

Domestic Care Work in Italy: The Work of Family Carers Between Irregularity and Exploitation

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1. Introduction¹

This essay is devoted to the regulation of work performed in the care sector for the benefit of non-self-sufficient persons, within the family sphere and under the authority of a domestic employer, with reference to three dimensions that appear especially significant in the Italian experience, namely the extensive deregulation of the ordinary labour law framework, irregularity and labour exploitation.

The first part of the essay highlights some of the main critical aspects of the Italian regulation of domestic care work. It examines certain particularly complex issues, namely the employer's duty of safety and the regulation of working time, also considering recent national and European Union case law, as well as the rules governing termination of the employment contract (para. 1–3).

The second part of the essay, starting from the manner in which the welfare state approaches the care of non-self-sufficient persons, reconstructs the causes, consequences and possible remedies of the widespread irregularity that characterises the sector, on the one hand, and examines the phenomena of labour ex-

¹ Although the essay is the result of a shared reflection, para. 2–4 of this contribution were written by Giulia Frosecchi, and para. 5–7 by William Chiaromonte.

ploitation of which family assistants are often victims, highlighting in particular the limits arising from the application of Article 603-bis of the Criminal Code, on the other (para. 4–6).

2. The Legal Framework Applicable to Domestic Care Work

The first part of this essay examines, without any claim of exhaustiveness, some of the most critical aspects of the regulation of the employment relationship of domestic workers engaged in assisting non-self-sufficient persons. As highlighted within the “CARE4CARE – We Care for Those Who Care” project,² Italy is one of the European legal systems in which the relevant regulatory framework lends itself to important critical reflections.³

On the basis of the legislative notion—albeit imprecise (Montanari 2007) and variable (Persiani 1961, 629)—and according to a teleological characterisation (Basenghi 2000, 72–82), in the Italian legal system a domestic worker is defined as a person who performs work aimed at ensuring the functioning of family life,⁴ that is, at meeting the personal needs of the employer and his or her family,⁵ or at satisfying the needs of forms of cohabitation other than the family in the conventional sense, but nevertheless referable to that notion for classificatory purposes.

Within the field of domestic work, this contribution focuses in particular on the issues relating to domestic workers assigned to care work, whose function is not limited to the general “satisfaction of the living needs of those residing in the household” (Persiani 1968, 826), but consists in fulfilling the specific and distinctive task of assisting, or taking care of, the non-self-sufficient person. In this contribution, the Italian term commonly used to refer to such workers (*badanti*) is deliberately avoided, following discussions with stakeholders had in the context of the research project, during which attention was drawn to the negative value judgment embedded in that terminology (thus also, *inter alia*, de Martino 2021).

² See: <<https://www.care4care.net>> (accessed February 25, 2026). For an introduction to the project, see Vallauri 2025.

³ As is the case with Spain: see Rönmar 2025, who, based on the findings emerging during the research, highlights this aspect by comparing the two legal systems with those of the other partner countries in the project (France, Germany, Spain, Sweden, Poland).

⁴ Court of Cassation, 1 October 2005, no. 6824, in *Giustizia civile*, 2005, 4.

⁵ “For a community to possess a ‘family’ nature, it is necessary that there be stability, continuity and permanence of the persons composing it under the same roof, the absence of a profit-making purpose, observance of a principle of mutual assistance such as is found in families based on blood ties, and the presence of affectionate solidarity among persons sharing such common board and lodging” (Court of Cassation, 31 March 1983, no. 2354, in *Giustizia civile massimario*, 1983, 3); on the distinction from the employer’s professional activity, see Court of Cassation, 30 August 2018, no. 21446, in *Diritto e giustizia*, 2018. On this point, see Milianti 2022, 578–79.

Domestic personal assistants belong to the care sector,⁶ whose centrality has already been recognised at supranational level, both in the European Care Strategy⁷ and by the International Labour Organization.⁸

Therefore, to ground the reflections that follow, a conceptual shift is made, compared with the traditional and consolidated domestic legal classification of personal assistants within the broader category of domestic work—a classification also found in most of the (numerous) collective agreements applicable in this field. This shift is justified by emphasising the defining element common to all the tasks performed by these workers, namely *care*.⁹

The first part of this study is limited to employment relationships based on a regular contract of subordinate employment concluded with a domestic employer,¹⁰ and excludes both those who provide their services occasionally and are remunerated through the family voucher scheme (see Borelli 2020, 213–26), and irregular workers.¹¹

The regulation of domestic work governing care employment relationships is laid down by statute and by collective bargaining, where applicable. The principal legislative references are: the sparse provisions of Articles 2240–2246 of the Civil Code; the other provisions of the Civil Code governing subordinate employment, insofar as compatible;¹² Law no. 339 of 2 April 1958, within the limits to be discussed shortly; and the provisions of special legislation governing subordinate employment that do not exclude domestic workers from their scope of application.

While Articles 2240–2246 of the Civil Code apply generally to employment relationships concerning domestic services, the prescriptive scope of the 1958 Law is further limited and is characterised primarily by a constitutive element

⁶ In continuity with the CARE4CARE – We Care for Those Who Care project, which defines them as “workers, without any qualifications, who take care of elderly, sick, dependent persons and persons with disabilities” (Vallauri et al. 2025a).

⁷ See European Commission 2022; cf. Vallauri 2025; Mazzetti 2025. Among EU sources, the Council Recommendation of 8 December 2022 on access to affordable high-quality long-term care is also relevant, which defines a “domestic worker providing long-term care” as any person employed to perform domestic work who provides long-term care in the context of an employment relationship (point 3, letter h).

⁸ ILC.112/Resolution V of 14 June 2024 classifies domestic workers within the “care workforce”; 2.

⁹ “Care” thus enters the legal notion of domestic work providing personal assistance; see Vallauri 2025.

¹⁰ On the supply of care work, see Borelli 2023.

¹¹ Reference is made to para. 5–7 of this essay.

¹² This refers to the view that considers Article 2239 of the Civil Code applicable also to domestic employment relationships: see Basenghi 2000, 24–31, although the author regards certain exclusions as justified by incompatibility with the type of work (see Article 2087 of the Civil Code). The thesis supporting the applicability to domestic employment of the reference made by Article 2239 of the Civil Code is confirmed by Constitutional Court, 15 March 1994, no. 86; contra Offeddu 1986, 658. For a concise reconstruction of the debate concerning the special nature of the relationship, see Timellini 2003, 570.

of the distinct legal category: the time worked for the same employer must not be less than four hours per day. It follows that those who perform work in a domestic context for less than four hours per day fall within the scope of the Civil Code provisions alone (and of Law no. 940 of 27 December 1953), whereas those exceeding that threshold are subject both to Law no. 339/1958 and to the Civil Code provisions, where supplementation of the regulatory framework remains necessary.

Regarding the applicability of special legislation governing subordinate employment, such legislation excludes domestic work from the scope of certain provisions, obliging the interpreter to reconstruct a complex regulatory puzzle. Further complicating the framework is the wording used in the provisions introducing such exclusions. While some adopt the generic expression “domestic worker” (or the equivalent “family worker”, of European origin), such as Legislative Decree no. 66/2003, others explicitly exclude only employment relationships governed by Law no. 339/1958, notably Article 4 of Law no. 108/1990.

Adhering to an interpretation slavishly faithful to the literal wording of the statutory provisions would lead to identifying further intricate and almost byzantine distinctions between the different legal categories, with paradoxical outcomes, such as applying the rules limiting dismissal only to domestic employers who fall outside the scope of Law no. 339/1958, that is, to the employment relationships in which the worker is presumably less integrated into the family context. The legal scholarship immediately argued that this distinction was the result of an “embarrassing oversight”, promptly overcome through interpretation, by extending the exclusion from the obligation to provide justification for unilateral termination to all domestic employment relationships (Basenghi 2000, 302).

Moreover, the distinction between the two categories, from a practical standpoint—such as identifying which employers are subject to the obligation to justify dismissal—clashes with the inadequacy of the temporal threshold of “four hours per day”. This criterion fails to account for the wide range of working-time arrangements that may be established within domestic employment. For example, one may question whether three hours per day for six days per week exclude the application of Law no. 339/1958, while work performed for four hours per day for three days per week falls within its scope.

The principal driver behind the regulation of domestic work through special legislation was the absence of collective bargaining, which was prohibited in the sector by Article 2068 of the Civil Code until the judgment of the Constitutional Court of 9 April 1969, no. 68. Through an ingenious argumentative device, the Court overcame the paternalistic cultural prejudice that considered employment relationships performed within the strictly private walls of the home, under a regime of “devoted loyalty”, to be incompatible with collective representation of interests.¹³

¹³ Constitutional Court, 9 April 1969, no. 68, in *Il diritto del lavoro*, 1970, II, 58; see Basenghi (2000), 35–8.

The establishment of the first employers' association in the sector followed shortly thereafter. *Nuova Collaborazione* was founded in 1969 (and still exists today, federated within *Fidaldo*) and, in 1974, signed—together with the National Federation of the Italian Clergy—the first collective agreement regulating domestic employment with FILCAMS-CGIL, FISASCAT-CISL and UDATCA-UIL.¹⁴

Even prior to the establishment of a formal bargaining framework, part of the academic literature did not exclude the possibility that statutory regulation might be “supplemented or even replaced by a discipline laid down by collective autonomy and more favourable to the worker”, but only once “the trade union organisation of the categories has been completed” (Persiani 1968, 828). Here lies the central difficulty: not so much in the existence of employers' and trade union organisations aiming to regulate domestic employment collectively—which today are numerous, as are the collective agreements that proliferate in the sector¹⁵—but rather in the difficulty of recognising sufficient representativeness in the signatory organisations. Representativeness should reflect a genuine collective synthesis of individual interests, albeit mediated, a task made particularly complex by the highly individualised nature of employment relationships in this sector.¹⁶ Moreover, as has convincingly been observed, the criteria established in the 2014 Consolidated Act on Representation for measuring trade union representativeness are ill-suited to domestic work, a sector in which there are no unitary or company-level trade union representations, and therefore no electoral data (Borelli 2023, 890).

Finally, it is noteworthy that the website of the National Council for Economics and Labour does not report coverage data for any of the collective agreements applicable to the sector.¹⁷

Regarding statutory regulation, the collective agreements currently in force tend towards merging the two legal categories, rejecting the distinction based on hours worked. A certain degree of uniformity can be observed in defining their scope of application as encompassing all domestic employment relationships in which the worker is “engaged in ensuring the functioning of family life and of family-structured forms of cohabitation”.

¹⁴ See Nuova Collaborazione 2024. For a historical reconstruction, see Ioli 2010, 207.

¹⁵ Borelli (2023, 890–91) identifies 23 collective agreements; Casano (2022, 51–3) identifies 15 applying exclusively to subordinate employment under domestic employers and an equivalent number variously referable to that category; the CARE4CARE Project selected 16: see Vallauri et al. 2025a. Recently, CNEL identified 30 collective agreements referable to the heading “domestic and care work” (CNEL 2025, 85).

¹⁶ Doubts regarding representativeness were already raised in the early 1990s: see Bianchi D'Urso 1990.

¹⁷ Indeed, as regards the coverage rate of collective bargaining, CNEL itself notes that “critical sectors in relation to adequate wages, such as agricultural work and domestic work, remain uncovered in terms of information flows” (CNEL 2023, 17).

For the purposes of this contribution, primary reference will be made to the provisions of the *Fidaldo-Domina National Collective Agreement*, as it is signed by the trade unions commonly regarded as comparatively most representative, namely those affiliated with CGIL, CISL and UIL (hereinafter: the *Fidaldo NCBA*).¹⁸

3. The Subtractive Legislative Technique and the Role of Collective Bargaining

The technique through which domestic work has historically been regulated is frequently analysed by emphasising its “subtractive” force,¹⁹ by reason of the numerous provisions governing subordinate employment from which domestic workers or domestic employers are exempted. It is true, however, that domestic work enjoys (so to speak) a special regime—a degree of legislative attention not reserved for workers in other sectors (perhaps with the exception only of seafarers, professional athletes, railway workers and a few others). Thus, if one were not to take as the starting point the special legislation governing subordinate employment, but rather Law no. 339/1958 and the provisions of the Civil Code, the regulatory technique of domestic work would appear rather “additive”, in the sense that the special laws governing subordinate employment add, insofar as compatible, regulatory provisions also to domestic work.

This observation does not serve to challenge the nonetheless persuasive view that domestic work is regulated through a subtractive technique—a thesis capable of drawing attention to the reduced protection afforded to the workers concerned²⁰—but rather to highlight the extremely sparse nature of the regulatory framework, which, at the time of its enactment, was embedded in an economic, cultural and social fabric, as well as in a labour market,²¹ markedly different from that of today.

It suffices to consider the terminology that composes the illustrative list of domestic workers with “clerical functions” and that of “manual workers, specialised or otherwise”, adopted by Law no. 339/1958.

It must also be added that, in articulating a special regime, the Law accorded the same legal consideration to those who take care of horses, those who wash laundry, and those who—even without a diploma—care for children. The conceptual flaw of superimposing roles that are not comparable, due to heterogeneity of competences and tasks, allegedly justified in the 1958 Law by the homogeneity of the employer, is even more evident today, when domestic workers no longer constitute

¹⁸ For an overall critical reading, see Borelli 2020, 177 ff.

¹⁹ Basenghi 2000; 2010; more recently reiterated by de Martino 2021, to which reference is made for an examination of the regulation of the sector during the COVID-19 period, and by Borelli 2023.

²⁰ The European Care Strategy highlights the risk that, for live-in carers, working conditions may even be “exploitative” (European Commission 2022).

²¹ This is the analytical approach adopted in the volume edited by Casano 2022, which focuses on the capacity of collective bargaining to contribute to the construction of a care labour market; for example, Casano 2022, 44.

a “insignificant minority”,²² and domestic personal care has become one of the cornerstones of contemporary societies.²³ In this respect, the regulation of domestic work, in attempting to specialise the discipline, ultimately errs through excessive generality, insofar as it fails to distinguish between the performance of tasks serving the household or fully self-sufficient family members and the performance of care tasks for persons who are partially, if not entirely, non-self-sufficient. We are therefore confronted with a special regime applicable to a group of subordinate workers that is formally a species, but in practice functions as a genus, within which a distinct subcategory must be identified—namely domestic care workers. These are workers who, although operating within a domestic environment, perform specific tasks that should be distinguished, also at the level of legal classification, from those performed by workers commonly referred to as housekeepers (*colf*).

Collective bargaining, evolving over time, offers a more up-to-date representation, but departs only partially from the legislative framework. In many cases, it continues to treat all professional roles employed by a domestic employer as conceptually unified, while differentiating them through grading classifications.

The construction of professional profiles in the numerous collective agreements applicable to the sector (or sectors, considering the multiplicity of agreements directly referable to domestic care workers) is heterogeneous.²⁴ First, it should be noted that workers performing, without autonomy, the less complex tasks of maintaining or caring for the household or animals are placed at a different classification level from those performing relational tasks involving members of the family. Unlike the legislative framework, however, the presence of roles specifically devoted to assisting non-self-sufficient persons²⁵ is a constant feature across all collective agreements governing domestic work. These agreements generally provide for a higher classification level—with significant wage differentials (under the *Fidardo NCBA* amounting to almost 300 euros)—for workers able to demonstrate specific training through possession of a recognised diploma.²⁶ Nonetheless, collective bargaining does not establish a clear

²² Romagnoli 1990, 520, commenting on the exclusion of domestic employers from the obligation to justify dismissal provided for by Law no. 108/1990 (my translation).

²³ The Domina Report 2024 refers to approximately 1.6 million legally registered domestic workers; both the latest Eurostat data (2023) and the Domina Report 2024 indicate that around 50% of domestic workers legally employed in Italy are care workers. See also De Simone 2019, 658.

²⁴ In addition to the *Fidardo NCBA*, some of the collective agreements selected within the CARE4CARE project were consulted, including the FMPI-CONFINTESA; CONFAPI-UNSI; and ESAARCO-UGL collective agreements.

²⁵ The definition of a “non-self-sufficient” person for classification purposes may be derived from the *Fidardo NCBA* (and similarly from the other agreements), where it is understood as a person who is not able to perform the most important activities relating to personal care and social life (Article 10, minutes note).

²⁶ The issue of remuneration is not addressed in this contribution for reasons of space. It should nevertheless be recalled that Article 36 of the Constitution applies also to this sector, as expressly established by Court of Cassation, 23 October 1985, no. 5211, in *Giustizia civile*, 1985, 10 ff.

separation in classification between domestic care workers and other domestic employees. For example, under the *Fidaldo NCBA*, a trained personal care assistant is classified at the same level as a “household manager” and a “trained family educator”.²⁷

Taking the statutory framework as the principal reference point and resorting to the *Fidaldo NCBA* only residually, the following paragraphs will briefly examine the (non-)regulation of two of the many institutions affected by the subtractive technique: the duty of health and safety protection and certain aspects of working time. These have been selected because of their capacity to illustrate clearly both the reduced level of protection afforded to domestic workers and the consolidated legislative and bargaining approach to regulating the sector, still rooted in a distant cultural legacy that can no longer be perpetuated.

3.1 Health and Safety Obligations in Domestic Employment

The duty to ensure health and safety within domestic employment relationships is characterised by the absence of an articulated and structured protective framework,²⁸ although it would be inconceivable to admit the outright exclusion of the domestic environment from the scope of this institution.²⁹

A fortiori, there are no provisions expressing specific legislative—or indeed collectively bargained—attention to the risks deriving from the tasks performed by domestic workers who assist non-self-sufficient persons (De Vita 2009, 8; Angelini and Pascucci 2010, 233–34).

At the level of Civil Code protection, a recent judgment of the Court of Cassation has dispelled any remaining doubts regarding the applicability of Article 2087 of the Civil Code to domestic employment relationships.³⁰ Without engaging, in truth, with the related academic debate,³¹ the Supreme Court affirmed the “decisive significance within the protective framework” of Article 2087 also in a case concerning an accident occurring in a domestic employment context, with the well-known consequences, not only as regards the contractual nature

²⁷ For a reading of the articulation of professional profiles in care work, see also Negri 2022 and Guerra and Negri 2022.

²⁸ Legislative Decree no. 81/2008—as previously Legislative Decree no. 626/1994 and Framework Directive EEC 391/1998—excludes from the definition of “worker” for the purposes of its application those “engaged in domestic and family services” (Article 2(1)(a)).

²⁹ Regarding the peculiarity of this “working environment”, see Basenghi 2000, 239, and Angelini and Pascucci 2010, 223 ff., who clearly describe its hazardousness.

³⁰ Court of Cassation, 24 August 2023, no. 25217, in *Diritto delle relazioni industriali*, note by Tagliabue 2024.

³¹ In legal scholarship, the applicability of Article 2087 of the Civil Code to domestic employment relationships has long been debated: Timellini 2003a, 581, firmly rejected it; Basenghi 2000, 240, denied its formal applicability, albeit with certain openings (241 ff.); Romei 1997, 74, and Angelini and Pascucci 2010, 240, supported its applicability subject to a compatibility assessment; Adapt 2009, 10; the same conclusion may also be reached on the basis of the analysis conducted by Albi 2008, 174.

of the safety obligation, but also with regard to the burden of proof: the domestic employer is likewise required to “prove that the damage was due to a cause not attributable to him or her, that is, that he or she fulfilled the safety obligation by adopting all measures necessary to prevent the harm”.³²

The judgment confirms that, regardless of the succession of special regulatory regimes, Article 2087 retains its function as a “closing provision of the entire system” (for all, Romei 1997, 63). From this derive both a “specific preventive obligation” (Timellini 2003b, 806) applicable also within domestic (including domestic care) employment relationships, and the applicability of the principle of “maximum technologically feasible safety”, understood as an obligation of means and not of result, continuously adapting to the evolution of circumstances, according to which “it is not possible to eliminate risks entirely, but every effort must be made to eliminate them” (Del Punta 1999, 153; see also Romei 1997, 65 ff.). The relevance of this principle to the sector under examination is further supported by the same judgment of the Court of Cassation, which establishes the employer’s liability—in that case a domestic employer—

not only in the event of violation of known technical or experiential rules, but also for failure to adopt all measures and precautions capable of safeguarding the worker’s physical and psychological integrity in relation to the specific situation of risk (Court of Cassation, 24 August 2023, no. 25217).

In addition to constitutional principles, Article 6 of Law no. 339/1958 supplements this framework by prescribing two obligations, partially overlapping in content. The first applies to employers of live-in domestic workers and requires them to provide “an environment not detrimental to the worker’s physical and moral integrity, as well as healthy and adequate nutrition”. The second, broader in scope, as it protects all domestic workers falling within Law no. 339/1958, consists in a general duty to safeguard the worker’s health (though not expressly safety), “particularly where sources of infection are present within the family”.³³ The special statute thus identifies a distinct health risk factor within the domestic environment—namely the presence of infectious sources—which is particularly sensitive in the case of workers engaged in assisting non-self-sufficient persons, thereby requiring the employer to adopt specific preventive measures.

Domestic care workers entitled to board and lodging would therefore be entitled to protection under both of the aforementioned profiles, although the obligation to provide an environment not detrimental to physical and moral integrity—essentially mirroring the wording of Article 2087 of the Civil Code—

³² However, in the view of the present authors, reference to Legislative Decree no. 81/2008 is merely incidental and cannot be interpreted as extending the applicability of the decree to domestic workers, as such an interpretation would be *contra legem*; *contra* Tagliabue 2024.

³³ The issue of heightened infection risk in domestic employment was particularly debated during the COVID-19 pandemic; on this point, see de Martino (2021) and the bibliography cited therein.

would in itself be sufficient to encompass the full spectrum of traditional health and safety protections afforded to workers.

However, it must be emphasised that the exclusion of Article 2087 of the Civil Code, advocated in part of the academic literature, would raise significant critical issues for all the employment relationships under consideration.

First, since Article 6 of Law no. 339/1958 applies only to domestic workers employed for at least four hours per day, its exclusive application would leave a segment of workers—not easily identifiable in practice—without protection.

Secondly, excluding Article 2087 would result in the unacceptable removal of the principle of “maximum technologically feasible safety”.

Even if one were to criticise, at a systemic level, the use of that jurisprudential formula, the safety obligation laid down in Article 2087 is circumscribed by a standard of reasonableness anchored in the requirement to act with diligence appropriate to the “nature of the activity carried out” (Article 1176 of the Civil Code),³⁴ which limits its scope to what is fairly and reasonably expected. It would therefore appear unreasonable to deny its applicability to domestic employers.³⁵

Finally, it may be questioned whether the protection of health alone, as provided by Article 6 for domestic workers not entitled to board and lodging, is sufficient to establish a contractual obligation comparable to that arising under Article 2087—an obligation that extends to both physical and moral integrity and carries significant implications regarding the burden of proof—and whether such protection should, in any event, be interpreted in a manner that excludes a broader duty of safety on the part of the employer, at least with regard to non-live-in workers who are excluded from the more specific protection under Article 6 of Law no. 339/1958.

3.1.1 The Limited Contribution of Collective Bargaining

Having established the necessary applicability of both the Civil Code provision and the special statute, in the absence of a regulatory framework—even a “minimal” one (Angelini and Pascucci 2010, 24)—concerning prevention and protection in the domestic employment context, significant critical issues remain about the concrete measures to be implemented. This is even more so given that collective bargaining has not assumed the role of elaborating a structured discipline in this field.

³⁴ Albi 2008, 212, is among the most critical voices regarding the use of the “maximum technologically feasible safety” standard.

³⁵ Avoiding the ideologically hyper-protective rhetoric towards the employer and his or her limited economic means, as appears to be suggested by Timellini 2003a, 581, and equally avoiding an over-expansive reading of this principle that would render it impracticable in the domestic sphere, thereby requiring the adoption of a “static perspective of the safety obligation” (Basenghi 2000, 241–42).

The provisions of the collective agreement could potentially serve as a useful benchmark for assessing compliance with Article 2087 of the Civil Code, insofar as they might give substantive content to the principle of “maximum technologically feasible safety” within the domestic environment, including in relation to the specific needs of workers assisting non-self-sufficient persons. Nevertheless, these expectations are largely disappointed.

Article 28 of the *Fidaldo NCBA*, after establishing a general right of workers to a “safe and healthy working environment”, provides that, to achieve this objective, employers must install “an appropriate residual current circuit breaker, the so-called life-saving device”, in the electrical system. This constitutes the only concrete preventive measure elaborated within the bargaining framework.

Only one further obligation incumbent upon the employer is added to what seen above, which is to be fulfilled at the time of assignment of duties or upon subsequent modification thereof. It consists of a rather modest informational duty concerning

any risks existing in the working environment, including those relating to the use of equipment, including telematic and robotic tools, and exposure to particular chemical, physical and biological agents.

The absence of further references to preventive obligations is striking. Were it not for the legislative framework and the aforementioned Supreme Court ruling—which clearly continues to apply even where the collective agreement is in force—one might fear that proper compliance with such informational duties could give rise to a disproportionate expectation that the worker autonomously organise his or her own preventive protection.

This concern might be mitigated only if the clause “on the basis of applicable legislation”, appended to the contractual recognition of the right to a safe and healthy working environment, were optimistically interpreted as an attempt to suggest the extension, insofar as compatible, of at least some of the provisions of Legislative Decree no. 81/2008 to domestic workers.

The intention of partially reintegrating health and safety protection in the domestic sphere into the broader regulatory system seeks to overcome the unjustified underestimation of the element that assimilates domestic workers to other workers: namely, the performance of work for the benefit of another (Angelini and Pascucci 2010, 241).

This need is even more compelling in the case of domestic care workers whose tasks are comparable to those performed by socio-healthcare assistants employed in residential care facilities,³⁶ where Legislative Decree no. 81/2008 unquestionably applies.³⁷

³⁶ For reflections on certain aspects of the regulation of socio-healthcare assistants (OSS and OSA) employed in residential care facilities (RSA), see Renzi 2025.

³⁷ Angelini and Pascucci 2010, 233–34, referring to tasks similar to those performed by nursing staff.

3.2 Issues Concerning Working Time

With regard to working time, in light of the exclusion of domestic workers—pursuant to Article 17(5) of Legislative Decree no. 66/2003—from the scope of application of the provisions concerning “normal working hours” (Article 3), “maximum duration of working time” (Article 4), “overtime work” (Article 5), “daily rest” (Article 7), the “break regime” (Article 8), and the “organisation and duration of night work” (Articles 12 and 13), as well as the implicit repeal, by the same decree, of Articles 7, 8, 9 and 10 of Law no. 339/1958,³⁸ workers providing personal assistance within the family sphere are left only with the protections provided by the remaining provisions of Legislative Decree no. 66/2003, by Article 2243 of the Civil Code, and by the applicable collective agreement.³⁹

Given the minimal content of the Civil Code provision, which “introduces a general right to weekly rest (Basenghi 2000, 274), in accordance with custom, and to annual leave”, the collective agreement—notwithstanding the critical issues already noted in terms of its diffusion and effective representativeness—becomes decisive, functioning as the sole normative source governing daily and weekly rest, maximum working time (set at 54 hours under the *Fidaldo NCBA*) and overtime work.

The almost complete legislative deregulation of working time in domestic employment cannot be justified by reference to the specificity of the employer or of the environment in which the work is performed, namely the private household, nor even by invoking the “marked and atypical emotional gradient” that may characterise such relationships (Basenghi 2000, 271). On the contrary, if one were to justify the previously noted dilution of health and safety obligations on such grounds, it would be necessary, as a counterbalance, to safeguard the worker’s physical and moral integrity at least through a careful and balanced normative composition of working time.

As from 19 December 2024,⁴⁰ even the argument based on European legislation ceases to provide a valid pretext, insofar as the directive allows derogations for “family worker”.⁴¹ According to the interpretation of the Court of Justice, this exception cannot be used indiscriminately to support the legitimacy of a broad exclusion of domestic workers from working time protections.⁴² In the *Loredas* judgment, the Luxembourg judges clarified that the margin of discretion granted to Member States under Directive 2003/88 cannot result in “depriving

³⁸ Basenghi 2010, 215; 2000, 274, emphasising that the provisions already “shone for modesty of content”.

³⁹ See Articles 13, 14 and 15 of the *Fidaldo NCBA*.

⁴⁰ CJEU, 19 December 2024, Case C-531/2023, *Loredas*.

⁴¹ Article 17(1)(b) of Directive 93/104/EC.

⁴² It should be recalled that ILO Convention no. 189/2011 also requires Member States to ensure equal treatment (including in relation to working time) between domestic workers and other subordinate workers employed in productive or service sectors (Article 10).

of substance the rights enshrined in Article 31(2) of the Charter, in Articles 3 and 5, and in Article 6(b) of the Directive” (CJEU, *Loredas*, para. 35), with the evident consequence that, in order to ensure the effectiveness of the Directive, domestic workers must also benefit from minimum daily and weekly rest periods and from the maximum limit on average weekly working time provided by the Directive (CJEU, *Loredas*, para. 38).

The specific issue addressed in *Loredas* concerns the measurement of working time, understood as a necessary precondition for enabling workers to challenge violations of their rights, and a particularly sensitive issue in contexts of live-in assistance to non-self-sufficient persons.⁴³ To such an extent that collective bargaining itself acknowledges—and legitimises—an anomaly in the temporal commitment characteristic of such employment relationships. The *Fidaldo NCBA* provides that “in case of emergency, work performed during night-time and daytime rest periods shall be regarded as ordinary”, if it is “absolutely occasional and unforeseeable”. From a reciprocal perspective, the additional work so performed does not give rise to increased remuneration, but “only to an extension of the rest period”. Only additional hours agreed at least one day in advance qualify as overtime and attract the corresponding premium. Domestic care workers assist individuals who structurally require interventions that are difficult to schedule and therefore inherently unpredictable. At the same time, the further requirement of “occasionality”, expressed without any temporal reference parameters, risks losing any real deterrent effect against systematic recourse to this anomalous form of work, which might be described as ultra-ordinary.

The conclusions reached in *Loredas*, developed in continuity with the *Deutsche Bank* judgment,⁴⁴ according to which effective enforcement of working time rights requires the establishment of “a system enabling the duration of time worked each day by each worker to be measured objectively and reliably, and enabling the number of hours worked beyond normal working time to be determined” (CJEU, *Loredas*, para. 38), call into question the legitimacy of Article 39 of Decree-Law no. 112/2008 (converted into Law no. 133/2008). That provision exempts domestic employers—unlike other private employers—from the obligation to establish and maintain a unified labour register in which all subordinate workers are recorded and in which, for each worker, the daily number of hours worked, overtime, absences (including unpaid absences), holidays and rest periods must be registered.⁴⁵

Concluding this brief reflection on working time, at least one (perhaps unintended) merit must be acknowledged in the 1958 statute. In accordance with Article 9(4) of Legislative Decree no. 66/2003, which preserves “special pro-

⁴³ For a critical reflection, see Borelli 2021, 290.

⁴⁴ CJEU, 31 January 2019, Case C-55/18, *Deutsche Bank*, annotated by Gentile 2019; see also Giampà 2022.

⁴⁵ Although, following *Deutsche Bank*, the provision would already be questionable, since it does not provide for an obligation to record workers’ start and end times: Gentile 2019, 616; Leccese 2022, 8 ff.

visions allowing weekly rest on a day other than Sunday”, the statute requires the employer to “grant the worker the time necessary to fulfil the essential duties of his or her religion” (Article 6). This mandatory provision of substantive protection pre-empts—at least within domestic employment—the traditional dilemma concerning religious freedom in the workplace, typically addressed through anti-discrimination law, by promoting a form of inclusive neutrality within the domestic sphere.⁴⁶

However, it would be illusory to argue that this provision contradicts the many anachronistic elements of the statute in which it is embedded. At the time of its enactment, it was perfectly consistent with a legislative technique that recognised only minimal protections for domestic workers in a scarcely multicultural society in which Catholic worship predominated. The paradoxical anachronism of this apparently advanced protection is unfortunately confirmed by Article 13(5) of the *Fidaldo NCBA* (“Weekly Rest”), which, in the case of a worker professing a religion that observes a day of rest other than Sunday, invites the parties to agree on an alternative rest day, but ultimately provides that, in the absence of agreement, Sunday shall prevail.

4. Overcoming the “Paternalistic” Subtraction through a “Reasonable” Recalibration

The analysis of the special regulatory regime governing domestic employment relationships, and of its markedly derogatory character, developed in the first part of this contribution, has been confined to certain elements of two institutions considered particularly representative, both because of the high value of the legal interests only partially protected and because of the systematic manner in which the legislature has applied the subtractive technique, with the partial endorsement of collective bargaining.

Many other institutions and aspects would have lent themselves to examination. Their exclusion has been motivated exclusively by reasons of space, which required a rigorous and limited selection.

Among the other institutions whose regulation within domestic employment presents distinctive critical issues, foremost is the employer’s unrestricted right of termination. It is well known and widely acknowledged that domestic employment remains one of the few residual instances of dismissal at will, because of the express exclusion of domestic employers, under Article 4 of Law no. 108/1990, from the obligation to specify the reasons for dismissal, with the resulting lacunae in the system of remedies for unlawful termination (De Simone 2007, 568; 2019, 659). Even the European Committee of Social Rights, in its conclusions of 2003, 2007 and 2008, highlighted the violation of the obligation arising under Article 24 of the European Social Charter to provide “adequate compensation or other appropriate relief” for workers dismissed without valid reason, observ-

⁴⁶ On this point, *inter alia*, Voza 2024; Lo Faro 2024; Frosecchi 2024.

ing that “the lack of protection against dismissal for domestic employees went beyond the provisions of the Appendix to Article 24”.⁴⁷

The employer’s freedom to terminate at will constitutes the principal critical feature of the sector’s regulatory system. It undermines the effectiveness of many other protective institutions, since the safeguards they provide “may in practice be sterilised by the employer’s freedom to terminate”,⁴⁸ ultimately generating a misleading equivalence between open-ended contracts and employment stability.⁴⁹

Remaining within the sphere of termination, from the worker’s perspective doubts of legitimacy arise primarily in relation to the provision excluding domestic workers from the obligation to submit resignations exclusively through the telematic procedure established by Article 26(7) of Legislative Decree no. 151/2015. The exclusion of domestic workers from this protective mechanism is consistent with the tendency to prevent public oversight from penetrating the domestic employment relationship, due to its close connection with private family life. However, this approach marginalises both the structural elements of subordination and the inherent contractual weakness of the worker—precisely the rationale underlying the telematic resignation system. Similarly, labour inspection activity is constrained by the coincidence between workplace and private domicile (De Simone 2010, 383).

Considering the foregoing, the possibility—suggested in *Loredas*—that a special regulatory provision, less favourable than the general regime and applicable exclusively to a sector characterised by an overwhelmingly female workforce,⁵⁰ may amount to indirect sex discrimination invites serious reflection on the domestic legal framework governing domestic employment.⁵¹ This is even more compelling in view of Italy’s ratification of International Labour Organization Convention no. 189 on domestic workers, whose provisions insist upon the equalisation of working conditions between domestic workers and workers employed in other productive or service sectors.⁵²

⁴⁷ Most recently, European Committee of Social Rights (2008); on this point, De Simone (2010), 395.

⁴⁸ With regard to termination, it should also be recalled that the statute excludes domestic workers from the prohibition of dismissal under Article 54 of Legislative Decree no. 151/2001 (maternity protection), although protection is extended by the *Fidardo NCBA* (Article 25), thus demonstrating the at least potential expansive force of collective bargaining in the sector; for further discussion, also in relation to possible violations of ILO Convention no. 189, see Borelli (2020), 176 ff.

⁴⁹ Basenghi 2010, 214, with reference to Article 2103 of the Civil Code.

⁵⁰ Article 13 of Law no. 689/1981; see Chiaromonte (2025). This legislative choice was criticised by the ILO Committee of Experts on the Application of Conventions and Recommendations; see ILO, *Labour inspection*, Report III (Part 1B), ILC, 95th Session (Geneva, June 2006), para. 264.

⁵¹ In the case at issue, concerning Spain, the percentage of women amounted to 95%: CJEU, *Loredas*, para. 23.

⁵² CJEU, *Loredas*, para. 56–9; previously CJEU, 24 February 2022, Case C-389/20, *TGSS*; see Chiericato 2022.

Specifically, to avoid the risk of systemic indirect discrimination—or of a proliferation of indirect discriminatory effects affecting a substantial portion of the rules governing domestic care work—it is appropriate to consider a reasonable recalibration of the regulatory framework. Such recalibration should consider the peculiarities of the relationship and the consequent need for a special regime but must definitively abandon the paternalistic approach that has long characterised the sector.

Just as the liberalisation of collective bargaining represented a decisive moment in which the legal system actively promoted social change, contributing to overcoming entrenched cultural resistance to unionisation in the sector, the time has now come to abandon the marginalisation of domestic employment regulation⁵³ and to embark upon a second phase of modernisation. This reform process⁵⁴ should also recognise the specific nature of domestic care work and its distinctive protective needs.⁵⁵

5. Contextual Data

The second part of this contribution examines two distinctive dimensions of domestic work performed in the care sector for the benefit of non-self-sufficient persons which, in the Italian experience, appear particularly significant. This is, indeed, a sector strongly characterised, on the one hand, by irregularity and, on the other, by the frequent presence of forms of labour exploitation—both lawful and unlawful.⁵⁶

Following once again the methodological approach adopted in the CARE4CARE research project, the analysis will be conducted exclusively regarding paid domestic care work, thus focusing on care workers rather than caregivers (those who provide care on an unpaid basis⁵⁷), while acknowledging the close interconnections between paid and unpaid care work (Borelli 2023, 883).

⁵³ The ratification of Convention no. 189 by so-called developed countries cannot be taken for granted: it is noteworthy that two States with high standards of protection, such as Poland and, even more strikingly, France, have not ratified it. On this point, see Rönmar 2025.

⁵⁴ Metaphorically described as the “Cinderella of subordinate employment” (De Simone 2019, 657).

⁵⁵ For a critical analysis of the incapacity of public welfare to respond adequately to families’ needs, see Borelli 2020, especially 11 ff.; even Law no. 33/2023 (the so-called delegation law on non-self-sufficiency) has not been welcomed enthusiastically in legal scholarship; for a first critical analysis, see Pioggia 2023.

⁵⁶ The Policy Paper developed within the CARE4CARE project (see CARE4CARE Consortium 2025, Kocher 2026) emphasises that “Undeclared work, including ‘bogus’ self-employment, is present in care work in many countries within the EU, especially in live-in-care, with risks not only of exploitation and substandard working conditions, but also of unfair competition against institutions that offer regular employment” (p. 4). With regard to the Italian situation, see Vallauri et al. 2025a; 2025b. For a comparative perspective, see Rönmar 2025; Camas Roda et al. 2025.

⁵⁷ On the distinction between paid care work and unpaid care work, see ILO 2018a. With regard to the social protection of informal caregivers, who aid in the absence of a contractual

In particular, the discussion will concern not so much work performed under a regular contract of subordinate employment, but rather work performed irregularly, in the awareness that the latter scenario is the one that most frequently gives rise to phenomena of labour exploitation.

In the following pages, reference will be made to family assistants. This is the term that, also in line with the leading sectoral collective agreement (*Fidaldo NCBA*, Article 1.), has been chosen to avoid the commonly used expression of *badanti*, which carries an implicit demeaning judgment both towards those who provide care and those who receive it.⁵⁸

The analysis will focus exclusively on situations in which the regulatory framework applicable to family assistants is violated, along a continuum ranging from partially irregular work (so-called grey work), through undeclared work (so-called black work), to the most serious forms of exploitative labour.

As will become clear, the widespread incidence of undeclared work in the domestic sector produces significant repercussions, first and foremost for workers, primarily in terms of reduced protections and guarantees, but also for employers and for the economic system, generating greater instability and loss of tax and social security revenue (Osservatorio Nazionale Domina 2024, 80). Although the second part of this contribution concentrates exclusively on the vulnerability of family assistants, an autonomous reflection would also be warranted on the analogous vulnerability often experienced by employing families, who—particularly in view of the special bond that may develop with the worker entrusted with the care of especially fragile individuals—see the traditional position of dominance characterising the employer in subordinate employment relationships attenuated.

Before addressing irregularity and exploitation in greater depth, it is useful to consider the most recent data concerning domestic work in Italy.

In 2024, domestic workers contributing to the National Social Security Institute (INPS) numbered 817,403, marking a decline for the third consecutive year following the significant increases recorded in the 2020-2021 biennium. Those increases were attributable, on the one hand, to the regularisation of employment relationships aimed at obtaining the self-certification required to travel to work during the lockdown period and, on the other, to the latest regularisation procedure for foreign workers introduced by Decree-Law no. 34/2020 (to which reference will be made below) (INPS 2025, 1). Notwithstanding this decline—which suggests not so much a decrease in demand from families as a possible intensification of irregular employment—and confirming the prospective relevance of the sector, it is estimated that care work in Italy, within

bond, see D'Onghia 2024a. The gender dimension of care work within the family sphere is explored by Zilli 2022.

⁵⁸ Sciarba 2015, 79. In the same sense, de Martino 2021, 57, recalling that Ambrosini 2013, 96, points out that in the past the term referred to those who supervised livestock.

which domestic work plays an essential role, could generate approximately 1.4 million new jobs by 2030.⁵⁹

The total number of domestic workers is divided almost equally between family assistants (50.5%) and household workers (49.5%) (INPS 2025, 6). It is noteworthy that, for the first time in 2024, family assistants slightly outnumbered household workers.

As anticipated, gender and migration status are defining features of the workforce in this sector.

Women account for 88.9% of domestic workers (INPS 2025, 2).

Regarding nationality, foreign workers represent 68.6% of the total, the majority originating from Eastern Europe (34.8%).⁶⁰ It is worth recalling that domestic work has traditionally represented one of the principal “entry occupations” into the labour market for newly arrived migrant women in Italy, contributing to the social and economic sustainability of migration flows towards the country (Lutz 2016). At the same time, domestic work tends to function as an occupational trap for foreign women workers, especially following the transition from short-term or circular migration patterns to more stable forms of settlement. Once employment in the sector has been secured, it is extremely difficult for these workers to escape this form of occupational segregation and obtain employment in other sectors or in more qualified roles, also in view of the low turnover rate characterising domestic work (Noviello and Parente 2024, 65).

Regarding age, domestic workers are generally older than workers in other sectors. Workers aged 60 or over account for 23.9% of the total, while those aged between 55 and 59 account for 18.1%. Only 1.5% are under the age of 25. With specific reference to family assistants, the average age in 2023 was 52.1 years, and 64.9% were at least 50 years old (Osservatorio Nazionale Domina 2024, 60). These data not only indicate a relatively advanced workforce, but also reveal a progressive ageing trend, with significant implications in terms of imminent exit from the labour market and insufficient generational replacement to meet families’ needs, representing one of the most critical challenges facing them (Fondazione Studi dei Consulenti del Lavoro 2023, 11).

Regarding working time, almost 45% of family assistants work more than 40 hours per week, with a strong concentration at the contractual maximum of 54 hours established by collective bargaining (*Fidaldo NCBA*, Article 14). Only 6.3% work fewer than 10 hours per week (Osservatorio Nazionale Domina 2024, 63).

⁵⁹ ILO 2018b, 4. With specific reference to family assistants, it is estimated that in Italy the labour demand in the personal services sector for the three-year period 2026–2028 will amount to 938,600 (2026), 949,100 (2027) and 957,600 persons 2028; see Centro Studi e Ricerche Idos 2025.

⁶⁰ INPS 2025, 3. This is followed by workers holding Italian citizenship (31.4%, a percentage that obviously also includes those who subsequently acquired Italian citizenship), those from South America (8.5%) and those arriving from East Asia (5.8%).

Closely linked to working time is the issue of remuneration. The sector is characterised not only by low wages—23.4% of family assistants earn an average annual income between 6,000 euros and 10,000 euros; 36% earn more than 10,000 euros; only 20.8% exceed 13,000 euros—despite often being employed full-time and notwithstanding considerable employment discontinuity, frequently linked to the lifespan of care recipients (Fondazione Studi dei Consulenti del Lavoro 2023, 15)—but also by the peculiarity that it is one of the few sectors in which women earn, on average, slightly more than men.

The proportion of workers earning more than 12,000 euros per year is higher among women (21.5%) than among men (19.3%), whereas men are more concentrated in the lowest income bracket. This depends essentially on the fact that women more frequently occupy longer-term roles involving greater responsibility, such as caring for elderly and non-self-sufficient persons, whereas men are more often employed in reduced-hour tasks such as cleaning or gardening (Osservatorio Nazionale Domina 2024, 92).

The issue of low remuneration is closely connected to families' capacity to bear the cost of care. Most domestic employers are at least 60 years old (70%), and 37% are over 80. Their principal source of income is therefore pension benefits. Many elderly persons are unable to meet care needs solely through their pension, particularly considering rising costs. The majority can afford assistance for approximately five hours per week (55%), whereas only a small percentage can sustain assistance of 40 or 54 hours per week (7.7% and 6.69%) (Osservatorio Nazionale Domina 2024, 99).

The unequal economic capacities of those resorting to the market tend to crystallise pre-existing structural inequalities and, at the same time, to worsen the working conditions of care workers (Militello 2024, 360). Low wages and families' limited spending capacity contribute to placing care work—even where formally regular—among the poorest segments of the labour market (Militello 2024, 357).

The figures cited thus far concern regular employment relationships. However, domestic work is the sector with the highest density of irregular employment compared to the average across all economic activities.⁶¹ In 2022, against an average irregularity rate of 9.7%, undeclared work in the domestic sector reached 47.1% (Osservatorio Nazionale Domina 2024, 77). Considering that approximately 1.7 million individuals are registered with the National Social Security Institute as either domestic workers or employers, applying the irregularity rate suggests that more than 3.3 million persons are involved in the sector irregularly. In other words, in Italy one out of every two domestic employment relationships is wholly or partially irregular, notwithstanding the extensive leg-

⁶¹ The concept of “irregularity”, which in this case refers to the employment contract, may also concern the worker's residence status; for this reason, in the domestic work sector irregularity assumes a dual dimension.

islative derogations from the general protective regime of subordinate employment (de Martino 2021, 59).

It is therefore impossible to analyse domestic work—and especially the work performed by family assistants—without first undertaking a reconstruction of the causes, consequences and possible remedies of its widespread irregularity, which often constitutes fertile ground for the development of exploitative practices. These causes are deeply rooted in the way the Italian welfare state has historically approached, and continues to approach, the care of non-self-sufficient persons.

6. Irregularity: Causes, Consequences and Possible Remedies

For many years, the familistic welfare model that characterised Italy allowed the State to disengage largely from responsibility for the care of non-self-sufficient persons, transferring this burden onto families—more precisely, onto women's unpaid labour.⁶²

The crisis of this model—caused, *inter alia*, by the growing need for support in care work within families, itself driven by demographic ageing and transformations in the country's social structure, including increased female labour market participation and changes in family organisation⁶³—together with the progressive reduction of public expenditure on welfare services and the consequent impetus towards the privatisation of care provision, has given rise to what has been described as do-it-yourself welfare.⁶⁴

The increase in demand for care services has prompted reform of long-term care systems throughout the European Union, also considering the European Care Strategy.⁶⁵ In Italy, this process—accelerated by the pandemic and supported by the National Recovery and Resilience Plan (PNRR), which allocates significant resources to elderly and disability care—has been initiated.⁶⁶ However, the long-awaited comprehensive reform concerning non-self-sufficiency has, for the time being, taken only initial steps. Within this framework, families remain essentially responsible for addressing care needs, partly by bearing the burden directly⁶⁷ and partly by purchasing services on the market.

Where the latter route is chosen, the only financially sustainable solutions are those that make it possible to secure care services—even with the assistance of limited cash transfers provided by the State—at a cost compatible with fam-

⁶² Saraceno 2003. For an overview of the evolution of the national welfare state, see, among many others, Giorgi and Pavan 2021.

⁶³ Noviello and Parente 2024, 63. See also Borelli 2020, especially 24 ff.

⁶⁴ Most recently, Borelli 2023, 885. See also Sarti 2016.

⁶⁵ On the European Care Strategy, presented by the European Commission in September 2022, see Mazzetti 2025.

⁶⁶ Reference is made to Delegation Law no. 33/2023 (on which see Gori 2023) and to Legislative Decree no. 29/2024. For a labour law reading of these two measures, see Gualandi 2025.

⁶⁷ On informal care work, see again D'Onghia 2024a.

ily budgets. For this to be feasible, the cost of care work must remain lower than the income that individuals can earn in the labour market by reallocating the time freed from care responsibilities.

The gradual displacement of care work from its “natural” location within the family has therefore made it necessary to externalise a service that, based on the erroneous assumption that it requires no particular competences⁶⁸ and that must be provided at competitive costs for the reasons just mentioned, is increasingly entrusted to vulnerable subjects within the labour market (Pavlou 2021, on which see Papa 2023).

The need to contain—legally, primarily through the subtractive legislative technique already referred to, and illegally, through widespread recourse to irregular employment—the cost of care work under this configuration has further contributed to its devaluation (Vallauri 2025). It has favoured reliance on paid family assistants, often of foreign origin. In this way, the traditional model of family-based care has progressively been replaced—through global care chains—by a model based on the “migrant in the family” (Borelli 2023, 886).

For all these reasons, family assistants represent not only an essential response to the growing demand for care in situations of non-self-sufficiency, but also—owing to the compression of their rights, tolerated by the public apparatus in order to preserve social equilibrium (de Martino 2021, 60–1)—the most economically convenient instrument for compensating for the shortcomings of the welfare state,⁶⁹ especially where work is performed irregularly.

These brief observations capture only some of the factors underlying the widespread diffusion of irregular employment in the domestic sector. In addition to deficiencies in the welfare state, political and institutional inertia in managing non-self-sufficiency policies, and the relative indifference of the administrative apparatus towards regularity in the sector (de Martino 2021, 61), other elements also contribute to the persistence of irregular employment relationships.

A study by Maurizio Ambrosini identified several factors that remain highly relevant (Ambrosini 2013, 48).

First, family assistants perform their work within a workplace that is difficult to monitor. Even the Labour Inspectorate’s powers are effectively curtailed at the threshold of the private home. Inspection activities—generally initiated upon complaint by workers, who are often reluctant to report abuses, particularly where they are irregular migrants, given that the offence of unlawful entry and stay in the national territory remains in force—are almost impossible to conduct without infringing the constitutional protection of the inviolability

⁶⁸ There is a widespread belief that care work does not require specific training and that the principal channel of learning consists in direct experience. As is easily understood, this is an overly simplistic reading of the phenomenon, which neglects the importance of investment in training and professionalisation.

⁶⁹ It represents the “most economical and most widespread response of home-based care”, according to Borelli (2023), 903.

of the home.⁷⁰ In practice, this substantially exempts domestic employers from public controls and related sanctions.⁷¹

Secondly, domestic employers are typically unstructured and weakly formalised. The domestic employer is not generally an entrepreneur pursuing profit, but a private individual seeking to meet an urgent and sometimes sudden care need (which may itself prevent compliance with the lengthy and cumbersome procedure for hiring foreign workers, discussed below). Moreover, both employers and workers often lack adequate knowledge of the applicable legal framework and of the administrative obligations it entails (Osservatorio Nazionale Domina 2024, 79–80).

Thirdly, final consumers frequently have an interest in reducing the cost of the service purchased. As noted above, families' economic resources rarely allow them to employ a full-time family assistant while fully complying with the statutory and collectively agreed economic and normative treatment.

The economic sustainability of care costs constitutes a particularly pressing issue for Italian families, especially for those requiring the support of a family assistant to care for their relatives, who are therefore often driven to resort to undeclared work. The issue is certainly not resolved by the cash transfers underpinning social policies for non-self-sufficiency, which essentially consist of—aside from recent experimental measures—the attendance allowance (*indennità di accompagnamento*) provided under Law no. 18/1980. This allowance, which absorbs approximately 45% of total expenditure on non-self-sufficiency care,⁷² remains wholly insufficient to cover the cost of employing a full-time family assistant (in 2025 its monthly amount stands at 542.02 euros). Moreover, it is not selective about income or family structure, is not calibrated according to the severity of need, and is not subject to monitoring regarding the use of transferred resources.

Finally, there is often a convergence of interests between employer and worker in maintaining employment within the sphere of informality, particularly in cases involving:

⁷⁰ Article 8 of Presidential Decree no. 520/1955 provides that “Labour inspectors [...] are authorised to visit, in every part and at any time of day or night, workshops, factories, construction sites and workplaces, insofar as they are subject to their supervision, as well as dormitories and refectories annexed to establishments; nevertheless, they must refrain from visiting premises annexed to workplaces that are not directly or indirectly connected with the running of the undertaking, unless they have reasonable grounds to suspect that such premises are used to commit or conceal violations of the law” (emphasis added). Borelli (2023), 894, underlines the tension between this provision and Article 17(3) of ILO Convention no. 189, which, in relation to inspection measures, requires States to “specify the conditions under which access to household premises may be authorised, having due regard to privacy”.

⁷¹ Undeclared domestic work was excluded by Law no. 183/2010 from the application of the so-called “maxi-sanction” provided for by Article 36-bis(7) of Law no. 248/2006.

⁷² Audino, Mazzaferro and Morciano 2024, who recall that in 2023, according to INPS estimates, the total number of attendance allowances amounted to 2.2 million benefits, with an expenditure of 13.3 billion euros: “it is entirely evident that without intervention on this benefit any reforming aspiration would be frustrated”.

- Migrant workers lacking a valid residence permit, who can only work irregularly, given that Italian law does not provide an ordinary legal mechanism enabling irregular migrants already engaged in irregular employment to regularise their status through employment, unlike what occurs, for example, in France or Spain.⁷³
- Workers engaged in short- or medium-term migration projects who may have limited interest in social security regularity, particularly where they must repay migration debts or support families in their country of origin through remittances.
- Workers originating from countries that have not concluded bilateral social security agreements with Italy, thereby preventing the aggregation of contribution periods for pension purposes where the period completed in one country does not meet minimum requirements.⁷⁴

More than a decade after they were first identified, these push factors remain substantially unchanged. Recent research confirms that the high incidence of irregularity is closely connected to the intrinsic nature of domestic work, to the characteristics of employers and workplaces, and to the predominance of migrant workers in the sector (Fondazione Studi dei Consulenti del Lavoro 2023, 7).

Turning to possible remedies,⁷⁵ it is worth recalling that, within the framework of the National Recovery and Resilience Plan, a National Plan for Combating Undeclared Work 2022-2025 has been adopted. The Plan aims to address irregularity across economic sectors, including domestic work, through rationalisation of sanctions and strengthening of intermediation services. However, this instrument intervenes only marginally on the structural causes described above, which may be interpreted as a further sign of broad tolerance towards illegality in the sector (Borelli 2021, 294). Recent studies have suggested additional measures that might encourage families to regularise domestic employment relationships, such as full tax deductibility of expenses incurred for employing family assistants or total contribution exemptions for employers, while simplification of hiring procedures and targeted family allowances appear less decisive (Fondazione Studi dei Consulenti del Lavoro 2023, 48–50).

⁷³ Chiaromonte 2023a, 712. For a comparative perspective, see Locchi 2021. On the desirability of introducing solutions such as those mentioned, as well as simplifying procedures to facilitate migrants' access to the labour market, see also the above-mentioned CARE4CARE Policy Paper, 21.

⁷⁴ Chiaromonte and Ferrara 2020, 533. Additional deterrents to the establishment of regular employment relationships are represented by two statutory exceptions to the principle of equal treatment in social security matters: the special social security regime provided for seasonal migrant workers (Article 25(2) of the Consolidated Immigration Act) and the absence of reimbursement of contributions paid by migrant workers in the event of repatriation (Article 22(13) of the Consolidated Immigration Act); see Chiaromonte and Guariso 2019, 377 ff.

⁷⁵ For a comparative analysis, see Tomei 2011.

The economic burden borne by families would justify interventions aimed at reducing—or even eliminating—the cost differential between regular and irregular employment, potentially through enhanced fiscal and social contribution incentives (Noviello and Parente 2024, 69), although such measures would reduce public resources available for developing public care services (Borelli 2023, 888).

In this direction, the legislature has introduced, for the period from 1 April 2024 to 31 December 2025, a 100% exemption from employer social security contributions—up to an annual ceiling—for domestic employers over 80 years old receiving the attendance allowance and with a low-income indicator (Art. 29(5), Law Decree no. 19/2024, converted into Law 56/2024). More recently, a universal benefit has been established on an experimental basis, including a care allowance of 850 euros per month, to be used for remunerating care work performed by domestic workers employed under national collective agreements or for purchasing qualified social care services. The measure is addressed to elderly persons with very severe care needs and limited income (Art. 36, Legislative Decree no. 29/2024).

These measures, however, are limited both by their experimental character and by the modest financial resources allocated.

6.1 Critical Aspects of the Procedure for Hiring Foreign Workers

In addition to the structural factors outlined above, there are further normative elements that facilitate the diffusion of irregular employment in the domestic sector and that would require corrective legislative intervention. It has already been noted that domestic work has long been subjected to less favourable treatment compared with other sectors, a gap that has not been bridged even following Italy's ratification of International Labour Organization Convention no. 189 on decent work for domestic workers (Borelli 2020, especially 181 ff.).

For reasons of space, attention will be confined here to the critical aspects of the particularly complex and cumbersome procedure for hiring foreign workers laid down in the Consolidated Immigration Act, which has been identified as a legal technique for containing the cost of care work (Borelli 2023, 887). This system is founded upon two unrealistic assumptions, which reveal their limitations especially in the context of domestic care work: first, that the employer is able to foresee recruitment needs well in advance, given the lengthy administrative procedure; and second, that the employer may be willing to hire a worker whom he or she has never met, in the case of numerical recruitment.

The absence of effectively accessible legal entry mechanisms has rendered regular entry for work purposes virtually impossible. Combined with ineffective programming of admission quotas—which continue to provide an insufficient number of permits for domestic and care work⁷⁶—this situation has encouraged

⁷⁶ And this notwithstanding the existence of quotas specifically reserved for them.

circumvention of the rules designed to match labour supply and demand, as well as the search for alternative entry channels, thereby increasing irregular arrivals, fuelling criminal organisations and expanding the undeclared labour market.

Without claiming exhaustiveness, the principal critical aspects include⁷⁷:

- The predominant mechanism of named recruitment of workers still residing abroad.
- The impossibility of entering Italy for the purpose of seeking employment.
- The principle of preference for hiring workers already present in the national territory.
- The introduction of the residence contract for subordinate employment.

This framework has been aptly described as a model that renders lawful access to the labour market “virtually impossible”⁷⁸ and that tends to foster rather than prevent irregularity, producing a striking heterogenesis of ends (D’Onghia 2022, 54–5). These elements—which cannot be analysed in greater depth here—create a normative disincentive to hiring foreign workers and thus to concluding regular employment contracts with them.

In the absence of legislative reforms capable of addressing these shortcomings, the principal instrument used over time to remedy a regulatory structure that discourages regular employment of migrants has been the periodic adoption of regularisation procedures. In practice, behind the formal rationale of regulating new entries, such measures have primarily served to regularise the status of individuals already present irregularly in Italy (Chiaromonte and D’Onghia 2021).

It is no coincidence that, of the eight regularisation measures adopted since 1986, the 2009 measure was exclusively devoted to the emergence of workers employed in family assistance activities,⁷⁹ while the measures of 2002,⁸⁰ 2012⁸¹ and 2020⁸² specifically identified domestic workers among their primary beneficiaries. Regarding the 2020 regularisation, 85% of the nearly 208,000 applications concerned domestic employment relationships. Moreover, definitive data concerning the outcomes of those applications remain unavailable, given the prolonged administrative procedures, which, at the time of writing, have not yet been fully concluded.⁸³

⁷⁷ For further analysis, see Chiaromonte 2023a, 717 ff.

⁷⁸ It should be recalled that Article 22(12) of the Consolidated Immigration Act criminally sanctions employers who employ foreign workers without a residence permit, whose permit has expired and for which renewal has not been requested within the statutory time limits, or whose permit has been revoked or annulled.

⁷⁹ Article 1-ter of Decree-Law no. 78/2009, converted with amendments into Law no. 102/2009.

⁸⁰ Article 33 of Law no. 189/2002.

⁸¹ Article 5 of Legislative Decree no. 109/2012.

⁸² Article 103 of Decree-Law no. 34/2020, converted with amendments into Law no. 77/2020.

⁸³ For updated monitoring, see Ero Straniero 2024.

Reliance on repeated regularisation measures fails to acknowledge that the structural demand for domestic workers and family assistants should be met through stable and accessible mechanisms for lawful entry (de Martino 2021, 65–6). Such mechanisms remain absent even in the most recent legislative interventions.⁸⁴

7. The Exploitation of Care Work

Some final remarks must be devoted to the offences of unlawful intermediation and labour exploitation, as regulated by Article 603-bis of the Criminal Code. It frequently occurs that undeclared employment involving family assistants is characterised not only by the involvement of an irregular migrant, but also by unlawful labour intermediation and/or exploitative working conditions.

Alongside the general—and, so to speak, non-technical—notion of labour exploitation, which refers to the condition of those who benefit from work without adequately compensating it, taking advantage of their privileged position or of the worker's state of need, there exists the more specific notion adopted by the law and codified in Article 603-bis.

The provision identifies two distinct criminal conducts against the person: that of the intermediary, who recruits workers (often irregular migrants) in order to assign them to work for third parties under exploitative conditions while taking advantage of their state of need⁸⁵; and that of the employer who uses, hires or employs workers — even without recourse to such intermediaries — subjecting them to exploitative conditions and taking advantage of their state of need.⁸⁶

Labour exploitation is described through a series of “factual indicators” (Di Martino 2018, 1 ff.), that is, circumstances defining the typical contexts in which such phenomena occur in most cases.⁸⁷ Through this process of indexation—rather than strict definition—the most serious cases involving non-compliance with the core of labour law protection, whether statutory or collectively agreed (remuneration, working time, health and safety etc.),⁸⁸ are brought within

⁸⁴ Reference is made, most recently, to Decree-Law no. 20/2023, converted with amendments into Law no. 50/2023, to Decree-Law no. 145/2024, converted with amendments into Law no. 187/2024, and to Decree-Law no. 145/2025, converted with amendments into Law no. 179/2025; on these measures see Chiaromonte 2023b and D’Onghia and de Martino 2025.

⁸⁵ The “state of need” identifies a particular condition in which indigence and economic hardship render a person more inclined to accept extreme working conditions that would otherwise be rejected. The Court of Cassation considers that even the mere condition of irregular residence may be sufficient to fulfil the requirement of “state of need” (Criminal Chamber, Court of Cassation, Section IV, 9 March 2021, no. 10554).

⁸⁶ Among many, Garofalo 2024; with specific reference to the repression of migrant labour exploitation, see Chiaromonte 2023c.

⁸⁷ From this derives a notion of exploitation that is “rather ambiguous and strongly conditioned by the political-cultural orientation of the interpreter” (D’Onghia 2025, 55).

⁸⁸ Most recently, Donini 2025. As Sarti (2022, 67) observes, “Many of the conditions indicated as indicators of exploitation by Article 603-bis of the Criminal Code are [...] implicit in the current regulatory framework governing domestic work: part of the work is exploited, but legally”.

the scope of the criminal provision, as evidenced by recent case law grappling with these indicators in the complex task of delimiting and interpreting them (D'Onghia and Laforgia 2021; Donini 2025).

The work of family assistants, performed within the private home—an environment that facilitates evasion of minimum protective standards—by individuals who are often vulnerable, gives rise to forms of “invisible exploitation” (Militello 2024, 360–61) that, in extreme cases, may fall within offences such as enslavement or human trafficking, and may also engage the prohibition of forced or compulsory labour under Article 4(2) of the European Convention on Human Rights.⁸⁹

For reasons of space, the analysis here will be confined to cases in which exploitation of family assistants is unlawful because it meets the criminal threshold established by Article 603-bis. It will not examine, on the one hand, the various techniques developed within the Italian legal system to contain the cost of care work, which generate forms of lawful exploitation,⁹⁰ nor, on the other, the additional manifestations of irregularity that take the form of under-classification, under-reporting of hours, non-payment of overtime or night work, or failure to grant rest periods and holidays (Borelli 2021, 293; Picco 2022, 144 ff.).

Applying the indicators, the Court of Cassation has held that exploitation must be understood as a deterioration in the balance between the labour force expended by the worker and the working conditions ensured by the employer. Exploitation arises where those conditions systematically and repeatedly exceed the limits established by law to protect work performance, or where the worker's dignity is degraded precisely by the working situation imposed upon him or her—whether through disregard for the worker's physical and psychological well-being or by compelling acceptance of humiliating accommodation conditions.⁹¹

This is a definition with significantly blurred contours, focusing above all on the systematic nature of violations of rules protecting workers' integrity and dignity (Martelloni 2025, 110; see also Laforgia 2020).

The provision does not readily lend itself to application in the context of family assistants' work, first and foremost because the relationship between care provider and care recipient does not, in most cases, correspond to the typical paradigm of exploiter and exploited. The ultimate beneficiary of the service may himself or herself be a victim of an inadequate social protection system which, failing to provide sufficient public care services, leaves as the only alternative to the familiarisation of care recourse to low-cost market provision (Militello 2024, 359).

⁸⁹ This notion revolves around coercion in the performance of work, an element which, conversely, is not necessarily characteristic of labour exploitation. Not every form of exploited labour or work performed in conditions of hardship or degradation may be defined as forced labour in the strict sense; see D'Onghia 2025, 62.

⁹⁰ Borelli 2021, 287, referring, *inter alia*, to the aforementioned subtractive legislative technique, to the proliferation of sectoral collective agreements, to immigration legislation, and to the difficulty of trade union organisation in the sector. See also Picco 2022, especially 142 ff.

⁹¹ Criminal Chamber, Court of Cassation, Section IV, 16 May 2022, no. 19143.

The few cases in which labour exploitation in the domestic sphere has been judicially established concern the first of the two criminal conducts described above, particularly the unlawful supply of irregular domestic workers by labour providers who exploit both the worker's and the employing family's state of need.⁹² The role played by private intermediation and labour supply agencies in the domestic sector—a phenomenon of considerable relevance that cannot be examined in depth here—demonstrates that such entities may contribute to exploitation, taking advantage of the difficulty many families experience in conceiving of themselves as employers and in managing employment relationships.⁹³

Moreover, although the concurrence of all exploitation indicators is not legally required for the offence to be established, in practice criminal liability is rarely found based on a single indicator. Most judicial decisions recognising exploitation describe situations of extreme gravity in which all the indicators are present simultaneously (Donini 2025, 84), further limiting the practical applicability of the provision in the context of family assistants.

As a result, the criminal norm ends up sanctioning only the most evident forms of exploitation, leaving outside its scope a wide range of situations that, while involving the imposition of working conditions contrary to mandatory labour law, do not reach the threshold of criminal punishability. Where the exploited worker is an irregular migrant who has reported the offence and cooperated in criminal proceedings, failure to establish the offence may preclude the granting of a residence permit for victims of unlawful intermediation and labour exploitation (Art. 18, Legislative Decree no. 286/1998; Chiaromonte 2025, 20).

This circumstance is especially significant in the context of family assistants, given that the majority of “non-technical” exploitative situations—widely tolerated because the care system itself depends upon them—consist of lawful forms of exploitation and are therefore not criminally relevant. In such a framework, a purely repressive approach, focusing exclusively on criminally relevant cases and intervening only after exploitation has occurred, appears inadequate (Militello 2024, 363).

The marginalisation of the criminal provision's operational scope, functional to preserving non-criminal forms of exploitation and thus the stability of the system described above, produces evident distortive effects: anti-exploitation policies, by concentrating primarily on isolated and spectacular cases, undermine their capacity to prevent and correct ordinary abuses deriving from the routine functioning of the socio-economic system (Borelli 2021, 296).

Even setting aside the limited practical relevance of Article 603-bis in this context, it remains clear that a purely punitive approach, treating exploitation

⁹² Criminal Chamber, Court of Cassation, Section IV, 9 October 2019, no. 49781, which held that the mere irregular presence of a foreign national, accompanied by a situation of hardship and need to access employment, does not in itself suffice to constitute the offence under Article 603-bis of the Criminal Code, which instead requires exploitation characterised by indicators reflecting a situation of evident prejudice and significant subjection of the worker.

⁹³ For further analysis, see Amorosi, Borelli and Sarti 2024.

as a pathological private relationship to be cured exclusively through criminal law, without offering effective protection to exploited workers, is insufficient (D'Onghia 2025, 68). While criminal law may play an important role in identifying exploitation in sectors where labour protections are particularly fragile, the criminal offence itself cannot guarantee effective protection to those who suffer exploitation (D'Onghia 2024b, 33).

The penal response, intervening *ex post*, should therefore be complemented—as an ultimate *ratio*—by preventive measures capable of addressing the structural causes of exploitation. Labour law must reclaim its traditional function of protecting workers through a consciously unequal approach, rethinking the system for combating labour exploitation from a perspective capable of encompassing the multiple dimensions—including gender-specific aspects—of exploitation (D'Onghia 2024b, 34).

An excessive emphasis on the penal dimension risks marginalising the labour law perspective and creating a gap in the typical protections afforded by labour law. A renewed synergy between the two fields is necessary. A multidimensional approach to exploitation would restore centrality to labour law (Calafà 2021; Chiaromonte 2025), whose teleological reference point has always been the dignity of the worker (D'Onghia 2025, 70).

Admittedly, once one moves beyond the boundaries of criminal law, it is not easy—in the absence of explicit positive legal references—to define exploitation or determine when it arises, especially if one considers that labour law itself may formalise and legitimise forms of “physiological” exploitation that do not, according to prevailing views, infringe human dignity or freedom (Lassandari 2024, 37).

Despite these definitional difficulties, from a *de lege ferenda* perspective it may be appropriate to develop a broader and more comprehensive notion of exploitation.⁹⁴ Such an approach would partially relocate the issue within the domain of labour law, provide interpreters and supervisory authorities with a useful conceptual tool, and strengthen preventive legal instruments, re-establishing the prevention–repression dualism traditionally favoured by labour law, for example in the field of health and safety.

In this way, it would become easier to interpret exploitative phenomena in their concrete and systemic dimension, looking beyond the formal appearance of consent to the actual time worked and remuneration received, to the environmental and personal conditions of workers, and to the harmful effects on their physical and psychological integrity—all factors that, in reality, render the exchange between worker and employer far from free (D'Onghia 2025, 74). Such an approach would be particularly valuable in sectors characterised by a high degree of worker vulnerability and by a continuous process of erosion of labour rights, such as domestic care work (D'Onghia 2025).

⁹⁴ D'Onghia and Laforgia 2021, 251. In legal scholarship, there are also voices that do not consider it indispensable to fill this gap in the labour law system: Barbieri 2019.

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