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Employment, Housing and Residence Permits: a dangerous intersection. The Italian case.

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Abstract

Foreign workers represent one of the social subjectivities most exposed to structural marginalisation and institutionalised discrimination. As highlighted by prominent legal scholarship, these individuals face a unique entanglement between housing, employment and residence permits that severely limits their fundamental rights. Indeed, adequate housing is a necessary precondition to obtain or convert a residence permit, yet the Italian legal system often sets more burdensome requirements for foreigners' access to public housing, while the private market is marked by systemic discrimination. This paradox - where the right to housing depends on already having housing - generates a "double track" of protection that places migrant workers in a structurally subordinate position. The implications become even more critical when analysed in relation to the employer - employee dynamic: the law allows (and in some cases requires) employers to provide a housing "guarantee" for this type of workers, making them dependent on the employers not only for income but also for legal residence. Job loss, even if illegitimate, can thus undermine the right to stay in Italy, producing a dynamic of de facto domination. This study investigates the legal-sociological roots of such mechanisms - whether accidental or systemic - and will draw on both legal analysis and field research.

Keywords: Right to housing; migrant workers; residence permits; discrimination; systemic exploitation.

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1. Introduction: Migrant workers as a marginalised and systematically discriminated subjectivity[1].

As firstly observed by Kimberlé Crenshaw in her pioneering study "Mapping the margins: Intersectionality, identity politics and violence against women of color"[2], subjectivities[3] within the social fabric are shaped by the intersection of multiple "axes" of oppression and privilege that together construct their "social identity". Consequently, certain individuals experience multiple systemic discriminations simultaneously and, as a result, are relegated to the margins of society to the point of being reduced to true second-class people.

A glaring example of this can be observed in relation to the conditions of "existence"[4] of migrant workers (especially if socialised as women). Indeed, this subjectivity not only experiences in the workplace the classic subordination of "labour" to "capital" - and therefore the so-called "exploitation" of labour[5] - but is also the recipient of racist conducts (whether institutionalised or not) that legitimises - more or less explicitly - differentiated legal treatments; as well as patriarchal and paternalistic practices in relations with other private subjectivities and institutions.[6] Thus, it is not surprising, as several studies have highlighted, that migrant workers systematically face multiple and overlapping forms of disadvantage. On average, they receive lower wages than their Italian counterparts,[7] experience higher levels of income and employment insecurity, and are more frequently excluded from trade union representation (an exclusion that often assume the connotations of a *de facto* occupational segregation")[8]. Furthermore, in a country with a high rate of home ownership, they are also

[1] For the sake of intellectual honesty, it is specified to the reader that the author is not a "real subject" who experiences the discrimination described in the paper, but belongs to a trade union reality that deals with the living conditions of the working class (work, housing and residence permits) and operates in the Trentino - South Tyrol area (Sportello Casa per Tuttə).

[2] Crenshaw K., *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, in *Stanford Law Review,* 6, 1991, 1241-1299.

[3] Intended as groups of more or less homogeneous individuals that share common material living conditions and, therefore, similar economic, social or civil interests.

[4] *I.e.* those conditions that affect the individual in "general" by impacting upstream on their ability to self-determine and live a free and dignified life (work, housing, relationships, etc.).

[5] Marx K., *Salario Prezzo e Profitto*, Editori Riuniti, Rome, 1961.

[6] Davis A., *Donna, Razza e Classe*, Alegre, Rome, 2018.

[7] As well observed, among others, by Chiaromonte W., *L'(in)evitabile nesso fra regolazione del lavoro immigrato e diffusione del lavoro sommerso: spunti ricostruttivi,* in Canavesi G.(eds.), *Dinamiche del diritto, migrazioni e uguaglianza relazione*, Università di Macerata, Macerata, 2019, 251-254. The essay points out that the *Rapporto annuale sull'economia dell'immigrazione 2017* (Annual report on the economics of immigration of 2017) by the Fondazione Leone Moressa highlights how migrant workers are concentrated in sectors characterised by low-skilled and low-specialisation jobs (these workers make up 74% of domestic helpers, 56.1% of carers, 51.6% of street vendors, 39% of fishermen, shepherds and woodcutters, 29.8% of agricultural labourers and 29.5% of construction workers). Moreover, some of these sectors (construction, agriculture and domestic work) are also characterised by the high presence of irregular workers - Di Pasquale E., Stuppini A., Tronchin C., *Migranti economici cercasi,* in *lavoce.info*, 13 june 2018 https://www.lavoce.info/archives/54139/abbiamo-ancora-bisogno-dei-migranti-economici (last accessed on 14 june 2025) - and this context produces considerable consequences from a salary standpoint too: the Centro Studi e Ricerche IDOS, *Dossier statistico immigrazione 2017,* IDOS, Rome, 2017, 13ss, estimates on this point an average salary that is 27.2% lower for foreign workers compared to Italian workers.

[8] Chiaromonte W., *«Cercavamo braccia, sono arrivati uomini». Il lavoro dei migranti in agricoltura fra sfruttamento e istanze di tutela,* in *Giornale di diritto del lavoro e di relazioni industriali*, 2, 2018, 352 ff.; Della Puppa F., *Sindacato, lavoratori immigrati e discriminazioni razziali nell'Italia della crisi*, in *Mondi Migranti*, 2, 2018, 117-120.

disproportionately relegated to the rental market, many times under precarious and even unlawful conditions, including exploitative contracts and substandard or unhealthy housing.[9] These material vulnerabilities are further exacerbated by their interactions with public institutions, where discriminatory or unlawful practices - particularly by police headquarters ("*questure*") in the context of residence permit issuance, renewal, or conversion - are not uncommon.[10]

Therefore, this paper aims to explore the implications of this intersection, with particular attention to the experiences of migrant workers gathered through a series of semi-structured interviews.[11] The goal is to understand how this social subjectivity is exposed to multiple forms of oppression and how these are institutionalised by the Italian legal system. Specifically, the research will examine how the current Italian legislation links employment, housing, and residence permits in a way that can generate structurally problematic or even pathological conditions. This means that an attempt will be made to understand how the overlapping of these three dimensions can foster the development of an ideal environment for the germination of phenomena that, due to the intersection of power relations that are already unbalanced *per se*, deviate conspicuously from the physiological functioning of the legal model abstractly envisaged at the normative level for each legal position (labour, housing, migration). The analysis will then focus on delving into the effects of this interdependence on both the guarantee - or denial - of the right to housing for migrant workers and on broader labour power dynamics. Finally, the study will assess the extent to which the existing legal and factual framework aligns, or fails to align, with the principles enshrined in the Italian Constitution.

2. The Relationship Between Housing, Employment, and Residence Permits.

In legal terms, the intersection under discussion finds a fundamental confirmation in the "strict bond" that exists between residence permits, employment relationships, and housing.[12] In this framework, one of the first and most significant interrelations to be

[9] Bargelli E., Ranieri B., *Black Market and Residential Tenancy Contracts in Housing in Southern Europe: New Trends in Private Law Measures*, in *Comparative Law Review*, 8, 1, 2017, 7ff.

[10] ASGI, *Mappatura delle prassi illegittime delle questure italiane. Lo studio pilota di ASGI*, 2024, https://www.asgi.it/wp-content/uploads/2024/04/Analisi-prassi-illegittime.pdf (last accessed on 06 may 2025).

[11] As indicated in the footnote no. (1), I am affiliated with a trade union organisation that operates within the Autonomous Province of Trento, focusing on the intersection of housing, residence permits, and labour relations. This has enabled me to engage directly with migrant workers living in precarious housing conditions and to conduct an ethnographic study that has been going on since 2023 through participant observation of union activities (such as picket lines, assemblies and help desks). With the consent of both the organisation and the workers involved, I was thus also able to conduct a group interview in Trento on February 11, 2025, with six North African migrant workers. Additionally, between January and July 2024, I resided in a building located in the Barriera di Milano neighbourhood of Turin, which is largely rented illegally to migrant workers. This period of participant observation facilitated several individual interviews, one of which has been incorporated into this research. From a methodological standpoint all interviews were conducted using a semi-structured format: while guided by a predefined set of questions, significant space was intentionally left for open-ended responses to foreground the concrete material experiences of the workers themselves.

[12] Della Puppa F., nt. (8), 131.

examined is that between immigration law and labour protections – a connection that has long been overlooked, yet profoundly influences the material realities of migrant workers.[13] In fact, as it has been extensively observed in recent legal scholarship, immigration regulations can potentially (and factually) lead to an arbitrary restriction of labour protections and encourage the systematic proliferation of irregular, and therefore unprotected, forms of employment.[14]

Indeed, from the very moment of entry into the national territory, the Italian legal system (on the footsteps of European law) establishes differentiated treatments for workers coming from European Union member states and those from so-called "third countries". While the former generally enjoy the right to free movement,[15] for the latter the right to enter and reside in the national territory is conditional upon the verification of specific prerequisites (linked to applications for international protection, other forms of protection, family ties, or an employment relationship).[16] For this social group, therefore, both the available protective measures and their bargaining power within the employment relationship are already significantly limited by the mere fact that engaging in a conflict with their employer could have repercussions on the very conditions that justify their stay in Italy.[17]

Moreover, the Consolidated Immigration Act[18] (hereinafter, T.U.I.) and *Decreto Legislativo* N. 3/2007 (which implements the directive on the *status* of long-term residents) introduce an additional element into this relationship: housing. Under the T.U.I., the availability of "adequate housing"[19] is a prerequisite for the issuance or conversion of a residence permit -

[13] Indeed, the Italian legal literature tended to disregard this issue until 1998, for a more in-depth analysis of this topic *see* Pastore F., *Migrazioni internazionali e ordinamento giuridico*, in Violante L. (eds.), *"Diritto e giustizia", Annali della Storia d'Italia,* Einaudi, Turin, 1998, 1031-1123; and Calafà L., *Lavoro irregolare (degli stranieri) e sanzioni. Il caso italiano*, in *Lavoro e Diritto*, 1, 2017, 69 ff.

[14] For an in-depth discussion of this doctrine refer to: Montanari A., *Stranieri extracomunitari e lavoro,* Cedam, Padua, 2018; Calafà L., *Migrazione economica e contratto di lavoro degli stranieri*, il Mulino, Bologna, 2012; Ambrosini M., *Immigrazione irregolare e welfare invisibile. Il lavoro di cura attraverso le frontiere,* Il Mulino, Bologna, 2013; Chiaromonte W., *Lavoro e diritti sociali degli stranieri. Il governo delle migrazioni economiche in Italia e in Europa,* Giappichelli, Turin, 2013.

[15] Which, as is well known, finds its legal basis in: Article 3(2) of the Treaty on European Union; Article 21 of the Treaty on the Functioning of the European Union (TFEU); Titles IV and V TFEU; Article 45 of the Charter of Fundamental Rights of the European Union.

[16] Indeed, already at European level, the entry and stay of third-country nationals within the territory of the European Union is regulated by a series of directives on individual residence permits which are granted (and renewed or converted) only upon the occurrence (and permanence) of certain requirements. Examples are: Directives 2024/1233/EU (which reforms the Directive 2011/98/EU on the single permit for work and residence); 2003/109/EC (on the long-term resident permit); 2003/86/EC (on family reunification); 2014/36/EU (on the entry of seasonal workers); 2021/1883/EU (on the entry of highly qualified workers); 2014/66/EU (on intra-corporate transfers of workers); 2016/801/EU (on the entry of students, researchers, *au-pairs*, etc.); 2011/95/EC (on international and subsidiary protection); and 2001/55/EC (on so-called "temporary protection"). Furthermore, it should also be considered that the regulatory instrument adopted to introduce the disciplines of residence permits allows member states to integrate, at least partially, the conditionalities established at the European level (as in the case of Italy with the transposition of Directive 2003/109/EC on long-term residents, which will be discussed shortly). A rather multifaceted regulatory framework thus emerges that certainly does not benefit the condition of the migrant person.

[17] As will be seen in the following paragraphs with regard to both the employment relationship and accommodation.

[18] Legislative Decree no. 286/1998.

[19] *I.e.*, meeting legislative requirements concerning habitability and health-hygiene standards.

whether for employment purposes[20] or for family reunification.[21] While, for the issuance and renewal of a long-term residence permit, the aforementioned Decree has supplemented the European-level conditions with the further requirement of the availability of an (adequate) accommodation.[22] Through these provisions, housing is thus elevated to a prerequisite not only for engaging in employment but also for entry and continued residence in Italy. Therefore, from a regulatory standpoint, it can be argued that an indissoluble relationship of interdependence has been established between residence permits, employment relationships, and housing, where each of these three elements has consequential effects on the others.

Indeed, without a valid residence permit, or in the event of its non-renewal, it is impossible to engage in lawful employment or secure rental accommodation. At the same time, job loss (even without a rightful cause) can lead to the non-renewal of a residence permit,[23] resulting in the inability to remain in a rented dwelling. Conversely, the loss of housing may legally obstruct the conversion of a residence permit or make its renewal more burdensome, as well as materially affect work activity.[24] The substantive regulations therefore seem inherently capable of giving rise to a "dangerous" intersection potentially capable - under pathological conditions - of severely constraining an individual's capacity for self-determination due to the risk of being exposed to a state of "multidimensional" vulnerability.[25]

The situation, then, becomes even more critical when examining also the procedural aspects related to the issuance of residence permits. Formally, the mechanism designed by the Italian legal system for the entry of migrant workers is the so-called "*quota system*". Under this system, it is initially the employer who must submit an application for a clearance certificate for the worker's entry into Italy accompanied by guarantees regarding their future housing arrangements. This certificate is then issued by the competent Immigration Desk of the Prefecture, and only at this stage the worker can apply for a visa at the consular representation in their country of origin. Upon arrival in Italy, thereafter, they sign the "residence contract", accompanied by the corresponding request for a residence permit. Notably, this application must be filed electronically through the Ministry of the Interior's online platform and is processed strictly in chronological order,[26] further adding to the procedural rigidity of the protocol.

[20] In accordance with Articles 22 (subordinate employment) and 26 (self-employment) of the T.U.I.
[21] As stated in Article 29 of the T.U.I.
[22] Art. 1 Legislative Decree no. 3/2007 (which, as mentioned earlier, transposed Directive 2003/109/EC). It should also be noted that with this article, the Decree reforms Article 9 of the T.U.I.
[23] In this regard, it is true that under Article 22, par. 11 of the T.U.I. it is possible to obtain a so-called 'residence permit for awaiting employment' for a period of at least one year, but in order to obtain one, bureaucratic formalities are required, which aggravate the worker's position. Furthermore, if the worker is unable to find a new job during this period, he must return to his country of origin.
[24] Filandri M., *L'accesso al bene casa: instabilità lavorativa e disagio abitativo in Italia,* in *Sociologia del Lavoro*, 2, 2016, 115-129.
[25] Since it simultaneously exposes one not only to the risk of not being able to find the resources necessary for the person's self-sustenance (the labour relationship), but also of being deprived of the good par excellence necessary for one's social reproduction (the housing good) and of the legal title that legitimises one's presence in the state territory (the residence permit). For a comprehensive analysis of this 'multidimensional' perspective, *see* Calafà L., *Per un approccio multidimensionale allo sfruttamento lavorativo*, in *Lavoro e Diritto*, 2, 2021, 193-213.
[26] The procedure just described is governed by Article 22 T.U.I. paragraph 2 et seq.

Taken together, these factors should therefore highlight how deeply bureaucratic and cumbersome such a system is- not only due to the prerequisite of employer-initiated clearance, which in most cases would make it practically impossible for an employer to establish contact with a worker residing in a third country without the assistance of an intermediary, but also due to the practical impossibility for the worker to obtain real and concrete guarantees about their housing conditions without being on the Italian territory. As widely recognized, this makes the system entirely inadequate for effectively managing migration flows and particularly prone to giving rise to situations of abuse.[27] It is therefore unsurprising that so-called "regularization programs" aimed at legalizing migrant workers already present in the national territory have become a systemic feature of this model. Indeed, as demonstrated by ISTAT data on first-time residence permits granted to foreigners in Italy, 37% of such permits are obtained through regularization programs, whereas only 4% are issued through the formal quota system.[28]

Thus, it does not seem excessive to assert that, while from the standpoint of substantive law, the relationship between employment, housing, and residence permits is "potentially" capable of fostering pathological situations; from a procedural law's perspective, a troubling shift can be observed from mere potentiality to the concrete manifestation of systemic dysfunctions. Indeed, as evidenced by the mentioned statistics, the condition of "irregularity" effectively becomes an almost inevitable step in the entry process into Italy, thereby exposing its function as a structural trait of the national migration system.

3. Access to Housing: Discrimination in the Private Market and Public Housing.

To complete the picture and fully understand why it is so difficult for a migrant worker to exit the "sphere of influence" of their employer, it is now necessary to consider certain features of the Italian public housing system and private rental market - in particular, those that act as entrance barriers for migrant workers, are capable of producing discriminatory effects, and can ultimately influence the relationship under discussion negatively.

With respect to public residential housing, it is essential to first acknowledge that this matter falls under the shared competence of the state and the regions. As a result, different regional contexts feature partially diversified regulations, promulgated through regional laws, and therefore it is appropriate to distinguish between the two spheres.

At national level, the T.U.I establishes that all foreign nationals holding either a long-term residence permit or a permit valid for at least one year are equated with Italian citizens with

[27] Consider, by way of example: Chiaromonte W., nt. (7), 271 ff.; and Faleri C., *Non basta la repressione. A proposito di caporalato e sfruttamento del lavoro in agricoltura*, in *Lavoro e Diritto*, 2, 2021, 257-279. For a specific study on how the Italian flows management system fosters the diffusion of irregularity among migrant workers, *see* also the recent study: Coresi F., Mason F., Portoghese F., Albiani S., Gori G., *I veri numeri del decreto flussi: un sistema che continua a creare irregolarità*, Erostraniero, 2024, available at https://erostraniero.it/wp-content/uploads/2024/05/Rapporto-Flussi_2024-1.pdf.

[28] As observed in Colombo A.D., Impicciatore R., Molinari R., *L'inevitabile strategia della sanatoria per regolarizzare gli immigrati,* in *Neodemos.info*, 11 February 2020, https://www.neodemos.info/2020/02/11/linevitabile-strategia-della-sanatoria-per-regolarizzare-gli-immigrati/ (last accessed on 06/05/2025).

regard to access to economic benefits and social assistance.[29] However, when it comes to public residential housing and measures aimed at facilitating access to housing, the same law imposes stricter requirements: eligibility is limited to foreign nationals who possess either a long-term residence permit or a residence permit of at least two years and who are regularly employed within the national territory.[30] Moreover, the so-called "*Piano Casa*"[31] establishes that, in addition to Italian citizens in need, low-income foreign nationals may also benefit from the plan's housing measures, but only if they have been residing in the national territory for at least ten years or in the same region for at least five years.[32]

Therefore while at first the national legislation seemed to set only a requirement of an annual residence permit for "economic or social assistance benefits and provisions", this requirement was "expanded", firstly, to become a two-year residence permit with the concomitant exercise of a work activity for access to public housing; and secondly, with the addition of the requirement of ten years residence "*in the country […] or at least five years in the same region*"[33] for access to the "*Piano Casa*" measures.[34] Hence, already at the national level a clear distinction emerges between the treatment of Italian workers (who are not even required to be working to have access to public housing), and foreign workers (who are required both to be resident and to be working).

Furthermore, at the regional level[35] there is an even greater expansion of conditionalities for entry into the public housing system. For example, the former Tuscan legislation on public housing required residence or employment in the region for at least five years,[36] and although it has been superseded by a new law[37] (which no longer imposes a minimum residence period to apply), the so-called "continuous residence" remains relevant for scoring in the ranking of housing allocations, potentially accounting for approximately 25% of the total score.[38]

Similarly, also Lombardy[39] required five years of residence or employment in the region. However, the Constitutional Court[40] declared this requirement unconstitutional due to its

[29] Art. 41 T.U.I.
[30] Art. 40, para. 6 T.U.I.
[31] *I.e.* a national housing plan introduced in 2008 with the aim of "guaranteeing throughout the national territory the minimum essential levels of housing requirements for the full development of the human person" (Art. 11 co. 1 Legislative Decree no. 112/2008).
[32] Art. 11 para. 2 Legislative Decree no. 112/2008.
[33] Art. 11 para. 2 letter g Legislative Decree no. 112/2008.
[34] As carefully remarked in Pallante F., *Gli stranieri e il diritto all'abitazione,* in *Costituzionalismo.it*, 3, 2016, 146 ff.
[35] Where the determination of eligibility requirements for public residential housing is delegated by art. 60 of Legislative Decree no. 112/1998.
[36] Legge Regione Toscana no. 96/1996, Annex A - Requirements for participation in the call for applications for the assignment of public residential housing (Article 5, paragraph 1).
[37] Legge Regione Toscana no. 2/2019
[38] As can be inferred by consulting the "Graduatoria Definitiva Bando ERP 2024" published by the Municipality of Siena, https://www.comune.siena.it/documento-pubblico/graduatoria-definitiva-bando-erp-2024-ordine-di-posizione (last accessed on 6 May 2025) and considering that residency and the performance of a continuous work activity can weigh up to 4 points (as reported in Annex B. Art. 10 sub. c of Legge Regione Toscana no. 2/2019.
[39] Legge Regione Lombardia no. 16/2016.
[40] Corte Costituzionale, judgment no. 44 of January 28, 2020, available at: https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2020:44.

discriminatory nature. Nonetheless, residence continues to play a role in allocation rankings,[41] although recently the Milan Court has ruled that "the conduct of the Lombardy Region in awarding [...] disproportionate scores for past residence, unrelated to the actual need for housing services, constitutes a discrimination"[42].

Likewise, 5 years of residence (including three years, not necessarily continuous, within the jurisdiction of the managing entities) were demanded in Piedmont as well[43]. Here, too, the Constitutional Court intervened declaring the requirement unconstitutional.[44] However, the regional legislator attempted to reintroduce the restriction in a disguised form, mandating three years of residence or employment in the municipality issuing the call for applications, with the possibility for these institutions to increase the requirement to five years.[45]

Lastly, the Autonomous Province of Trento[46] also faced the scrutiny of the Constitutional Court which, in 2025, ruled unconstitutional the requirement of ten years of residence in Italy (including the last two continuously) for access to housing support.[47] Nevertheless, a three-year residence requirement for application submission persists, along with the relevance of the continuous residency parameter for the formation of the rankings (accounting for 30% of scoring)[48] and the provision of a dual ranking system for Italian and foreign applicants, with only 10% of available housing units allocated to the latter.[49]

As can be easily perceived, the legislative pattern clearly demonstrates a persistent tendency by political-administrative bodies to impose arbitrary restrictions on housing access for migrant people. This trend certainly faces opposition from the Constitutional Court, whose stance - initially uncertain - has recently solidified in recognizing the discriminatory nature of such legislative measures. Nevertheless, despite the Court's rulings, there remains a consistent effort to reimplement, in slightly altered forms, measures previously struck down as unconstitutional due to their discriminatory nature (as in the case of the regional laws of Piedmont and Lombardy), effectively reducing compliance with the judgments to a merely formal exercise.

Therefore, it appears undeniable that a profound tension exists between a "Formal Constitution"[50] (oriented toward the principles of substantial equality and non-

[41] As stated in Article 12 Regolamento Regionale no. 4/2017 governing the formation of the rankings.
[42] Tribunale di Milano, judgment no. 1481 of 20 February 2025, p. 35, https://www.sicetcaserta.it/wp-content/uploads/2025/02/31-Sent-1481-25-Tribunale-Milano_Punteggi-residenza.pdf.
[43] Legge Regione Piemonte no. 3/2010.
[44] Corte Costituzionale, judgment no. 147 of July 25, 2024, available at https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2024:147.
[45] Art 3 para. 1, letter a) of Legge Regionale no. 3/2010.
[46] Legge Provincia Autonoma di Trento no. 5/2005
[47] Corte Costituzionale, judgment no. 1 of January 3, 2025, available at https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2025:1.
[48] As can be deduced from Article 3 (Scores for the locational-occupational condition) of Annex 3 to the *Decreto del Presidente della Provincia del 12 Dicembre 2011* no. 17-75/Leg.
[49] This double ranking was established by Circolare No. 813 del 26 Maggio 2008. It should be noted in this regard that such an incisive measure on the right to housing was introduced by an administrative act and therefore lacks the democratic-procedural guarantees associated with legislative acts.
[50] Term borrowed from: Mortati C. *La costituzione in senso materiale*, Giuffrè, Milan, 1998. It represents the set of legal norms contained in the constitutional text.

discrimination) which the Court is trying to preserve and a "Material Constitution"[51] (oriented towards the construction of privileged channels of entry to public housing for Italian citizens) which the brutality of the existing power relations and the economic-political interests at play tirelessly try to make prevail.

Moving now the analysis to the private market, it is essential to note that, generally speaking, as observed by Temistocle Martines, a landlord refusing to enter into a lease agreement for discriminatory reasons would be engaging in a conduct that is "unconstitutionally harmful to the principle of equality"[52]. Nonetheless, it is not uncommon nowadays for landlords to refuse to rent their property to migrant workers on discriminatory and arbitrary grounds. This obliges migrant tenants to accept suboptimal rental conditions,[53] irregular arrangements, or even to seek shelter in makeshift accommodations.[54] The major issue with these options, however, - particularly in the case of irregular solutions or precarious shelters - is that they do not provide the possibility of claiming a valid lease agreement, which is necessary to obtain a long-term residence permit, and not even a domicile for renewing a work permit.[55] This condition therefore exposes the individuals concerned to a specific form of social vulnerability, as the absence of a residence permit prevents them from carrying out regular work activities or residing legally in Italy. Such circumstances thus raise the question of which remedies the Italian legal system offers to address this issue.

Due to Martines' observation on the unconstitutionality of the conduct and, even more so, considering *Decreto Legislativo* N. 215/2003[56] according to which the "equal treatment of persons regardless of racial or ethnic origin" is protected, the legal system has a potential legal remedy for combating this type of discrimination: the pre-contractual liability action. However, from an enforcement-material point of view, two orders of problems arise that are not easy to solve. First, the subjects towards whom the discriminatory behaviour is directed tend to be in precarious economic conditions and therefore lack the very possibility of sustaining the costs and time that a judgement entails and this makes the very hypothesis of acting futile.[57] Secondly, even if adequate economic resources were available, the burden of

[51] Mortati C., *ibidem.* It indicates the set of power relations between social and political forces that determines the actual functioning of the institutional apparatus.
[52] The reason why authoritative doctrine - Martines T., *Il diritto alla casa,* in Lipari N. (eds.), *Tecniche giuridiche e sviluppo della persona*, Laterza, Bari, 1974, 404 - felt the need to specify so in the mid '70s stems from the long-standing and persistent trend of discrimination in the Italian rental market against marginalised social groups. At the time, this phenomenon was particularly evident in the treatment of southern Italian workers migrating north for employment, only to encounter landlords - motivated by racist (or more precisely, anti-southern) sentiments - who displayed signs explicitly stating, "No rentals to southerners" - Pallante F., nt. (34), 153.
[53] Both in terms of the property's condition and the onerousness of the contract.
[54] Bargelli E., Ranieri B., nt. (9)
[55] Although this is not absolutely true as for renewal it is sufficient for the employee to obtain a declaration of hospitality from a colleague or friend and present this as proof of domicile. It is easy to see, however, how all this aggravates the worker's condition by imposing additional technical and bureaucratic requirements.
[56] Which implements at national level the Directive 2000/43/EC.
[57] Indeed, it is true that the Italian legal system recognises free legal aid for low-income persons (Art. 74 *et seq*. Decreto del Presidente della Repubblica N. 115/2002), however, this is only granted if the annual income of the family unit does not surpass €12,838.01 (Ministry of Justice, Decreto Interdirigenziale of May 10, 2023), which is easily exceeded if the applicant is employed.

proof of the discriminatory grounds[58] behind the refusal and the quantification of the damage caused by the behaviour remain rather problematic in a case of this kind, and this on many occasions frustrates the need for protection and discourages legal action.[59]

If, therefore, on the one hand, it can be argued that the private rental market in Italy is characterised by dynamics that produce highly discriminatory effects, on the other hand, it cannot be ignored - with a hint of bitterness - that despite the fact that the remedy put in place by the legal system proves to be totally ineffective in repressing this type of abuse (by completely lacking an understanding of the material conditions of the subjects it is supposed to protect) there does not even seem to be, at least for the moment, any kind of interest on the part of the legislator to intervene to fill this "gap".

3.1. (continued) The Dual Protection Framework for the Right to Housing for Italian and Migrant Workers.

On the basis of the considerations just outlined, with regard to both the private market and public residential housing, it appears reasonable to align with that segment of legal scholarship which asserts that: "a significant portion of Italian legislation concerning the implementation of foreigners' right to housing is [...] characterized by a respect that is more apparent than real for international, supranational, and constitutional provisions"[60]. It should therefore come as no surprise that this regulatory framework has led to the emergence of a proper "double track" system for the recognition and enforcement of housing rights, which operates along distinct lines for Italian and foreign citizens. Indeed, in the case of Italian workers, the legal system formally safeguards both fair access to housing and its stable enjoyment. In contrast, for foreign workers, access to housing serves as a prerequisite for obtaining or renewing a residence permit and for engaging in lawful employment. As a result,

[58] On this point, it should be noted that in the context of judgments relating to a conduct in breach of the principle of equal treatment, operates the mechanism of the so-called inversion of the burden of proof (prescribed by Article 8 of Directive 2000/43/EC and now incorporated at national level in Article 28, paragraph 4 of Legislative Decree no. 150. /2011) according to which "*when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment*" (Art. 8 para. 1, cited directive). Moreover, as regards the scope of application of the rule, it should be pointed out that Article 3(h) of Directive 2000/43/EC specifically includes "*access to and supply of goods and services which are available to the public, including housing*" therefore, in the case under observation, this reversal of the burden of proof will operate, deviating from the ordinary procedure. For a systematic discussion on the principle equal treatment, discrimination and the burden of proof, refer to: Checchini B., *Discriminazione contrattuale e dignità della persona*, Giappichelli, Turin, 2019; Figlia G.C., *Il divieto di discriminazione quale limite all'autonomia contrattale*, in *Rivista di Diritto Civile,* 6, 2015, 1387-1418.

[59] The latter statement is the result of a participatory ethnographic survey of the housing rights movement in the Autonomous Province of Trento (Sportello Casa per Tutt*) that began in March 2023. Indeed, despite the inversion of the burden of proof mentioned in the previous note, in practice it is rather problematic have it recognised in a court that the main ground for the non-conclusion of the contract was a decisive unlawful motive (the discriminatory one). Indeed, the employment and remuneration status of migrant workers may represent an easy loophole for the landlord, who can easily claim that he did not conclude the contract because of the lack of economic and financial guarantees that the worker was able to provide (unless, of course, the discriminatory decision was made explicit in a written communication).

[60] Pallante F., nt. (34), 148.

only once a foreign worker has secured housing (and can therefore legally reside and work in Italy) they will be able to assert their right[61] and apply for admission into the public housing system.[62] Therefore, for this social subjectivity, the right to housing is paradoxically recognized only once *de facto* access to housing has already been obtained.

Moreover, considering the institutionalized (and non-institutionalized) forms of discrimination that act as barriers to foreign workers' access to both the private housing market and public residential housing, and analysing them in conjunction with the procedural aspects of the so-called "migration quota system", it should become evident that foreign workers will often find themselves unable to secure independent access to housing. In fact, since their arrival in Italy, they will be housed in an accommodation owned by their employer with little possibility of finding alternative solutions for the future.[63] Consequently, several of these workers are compelled to remain within the sphere of influence of an employer or an intermediary realising a dependency further exacerbated by the fact that, for a significant portion of foreign workers, irregularity becomes an unavoidable phase. Indeed, this condition places individuals in a state of need, effectively stripping them of any rights (as will be discussed further in the next paragraph) and forcing them to accept degrading living conditions that significantly deviate from the "free and dignified existence" that the Italian constitutional order upholds as its ultimate goal.[64]

4. The intersection of Housing, Employment and Residence Permits in the relationship between migrant workers and employers.

Up to this point, the discussion has generally addressed the relationship between housing, employment, and residence permits, as well as the discriminatory practices that make it more difficult for migrant workers to rent a property in the private market or access public housing. It is now necessary to examine how these issues manifest in the dynamics between workers and employers, and the forms of abuse and exploitation that may result from them. First and foremost, it is essential to emphasize that, as keenly observed in prominent legal scholarship, the employment relationship is inherently characterized by a power imbalance whereby the employer will seek, not only potentially but also in practice, to take the maximum possible advantage from the worker's weaker position.[65] The boundary between the "physiological" and "pathological" phases of the employment relationship is therefore quite blurred, and this becomes increasingly true the more the power relations are unbalanced in favour of the employer, as the worker finds himself in a state of need or unable to assert his rights, whether due to legal or factual constraints.

[61] Even if limited to the phase of enjoyment, as the access phase has already been overcome.
[62] As noted in Corsi C., *Il diritto all'abitazione è ancora un diritto costituzionalmente garantito anche agli stranieri?,* in *Law, Immigration and Citizenship*, 3-4, 2008, 141-148; Pallante F., nt. (34), 135-155.
[63] As mentioned in the first paragraph, these workers, earn lower wages than their Italian counterparts experience higher levels of income and employment insecurity, and are more frequently exclude from trade union representation.
[64] As drawn from Article 36 paragraph 1 Costituzione Italiana.
[65] Nogler L., *Saggio sull'efficacia regolativa del contratto collettivo*, Cedam, Padua, 1997, 145-146.

In the case of migrant workers, in particular, this condition reaches its peak. Indeed, the intertwining of employment, housing, and residence permits compels this social group to confront the reality that dissent and conflict with the employer may result in retaliation not only in the workplace but also in housing arrangements and even in their ability to remain in Italy. This dynamic is made even more problematic by the fact that the Italian legal system presents a wholly inadequate mechanism for managing migration flows and effectively establishes a "dual-track" system of protection for the right to housing, differentiating (in a discriminatory manner) the position of migrant workers from that of Italian ones, thereby rendering the former more exposed to backlashes and aggravating their "social vulnerability" on several grounds at once. In concrete terms, this means that the employer (or an intermediary) is often the one providing housing for the migrant worker, thereby accumulating the dual role of employer and landlord.[66] Hence, a scenario emerges in which the employer holds a "dominant" position that is articulated on several interconnected frontlines, while the worker's bargaining and conflictual power is considerably individualised and weakened.

The most severe consequences of this overlapping of powers are well illustrated by the case of six North African workers interviewed for this research. These workers arrived in Italy legally through the migration quota system, with an employer-provided housing guarantee, after being recruited by an intermediary in their country of origin. Upon arriving in the Trentino-Alto Adige region to begin agricultural work, however, they were confined with thirty other migrants in an overcrowded, unheated dwelling in a remote mountainous area and forced to work 14-hour days for less than 5 euros per hour under threat of dismissal, eviction, and deportation to their country of origin in case of "disobedience"[67]. In other words, a case of severe labour exploitation - closely resembling a modern type of slavery - has taken place even though the entire procedure of entry into Italy took place in complete legality.[68]

If such conditions can occur for those who enter Italy legally, the situation becomes even more dire for the large segment of migrant workers that are forced into irregularity while awaiting inclusion in the "quotas" of the migration system or, more commonly, in a "regularization" program. Indeed, the status of an "irregular" migrant virtually eliminates any possibility of asserting rights due to the risk of being subjected to an expulsion order and detained in a repatriation centre.[69] In this scenario, the employer-worker relationship degrades to the point of becoming one of outright "domination", as the employer typically

[66] Or, in the case of an intermediary, wielding a dual "disciplinary power" that extends to both employment and housing.

[67] The use of this expression was chosen as the term "obedience" was repeatedly used by workers in the interviews conducted for the preparation of this paper to indicate the attitude their employer demanded of them.

[68] Group interview organised in Trento on 11 February 2025. The notion of "serious exploitation" is not used here for rhetorical purposes, but because the charge in the criminal proceedings against the employer is precisely that of "unlawful intermediation and exploitation of labour" (Art. 603-*bis* Cr. C.).

[69] Which, in practice, are real prisons where detention can be ordered by the quaestor without any previous authorisation by the judicial authority (which only intervenes ex-post to validate the measure - and in the figure of a non-togal magistrate). It is no coincidence that this practice has been strongly contested by leading international human rights organisations including Amnesty International.

hires the worker without a contract (made impossible due to the "irregular" status), pays wages significantly lower than those established by collective bargaining agreements, and is able to arbitrarily demand a wide variety of work tasks while exercising an almost unlimited disciplinary power. Furthermore, in many cases, it is still the employer (or intermediary) who provides housing solutions for the worker, effectively controlling every aspect of their productive and reproductive life. Indeed, irregularity presents a major obstacle to securing a formal rental agreement, often leaving migrant workers with no choice but to seek housing through informal and legally unprotected channels.

Lastly, the employer may also exert additional pressure by offering or threatening to regularize the worker's *status* through the migration quota system as soon as the legal framework allows, but only in exchange for absolute "obedience". To illustrate this dynamic, the case of an Albanian worker interviewed for this research is particularly revealing. This worker entered Italy through a tourist visa and remained beyond the three-month limit. Once in the country, he was recruited by an entrepreneur in the Piedmont region who decided to employ him informally in his multi-service company, promising to provide housing and eventually regularize his status. After several months living in makeshift accommodation inside a property formally classified for commercial use and working without a contract for 10-12 hours a day at substandard wages (less than 4 euros per hour), the employer began to delay his "salary" payments, eventually suspending them altogether. When the worker "complained" about the non-payment of wages, the employer simultaneously evicted and fired him only to "hire" another irregular migrant worker, presumably offering the same "concessions".[70]

It thus appears that the well-documented phenomenon of "occupational segregation" of migrant labour is compounded by a corresponding phenomenon of "housing segregation" and that both are shaped by existing immigration laws and consolidated by the structural imbalance of power dynamics in the employer-worker relationship, contributing (especially when overlapping) to the creation of environments in which exploitation is not merely possible but systematically facilitated.

4.1. (continued) Housing Segregation: Remedies and Gaps.

Given the current state of affairs, the phenomenon of housing segregation discussed in the previous paragraph ultimately constitutes, particularly (but not exclusively) with regard to agricultural labour, a "central element in the management of the labour market and workforce"[71]. This is particularly evident in Southern Italy, where "ghettos" and shantytowns inhabited by migrant workers represent a widespread and well-known reality: the San Ferdinando shanty town in Calabria; those in Borgo Tressanti, Borgo Libertà, and Borgo Mezzanone in Puglia; and the ghettos of Cassibile, Vittoria, Campobello di Mazara, Caltanissetta, and Paternò in Sicily are just some of the most notable examples of the

[70] Individual interview organised in Turin on 15 May 2024.
[71] Sacchetto D., Perotta D., *Il ghetto e lo sciopero: braccianti stranieri nell'Italia meridionale*, in *Sociologia del Lavoro*, 4, 2012, 3.

pervasiveness of this phenomenon. However, this does not mean that a similar dynamic is absent in Northern Italy: the so-called "housing *caporalato*"[72] affecting the city of Turin, the cases of housing segregation in the so-called "Triveneto" region,[73] or the illegal settlements for agricultural workers in the Piana di Albenga demonstrate that, although less visible and with different characteristics,[74] this trend is no less widespread.[75]

In other words, although difficult to document, housing segregation appears to be a pervasive practice across the country that is not only a direct consequence of the precarious and exploitative conditions in which many of these workers find themselves; but also, a mechanism that helps to stabilize and perpetuate such conditions due to the interdependence between housing, employment and residence permit that has been widely discussed. As such, the marginalisation of migrant workers in both spatial and social terms cannot be seen as a mere by-product of labour exploitation, but rather as an integral and structural component of the Italian labour market itself.

Against this backdrop, it is therefore essential to examine what responses have been provided by the legislator to deal with this issue (and more generally, the exploitation of migrant workers) and how effective these measures have been.

First, it must be noted that beyond the traditional legal provisions used to counter cases of "exploitation"[76], an explicit recognition of the significance of housing segregation in the "oppression" of migrant workers can be found in at least two legal provisions.[77] The first one addresses the criminal offense of "illegal intermediation and labour exploitation," and identifies the so-called "indicators of exploitation"[78], among which is included "subjecting the worker [...] to degrading housing conditions"[79]. The second provision (although primarily aimed at preventing illegal immigration rather than exploitation) punishes with imprisonment from six months to three years anyone who, for a fee and with the aim of obtaining unjust

[72] Namely, the phenomenon whereby citizens of foreign origin are pushed into precarious places with contracts registered under nominees and vexatious clauses. For an in-depth political-journalistic discussion refer to Rondi L., *Viaggio nel "caporalato abitativo" che a Torino rischia di riempire il vuoto istituzionale*, Altreconomia, 27 March 2024, https://altreconomia.it/viaggio-nel-caporalato-abitativo-che-a-torino-rischia-di-riempire-il-vuoto-istituzionale/ (last accessed on 6 May 2025).

[73] This is the name used to refer to the historical "Tre Venezie" region consisting of Veneto, Trentino - Alto Adige and Friuli Venezia Giulia. For further information on the housing conditions of migrant workers in this area, *see*: Marconi G., Shkopi E., *Fuori dalla porta: la precarietà abitativa dei migranti in Veneto, tra discriminazione (istituzionale) e pratiche dal basso*, in *Archivio di studi urbani e regionali*, 2, 2022, 102-125.

[74] Indeed, instead of completely abusive settlements, it is more common for the phenomenon of housing segregation to occur in peripheral areas of the urban fabric where properties classified as "commercial buildings" are converted into workers' housing; or in country/mountain cottages lacking the habitability licence and essential services as well as primary urbanisation services.

[75] For a more in-depth look at the phenomena of housing segregation of migrant workers - although limited to the agro-alimentary sector - and irregular settlements, *see*: Progetto InCaS. *Le condizioni abitative dei migranti che lavorano nel settore agro-alimentare*, Fondazione Anci, 2022, https://www.anci.it/wp-content/uploads/Rapporto-INCAS-compressed.pdf (last accessed on 6 May 2025).

[76] *I.e.* Article 600 Cr. C. – reduction to and maintenance in slavery; Article 601 Cr. C. – human trafficking; Article 603 Cr. C. – acquisition and sale of slaves.

[77] Namely: Article 603-*bis* of the Criminal Code and Article 12 para. 5-*bis* of the T.U.I. (Legislative Decree no. 286/1998).

[78] Which, while not defining exploitation and not being intended as an exhaustive and closed list, provides a tool for "indexing" and identifying it.

[79] Art. 603 Bis Codice Penale, par. 3. no. 4.

profit, provides accommodation or transfers - also through rental agreements - a property to a foreign national lacking a residence permit at the time of the contract's conclusion or renewal.[80]

On paper, therefore, the legal framework might appear encouraging, as it features a wide array of provisions aimed at suppressing various forms of exploitation, including specific references to the role of housing conditions in shaping these dynamics. In practice, however, the implementation of these norms has fallen short of expectations, revealing a substantial gap between formal protections and their actual enforcement. In fact, as numerous scholars have pointed out, this elaborate repressive apparatus, not only proves largely ineffective in preventing and addressing abuses, but also fails to account for the material conditions of those it is meant to protect[81] and, as a result, fails to serve as an effective means of access to justice.[82] Indeed, judicial decisions in this area are so infrequent that they risk portraying the phenomenon as marginal, raising a pressing and inescapable issue of access to justice.[83]

This issue is compounded by a variety of both legal[84] and material factors[85] (as previously hinted at in earlier sections), which ultimately render the criminal provisions little more than empty threats and thus deprive them of both credibility and any real deterrent effect. It thus seems reasonable to conclude that the so-called "Law Enforcement Approach"[86] - i.e. the repressive model that characterizes the Italian framework for combating labour exploitation - has proven entirely inadequate in providing effective responses to the issues at hand, thereby generating yet another protection deficit that further contributes to the perpetuation and spread of the phenomena under discussion.

Finally, it is worth mentioning - without any claim to exhaustiveness - articles 18 and 18-*ter* of the T.U.I.. Indeed, these provisions regulate two additional tools aimed at countering labour exploitation, which partly depart from the strictly repressive approach previously discussed. They introduce two residence permits,[87] designed to protect victims of labour exploitation and featuring three key strengths compared to the measures examined thus far: 1. the application for these permits prevents the worker from being prosecuted for irregular immigration status; 2. no proof of adequate housing is required for their issuance; 3. they grant access to the reception system (including food and housing provided by the State).

[80] Article 12 para. 5-*bis* of the T.U.I.
[81] Starting with the consequences of the simultaneous housing, spatial and social segregation to which many of these workers are subjected.
[82] Among others, refer to : Calafà L., nt. (13), 67-90; Chiaromonte W., nt. (7), 249-277; Faleri C., nt. (27), 257-279.
[83] Faleri C., nt. (27), 265.
[84] These range from the punishment of the irregular status; to the impossibility of being refunded social security contributions in case of return to the country of origin; to long waiting times to obtain justice through the court system; to the risk of losing housing in retaliation when the contract expires.
[85] From the need for an income for self-subsistence; to spatial segregation; to the forms of institutionalised and non-institutionalised racism that pervade Italian institutions and much of the intermediate bodies - including trade unions - on this last point refer to the analysis made in Della Puppa F., nt. (7).
[86] Calafà L., nt. (13), 69.
[87] Article 18 T.U.I. allows the issuance of a so-called "residence permit for special cases" in the event that the migrant worker is a victim of trafficking or of "situations of violence or serious exploitation"; Article 18*ter* T.U.I. is on the other hand specifically dedicated to the victims of the crime regulated by Article 603 bis of the Criminal Code.

These permits therefore appear to be better suited to the "conditions of existence" of the social subjects they are intended to support as they allow all migrant workers (even "irregular" ones) to expose themselves without, in theory, having to fear repercussions and being able to rely on state assistance to satisfy their basic needs.

However, even if these permits represent a significant step forward in aligning legal instruments with the material conditions of exploited workers, it is equally important to acknowledge the considerable shortcomings that still undermine their effectiveness. First, the procedure for obtaining these permits remains highly bureaucratic and rigid, which is often incompatible with the need for timely protection.[88] For example, lengthy judicial proceedings may lead to months-long delays[89] before the permit is issued - during which the exploited worker (if their previous permit has expired) is not allowed to work and must find (and pay for) housing autonomously.[90] Second, the theoretical right to access reception services does not necessarily translate into an actual guarantee of such access. The well-documented treatment of asylum seekers by Italian police headquarters ("*questure*") demonstrates how this right is frequently denied in practice, and often only becomes effective through so-called "bottom-up" interventions by social movements or trade unions.[91]

Therefore, although these tools represent a meaningful improvement compared to the first group of provisions, they remain embedded within a broader, highly dysfunctional system that prevents them from being, *per se*, sufficient to ensure genuine and effective protection for exploited workers.

5. Conclusions.

In conclusion, considering what has been discussed in the previous paragraphs, the reflections developed by that portion of legal scholarship[92] that has studied the employment of migrant workers in the agri-food sector can, and should, be extended and generalized.

[88] It is true, indeed, that the residence permit pursuant to Article 18 of the T.U.I. also provides for a so-called "social pathway", but the authorities who are supposed to give access to it are the same ones who, on repeated occasions, implement illegitimate practices. As analysed in Graeber D., *The Utopia of Rules: On technology, stupidity and the secret joys of bureaucracy*, Melville House Publishing, New York, 2015, 26ff., the bureaucracy in charge of what is vulgarly referred to as "social services" seems since the birth of the modern state to have mostly a disciplinary and moralising task of the subordinate classes without any supportive ambitions.

[89] This issue has also been recently acknowledged by the Court of Brescia, which, in its order of 24 March 2025, recognised that "The time that has elapsed without the administration ever arranging an appointment for the registration of the application - notwithstanding the repeated reminders and warnings - reveals an unacceptable violation, even before the provisions of Article 5 of Decreto Legislativo N. 241, of the more general provisions of Article 18-bis of Legge N. 241 del 7 Agosto 1990, with serious and unjustified compression of the rights of the interested party, who is now unlawfully precluded from enjoying the rights attributed to him by the mere formalisation of the application (hence the undoubted existence of the other requirement of *periculum in mora*)"- Tribunale di Brescia, Ordinanza of 24 March 2025. Therefore, it is to be hoped that a jurisprudential orientation in this sense will be consolidated in the near future in order to solve the problem at judicial level.

[90] In the case of the workers interviewed for this research, they have in fact been waiting for six months and are still waiting for the issuance of their residence permits. In the meantime, they have to pay €650 each per month for a bed space, without being able to work — as their work residence permits have expired.

[91] ASGI, nt. (10).

[92] Refer to the authors cited in footnote n. 82.

Indeed, they reveal a structural feature of the entire Italian labour market: the systematic reliance on migrant labour under exploitative (or at least irregular) conditions, which constitutes a crucial factor in reducing production costs and ensuring the competitiveness of many Italian businesses.

Both occupational and housing segregation can therefore be interpreted as concrete manifestations of the logic described by Karl Marx, according to which the employer tends to compress the so-called "costs of labour production" until they align with the "costs of existence and reproduction of the worker"[93]. Indeed, the intersection of these two phenomena creates a context in which the employer exercises an almost total control not only over the production process but also over the social reproduction conditions of the worker, thereby creating the ideal settings for the full realisation of such a dynamic.

In this scenario, the legal system often appears inert, if not complicit: migration policies, institutionalized discrimination in access to public housing for foreign workers, and the lack of effective and timely tools against labour exploitation, all contribute to the creation of a multidimensional state of social vulnerability that becomes the premise for the normalization of exploitation. Moreover, despite certain isolated legislative interventions[94] the legislator does not appear to have seriously addressed the issue. Indeed, the reforms adopted have merely sought to contain the most severe and pathological expressions of the phenomenon, implicitly accepting its structural nature and choosing not to tackle its deeper causes. In doing so, the legislator has ended up legitimizing a *de facto* situation that responds to a brutal economic logic rather than to the principles of the Italian constitution, raising serious doubts about the constitutional sustainability of such an approach.

Considering that, on the one hand, the Italian Constitution formally recognizes not only the principle of substantive equality (Article 3), but also the duty of the Republic to guarantee the inviolable rights of the person and to promote a free and dignified life for all workers (Articles 2 and 36); and that, on the other hand, the current legal and institutional framework allows (and in some respects even sustains) structural conditions of exploitation, it seems both legitimate and appropriate to question if it is truly acceptable that a significant portion of the population living in a so-called "welfare state" remains effectively deprived of the fundamental rights that the legal system, at least in theory, guarantees to all.

Building on these considerations, it becomes essential to interrogate the underlying rationale of the legal and policy architecture regulating this phenomenon. For instance, does the distinction between "regular" and "irregular" migrants truly serve a legitimate purpose, or is it instrumental in maintaining widespread discrimination and vulnerability - especially in a context where the pathways to the regular *status* are highly restricted and the system relies on cyclical regularisation measures? Similarly, can the establishment of a two-tier system in access to housing - distinguishing between Italian and foreign workers, in contrast with recent rulings by the Constitutional Court - be reconciled with the principles of equality and non-discrimination? Finally, from a remedial perspective, can it seriously be argued that the current approach - repressive, bureaucratic, and lacking concrete instruments for access to

[93] Marx K., *Lavoro Salariato e Capitale*, Edizioni Lotta Comunista, Milan, 2009, 15 ff.
[94] Such as the introduction of Article 603-bis of the Criminal Code or the residence permit under Article 18-ter of the Consolidated Immigration Act (T.U.I.).

justice - does not contradict the Republic's duty to "remove economic and social obstacles" that hinder "the full development of the human person" and "the effective participation of all workers in the political, economic, and social organisation of the country" (Article 3, paragraph 2, of the Constitution)?

In the author's view, the answer to each of the questions posed must be negative. The elements discussed are not isolated anomalies, but rather expressions of a broader legislative trajectory - pursued, often in a bipartisan manner, by successive governments - that has progressively hollowed the constitutional guarantees in the fields of labour, social, and migration rights. This trajectory reflects not merely a series of contingent policy choices, but a structural orientation of the legal system that appears to prioritise economic imperatives over fundamental rights and democratic principles. Therefore, in the absence of a systemic change of pace, it seems correct to foresee the risk of a deepening of the dynamics of marginalisation and exploitation, with profound repercussions not only for the individuals most directly affected, but also for the integrity and cohesion of the social fabric as a whole.

That said, the complexity of the issues at stake - and the interplay of legal, political, and social dimensions - precludes the possibility of a simple "reformist" solution within a *de iure condendo* framework. Indeed, unless resorting to overly reductive narratives, it becomes clear that piecemeal legal reforms, although desirable (such as the elimination of the distinction between "regular" and "irregular" migrants), cannot alone address the structural nature of the problem. What is at stake is not merely the formal content of norms, but the systemic reproduction of illegitimate and discriminatory practices - often tacitly endorsed and reiterated by institutional actors - that continue to undermine the effective implementation of constitutional rights.

Therefore, in this scenario the role of legal scholars - and labour law scholars in particular - must extend beyond doctrinal analysis and normative discourses. Instead, it should take the form of a concrete and engaged practice aimed at supporting migrant subjectivities, workers, tenants and their collective organisations in their daily struggles. This involves not only striving to ensure that the rights formally enshrined in the legal system are made materially effective, but also working to rebalance deeply asymmetrical power relations.

In a context marked by entrenched social inequalities and systemic conditions of subordination, labour law must therefore reclaim its original emancipatory vocation.[95] One that goes beyond the formal protection of workers and aspires instead to transform the very material conditions of exploitation and exclusion. Indeed, as this analysis has sought to demonstrate, without a Material Constitution capable of sustaining the Formal Constitution, even the highest constitutional principles risk becoming empty formulas, observed in form but disregarded in substance - often by the very state apparatus tasked with upholding them.

[95] For an in-depth discussion of this function, refer to the extensive analysis in Dukes R., *The Labour Constitution: the enduring idea of labour law,* Oxford University Press, Oxford, 2014.

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