

Observation (CEACR) - adopted 2011, published 101st ILC session (2012)

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) - Italy (Ratification: 1981)

The Committee notes the communication from the Italian Union of Labour (UIL), submitted on behalf of the UIL, the Italian General Confederation of Labour (CGIL) and the Italian Confederation of Workers' Trade Unions (CISL), and the Government's reply thereto. The Committee also notes the observations by the Italian Confederation of Workers' Trade Unions (CISL) received 23 September 2010. The Committee recalls that some of the issues addressed by UIL had already been raised during the discussion of the Conference Committee on the Application of Standards in June 2009, and addressed in the Committee's observation of 2009.

Part I. Articles 2, 3, and 6 of the Convention. Addressing migration in abusive conditions, and the employment of workers having migrated in illegal conditions. The Committee notes the Government's statement that, due to the repercussions of the global economic crisis on the Italian economy, the Programmatic Document 2009–11, which included measures to address the exploitation of immigrants, was not adopted and that instead a moratorium was imposed on the entry of non-seasonal, non-European Union (EU) workers in 2009–10. The Committee welcomes the detailed information on the initiatives to address human trafficking into labour and sexual exploitation and refers in this regard to its comments on the Forced Labour Convention, 1930 (No. 29). The Committee further notes the Government's indication that the legislative framework will be enhanced through the transposition of European Directive 2009/52/EC of 18 June 2009 providing for standards on sanctions and measures against employers of illegally staying third-country nationals (the Sanctions Directive). *Considering that such legislative steps are important in the context of the implementation of measures required under Articles 2, 3 and 6 of the Convention, the Committee asks the Government to provide information on any developments regarding the adoption of legislation transposing European Directive 2009/52/EC, including a copy of the relevant texts. The Committee asks the Government to continue to provide information on measures to detect and suppress human trafficking and to prosecute those responsible for human trafficking from wherever the country they operate.*

Articles 1 and 9. Minimum standards of protection. The Committee recalls the particular vulnerability of migrant workers in an irregular situation to exploitation and violations of their basic human rights. With regard to previously reported human rights violations and exploitative conditions of undocumented workers coming from Africa, Asia and Eastern Europe, the Committee notes the detailed information, including statistics, on the action taken in 2008 and 2009 under the strategic programme of inspections carried out by the Ministry of Labour and Social Policies and under the "Extraordinary inspection plan for agriculture and construction in the regions of Calabria, Campania, Apulia and Sicily", in January 2010. It notes the particular attention paid to the illegal employment of foreign immigrants, especially in the construction and agriculture sectors, marked by a high incidence of labour exploitation of primarily clandestine non-EU workers. Targeted inspections were also carried out between 1 July and 31 December 2009 (Operation Rainbow) for the purpose of checking manufacturing and commercial business activities. The Committee also notes the data on reported offences and the persons denounced regarding organizing and facilitating clandestine migration, and the illegal employment of foreign workers in 2008 and 2009, indicating, however, few reported offences and perpetrators with respect to employment of seasonal foreign workers in an irregular situation, which could suggest difficulties in effectively monitoring conditions of migrants in an irregular situation in seasonal employment, including in agriculture.

The Committee previously expressed concern that section 10bis of Legislative Decree No. 286/1998, introducing the offence of illegal entry or residence, would further marginalize and stigmatize migrant workers in an irregular situation, and increase their vulnerability to exploitation and violation of their basic human rights. It had also noted that section 10bis combined with section 331(19) of the Code of Criminal Proceedings (obliging public officials to report criminal offences) may prevent these migrant workers, in practice, from filing complaints with regard to violations of their rights. The Committee notes the Government's reply that migrant workers in an irregular situation will in all cases, irrespective of any charge of clandestine immigration or expulsion order against them, have the possibility to apply, through a representative, to the judicial authority with a view to obtaining recognition of any rights due to them or to file a criminal complaint concerning conduct which impairs their basic rights. The Committee notes that, since the entry into force of the legislation until 15 April 2010, of the 37,192 foreigners found to be in an irregular situation, 12,775 were expelled and 24,417 foreigners were not repatriated; of those, 22,027 foreigners, were not repatriated due to non-compliance with the expulsion order. The Committee also notes that inspections carried out under the abovementioned programmes, involved local state police stations in procedures for identifying illegally employed nationals of non-EU countries and subsequent repatriation operations. The Committee also notes from the communication by the CISL regarding Convention No. 29, that migrant workers with an irregular status who are victims of labour exploitation tend to either hide from the authorities fearing deportation or being expelled from the country. The Committee also refers to its comments on the Labour Inspection Convention, 1947 (No. 81), noting that labour inspections have been mainly focusing on controlling illegal employment and the legal status of migrant workers under immigration law, rather than conditions of work.

The Committee notes that in 2009 and 2010 (until 31 March) 810 and 146 permits were issued "on humanitarian grounds for reasons of social protection" under section 18 of legislative Decree (Consolidated Statute) No. 286/1998 (in 2010, a large number of permits were issued to women from Nigeria (397), China (38), and some eastern European countries; and to men from Egypt (71) and Morocco (68)). However, no data are provided on the number of migrant workers found in an irregular situation who have sought redress from the courts with respect to violations of their basic human rights or rights arising out of past employment, including unpaid wages. It is therefore difficult to assess whether due process is guaranteed, in practice, to migrant workers who are accused of the crime of illegal immigration and who are subject to an expulsion order, with respect to claims regarding rights provided for in *Articles 1 and 9* of the Convention.

While acknowledging the difficulties encountered to manage the significant immigration flows and recognizing the Government's efforts to address migration in abusive conditions, including illegal employment, as required by the Convention, the Committee nonetheless emphasizes that, while such measures are justified, it is also essential to ensure that migrant workers enjoy a basic level of protection even if they have immigrated under irregular conditions or are employed illegally and their status cannot be regularized. The Committee notes that no detailed analysis has yet been undertaken of the impact of legislative initiatives to combat irregular migration, including section 10bis, on the human rights of migrant workers in an irregular situation and their equality of treatment in respect of rights arising out of employment, despite explicit requests by the Conference Committee and this Committee. The Committee also notes the Government's statement that the Constitutional Court has not yet pronounced itself on the referral proceedings pending before it concerning the unconstitutionality of section 10bis. The Committee draws the Government's attention to the important role given by the Convention to the social partners, and in particular *Article 7* requiring that representative organizations of workers and employers shall be consulted in regard to laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses against which the Convention is directed.

Emphasizing that access to justice is a basic human right which must be guaranteed to all migrant workers, in law and in practice, the Committee requests the Government to indicate all

measures taken to ensure that effective mechanisms are in place to facilitate complaints by migrant workers in an irregular situation and to inform them of their rights and relevant complaints procedures. The Committee also asks the Government to provide information on the number of migrant workers in an irregular situation, particularly those in the agriculture and construction sectors, that have sought redress regarding violations of their basic human rights or regarding rights due with respect to remuneration and social security benefits, and the outcome of the cases concerned. The Committee asks the Government to continue to provide information on the activities, including detailed statistics on targeted inspections in agriculture and construction, as well as in other sectors, to detect illegal employment of migrants as well as the employment of migrants in abusive conditions of work, and the results achieved. Please indicate how representatives of organizations of workers and employers have been and are being consulted in regard to matters provided for in Part I of the Convention.

Part II. Articles 10 and 12(c) and (e). National policy on equality of opportunity and treatment of migrant workers lawfully in the country. The Committee previously requested the Government to indicate the specific results of the programmes and initiatives to promote equality of opportunity and treatment of migrant workers lawfully in the country with nationals, with a view to eliminating discrimination against them. The Committee notes the approval on 10 June 2010 of the Plan on Integration in Safety – Identity and Dialogue, which, according to the Government, identifies the main lines of action and mechanisms to be adopted with a view to promoting an effective process of immigrant integration combining safety and acceptance. The Plan covers five main areas including education and learning, employment, housing and local government, access to essential services (health and social welfare services) and under-aged and second generation immigration. The Committee notes in this regard the comments by the CISL drawing attention to the discrepancy between the Plan on Integration in Safety – Identity and Dialogue and the existing laws and policies making distinctions between migrant workers and nationals regarding civil, political and social rights, and questioning the Plan's purpose and effectiveness, and lack of budgetary guarantees for its implementation. The Committee further notes that the Department of Civil Liberties and Immigration of the Ministry of Interior has developed a strategy for the use of resources from the European Integration Fund involving a multi-annual programme for the period 2007–13. The Government also provides extensive information on initiatives by the National Office Against Racial Discrimination (UNAR), such as the establishment of territorial anti-discrimination networks and the Memoranda of Understanding in 2009 and 2010, signed with various municipalities and regional authorities in this context, and interventions to support female immigrants at risk of social marginalization. Finally, the Committee notes the institutional awareness, communication and information campaigns on social integration of immigrants developed by the Ministry of Employment and Social Policies in 2008 and 2009, which, after evaluation, appeared to have been useful to almost 90 per cent of the participants. *With a view to assessing progress made over time, the Committee requests the Government to continue to provide information on action taken to implement the national policy on equality of opportunity and treatment for migrant workers lawfully in the country, and the results achieved. Please also provide information on the activities carried out under the Plan on Integration in Safety – Identity and Dialogue, and how its effective implementation will be ensured, including in cooperation with the social partners.*