exploitation, especially in the South of Italy (Perrotta 2015; Omizzolo 2019; Santoro and Stoppioni 2019). In particular, reference is made here to the phenomenon of Caporalato and Agro-Mafia, which the government has tried to cope with over the years with the introduction of specific regulations that, however, have never solved the issue (Palumbo and Scirba 2018; Corrado, De Castro and Perrotta 2019).

3.2 Before Covid-19: access to medical care for regular and irregular migrants

As far as the regulations in force are concerned, Italy is at the forefront in terms of access to public health. In practice, however, things are very different, and the right to health for *non-citizens* is not easy to benefit from. According to the Article No.32 of the Italian Constitution, health is considered as a fundamental right of the individual and its preservation it is in the interest of the community. Healthcare is therefore free of charge and must be guaranteed to all those who are on Italian territory, regardless of their legal status. In theory, therefore, the right to health appears to be well protected from a normative point of view. Regarding migrants residing in Italy legally, access to medical care has been regulated by the TUI: migrants who reside legally in Italy are obliged to register with the SSN (Sistema Sanitario Nazionale⁴) and benefit from the same rights as Italian citizens. With regard to *sans papiers*, the absence of a residence permit does not preclude the possibility of receiving urgent and essential hospital treatment. The same is true for ongoing care, for illness and accident, and for mental health protection programmes. In case of need, therefore, the hospital is obliged to accept also undocumented migrants, registering the patient and providing them with a code called STP (Stranieri Temporaneamente Presenti⁵), which it is valid for six months and completely exempt from the payment of health expenses. Moreover, the access to services by a *sans papiers* must not involve any kind of report to the authorities.

There is therefore a lack of coordination and homogeneity in the application of the rules concerning migrants' health. In the face of good basic regulations, in fact, there is still an extreme difficulty in the policies of access to health care for migrants, both between regions and sometimes within the same territory, with local interpretations of the regulations that hinder inclusion and favour discrimination. According to different reports published by Società Italiana di Medicina delle Migrazioni (S.I.M.M.), some regions do not recognise, in fact, the rights sanctioned by the law: such as the protection of the child, the exemption from the ticket for the STP or the possibility of voluntary registration to the SSN. In this case, appears clear that the legal and administrative classification of migrants reproduces certain inequities and do not guarantee the access to health care services to all the subjectivities here considered. There is therefore the need to development systems and to apply norms and legislation which better understand the health risks for those who are in a position of vulnerability (Hanefeld, Varey and Lunt 2017). In the Italian legislation this trend is accepted, as the right to health is recognised to everyone, regardless of legal status; in practice, however, classifications and citizenship attributes are more relevant, which make access to the health system differentiated and categorised, where migrants have access only to second-class care services. Given the circumstances, it is also necessary to take into account the to the risks faced by migrant workers, usually considered invisible, often in irregular conditions and only temporarily employed (Sargent and Larchanché 2011).

4. A turning point? When the invisibles became essentials

Should not be surprising that the issue of amnesties in Italy has one more time been raised precisely during the Covid-19 crisis. With the worsening of the pandemic - in the spring 2020 - the invisible suddenly became essential. Migrant workers in Italy, regardless of their legal status, have been contributing to the Italian agricultural sector for years, and this is certainly not new. According to researches by - before the pandemic -

⁴ Sistema Sanitario Nazionale is the national health service.

⁵ Stranieri Temporaneamente Presenti are the temporarily present migrants.

migrants with regular work permits represent in fact about a quarter of the total labour force in agriculture. Every year 370 thousand regular seasonal labourers work in Italian fields; but with the Coronavirus emergency, and the closure of the borders, they would not be able anymore to work in Italy anymore.

In this first stage of the pandemic, which precedes the summer, the government of the crisis already appears oriented towards safeguarding the economy and, in this case, the agricultural sector. In our opinion, it is interesting to focus mainly on two actors, involved in the public debate, which largely discussed the possibilities of avoiding a labour shortage in the agricultural sector that, at that time, was already expected. They are, respectively: the Italian Government and the two major national association in the agricultural sector - namely Coldiretti and Confagricoltura.

The Italian Government, to avoid the collapse of the agricultural sector, in April 2020, proceeds in two ways. On one hand, under pressure from Confagricoltura and Coldiretti, the Ministry of the Interior extends until 15 June all residence permits, including those for seasonal work, which expired on 15 April. The aim is to avoid seasonal workers having to return to their own country with the impossibility of returning once the harvest season has begun. On the other hand, a first possible amnesty is drafted to make regular - and therefore employable in the agricultural sector - those who are already on Italian territory, but in a condition of irregularity. The Minister of Agriculture Teresa Bellanova, in an article published by *Il Manifesto* in April 2020, clarifies the reasons justifying the introduction of these procedures. Firstly, because of the need to deal with the lack of labour - due to the closure of the borders and the impossibility of hiring seasonal workers. According to the Minister Bellanova “*because of Covid-19, the agricultural companies are seeing a serious shortage of labour, with more than 250,000 laborers fewer than needed*”. The extension of the resident permits is in this sense a measure needed to avoid the loss of thousand seasonal migrant workers. Secondly, regarding a possible amnesty - which, at the time of the article’s publication here mentioned, was still a draft - Bellanova affirms: “[The amnesty] *it’s an opportunity for those in the agriculture sector who care about legality and the protection of rights and human lives. And for those who have long been waiting to be rescued from the downward spiral of undocumented work, exploitation, denial of all forms of humanity.*” Only later on is mentioned the need to be able to benefit from the right to health in the case of regularisation. The urgency - given the current pandemic crisis - to allow all those who are on Italian territory, regardless of their regularity, to have access to the necessary medical care, in case of illness, appears to be a secondary concern. “*Today, in the midst of a health emergency, there are all the more reasons to guarantee them healthcare and rights, like for all workers*”, concludes Bellanova. On one hand, the amnesty in Italy must therefore be understood in this sense as very different from that implemented by Portugal: the Government in this case has decided to address this issue by regularising all migrants present on its territory who have applied for a residence permit, equating their status with that of Portuguese citizens until at least the first of July. In this way, it is possible for them to work legally and, above all, to have access to all services, including health services. On the other hand, from a practical point of view, the Italian amnesty has contributed very little to facilitate migrants' access to medical care.

Given the circumstances explained above, two other actors played a key role in the first months during the pandemic. Confagricoltura intervenes strongly in the public debate, addressing both national and European institutions. The organisation asks the Italian Government to expand and make more flexible all the tools necessary to recruit new workers, such as vouchers, and quickly start the process for the definition of a new flow decree that will allow the agricultural sector to employ non-EU workers; at the same time, Confagricoltura solicits the EU to create *green corridors* to allow the mobility of workers in the agricultural sector. An interesting and hypocritical change of direction, given the policies of closing borders pursued for years in Italy.

In conclusion, in this first phase of the pandemic, before the summer 2020, the intentions of the Italian government, as well as the institutions representing the agricultural sector, are therefore very clear. The opening of Europe to third countries is here strongly oriented, from a regulatory point of view, towards a

specific type of migration, the seasonal one, favourable to those who come from a specific country and want to reside in the EU for work reasons - legally, with a temporary residence permit for work, during the pandemic.

5. Amnesty for all during the emergency?

On 20 May 2020, has been therefore published the so-called ‘Cura Italia’ Law Decree No.34 2020; the Article No.103, entitled ‘Emergence of employment relationships’, indicates the procedures and limits for requesting and obtaining the regularisation - the so-called amnesty. The sectors around which the new law revolves are the agricultural, domestic and care work - precisely because in these one finds the highest rates of non-citizens employed seasonally, irregularly or regularly. The regularisation can mainly take place through two channels of access: firstly, it can be the employer who requests the regularisation of a *sans papiers*, thus bringing out the previous undeclared activity or establishing a new employment contract. In this case, the irregular worker will obtain a residence permit for work reasons. Secondly, it may be the *sans papier* himself who applies for regularisation: in this case, the subject obtains a specific temporary residency permit for six months, which he may then convert, if he meets certain requirements, into a residency permit for work reasons. In the next paragraphs, is took into account the Article No.103, and are made three main critics to it: the unchanged exploitative conditions of the migrant workers’, the uneasy access to health care services for migrants, and the real numbers of migrant workers regularised after the amnesty.

5.1 The Article No.103

In the first channel of emergence, the employer who can activate the procedure must necessarily operate in one of the economic sectors indicated in paragraph 3. The employer can be an Italian citizen, an EU citizen, or a non-EU citizen who is, however, the holder of a long-term residency permit. A non-EU citizen who is the holder of an ordinary residency permit cannot activate the procedure. The employer must present the application with the aim of hire a foreign worker already present in the territory of the State; regularise an existing employment relationship, i.e., one that has been irregularly established with an EU, non-EU or Italian worker. In both cases, the employer will have to prove that he has the economic capacity to hire the foreign worker: this economic capacity and the relative income limits have been determined by an additional decree. The application must contain an indication of the duration of the employment contract and the remuneration, which cannot be lower than that provided for in the relevant collective agreement. According to the provisions of paragraph 6, the foreign national is obliged to work exclusively under the employ of the employer who submitted the application. The employer's request cannot apply indiscriminately to any foreign citizen present on the national territory, but only to foreign citizens who, regardless of the regularity of their residency, were present on Italian territory before 8 March 2020 and who have not left after 8 March 2020. Proof of the foreigner's presence on Italian territory can only be provided by means of the following means: the record of your photo and/or a digital fingerprint to which the foreign citizen was subjected before 8 March 2020; the declaration of presence made before 8 March 2020 by the foreign citizen who entered the national territory for short stays; certificates consisting of documents of a certain date from public bodies. Once the preliminary investigation has been completed, if the application is accepted, a residency permit for work regulated by the TUI will be issued to the foreign citizen. In order to activate the emergency channel, the employer will have to pay a contribution to cover the costs of the procedure amounting to Euro 500.00 for each worker. In addition to this contribution, the employer who declares an irregularly established employment relationship will have

to pay a further lump sum to cover the amounts due in terms of salary, contributions and tax: the amount of the sum, which will have to be paid before the stipulation of the stay contract, will be determined in a subsequent inter-ministerial decree.

The second channel of emersion is introduced by paragraph 2. It may be activated by a *sans papier* who has already held a residency permit if the following conditions are met. Firstly, the residency permit must be expired since 31 October 2019, without having been renewed or converted. Secondly, the migrant in this case is present in the national territory as of 8 March 2020 but has not left it since. Thirdly, the *sans papier* has to have worked before 31 October 2019 in one of the three labour sectors to which regularisation is linked, and this working activity shall be proved by the production of verifiable documentation. If the conditions listed above are met, the foreign citizen will be able to activate the procedure by presenting, upon payment of a sum of Euro 130.00 for the costs of the procedure, an application for the issue of a temporary residency permit which will last six months. The temporary residency permit, which is valid only in the national territory, allows work to be carried out only and exclusively in the work sectors to which the regularisation is linked. When the temporary residency permit expires, a foreign national may request its conversion into a residency permit for work only if at least one of the following conditions is met: during the period of validity of the temporary residency permit, the foreign national may prove that he has worked in one of the sectors to which regularisation is linked; the foreign national may present a legally established employment contract.

5.2 But the normality didn't changed at all

Although the Minister of Agriculture Teresa Bellanova considers the amnesty an “*opportunity to be seized*”, in the name of legality and respect for human rights, an in-depth reading of the legislation now in force shows exactly the opposite. More than human rights and legality, the new law seems to be in line with a utilitarian logic entirely oriented towards the preservation of the agricultural production sector, where the ultimate objective is to obtain a certain amount of labour, only when it is needed, for those who need it. The Article 103 is an undoubtedly exclusionary legislative procedure: not all employers have access to regularisation procedures, just as not all *sans papiers* can obtain regularisation. On one hand, the limits imposed by the new law therefore contain specific clarifications, with the aim of containing applications for regularisation (Cognini, 2020). On the other hand, the legislation was created to meet only a material need, expressed in numerical terms, that of the farm workers needed by the agricultural sector in order not to collapse. For the purposes of the discussion proposed here, it is necessary to focus on essential issues in order to understand why such an amnesty should be considered anything but ineffective. The possibility of favouring underwater activities by bringing them to the fore does not put an end to the exploitation systems of the Caporalato and the Agro-mafie, which are also well-known phenomena in Italy. If it is true, therefore, that some lucky *sans papiers* will have the possibility to get out (temporarily) of their irregular condition, it is also true that their working conditions will not change. Inhuman working conditions, widely documented by numerous researches, where exploitation is the order of the day (Elver 2020).

The amnesty reported here does not make access to treatment in an emergency situation such as the one reported here any easier. On one hand, because it is clear that the main objective of the amnesty is to address the shortage of labour resulting from the closure of borders - and the lack of seasonal workers in Italy. The right to health is considered here as subordinate to the needs of the market, and the legislation was created to meet only one specific demand, that of a certain number of workers needed in the sectors now at risk. On the other hand, The Article No.103 is therefore to be considered ineffective, as well as inadequate, if one adopts a perspective that privileges the right to health. Although it has been promulgated with the - at least apparent - intention of making access to the health care system more agile - its effectiveness in this respect is practically

null and void. The regularisation of a certain number of migrants will not protect them from the risks they run in the places where they work and reside, spaces where living conditions - which violate inviolable human rights - remain almost unchanged. In this specific case, despite the global health emergency and the historical contingencies that motivated its application, the regulations taken into consideration here do not include a precise reference to the health sector. A very problematic circumstance, if one reflects on the decree that has entered into force and the article taken into consideration here. Promulgating legislation that only apparently contributes to the implementation of such an inviolable right as health is counterproductive. The amnesty under investigation here clearly contains incompatible objectives: while it has been promoted as an attempt to regularise migrants in order to facilitate access to public health, it is actually aimed at remedying the shortcomings that the economic sector is experiencing precisely because of the pandemic - and the closure of borders. The simple regularisation of a specific number of *sans papiers* does not automatically lead to an improvement in living conditions in agricultural fields. Because the finalisation of the regularisation process, and therefore the change of the status from irregular to regularised with temporary residence permit, does not however facilitate access to health care for migrants staying in Italy nor changes the precarious conditions of those who are working in specific sectors, as the agricultural and domestic work one. In the large reception centres, often organised within containers and dormitories with more than ten places, it is not possible in any way to respect and maintain the social distances, prescriptions globally imposed on anyone during the current pandemic crisis. Meal distribution services are organised inside refectories which can represent a fertile ground for the spread of the virus, constituting those 'forms of assembly' prohibited by current regulations. In informal settlements where hundreds of migrants working in the agricultural sector reside, hygiene conditions were dramatic long before the pandemic crisis. These living conditions make it very difficult - if not impossible - both to comply with the measures provided for in the decrees and to implement measures to prevent the spread of the contagion, such as frequent washing of hands and clothes worn, and the sanitation of the environment.

5.3 How many invisibles have been regularised?

During the summer, with the amnesty issued, a substantial number of requests for regularisation were expected, but they never arrived. If we focus on the real numbers, published by the government once the period for regularisation was over, the amnesty here appears to have been even more ineffective than expected. Not only, therefore, were the expectations wrong and based on market logic: the results were decidedly disappointing. As far as the agricultural sector is concerned, the applications for regularisation were less than expected and far from the number predetermined (and desired) by the Italian Government. Below is reported a showing the total number of applications processed during the summer, which takes into account the nationalities of those who applied for regularisation (Table 1).

We intend to argue here that regularisation has been a wasted opportunity, in content and application. At a time of global crisis like the present one, the government of those who have always been considered invisible - by the Italian government - should have been different. There was an opportunity to regularise all those who find themselves without documents on Italian territory, and finally restore dignity to those who work in the agricultural sector and contribute to the Italian economy. This opportunity, unfortunately, has not been seized, and the results are disastrous. There are still many *sans papiers* in Italy, and they do not have the opportunity to enjoy the basic human rights that should be granted to everyone, regardless of legal status.

Table 1 – Nationality of the migrant workers which applied for a regularisation in the agricultural sector.

Nationality of the migrant worker	Total number of applications in the agricultural sector
Albania	5.176
Morocco	4.556
India	4.488
Pakistan	3.084
Bangladesh	2.222
Tunisia	1.936
Senegal	1.265
China	1.235
Egypt	931
Algeria	806
Other	4.995
Total	30.694

Source: Ministero dell'Interno, *Emergenza dei Rapporti di Lavoro* 2020.

6. No more normality: new perspectives on migrant workers' rights in Italy

During the summer numerous virtuous practices have spontaneously emerged throughout the Italian territory. In particular, we intend to focus here on the actors who have taken the floor in the public debate, strongly opposed to the amnesty implemented because it was – since the beginning - bent to the mere logic of the market. First among all, the *sans papiers* themselves, thousands of people made invisible, who have raised their voices in protest; and the civil society, and hundreds of associations, cooperatives, social spaces, which voluntarily contributed to help the migrant workers to apply to the sanatoria, even if they consider it a fictitious regularisation which is only useful to fill the labour shortage in the agricultural sector.

Aboubakar Soumahoro, trade unionist, activist and Italian-Ivorian migrant, in April published in a well-known online newspaper a valuable testimony, and then launched a campaign against the proposed amnesty, which would later become law. *“In recent weeks, public debate has polarised around the issue of regularisation. Unfortunately, supporters and opponents of regularisation have often argued their case within the paradigm of utility, [the paradigm] of emergency and [the paradigm] of fear”*, says Soumahoro. The activist defines utility paradigm as the concrete and material need to regularize a certain number of migrants according to an economic point of view: there is a lack of workers, so it is enough to regularize the right number of irregular migrants to work. The paradigm of the emergency is instead represented by the possibility - according to many - of an unbridgeable economic loss, if the workers to be employed in the Italian agricultural sector are not immediately found. The paradigm of fear, according to the activist, stems from the need to regularise the irregulars because they could become a cause of contagion if they do not have access to the care they might need. *“In this context, the State has a duty to save the lives of all, both local and non-native, in order to safeguard the inalienable right to existence. The government must have the audacity to take a position by making regularisation in the sole interest of saving the lives of all, since human life is a precious commodity.”*, affirms Soumahoro. This is how the #iononsonoinvisibile campaign was born, promoted by many associations and cooperatives that have been working for years to support migrants' struggles in Italy; media campaign that unfortunately did not receive the support it would have deserved.

Given the circumstances mentioned above, we intend to argue that there is a need to implement a radical change. The pandemic crisis still underway has helped to highlight, and at the same time exacerbate, the already precarious living conditions of those who are employed in the Italian agricultural sector and who, for reasons beyond their control, find themselves in a position of irregularity. The reasons for a radical change are several and have different time horizons; the first motive is urgent and must be followed by a substantial and efficient transition. At a time of crisis like this, the right to health cannot be a privilege for the few. The Covid-19 virus does not discriminate, and it is infectious regardless of nationality, legal status or employment contract. What makes us different in the face of the pandemic is the degree of precariousness in which our lives find themselves. The second reason why it is necessary to act right now is for a deeper and more oriented change. There is a need, now more than ever in a phase of transformation and re-construction, to rethink a legislation which has to be homogeneous, functional and respectful of human rights, not only in Italy but also within the EU. It is therefore clear that the direction taken by the EU more than two decades ago has not been effective and even efficient. The lack of cooperation between states as well as the difficulty of combining migration policies that take into account external and internal responses and dimensions of nation states, have contributed to the construction of a body of legislation - both EU and national - that is inconsistent, violating human rights, where responsibilities are far from shared (Nieman and Zaun 2018). The difficulty in achieving a shared entry system at a communitarian level, as well as the hardship in harmonising integration policies aimed at economic migrants, confirms the idea of a *fortress Europe*, where the approach to immigration is left to the political discretion of individual states. And the reasons for this closure to migrant subjectivities, especially if they are asylum seekers or low skilled migrants, are to be found in the belief, well rooted in the history of migration policies, that these categories of migrants represent an unsustainable fiscal expense for nation states (Hansen, 2020). At the same time, those who until now have been invisible, neglected and forgotten, all of a sudden become as essential as their regularisation is necessary in order to preserve large-scale production. Instead, we need to rethink - and then implement - long-term policies that provide full access to essential rights for those who live and work in Italy. There is therefore an urgent need for a legislative process that goes beyond what has already been implemented in the past. It is necessary that all migrants present on Italian territory are regularised, regardless of their recognised (or not) legal status. Other countries, such as Portugal, have already put these resolutions into practice with positive effects, respecting human rights, a key principle on which the European Union itself is based.

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