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Migrant women workers in Europe: forms of irregularity and conditions of vulnerability

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1. Introduction

Irregularity among migrant workers stems from European and national migration policies which mainly focus on creating legal channels for 'skilled' occupations, at the expense of the low-paid, undervalued and 'low-skilled' jobs performed by the majority of migrants (Ruhs and Anderson 2010). This has resulted in a large number of migrant workers who are either undocumented migrants or have precarious legal status. In the case of women, these workers are often employed in house cleaning and elderly care, in agriculture and in the sex industry (Andrijasevic 2013, Palumbo and Sciarba 2018, Triandafyllidou 2013).

In this chapter we look simultaneously at the domestic, agricultural and sex work sectors in Europe, which are impacted by the intersection of migration and labour market policies. In fact, employment of women in these sectors is based on a strong labour market segmentation, with 'job opportunities for women migrants [which] are predominantly in unregulated sectors: agriculture, domestic work, service, and the sex industry' where 'labour standards are usually weak or non-existent' and the risk of discrimination, exploitation and abuse is high (ILO 2015). These are among the most severely exploitative sectors in the global economy: the ILO estimated that of the 25 million people subject to forced labour exploitation globally, approximately 5 million were in the sex industry (99 per cent of whom

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were women), around 4 million were in domestic work (roughly 60 per cent of whom were women) and around 1.7 million were in agriculture and fishing (of whom around 30 per cent were women) (ILO 2017). Further, for many migrant women these are seen as circular opportunities, as they move from sex to care, to agricultural work – or they engage in these sectors simultaneously, often in irregular conditions, blurring the boundaries between these sectors in practice (Peano 2017).

We will show how some of the elements that characterize these labour sectors – such as irregularity and invisibility – that make it possible to employ undocumented migrants also overlap with situations of abuse and harsh exploitation. It is thus crucial to address the exploitation that takes place across these three sectors, and how certain groups of migrant workers, especially undocumented women, disproportionately find themselves in situations of vulnerability to exploitation and abuse. Mainstream readings of ‘modern slavery’ and ‘trafficking’ too often represent certain groups of individuals – largely women – as inherently vulnerable, and their exploitation as inherent to certain kinds of work. However, in our view this tends to perpetuate gendered stereotypes which deny migrant workers agency, and legitimize paternalistic approaches that may increase the vulnerability of the subjects they aim to protect (Andrijasevic 2010, Doezema 2010, Mai 2013, O’Connell Davidson 2015). Instead, vulnerability is best conceived as contextual/‘situational’ and, accordingly, shaped by multiple factors, rather than as inherent to certain groups of individuals (Mackenzie et al. 2014).

Therefore, in this chapter we set out to illustrate how migrant women workers’ vulnerability is actually produced by a number of factors, including conditions of irregularity. This irregularity concerns two distinct but related dimensions: irregularity in migrant legal status, and irregularity in employment and working conditions, which is a recurrent element of sex, care, domestic and agricultural work. The former dimension regards migrants’ lack of documentation authorizing their entrance to and/or residency in a country; the latter refers to the lack of a proper labour contract, or to the discrepancy between the conditions set by the contract (such as working hours, salary and insurance coverage) and those that apply in reality. Irregularity in migrant legal status necessarily shapes the irregularity of employment and working conditions, but not the other way around. Indeed, migrants experiencing irregularity and exploitation are not necessarily undocumented but also regular migrants,

refugees or intra-EU mobile citizens (FRA 2015). In other words, the link between exploitative working conditions and irregularity of migration status is less obvious, while the role played by the irregularity of work is more evident. Sex, care, domestic and agricultural work are emblematic in this regard, as we will illustrate in the following pages. First, however, we will set out key topics of debate relevant to the context.

2. IRREGULARITY AND EXPLOITATION

Exploitation is a highly contested concept, from both a socio-economic and legal perspective (Mantouvalou 2018). Scholars have also suggested understanding exploitation as a continuum, ranging from less severe forms to situations of forced labour, slavery or trafficking (Skrivankova 2010). This continuum is determined by multiple forms of oppression and discrimination, which rely on, and simultaneously produce, the position of vulnerability of the person concerned.

Along this perspective, it seems important to question the conception of vulnerability as something static or fixed, inherent to specific categories of people, individuals or groups. Feminist and social theorists have rightly underlined the context-specific dimension of vulnerability as always related to people's positions in society and in power relations (Butler 2004, Fineman 2008, Turner 2006). In this light, vulnerability is not opposed to nor does it exclude agency. Instead, it recognizes the ways individuals act, negotiate and make their choices within contexts marked by structural injustices and inequalities. In this sense, in their taxonomy of different sources of vulnerability, Mackenzie, Rogers and Dodds (2014) have developed the concept of 'situational' vulnerability. Such a notion sheds light on the interplay of personal and structural factors (legal, economic, political, social elements) rendering some people vulnerable to forms of abuse and exploitation which are differently articulated according to the gender, class, age, race, nationality, (dis)ability and educational backgrounds of each person (Crenshaw 1991).

In Europe, relevant structural factors include, crucially, the legal stratification brought about by restrictive immigration policies by national governments, which establishes hierarchies between migrants mainly on the basis of their nationality and professional profile. Such hierarchies significantly influence migrants' differential inclusion in the labour market and access to rights. This is in the context of segmented labour markets, significant informal

economies, and a demand for workers in occupations that are low-paid and classified as ‘low-skilled’, such as agriculture, domestic work and sex work. Migrant women with lower educational levels are generally disadvantaged by policies privileging ‘skilled’ migration as well as by family reunification policies that have become more strict in their requirements, including income and housing criteria (Marchetti and Salih 2017). Moreover, many countries do not provide legal migration channels to work in low-skilled sectors, allegedly to ‘protect’ jobs for national workers or migrants already residing there. In other countries, existing entry channels for workers in these sectors are very limited, as will be demonstrated in the following pages.

EU-level policymaking has followed and supported this trend by generally precluding easy entrance and long-term residency, except for highly qualified workers. In particular, the 2015 European Agenda on Migration marked a new restrictive phase in migration policies, providing very limited legal and safe migration channels for non-EU citizens, and making the legal entry and stay of ‘medium’ and ‘low-skilled’ workers basically impossible in any way that would support their long-term inclusion in the labour market. The 2020 European Commission’s Pact on Migration and Asylum, by paying minimal attention to human rights and legal paths for labour migration paths, has not led to any significant change in this regard (PICUM 2020).

The Seasonal Workers Directive 2014/36/EU is the de facto main European Union (EU) instrument regulating the legal migration of low-skilled third-country nationals. However, this instrument is premised on an employer-driven system and provides member states with wide discretionary powers over the implementation of the provisions concerning the rights and protection of seasonal workers (Rijken 2015). In particular, studies have highlighted that in many European countries, policies and legislation regarding seasonal workers tend to accentuate workers’ dependency on employers, narrow a migrant labour force to specific sectors, and, simultaneously, facilitate their continuous replacement (Zoeterweij 2018).

In general, the absence of legal migration paths for ‘low- and medium-skilled’ third-country national workers pushes migrant workers towards precarious and informal channels, making their condition of ‘irregularity’ – in terms of both legal status and employment conditions – an inevitable part of their migratory projects. At the same time, since the issuing of residence permits for work reasons is dependent on the existence of a work contract, migrant workers

are put in conditions of vulnerability and exposed to blackmailing and dynamics of exploitation, which can also result in forced labour and trafficking (Corrado et al. 2018, Ricard-Guay and Maroukis 2017).

The lack of adequate channels for entry as well as pathways to regularization has also resulted in the asylum system becoming the main option for gaining temporary legal status for many migrants whose labour is in demand. Indeed, the arrival of large numbers of asylum seekers during the so-called 2015 refugee crisis needs to be read in the context of the progressive closure of nearly all possible legal entry channels to Europe for third-country nationals, particularly channels related to migration for work reasons (Geddes and Petracchin 2020). Accordingly, many migrants, including refugees, have had no choice other than to follow increasingly dangerous journeys, such as through the Mediterranean Sea and Balkan routes, seeing the 'asylum seeking' channel as their only possible strategy.

In this context, the inconsistencies of EU and national migration and asylum policies, including reception systems, expose migrants to exploitation and abuse, especially in invisible and unprotected sectors, such as domestic work, sex work and agriculture. Indeed, the lack of recognition and/or enforcement of labour rights is a recurrent issue for these sectors across Europe. People engaging in sex work are even less protected, and are often directly or indirectly criminalized for their work. Furthermore, EU and national responses to labour exploitation and trafficking have mainly been characterized by a repressive approach, aimed primarily at combating irregular migration and prosecuting traffickers and other abusive actors (such as illegal gangmasters), rather than addressing the root causes of exploitation and the structural factors creating people's conditions of vulnerability (Andrijasevic 2010, Corrado et al. 2018). Interventions aimed at 'ending the demand' for sexual services through clients' criminalization, which are increasingly being promoted as means to reduce exploitation and trafficking, have been proven to have negative effects on the workers, in particular migrant workers in situations of irregularity (Amnesty International 2016, Calderaro and Giametta 2019, Vuolajarvi, 2019).

In so-called 'dirty, dangerous and demanding' sectors (Anderson 2000), the employment of migrants is also affected by the xenophobic discourses at play in European societies, which distinguish between 'good' and 'bad' migrants, whose integration depends on migrants' apparent degrees of 'cultural distance' (Spijkerboer and Van Walsum 2007). The ways in

which racialized and gendered representations inform the organization of what comes to be defined as 'low-skilled' labour have attracted considerable scholarly attention. In domestic and care work, the naturalization of gendered and racialized differences contributes to making the emotional labour and skills of migrant domestic workers invisible, on the basis of the idea of a predisposition for it among women of certain nationalities and racialized backgrounds (Marchetti 2014). Similar processes are at work in the sex industry, where economic stratification of workers is organized around sexual stereotyping of racialized groups which attributes hypersexuality, docility or rebelliousness to different groups of workers and serves to justify social, legal and economic discrimination and exploitation (McClintock 1992, Rodríguez García et al. 2017). In the agricultural sector too, skills and tasks are highly gendered and racialized, often according to specific body characteristics (Piro 2021). Moreover, migrant women farmworkers are often considered by employers to be 'sexually available' (Hellio 2016). In this context, intermediaries such as recruitment agencies and brokers (both legal and illegal) can play an important role in reproducing sexist and racist ideas in these sectors, exacerbating dynamics of dependency and exploitation (Corrado et al. 2018, Lendaro and Imdorf 2012).

3. THE CARE AND DOMESTIC SECTORS

The conditions of irregularity and exploitation of domestic and care workers in Europe occur in a variety of settings and are determined by/largely a product of both state and market interventions (Ruhs and Anderson 2010). At the level of state migration policies, both sending and receiving countries have adopted mechanisms to channel migrants (especially women) into these specific occupations. Meanwhile, the market-oriented care provision which dominates in many EU countries creates a growing demand for a migrant women's labour force employed to work long hours, in bad working conditions, for very low wages with limited labour and social rights in comparison to other working sectors (Anderson and Shutes 2014, Cangiano and Shutes 2010). In fact, a study by the Fundamental Rights Agency (FRA) on irregular migration in domestic work has illustrated how the specificities of domestic work (taking place inside the home, often with non-fixed hours and tasks) when intertwined with undocumented migration status and informal work arrangements can lead to particularly exploitative conditions of work and situations of extreme vulnerability (FRA 2011).

Despite the expansion of the care market mentioned before, in many European countries it is still difficult, if at all possible, to legally hire a migrant domestic worker. Domestic workers lack ad hoc legal protection in countries such as Greece, the UK, Denmark, Spain and the Netherlands. Poland does not actually recognize it as proper work, relegating it to a 'personal service' (ACTRAV 2013). Moreover, in countries like Denmark, Finland, the Netherlands and Germany, it is not possible for households to hire a foreigner in a legal way. In Belgium, France and Spain, by contrast, although this is possible in principle, it is actually made impossible by the strict application of regulations against the employment of foreigners in low-skilled labour markets.

In countries where there is a quota system, such as Italy and Greece (depending on the year), this may allow a certain number of people to apply for a residence permit for employment as domestic workers or carers. Yet, these quotas correspond to regional estimates of demand for workers in this sector and are not therefore representative of the true scale of demand. Indeed, household needs for care or cleaning tasks cannot be planned by families as employers-to-be in the same way that a private firm would do. The whole system of annual quotas for labour demand in the domestic work sector is therefore ill-equipped to respond to the needs of households.

Countries where hiring is possible may nevertheless have very different regulations concerning recruitment: in Italy, Belgium and the UK, the employer must formally sponsor the worker's trip and stay – for example, providing housing and financial support – while in Austria, care workers are self-employed, which releases the households from any responsibility. In other countries, however, the demand for full-time paid domestic work has been channelled into the au pair scheme, which is increasingly popular among families with young children who do not have other resources for the employment of foreign workers (Cox 2007, Isaksen 2010).

It is also worth mentioning that in the past, Greece, Italy and Spain met their demand in these sectors through repeated mass-regularizations of undocumented migrants, many of whom, particularly women, were employed in care and cleaning jobs. Italy in particular implemented two large regularization programmes in 2002 and 2009 specifically targeting people in this sector. Again in Italy, a recent regularization scheme for care/domestic and agricultural workers took place in the summer of 2020, with the aim of regularizing two sectors that have proven to be 'essential' in the midst of the Covid-19 pandemic.

Finally, in many EU countries intra-EU and other regular migrant domestic workers also often face irregular and exploitative conditions at the hands of employers and recruitment agencies, especially in the case of circular workers (Marchetti, Garofalo Geymonat and Di Bartolomeo 2022). This has important implications for migrants' households, many of whom depend on remittances.

In a scenario in which anti-trafficking and anti-exploitation efforts are mainly geared towards tackling criminals and abusive actors, and pay little attention to the root causes of vulnerability to exploitation, domestic work becomes a 'blind spot' of these policies (Ricard-Guay and Maroukis 2017). This reveals the significant difficulties institutions have in recognizing and addressing exploitation occurring within the private sphere.

4. THE AGRICULTURAL SECTOR

In many EU countries, agri-food systems rely on the employment of a migrant labour force characterized by irregular and exploitative working conditions. The main factors driving recourse to this labour force are the price–cost squeeze and the imbalance of power in long supply chains (Corrado et al. 2018). The system further takes advantage of the inconsistencies between EU and national policies on migration and labour mobility.

In many countries, such as Germany, the Netherlands, Italy and Spain, channels for the admission of seasonal workers have proven unable to meet labour demand in agriculture (Palumbo and Corrado 2020b). In Germany, for example, bilateral agreements with third countries have not been consistently in place, and when they have been, the annual number of admitted workers is often modest. In the Netherlands, administrative obstacles and related costs prevent employers from applying for the recruitment of third-country-national seasonal workers. In Italy, annual quotas for both seasonal and non-seasonal migrant workers are very limited. In Spain, the recruitment system of third-country migrant farmworkers, called 'contracts in origin' or 'at source' (*contratación en origen*), has experienced a decrease in quotas and mainly applies in Huelva and Lleida through bilateral agreements with Morocco.

The lack of adequate national entry systems for foreign seasonal workers has been offset in many European countries, not only by undocumented migrants, but also by Eastern EU nationals (especially Romanians and Poles), and non-EU refugees and asylum seekers (Dines and Rigo 2015). In this context, the specific features of agricultural work – such as seasonality

and high rates of irregularity – have contributed to exacerbating the conditions of vulnerability of migrant workers. Moreover, the increasing recourse to highly flexible labour market practices, including indirect employment through agencies, has made the enforcement of labour rights even harder, fostering irregular and abusive labour practices.

Women migrant farmworkers often work under the same exploitative conditions experienced by their male counterparts: long hours in unsafe conditions for low wages. In some cases, these situations may amount to forced labour and trafficking (UNODC 2020). Migrant farmworkers usually live in degrading conditions, such as in makeshift housing or, as in the case of Italy, in informal settlements without basic services (Corrado et al. 2018). These conditions of ghettoization also significantly limit migrant workers' possibilities to participate in their local communities, and access to social rights. Such substandard working and living conditions have been exacerbated by the Covid-19 pandemic (Palumbo and Corrado 2020a).

Prevailing gender norms aggravate the dynamics of women's exploitation. Indeed, migrant women farmworkers often receive lower wages than male farmworkers and tend to be more involved in irregular work. In countries such as Italy, they are often excluded from maternity and unemployment benefits. As research in the Netherlands shows (Siegmann and Williams 2020), Polish women farmworkers, in charge of family responsibilities, often have difficulties escaping their employers' demands. The fear of losing their jobs, and thus being unable to support their children financially, prevents them from reporting abuse. Similar dynamics happen in Italy and Spain. In the latter, in particular, these are clearly facilitated by institutional policies. Indeed, within the above-mentioned 'contracts at source' system, the fact of having left children to be cared for in their country of origin constitutes a formal prerequisite for women's selection, as it guarantees their return to their countries at the end of the harvest. Under this system, therefore, care and family responsibilities have become formal elements used for the recruitment of a flexible, 'docile' and, accordingly, exploitable feminized labour force (Hellio 2016). Research on Italy has also highlighted that migrant women, especially Romanians, often decide to leave live-in domestic work for farm work because it allows their children to accompany them. However, the presence of children often exacerbates abuse by employers (Palumbo and Sciorba 2018).

In circumstances of significant dependency on employers or intermediaries, women's labour exploitation in the agricultural sector is often accompanied by sexual blackmail and abuse

(Hellio 2016, Omizzolo et al. 2021). This is a common feature in a system that is built on migrant women's situational vulnerability. Moreover, in some countries, such as Italy and Spain, migrant women's sexual abuse in rural areas is not only connected to the labour exploitation of women farmworkers. In rural areas of Italy, migrant women not only engage in agricultural work, but may also work as sex workers, waitresses or cooks in informal settlements, often in conditions of exploitation and abuse (Peano 2017).

While in recent years European and national institutions have paid more attention to the issue of exploitation in the agri-food systems, this has primarily resulted in repressive actions and short-term protection measures, rather than structural interventions addressing the factors behind the situational vulnerability of migrant farmworkers, supporting their rights and full social inclusion.

5. THE SEX WORK SECTOR

Sex work, and in particular direct forms of sex work such as prostitution, is largely performed in Europe by migrant workers. In Western Europe, migrant workers represented at least 65 per cent in 2009, when a complete estimate was produced (TAMPEP 2009), with an extremely high turnover, both within countries and across borders (Andrijasevic 2013), to meet the significant demand for sex services in Europe.

Migrants come to work in the European sex industry both from outside the EU, especially Latin America, Africa and South Asia, and from within it, especially Eastern European countries. For instance in Italy, in 2019, street-based workers (which were about 80 per cent cis women and about 20 per cent trans women) were mostly from Eastern Europe (60 per cent, of whom most were Romanian, but also Albanian and Bulgarian), and 30 per cent were from Africa, mostly Nigerian (Degani 2020).

Because sex work is rarely legally recognized as work, and mostly directly or indirectly criminalized, irregularity is an endemic among sex workers. For the same reason, to define what constitutes exploitation or good working conditions in this sector is even more difficult than for other kinds of work (Adriaenssens et al. 2016). However, what we know is that migrants in the European sex industry systematically experience poorer working conditions, stigmatization and criminalization compared to their national counterparts (ICRSE 2016a, 2016b). These conditions are even worse for irregular migrants, asylum seekers and refugees. In particular,

debts are commonly contracted by migrants with intermediaries that facilitate their migratory projects and arrange their work upon arrival. These debts are often illegal, not clear in the terms of the repayment, and give the 'facilitators' direct or indirect control over the workers' work and earnings. For example, migrant sex workers may be limited in their mobility within and across working places; subject to wage manipulations, arbitrary fees and violence; and pushed into offering unprotected sex.

Empirical research shows that most irregular migrant workers find themselves oscillating along a continuum of exploitation which goes from what is defined as a 'less severe' or 'acceptable' degree of labour exploitation to what is considered 'forced labour' (Modupe-Oluwa Baye and Heumann 2013) or 'too much suffering' (Mai 2016). Similarly exploitative conditions are found not only for cis women but also for trans people, who have even fewer working options, and young queer men, who may be subjected to more severe forms of discrimination (Mai 2013).

In the few European countries in which prostitution is legal, such as Germany, the Netherlands and Austria, migrant sex workers often experience forms of exclusion both from citizenship and labour rights (Waagenar and Jahnsen 2018). For instance, the Netherlands does not provide residence permits for non-EU sex workers, and at different points in time has limited access for migrants from newer EU countries who are self-employed in sex work, such as those from the Czech Republic, Poland, Romania and Bulgaria. In Austria, a residence permit exists for non-EU citizens, but it only allows them to work 3 to 6 months out of 12 months.

Both in countries where prostitution is not legal and in countries where it is legal, migrant sex workers are often exposed to more exploitation and abuse by the laws and administrative bylaws which have been increasingly introduced since the end of the 1990s with the aim of protecting public order and/or women in prostitution, especially victims of trafficking (Waagenar and Jahnsen 2018). These interventions typically focus on repression of 'traffickers', 'smugglers' or 'sex clients'. In practice they consist of police raids in outdoor and indoor working places often resulting in arrest of irregular migrant workers, followed by detention or deportation. As a consequence, migrant workers tend to work in more isolated locations, and develop greater distance from society and public authorities, and typically do not report the abuse and exploitation they may experience (Calderaro and Giametta 2019, Garofalo

Geymonat and Maciotti 2016). This also happens to sex workers who have experienced trafficking and can rarely access victim support across Europe (European Commission 2020).

Having said that, migrant workers may also see sex work as relatively good option because of its flexible working hours and fast payment. Even when their debts have been paid, migrant sex workers might opt to work in similar settings where money can be saved more quickly – such as in the case of Latin American women working in the ‘plaza’ system in Spain (Oso 2016).

For these reasons, we support an approach that looks at the experiences and problems of migrant sex workers through the lenses of exploitation and situational vulnerability, rather than using a ‘trafficking perspective’ which sees migrants working in the sex industry as entirely forced, and may conceal central characteristics of their means of survival and mobility (Garofalo Geymonat and Maciotti 2016).

6. CONCLUSION

By looking at the three sectors in which migrant women workers in Europe, especially undocumented women, are most likely to work, the chapter has set out some of the common factors which may account for the production of vulnerability in relation to irregularity. Across domestic work, agricultural work and sex work, we found multiple links between vulnerability to exploitation and irregularity in migration status and/or working conditions, and we have shown how gendered norms play a role in this process in several respects.

Migrant women workers, especially those with lower educational levels, are disadvantaged by policies privileging ‘skilled’ migration, as racialized and gendered representations inform what comes to be defined as ‘low-skilled’ labour and tend to exclude domestic, sex and agricultural work. More generally, these ‘dirty, dangerous and demanding’ sectors remain invisible and unregulated sectors of the economy – in the case of sex work, even criminalized. Moreover, exploitative conditions often appear to be ‘accepted’ by women migrant workers because of their commitment to family and caring responsibilities, and because they are often subjected to forms of sexual abuse which make resistance to labour exploitation even more difficult. Finally, most EU and national ‘anti-exploitation’ and ‘anti-trafficking’ responses oriented towards rescuing ‘innocent victims’ and punishing ‘bad criminals’ remain paternalistic, and have been proven to produce vulnerability, rather than limiting it. Moreover, the ‘anti-

trafficking' paradigm is often used to justify restrictive migration measures, fostering greater dangers, irregularity and exploitation in these sectors.

In conclusion, structural interventions aimed at reducing irregularity both in migration status and employment are also likely to play an important role in reducing migrant women workers' vulnerability to exploitation. These include establishing safe and regular entry channels, removing the necessary link between residence permits and labour contracts, and, crucially, strengthening labour rights in domestic, agricultural and sex sectors.

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