

# The Global Labour Rights Reporter

Protecting the Labour Rights of Migrant Workers and Refugees



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# THE VULNERABILITY OF UNDOCUMENTED MIGRANT WORKERS UNDER ITALIAN IMMIGRATION LAW. AN INSIGHT ON THE ITALIAN LEGAL FRAMEWORK AFTER 2020: A CHANGE OF COURSE?

## RITA DAILA COSTA<sup>1</sup>

Italy | Originally written in English

### Introduction: Foreigners and Vulnerable Undocumented Migrant Workers

The juridical status of migrants in the state of arrival is a classic example of vulnerability, due to the intersectional discrimination and inequality, combined with structural and social dynamics, that they face. When addressing this issue, the U.N. Human Rights Council made the following statement: “The vulnerable situations that migrants face can arise from a range of factors that may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances change.”<sup>2</sup>

On one hand, merely moving from one place to another causes the acquisition of a different *juridical* status<sup>3</sup> and, therefore, different levels of empowerment and access to rights. On the other hand, it is undeniable that immigration policies are one of the main causes of migrants’ vulnerability.<sup>4</sup> Indeed, Italian and European immigration

policies are crafted to fight illegal migration, in accordance with the perception that immigration is a problem of public order and security, and there is no apparent room for policies addressing the lawful entrance and residence of people in European countries. This approach pushes migrants to enter and stay illegally, thereby experiencing a situation of invisibility and marginality, while also being at heightened risk for becoming potential victims of criminal organizations, abuse, and exploitation.<sup>5</sup> In fact, undocumented and irregular migrants are considered paradigmatic victims of exploitation.<sup>6</sup>

The Italian legal framework has traditionally ignored the existence of these people, exacerbating issues created by this invisibility by not regulating and protecting migrants who entered Italy. However, in 2020, the Italian government issued special protections that give migrants lawful opportunities, through individual assessments of their situation in Italy, to escape from this invisibility.

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<sup>2</sup> U.N. High Commissioner for Refugees (UNHCR), *Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations, Report of the United Nations High Commissioner for Human Rights*, at 12, UN Doc. A/HRC/37/34 (Jan. 3, 2018).

<sup>3</sup> Jorge A. Bustamante, *La “responsabilidad del estado” y las migraciones internacionales*, in *DERECHO INTERNACIONAL Y PROTECCIÓN DE MUJERES MIGRANTES EN SITUACIÓN DE ESPECIAL VULNERABILIDAD* 17, 34 (Carmen Pérez González ed., 2014).

<sup>4</sup> Indeed, also institutions may be cause of “pathogenic” vulnerabilities. See Catriona Mackenzie, Wendy Rogers, & Susan Dodds, *Introduction: What is Vulnerability and Why Does It Matter for Moral Theory?*, in *VULNERABILITY: NEW ESSAYS IN ETHICS AND*

*FEMINIST PHILOSOPHY* 1, 8 (Catriona Mackenzie, Wendy Rogers, & Susan Dodds eds., 2013).

<sup>5</sup> See Anne T. Gallagher & Marika McAdam, *Abuse of the Position of Vulnerability Within the Definition of Trafficked Persons*, in *ROUTLEDGE HANDBOOK OF HUMAN TRAFFICKING* 185, 186 (Ryszard W. Piotrowicz, Cony Rijken, & Baerbel Heide Uhl eds., 2017).

<sup>6</sup> Louise Waite, Gary Craig, Hannah Lewis, & Klara Skrivankova, *Introduction*, in *VULNERABILITY, EXPLOITATION AND MIGRANTS – INSECURE WORK IN A GLOBALISED ECONOMY* 1, 7 (Louise Waite, Gary Craig, Hannah Lewis, & Klara Skrivankova eds., 2015).

## The Italian “cimmigration” System: a Cause of Migrants’ Vulnerability to Exploitation

Italian immigration policies are a prime example of furthering vulnerability of migrant workers. Under Italian immigration law, foreigners – including asylum seekers and refugees – are perceived not only as dangerous “enemies,” but also as sources of social insecurity.<sup>7</sup> Therefore, Italian immigration policies are designed to fight both irregular migration and criminal organization, while policies on access and stay are completely neglected,<sup>8</sup> pushing people to find alternative illegal ways to enter and live in Italy.<sup>9</sup> Nevertheless, those who enter and stay illegally are criminalised under the article 10-bis of the so-called Consolidated Act on Immigration.<sup>10</sup> Accordingly, they are invisible to Italian institutions and are even denied access to basic rights, despite the formal guarantee of fundamental rights provided by the Italian constitutional framework.<sup>11</sup>



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<sup>7</sup> See Luigi Ferrajoli, *Il populismo penale nell’età dei populismi politici*, in 1 QUESTIONE GIUSTIZIA, 79, 80 (2019).

<sup>8</sup> See, e.g., Alessandro Riccobono, *Immigrazione e lavoro al tempo della crisi. Aspetti problematici e prospettive di riforma del quadro normativo*, 2-3/2013 NUOVE AUTONOMIE, 401, 406 (2013); Livio Neri, *Il lavoro*, in IMMIGRAZIONE, ASILO E CITTADINANZA 191, 201 (Paolo Morozzo Della Rocca ed, 5th ed. 2021).

<sup>9</sup> The latest “Flows Decree,” which identifies the number of people, which can enter Italy for working reasons during the current year, seems to repeat previous mistakes. The decree provides a very low number, compared to the demand. Migrants can enter only if they have already an employer. Therefore, when they are still in their home country, migrants have to find an employer available to apply for and carry on the procedure in Italy. The latest Decree also added a new requirement, asking employers to verify the availability of Italian workers before hiring a foreigner. See Associazione per gli Studi Giuridici sull’Immigrazione (ASGI), *Al via le quote d’ingresso per il 2023. Un commento al Decreto Flussi* (Jan. 31, 2023), <https://www.asgi.it/notizie/decreto-flussi-2023/>.

<sup>10</sup> Decreto legislativo 25 luglio 1998, n. 286/1998 (It.), <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286>. Italian scholars blamed the crime punished under article 10-bis for being useless and ineffective. See e.g. Luca Masera, “Terra bruciata” attorno al clandestino: tra misure penali simboliche e negazione reale dei diritti, in IL PACCHETTO SICUREZZA 27 (Oliviero Mazza & Francesco Viganò eds., 2009); Massimo Donini, *Il cittadino extracomunitario da oggetto materiale a tipo d’autore nel controllo penale dell’immigrazione*, in 1 QUESTIONE GIUSTIZIA, 101, 114-115 (2009).

<sup>11</sup> As addressed by scholars, the Italian legal framework is built on the existence of structural inequalities between citizens and aliens but provides that different treatments have to be reasonable and respectful of

“Indeed, undocumented migrants cannot be employed through regular contracts, nor do they have access to the regular labour market. This is because the Consolidated Act on Immigration criminalises the employment of foreign workers without a residence permit, which makes it impossible for employers to hire undocumented migrants legally.”<sup>12</sup>

As a result, undocumented migrants are forced to work in the informal economy and accept conditions of abuse and exploitation,<sup>13</sup> or turn to criminal organizations to make a basic living. The agricultural sector in Italy is a prime example of this type of abusive situation: it is almost entirely based on the exploitation of migrants, who are able to work for lower wages and longer hours than Italian workers. Undocumented migrants are usually illegally recruited by other foreigners to work without a formal contract and without any guarantees for health, safety and social security.<sup>14</sup> Moreover, they often live in segregation and isolation from the rest of Italian society, in temporary and precarious encampments in the rural zones, which they can only leave when transported to the working place by the same ‘gangmasters.’<sup>15</sup>

It is worth noting that this employment situation is not only common among undocu-

fundamental rights. See Silvio Bologna, *Lavoro e sicurezza sociale dei migranti economici: l’eguaglianza imperfetta*, in DIRITTO E IMMIGRAZIONE. UN QUADRO AGGIORNATO DELLE QUESTIONI PIÙ ATTUALI E RILEVANTI 277, 281 (Giuseppe De Marzo & Francesco Parisi eds., 2021).

<sup>12</sup> D.Lgs. n.286/1998, art. 12, paras. 12 & 12-bis (It.).

<sup>13</sup> Madia D’Onghia, *Immigrazione irregolare e mercato del lavoro: spunti per una discussione*, 2019-2 RIVISTA TRIMESTRALE DI DIRITTO PUBBLICO 463, 474 (2019); Stella Laforgia, *Il contrasto allo sfruttamento lavorativo dei migranti*, in MIGRANTI E LAVORO 192 (William Chiaromonte, Maria Dolores Ferrara, & Maura Ranieri eds., 2020). On the other hand, regular migrants are also particularly vulnerable to abuse in the workplace since their residency depends on their job.

<sup>14</sup> ALAGIE JINKANG, PERCEPTIONS POLICY BRIEF: - VULNERABILITY AND EXPLOITATION OF MIGRANT WORKERS IN ITALIAN AGRICULTURE 2 (Apr. 2022).

<sup>15</sup> See LETIZIA PALUMBO & ALESSANDRA SCIURBA, THE VULNERABILITY TO EXPLOITATION OF WOMEN MIGRANT WORKERS IN AGRICULTURE IN THE EU: THE NEED FOR A HUMAN RIGHTS AND GENDER BASED APPROACH 24 (2018), [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604966/IPOL\\_STU\(2018\)604966\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604966/IPOL_STU(2018)604966_EN.pdf)



mented migrants, but it also affects migrants who may agree to work in these conditions because they need an employment contract to renew their Italian residence permit. In this situation, employers usually take their identity documents to retain full control over them, which often results in them losing their right to renew their residence permit because of the precariousness or irregularity of the job.<sup>16</sup>

In the meantime, employees in this situation are unable to ask for help from the state authorities to protect themselves from abuses. Indeed, “due to the fear of being arrested (and/or deported), many migrants refrain from reporting their exploitation (no matter the degree). This suggests that the Italian policy approach that criminalises migrants in irregular situations is an obstacle to combating labour exploitation.”<sup>17</sup>

Furthermore, according to the traditional approach of Italian immigration law, this condition of irregularity is usually irreversible. The Italian legal framework does not provide any way out of this status of invisibility, making it impossible for an undocumented migrant to get not only a permit to stay in Italy lawfully, but also access to the regular economy. Measures of regularization (‘amnesties’) are only provided, as an exception, from time to time by the Italian government when the need to reconcile “the world of legal immigrants with the world of actual immigrants residing and working in the country” arises.<sup>18</sup> Furthermore, these “amnesties” have strict eligibility requirements, due to their exceptional character.<sup>19</sup> For example, to be eligible to apply for amnesty, a migrant would have to prove having been in Italy on 8th March 2020 and having had a suitable employment, despite his irregularity, and the employer would have to prove having had the minimum income required.

<sup>16</sup> A sample of these situations of vulnerability and abuse is provided in the judgment No. 17095 of the Court of Cassation of March 16, 2022. On that occasion, the Court described the conditions of both documented and undocumented migrant workers, and convicted the employers of the crime of slavery and forced labour. Rita Daila Costa, *Servitù, schiavitù e sfruttamento lavorativo*, 4/2022 RIVISTA GIURIDICA DEL LAVORO E DELLA SICUREZZA SOCIALE 419 (2022) (citing Cass., 16 marzo 2022, n. 17095, V pen., sent. (It.)).

<sup>17</sup> Jinkang, *supra* note 14, at 7.

<sup>18</sup> Maurizio Ambrosini, *Moral Economy and Deservingness in Immigration Policies. The Case of Regularisations in Italy*, 23 ETHNICITIES, 306, 314 (2022).

<sup>19</sup> *Id.*, at 313.

## A Change in Course: the Special Protection After the Reform of 2020

The framework just pictured became harsher after the increasing of refugees arrival by sea in 2015. For years, “the attention was mainly attracted by landings from the Mediterranean Sea and by the reception of asylum seekers, generating fears of invasion well in excess of the objective figures.”<sup>20</sup> As a consequence, several restrictive provisions were approved, affecting the lives of many asylum seekers, and reducing their possibility of getting permits to stay after filing their applications for international protection.

Nevertheless, after a controversial measure of migrant regularization, defined in article 103 of the so-called “restart decree” (Decree n. 34/2020, issued in May 2020) failed,<sup>21</sup> the Italian government made a decisive change of course at the end of 2020. Indeed, Decree n. 130/2020, issued in October 2020,<sup>22</sup> introduced an unexpected innovation in Italian immigration law.

Aiming to reduce the side effects of the prior restrictive reforms of the asylum system, Decree n. 130/2020 introduced a “new” form of complementary protection<sup>23</sup> in the Italian asylum system: protection of the right to respect for one’s private and family life, in accordance with Article 8 of European Convention on Human Rights (ECHR).<sup>24</sup> The Decree n. 130/2020 forbade the expulsion of

<sup>20</sup> *Id.*, at 315.

<sup>21</sup> See Alessandro Bellavista, *L'emersione del lavoro irregolare nel “Decreto Rilancio”*, in DALL'EMERGENZA AL RILANCIO: LAVORO E DIRITTI SOCIALI ALLA PROVA DELLA PANDEMIA 163 (Alessandro Garilli ed., 2020).

<sup>22</sup> Decreto legge 21 ottobre 2020, n. 130/2020 (It.), <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2020-10-21:130>.

<sup>23</sup> Ruma Mandal, UNHCR Department of Internal Protection, *Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)*, PPLA/2005/02, at 2, (Jun. 2005), <https://www.unhcr.org/media/no-9-protection-mechanisms-outside-1951-convention-complementary-protection-ruma-mandal> (“The term ‘complementary protection’ has emerged over the last decade or so as a description of the increasingly-apparent phenomenon in industrialised countries of relief from removal being granted to asylum seekers who have failed in their claim for 1951 Convention refugee status. [...] all these initiatives have in common is their complementary relationship with the protection regime established for refugees under the 1951 Convention/1967 Protocol. They are intended to provide protection for persons who cannot benefit from the latter instruments even though they, like Convention refugees, may have sound reasons for not wishing to return to their home country.”).

<sup>24</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 8, Nov. 4, 1950, E.T.S. No. 5.

a foreigner when doing so could violate the right protected by ECHR Article 8, as well as other constitutional and international obligations of Italy, defined under Article 19 of the Consolidated Act on Immigration.

Thus, people who cannot be expelled because of their status as refugees have the right to apply for a residence permit for “special protection.”<sup>25</sup>

Indeed, after the reform of 2020, people could receive special protection through several paths. Under the first option, asylum seekers who do not fit the requirements of international protection may be able to receive recognition of their right to special protection. Under the second option, migrants could apply directly for recognition of their right to get a permit to stay for special protection, under Article 19, par. 1.2 of the Consolidated Act on Immigration. Article 19 became an important means of defence against unlawful deportation, since a valid expulsion order could not be issued in case of a potential violation of it.

### *The Special Protection After 2020 as a Way Out of Invisibility*

Despite several references to the system of humanitarian protection that was abolished in 2018,<sup>26</sup> the 2020 reform made an unexpected change in the overall system of Italian immigration law. According to some scholars, Decree n. 130/2020 fi-

<sup>25</sup> See Decreto Legislativo 28 gennaio 2008, n. 25, art. 32, para. 3 (It.), <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2008-01-28;25> (providing detailed rules on the permit to stay for special protection).

<sup>26</sup> Until 2018, the right to asylum under the Italian Constitution was realized in the form of refugee status, subsidiary protection, and humanitarian protection. Humanitarian protection was provided on serious humanitarian grounds or in response to constitutional or international obligations incumbent on Italy. It was a form of protection which, according to case law, had to be recognized due to hypotheses of ‘vulnerability’, to assess on a case-by-case basis. Recent case law also recognized the existence of humanitarian grounds in the case of the “social integration” of the applicant, in conformity with the right to respect for private and family life under ECHR Article 8 ECHR. To provide protection for social integration, case law required, however, that at the outcome of a comparative assessment the ties in Italy were stronger than in the country of origin. In 2018, with the so-called Security Decree, this form of protection was repealed, causing alarm among civil society and even the international community. Despite the lack of reference to the old humanitarian reasons, the reform of 2020 was clearly inspired by the previous framework, referring to constitutional and international obligations and to the right to one’s private and family life. See Marcella Ferri, *La tutela della vita privata quale limite all’allontanamento: l’attuazione (e l’ampliamento) degli obblighi sovranazionali attraverso la nuova protezione speciale per integrazione sociale*, 2/2021 DIRITTO, IMMIGRAZIONE E CITTADINANZA 78 (2021).

nally introduced a permanent regularization mechanism for undocumented foreigners residing in Italy.<sup>27</sup> Indeed, its special protection provision may allow the regularization of undocumented migrants based on an individual assessment.

Before 2020, “special” protection was merely an application of the principle of *non-refoulement*. This meant it only applied to people at risk of suffering torture or inhuman or degrading treatment if they were returned to their home countries.

“The reform of 2020 extended the Italian understanding of the principle of non-refoulement, extending the application of the principle according to the obligation created by Article 8 of the ECHR and giving specific relevance to the assessment of the migrant’s private and family life. In making this assessment, according to case law, the key element to evaluate is work integration, since it may reveal the existence of an effective link with Italy.”<sup>28</sup>

*Indeed, according to the interpretation of the European Court of Human Rights of ECHR Article 8,<sup>29</sup> Italian case law is interpreting the concept of “private” life as independent of family life. Thus, private life embraces every kind of relationship of the individual with the external world and, in particular, working relationships. These are considered the most significant proof of private life and, therefore, the most meaningful element of consideration for special protection under the 2020 decree.<sup>30</sup>*

Nevertheless, special protection has been recognized not only when people were already working in Italy regularly,<sup>31</sup> but also when they have been

<sup>27</sup> See Paolo Bonetti, *Il permesso di soggiorno per protezione speciale dopo il decreto legge n. 130/2020: una importante innovazione nel diritto degli stranieri*, in FONDAZIONE MIGRANTES, IL DIRITTO D’ASILO – REPORT 2021 – GLI OSTACOLI VERSO UN NOI SEMPRE PIÙ GRANDE 245, 268 (2021); Livio Neri, *Si fa presto a dire speciale. La protezione speciale a due anni dal decreto legge 130/2020: un istituto unitario ancora in cerca di una disciplina, un permesso di soggiorno che non può non essere convertibile*, 3/2022 DIRITTO, IMMIGRAZIONE E CITTADINANZA, 123, 125 (2022).

<sup>28</sup> Trib. Ord. di Roma, sez. dir. della pers. e immig., 22 gennaio 2021, n. 19019/2019 (It.); Trib. di Venezia, 13. ottobre 2022, n. 7300/2022 (It.).

<sup>29</sup> Paradiso & Campanelli vs Italia, App. No. 25358/12 (Jan. 24, 2017), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-170359%22%7D>.

<sup>30</sup> See Cass., sez. un. civ., n. 24414/2021 (It.).

<sup>31</sup> This is usually the case of asylum seekers, which are not entitled to international protection but have been living in



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working there irregularly<sup>32</sup> and even when they have experienced exploitative conditions.<sup>33</sup> Therefore, the obligation to protect one's right to private and family life made it possible to consider if a migrant works (or has worked) in Italy, even if under irregular conditions, ensuring them the right to a residence permit due to their work integration and thus protecting their right to private life.

In this way, special protection could have been a tool to give access to justice to undocumented and irregular migrants, giving them a way out of their invisibility and marginality. Indeed, the opportunity to get a permit to stay, rather than an order of expulsion, could be an effective means of encouraging irregular migrants to finally report the exploitative working conditions they may have been experiencing.<sup>34</sup> Employers who

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Italy, studying, and working.

<sup>32</sup> Indeed, it would be contradictory and unreasonable asking to prove a regular employment, since undocumented migrants cannot work lawfully.

<sup>33</sup> According to case law, the reference to international and constitutional obligations aims to provide protection when fundamental rights might be violated. Thus, victims of exploitation are also entitled to receive protection, since their fundamental rights are violated by their condition of exploitation. See Court of Turin, May 24, 2022 (this needs a cite to the specific case – I tried finding it but there were several opinions issued by the Tribunale di Torino on this day...); Rita Daila Costa, *Il diritto alla protezione "speciale" del migrante vittima di sfruttamento lavorativo*, 23 DIRITTO DELLE RELAZIONI INDUSTRIALI, 117, 119 (2023).

<sup>34</sup> It is worth reminding that Italian immigration law provides also a form of protection for the victim of labour exploitation, under article 18. Nevertheless, this protection is open only to victims of "serious" exploitation and has been blamed for ineffectiveness; see PALUMBO & SCIURBA, *supra* note 15 at 59; Letizia Palumbo & Alessandra Sciorba, *Vulnerability to Forced Labour and Trafficking: The Case of Romanian Women in the Agricultural Sector in Sicily*, 5 ANTI-TRAFFICKING REV., 89, 103 (2015). The "new" special protection, instead, may be recog-

exploit migrant workers save money by not paying the required amounts to pension and social security for them. While this kind of wage theft is common, in most cases, the fear of being expelled prevents undocumented migrants from reporting it or accessing justice.<sup>35</sup>

However, these 2020 reforms empowered undocumented migrant workers to report their exploitative employers, allowing those who had taken this precarious and informal work to be able to prove they have worked in Italy and, therefore, were entitled to special protection and a residence permit.

### The Latest Reform of Special Protection: a Step Back

Despite all these potential applications of special protection, the latest reform to the applicable law, which came into force with by Decree n. 20/2023<sup>36</sup> has partly changed the scope of this protection, removing the reference to the protection of private and family life in Article 19 of the Consolidated Act on Immigration.

However, despite the impact of Decree n. 20/2023, the protection of the right provided by ECHR Article 8 still must be considered an essential part of special protection. As pointed out by early commentators, even in the absence of a direct reference to private and family life, the current face of special protection would not be changed. Indeed, it is well established in case law that private and family life must be protected, not only because of the obligation provided by ECHR Article 8,<sup>37</sup> but also because they are still relevant under constitutional and international obligations.<sup>38</sup>

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nized to victims of every kind of exploitation, regardless of their employees' criminal accountability.

<sup>35</sup> It is worth underlining that, under Italian law, undocumented migrants have the right to sue their employers in cases of wage theft. See Cass., sez. lav., 13 ottobre 1998, n. 10128 (It.); Cass., sez. lav., 26 Marzo 2010, n. 7380 (It.); Cass., sez. lav. 21 settembre 2015, n. 18540 (It.).

<sup>36</sup> Decree n. 20/2023 of 2023 (It.), <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2008-01-28:25>.

<sup>37</sup> As already addressed, despite the removal of an express reference to the right to respect for private and family life, ECHR Article 8 must be applied in cases of "social integration." See Nazzarena Zorzella, *L'inaffidabile fretta e furia del legislatore sulla protezione speciale. Prime considerazioni*, QUESTIONE GIUSTIZIA, Apr. 4, 2023, <https://www.questionegiustizia.it/articolo/protezione-speciale-zorzella>.

<sup>38</sup> The relevance given to ECHR Article 8 before 2018, despite the lack of a direct reference, is one of the main arguments that may be used to reduce the side effects of the reform of Decree n. 20/2023 of 2023. See Zorzella, *supra* note 37.



Moreover, despite the case law focusing its attention on the application of the rights provided by ECHR Article 8, it is worth underlining that the right to special protection for undocumented migrants working in Italy is ensured also by the Italian Constitution. Specifically, Article 35, which mandates the protection of every kind of work in every kind of condition, also applies to undocumented migrant workers in Italy. This provision is the source of the constitutional obligation applicable to Article 19 of the Consolidated Act on Immigration and, therefore, establishes the right to special protection.<sup>39</sup>

This means that the protection of undocumented migrant workers should be still ensured under the “new” Article 19, even though its direct reference to the protection of family and private life has been removed. Therefore, despite the formal changes to the text of Article 19, the special protection seems to retain its prior scope.

Nevertheless, it cannot be denied that significant damage was created by the reform implemented by Decree n. 20/2023.

Indeed, this reform has completely changed the way to access special protection, abolishing paragraph 1.2 of Article 19. As previously mentioned, this provision allowed migrants to directly apply for the recognition of their right to special protection. Decree n. 20/2023 has removed this possibility and, incredibly, reduces actual access to special protection. Currently, special protection may be granted only after an application for international protection, or as a means of defending against unlawful deportation. Therefore, Article 19 can no longer be considered as a regularization mechanism for undocumented foreigners residing in Italy, signifying an incredible step back. After this reform, even though migrants have all the substantial requirements demanded by Article 19 to be entitled to special protection, their right to it may only be recognised if they are applying for asylum or if they want to oppose an expulsion order. Once again, undocumented migrants are bound in a condition of invisibility and vulnerability, without a way out.

## Concluding Remarks

Migrants’ vulnerability to abuse and exploitation is partly caused by Italian immigration policies and, particularly, by marginalisation and criminalisation

of immigrants, as the Italian legal framework shows. Nevertheless, vulnerability requires not only understanding, but also deconstruction, since it shows not only the reasons why individuals are exposed to harm by others, but also the responsibilities of the States.<sup>40</sup> In this sense, making the invisible visible is a means of deconstructing these vulnerabilities, since emerging from marginality and invisibility is itself an essential tool to fight labour exploitation, in that it allows people to be able to access their own rights<sup>41</sup>.

Thus, the “special” protection may be a valuable tool not just in the fight of exploitation, but also in the prevention of it. By introducing a form of protection for one’s private and family life, Decree n. 130/2020 seemed to have changed the traditional approach of Italian immigration law, proposing a effective procedure that would allow migrant workers able to come out from invisibility and finally have access to their fundamental rights.

This is not totally changing, despite the change effected by the Decree n. 20/2023. Indeed, the right to the protection of private and family life is not disposable, being ensured by ECHR Article 8 and the Italian Constitution, in addition to being part of the Italian understanding of the principle of *non-refoulement*.

Nevertheless, by eliminating the option of applying for direct recognition for special protection, the latest reform of 2023 has reduced the possibility to access special protection, once again changing the course of Italian immigration law and bounding people inside the borders of their invisibility.

<sup>39</sup> See Rita Daila Costa, *La tutela del lavoratore straniero “irregolare” dopo il decreto n. 130/2020*, 11 IL LAVORO NELLA GIURISPRUDENZA 1120, 1128 (2022).

<sup>40</sup> Alessandra Sciorba, *Vulnerabilità posizionale e intersezionale. I minori migranti soli come caso para-digmatico*, in I SOGGETTI VULNERABILI NEI PROCESSI MIGRATORI. LA PROTEZIONE INTERNAZIONALE TRA TEORIA E PRASSI 71, 75 (Isabel Fanlo Cortés & Daniele Ferrari eds., 2020).

<sup>41</sup> Laura Calafà, *Per un approccio multidimensionale allo sfruttamento lavorativo*, 2 LAVORO E DIRITTO 193, 209 (2021).