

DOMESTIC WORK MEDIATED BY PLATFORMS: NEW PATHS FOR EXPLOITATION?

Rita Daila Costa*

Abstract [It]: il saggio si propone di affrontare le principali sfide poste dalla proliferazione del lavoro su piattaforma nel settore della cura domestica, tenendo conto del legame tra lavoro su piattaforma e sfruttamento lavorativo e dei suoi possibili riflessi nella crescente "uberizzazione" delle relazioni di lavoro domestico.

Abstract [En]: *the paper aims to address the main challenges posed by the proliferation of platform work in domestic care by examining the link between platform work and exploitation and its possible development in increasingly "uberised" domestic working relationships.*

SUMMARY: 1. Introduction. Platform work beyond food delivery: the spread in domestic care; 2. Platforms and working conditions: old and new forms of exploitation; 3. Domestic work, commodification of care and working conditions; 4. The "uberisation" of care and the difficult protection of domestic workers; 5. Domestic work and platforms. Regularisation of a difficult sector or a new path for exploitation?

1. Introduction. Platform work beyond food delivery: the spread in domestic care

Platform work is gradually gaining a foothold in the most diverse sectors of our economy. With regard to platform work, the attention of lawmakers and scholars has focused on a few specific sectors and, in particular, the work of so-called "riders". In Italy, particularly emblematic in this sense was the introduction of a legal framework dedicated to self-employed platform workers, simply to specify the applicability of the provisions to home food delivery activities¹.

* *Ph.D. Student in System Dynamics, University of Palermo.*

¹ The reference is to "Capo V-bis" of Legislative Decree n. 81/2015, where the regulation of platform work only concerns cases involving people who deliver goods on behalf of others, in urban areas and by means of velocipedes or motor vehicles. However, this regulation has not been without criticism, as its application is reserved for self-employed platform workers. About the issue see: A. PERULLI, *La nuova definizione di collaborazione organizzata dal committente. Note al d.lgs. n. 81/2015*, in *Riv. it. dir. lav.*, 2019, 4, pp. 170 ff.; O. RAZZOLINI, *I confini tra subordinazione, collaborazioni etero-organizzate e lavoro autonomo coordinato: una rilettura*, in *Dir. rel. ind.*, 2020, 2, pp. 374 ff.; A. TAMPIERI, *Le tutele per i "riders": soluzioni italiane e straniere a confronto*, in *Mass. giur. lav.*, 2020, pp. 242 ff.; G. SANTORO PASSARELLI, *Sui lavoratori che operano mediante piattaforme anche digitali, sui riders e il ragionevole equilibrio della Cassazione 1663/2020*, WP C.S.D.L.E. "Massimo D'Antona".IT – 411/2020, pp. 7 ff.; S. CAIROLI, *Tempi e luoghi di lavoro nell'era del*

In contrast to this exclusive domain, there is a growing use of platform work in other sectors, particularly in home care². Domestic working relationships are increasingly “uberised”³, with no distinction between long-term and short-term work. Indeed, platform work is increasingly used to cover everything from care work to babysitting and cleaning services.

On its website, *Badanter* presents itself as «the first completely free online platform dedicated to home help in Italy» created «with the aim of putting people who need a domestic helper for themselves or their loved ones in contact with professionals in the sector, in a simple and intuitive way», offering caregivers an online showcase in which they can create a professional profile and highlight their skills and competences, increase their clientele and receive job offers in line with their offer. Similarly, *Badacare* claims to «offer experienced home care professionals», basically operating as an agency to match families in need of care for the elderly with a professional caregiver. It also offers help in the management of employment relationships with employers and training to workers.

The list of platforms and websites aiming to help in the search for a babysitter is endless. *Babysits* offers help in making the best decisions on baby care, with the possibility of interviewing the aspiring babysitter and managing appointments and payments directly through the app. *Le Cicogne* also aims to match parents with babysitters, but it also gives the possibility of creating a working relationship and taking care of some of the main aspects of its administrative management. The website *Sitly* is less developed as it is limited to matching the supply and demand of babysitting services. However, it is worth noticing that this website presents itself as an offer to babysitters of «new opportunities to expand their babysitting experience by working with children of different ages while staying in their neighbourhood» as «a fun and flexible way to earn money and make a difference in the lives of families in their area».

Helping, which claims to be «Europe’s no. 1 online marketplace for finding domestic cleaners», is a platform where «thousands of domestic cleaners are registered with a wide range of prices, competences and reviews», and all are self-employed and have liability insurance, as specified by the platform itself. Cleaning services are also offered by the platform *EasyFeel*, which allows booking a verified professional for home, workplace and personal care at any time «safely, quickly and inexpensively».

The aim of this paper is to show how the increasing use of platforms in the domestic sector, without an adequate and meaningful regulatory framework, risks contributing to the spread of exploitation, given the already particularly vulnerable position of the workers involved and the inapplicability of most of the solutions that the Italian legal framework has provided up to now to protect platform workers.

capitalismo cognitivo e dell’impresa digitale, Jovene Editore, Napoli, 2020, pp. 83 ss.; S. GIUBBONI, *Il lavoro attraverso piattaforma digitale nella disciplina nazionale*, in *Riv. it. dir. lav.*, 2023, 3, pp. 310 ff.

2 A. MOSTARDA, *Domestic workers’ occupational safety and health in Italy: from legal gaps to platform mediated work*, in *AmbienteDiritto.it*, 2024, 1, p. 13.

3 The word “uberisation” describing domestic care work has been used by: A. TROJANSKY, *Towards the “Uberisation” of Care? Platform work in the sector of long-term home care and its implications for workers’ rights*, Workers’ Group Research Report, EESC, 2020.

2. Platform work: old and new forms of exploitation

Without claiming to be exhaustive⁴, it is important for the purpose of this paper to begin with some insights into the relationship between platform work and exploitation in order to subsequently discuss the consequences of the proliferation of platforms in the domestic sector.

In its early stage, the economy of platforms presented itself as a new way of organising “little” jobs, guaranteeing the service providers some degree of autonomy and flexibility. The idea was that these jobs would be directed at young workers interested in minor work opportunities to facilitate working time management.

Despite this perceived notion of a ‘gig’ economy consisting of occasional work, it is nowadays undeniable that employment platforms are not limited to young people interested in casual work to supplement their income. The employment crisis and the emergence of growing pockets of poverty have resulted in this form of work being used increasingly by workers with family responsibilities, the long-term unemployed and those belonging to the “working poor” category⁵.

Platforms can thus no longer be considered sites of a “gig” economy based on casual and temporary work. On the contrary, they have ended up re-proposing the traditional relationships between workers and employers, with the particular feature whereby the employer's powers are exercised through technological tools (such as algorithms and the platform itself)⁶. In this way, platform work has proved to reproduce traditional forms of compression of workers' rights and perhaps even to create new ones⁷, being often: «characterised by low pay, poor occupational health and safety, exclusion from basic social security provisions, and a general precarity induced by a lack of applied or enforced labour market regulations»⁸.

4 The Italian academic literature on platform work is extensive; just to give a few examples: V. DE STEFANO, *Lavoro «su piattaforma» e lavoro non standard in prospettiva internazionale e comparata*, in *Riv. giur. lav.*, 2017, I, pp. 241 ff.; L. CORAZZA, *Industria 4.0: lavoro e non lavoro di fronte alla quarta rivoluzione industriale*, in *Economia & lavoro*, 2017, 2, pp. 15-22; R. VOZA, *Nuove sfide per il welfare: la tutela del lavoro nella gig economy*, in *Rivista del Diritto della Sicurezza Sociale*, 2018, 4, pp. 668 ff.; A. DONINI, *Il lavoro attraverso le piattaforme digitali*, Bononia University Press, Bologna, 2019; A. ALOISI - V. DE STEFANO, *Il tuo capo è un algoritmo: contro il lavoro disumano*, Bari, Editori Laterza, 2020; A. PERULLI - S. BELLOMO (eds.), *Platform work and work 4.0: new challenges for labour law*, Cedam, Padova, 2021; A. BELLAVISTA - R. SANTUCCI (eds.), *Tecnologie digitali, poteri datoriali e diritti dei lavoratori*, Giappichelli, Torino, 2022.

5 C. DE MARCO - A. GARILLI, *L'enigma qualificatorio dei riders. Un incontro ravvicinato tra dottrina e giurisprudenza*, in WP CSDLE “Massimo D’Antona”.IT – 435/2021, p. 3.

6 C. DE MARCO - A. GARILLI, *op. cit.*, p. 6; G. GAUDIO, *Algorithmic management, sindacato e tutela giurisdizionale*, in *Dir. rel. ind.*, 2022, 1, pp. 30-32. For an analysis of the so-called “algorithmic management”, see A. ALOISI - N. POTOCKA-SIONEK, *De-gigging the labour market? An analysis of the ‘algorithmic management’ provisions in the proposed Platform Work Directive*, in *Italian Labour Law e-Journal*, 2022, 1 (15), pp. 29 ff.

7 As addressed by Van Doorn: «Digital platforms amplify existing power dynamics and inequalities while introducing technologies and techniques that produce qualitatively new arrangements, conditions and experiences of work, generally referred to as gig work», N. VAN DOORN, *Stepping Stone or Dead End? The Ambiguities of Platform-Mediated Domestic Work Under Conditions of Austerity. Comparative Landscapes of Austerity and the Gig Economy: New York and Berlin*, in D. BAINES - I. CUNNINGHAM (eds.), *Working in the context of austerity*, Bristol University Press, Bristol, 2021, p. 50.

8 O. ALYANAK - C. CANT - T. LÓPEZ AYALA - A. BADGER - M. GRAHAM, *Platform work, exploitation, and migrant worker resistance: Evidence from Berlin and London*, in *The Economic and Labour Relations Review*,

In this way, the platform economy has also become a real alternative to the kind of exploitation typical of the conventional labour market⁹.

It is a common assumption that labour exploitation is a phenomenon predominantly affecting migrants engaged in agricultural work, particularly in the southern Italian region. However, many forms of exploitation take place outside the agricultural sphere. These include “new” forms of exploitation exercised through platforms and known in Italy as “*caporalato digitale*”¹⁰. In these cases, labour exploitation takes place through the recruitment of a workforce via the platform, which makes it possible to involve a mass of workers (a “crowd”) in need, often, though not necessarily, foreigners. Moreover, the use of technological tools to manage the employment relationship causes a progressive reduction in the worker's freedom, which often goes far beyond the limits of mere subordination¹¹.

A particularly emblematic example of this situation is the well-known “Uber case”¹². It was such a serious case that it resulted in criminal proceedings against both the managers of Uber Eats Italy and the recruitment agency for the crime of labour exploitation provided for by Art. 603 *bis* of the Italian Criminal Code¹³.

In this case, the judges found exploitative working conditions subject to article 603 *bis* of the Italian Criminal Code. For the recruitment of riders, Uber made use of two intermediary agencies based in Milan, mainly subcontracting asylum seekers and migrants, usually living in reception centres, in situations of vulnerability and social isolation. Because of the threat of having their account closed and their position of vulnerability, which made them unable to make claims or demands for protection, these workers felt forced to accept cheap working conditions. It was exactly this interaction between the workers’ “state of need” and the imposition of exploitative conditions that made it possible to pursue a prosecution against Uber’s management for the crime of exploitation¹⁴.

2023, 34 (4), p. 677.

9 It is no coincidence that the role attributed to foreigners as a source of cheap labour has become increasingly central in the context of the platform economy; O. ALYANAK - C. CANT - T. LÓPEZ AYALA - A. BADGER - M. GRAHAM, *op. cit.*, pp. 677 ff.; N. VAN DOORN - F. FERRARI - M. GRAHAM, *Migration and Migrant Labour in the Gig Economy: An Intervention, Work, Employment and Society*, 2023, 3 (4), pp. 1100 ff.

10 A definition of the concept can be found in C. FALERI, *Caporalato digitale*, in S. BORELLI – V. BRINO - C. FALERI – L. LAZZERONI – L. TEBANO – L. ZAPPALÀ, *Lavoro e tecnologie. Dizionario del diritto del lavoro che cambia*, Giappichelli, Torino, 2022, pp. 38 ff. Italian scholars have also talked about “smart exploitation”; see F. BANO, *Quando lo sfruttamento è smart*, in *Lavoro e dir.*, 2021, 2, pp. 303 ff.

11 F. BANO, *cit.*, pp. 307 ff.

12 See: A. MERLO, *Il contrasto al “caporalato grigio” tra prevenzione e repressione*, *Diritto penale contemporaneo*, 2019, 6, pp. 171 ff.; A. MERLO, *Sfruttamento dei riders: amministrazione giudiziaria ad Uber per contrastare il “caporalato digitale”*, *Sistema Penale*, 2 Jun. 2020; P. BRAMBILLA, *Il reato di intermediazione illecita e sfruttamento lavorativo al banco di prova della prassi: spunti di riflessione sui confini applicativi della fattispecie alla luce della prima condanna per caporalato digitale nel caso Uber*, in *Sistema Penale*, 2022, 3, pp. 149 ff.; C. INVERSI, *Caporalato digitale: il caso Uber Italy Srl*, in *Lavoro e dir.*, 2021, 2, pp. 335 ff.

13 Indeed, according to the judges, Uber’s manager was at least aiding and abetting the activities of exploitation carried on by the intermediary agencies.

14 Workers were formally contracted as occasional self-employed workers but had no autonomy in choosing the working hours and modalities. They were paid 3 euros per delivery, irrespective of connection hours, kilometres travelled, weather conditions and work at night and on holiday. As a matter of fact, workers were forced to work at an increasingly intense and frenetic pace, having repercussions in terms of stress and risks due to the need to be quick in making deliveries. In a lot of cases, their wages were diminished because of sanctions imposed by

In a certain way, in this case, criminal law has proved to be the quickest to read and identify the episodes of exploitation in areas and sectors where labour protection suffers from the particular vulnerability of workers, often accentuated by the peculiar way in which companies are organised.

This capacity of criminal law is probably related to the adoption of the substantive concept of exploitation made by art. 603 *bis* of the Italian Criminal Law. Unlike labour law, it does not get stuck in the question of identifying the employer since it recognises the liability of all those who have contributed in any way to the exploitation. Moreover, the criminal relevance of exploitation is independent of the concepts of autonomy and subordination. It has thus enabled forms of protection to be adopted even in the “new” platform work¹⁵.

In addition to such serious cases subject to the Italian Criminal Code, the platform economy also often stimulates well-known episodes of “legal exploitation”. These, although not criminally relevant, lead to a general compression of working and living conditions¹⁶.

3. Domestic work, commodification of care and working conditions

Beyond the traditional focus on the food delivery sector, platforms have progressively spread as a place to manage other forms of work, founding, among others, a fertile area for their use in the management of labour supply and demand in the domestic care sector. Nevertheless, before taking into account this phenomenon, some issues that are relevant to the broader path of progressive “commodification” of care need to be addressed¹⁷, of which the “uberisation” of care is a part.

Without claiming to be exhaustive, it can be stated that the aforementioned process of “commodification” of care originates in the absence of state welfare systems capable of meeting the care needs of families, which is the consequence of adopting a strongly liberal model¹⁸. According to this paradigm, we are all independent and autonomous people and, therefore, formally equal¹⁹. This is diametrically opposed to the view promoted by those who propose the concept of vulnerability, according to which we are all vulnerable, united by this condition and, therefore, all in need of both care and potential providers of it²⁰, without

the employer. Tips paid by customers on the platform were systematic subtracted.

15 On the crime of labour exploitation, see A. DI MARTINO, *Sfruttamento del lavoro. Il lavoro del contesto nella definizione del reato*, il Mulino, Bologna, 2020; A. MERLO, *Il contrasto allo sfruttamento del lavoro e al “caporalato” dai braccianti ai riders*, Giappichelli, Torino, 2020, pp. 51 ff.; M. D’ONGHIA, L. CALAFÀ, *Lo sfruttamento del lavoro nell’interpretazione giurisprudenziale: una lettura giuslavoristica*, in *Lavoro e dir.*, 2021, 2, pp. 233 ff.

16 See par. 4, *infra*.

17 Generally speaking, the progressive spread of platforms as a place for managing labour relations is the continuation and intensification of wider phenomena; see N. VAN DOORN, *Platform labor: on the gendered and racialized exploitation of low-income service work in the ‘ondemand’ economy*, in *Information, Communication & Society*, 2017, 20 (6), p. 900.

18 S. BORELLI, *Who cares? La (mancanza di) dignità sociale per il lavoro di cura*, in *Var. temi dir. lav.*, 2020, 3, pp. 659-662.

19 J. C. TRONTO, *Moral Boundaries. A Political Argument for an Ethics of Care*, Routledge, New York, 1993, p. 162

20 About this understanding of vulnerability, see J. BUTLER, *Precarious Life: The Power of Mourning and Violence: The Powers of Mourning and Violence*, Verso, London-New York 2004; J. BUTLER, *Ondoing Gender*, Routledge, New York, 2004; about the concept of vulnerability, see also C. MACKENZIE -W. ROGERS - S.

distinction of gender. On the contrary, in the dominant liberal paradigm²¹, the individual is autonomous, independent and not in need of any care. In this model, care is no longer a universal need or something of which we are all potential providers but becomes itself a product, a commodity, a service to be paid for within a welfare state that is no longer obliged to provide it. Following this dominant paradigm, the State is not in charge of the need for care of individuals, and everything should be put in private hands, creating what has been defined as a “do-it-yourself welfare system” and, therefore, asking the person in need of care simply to choose from the “care” services available on the market²².

Even the latest provision of some allowances and aid for elderly care, made in the framework of the “Piano Nazionale di Ripresa e Resilienza” (PNRR), does not seem able to change this paradigm, lacking an overall perspective for the future²³. The reform inaugurated by Law No. 33 of 2023 is known as the “Non-Self-Sufficiency Reform”. Although this reform includes elements to promote the regularisation of caregivers, it does not aim to achieve a general welfare reform, as it is still limited to support for non-sufficient elderly people. Moreover, it still lacks a project that responds in a comprehensive, integrated and permanent way to all the needs that the home care of a dependent elderly person entails²⁴.

This permanent lack of a functioning welfare system creates inequality between those in need of care, who cannot always afford the services they need. These processes have also resulted in incentives to drive down labour costs, originating competition between providers²⁵. Indeed, labour costs are a crucial component of a household’s “choice” of services. They often cannot afford the cost of home care²⁶ and, therefore, opt for cheap labour, creating a system based on the so-called “dumping of care”²⁷.

This downward competition is also stimulated by the proliferation of several collective bargaining agreements applicable to the sector²⁸ and by the presence of highly vulnerable workers. These are often migrant women willing to accept extremely low levels of pay and protection²⁹. According to the latest report produced by the Domina National Observatory, in 2022, of the total number of regular domestic workers in Italy, 58.7% are foreign women

DODDS, *Introduction: What Is Vulnerability and Why Does It Matter for Moral Theory?*, in C. MACKENZIE -W. ROGERS - S. DODDS (eds.), *Vulnerability. New Essays in Ethics and Feminists Philosophy*, Oxford University Press, Oxford, 2014, pp. 1 ff.

21 On the liberal paradigm, see J. RAWLS, *A theory of justice*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts 1971.

22 S. BORELLI, *Who cares? La (mancanza di) cit.*, pp. 659-662.

23 See C. GORI, *Assistenza agli anziani: la riforma c'è, va messa in pratica*, in *lavoce.info*, 4th April 2023.

24 K. PINTO, *Riforma dell'assistenza agli anziani non autosufficienti: la montagna ha partorito un topolino*, 7th Feb. 2024, in *ilsole24ore*.

25 S. BORELLI, *Who cares? La (mancanza di) cit.*, p. 662.

26 G. PICCO, *Il welfare invisibile: lo sfruttamento legale ed illegale delle colf e badanti*, in V. FILÌ (ed.), *Quale sostenibilità per la longevità? Ragionando degli effetti dell'invecchiamento della popolazione sulla società, sul mercato del lavoro e sul welfare*, Adapt University Press, Bergamo, 2022, p. 136.

27 G. BASCHERINI - S. NICCOLAI, *Regolarizzare Mary Poppins. Lavoro nello spazio domestico e qualità della cittadinanza*, in *Riv. dir. sic. soc.*, 2010, 3, p. 503.

28 See S. BORELLI, *Le diverse forme cit.*, p. 288.

29 On the vulnerability of migrant women to abuse in the domestic care sector, see A. SCIURBA, *La cura servile, la cura che serve*, Pacini Editore, Pisa, 2015, pp. 99 ss.; S. BORELLI, *Le diverse forme dello sfruttamento nel lavoro domestico di cura*, in *Lavoro e dir.*, 2021, 2, pp. 290 ff.

(compared with 27.8% Italian women and 10.9% foreign men)³⁰. Nevertheless, this report only takes account of regular working relationships, while if irregular workers were included, the percentage of female migrant workers would probably be even higher³¹.

In relation to these women, families see themselves as benefactors rather than employers, especially when care work also leads to situations of cohabitation³², following general rhetoric in which care work should not even be considered actual work³³. It is no coincidence, indeed, that the terms used to describe care work, such as “cleaning lady”, “maid” or “caregiver”, refer to a relationship of dependency rather than to a job³⁴.

Following this idea, and reflecting a general hesitation to rule the domestic sphere, labour law has shown a certain reluctance to regulate this type of relationship, ending up with a special discipline that in most cases derogates from the forms of protection provided for other workers³⁵, such as those relating to health and safety³⁶ or unlawful dismissal³⁷.

This special character of the framework applicable to domestic care has been justified by the Italian Constitutional Court, in the ruling No. 27 of 13 February 1974, on the ground that it is carried out for the benefit of a small and homogeneous family unit and is therefore intended to take place within the private life of a limited cohabitation. In such a situation, according to the Court, it would not be rational to subject the persons involved to rules that do not take account of the specific nature of the relationship³⁸.

Despite this statement of the Constitutional Court, it is clear that this framework is (at least partly) contrasting with the indication given by ILO in Convention No. 189/2011, asking States to ensure equal treatment in social security to domestic workers and, particularly, the application of rules on safe and security³⁹. Moreover, the Court of Justice⁴⁰ has raised some doubts about the compatibility of the Italian legal framework with European Union legislation, recently stating that the specific characteristics of domestic work are not sufficiently relevant to justify the exclusion of domestic workers from the scope of labour law protection and social security measures⁴¹.

Despite these inputs for a change coming from the international level, in Italy, the latest domestic work provisions still show a character of speciality. Besides the general framework

30 OSSERVATORIO DOMINA SUL LAVORO DOMESTICO, *Rapporto 2023*, 2023, p. 97.

31 G. PICCO, *op. cit.*, p. 139.

32 L. PALUMBO, *Grave sfruttamento e tratta nel lavoro domestico e in agricoltura in Italia*, European University Institute, San Domenico di Fiesole (FI), 2016, p. 3.

33 S. BORELLI, *Le diverse forme* cit., p. 287.

34 G. BASCHERINI - S. NICCOLAI, *op. cit.*, p. 504.

35 This has been defined as a 'subtractive' legislative technique, consisting in the non-application of protections provided for other workers; see C. DE MARTINO, *Chi bada alle badanti? La specialità del lavoro domestico alla prova del Covid*, in *Giornale dir. lav. e relazioni ind.*, 2021, 1, p. 57.

36 See A. MOSTARDA, *op. cit.*, pp. 7 ff.

37 These workers are still included in the few categories able to be dismissed *ad nutum*; C. DE MARTINO, *op. cit.*, p. 57.

38 C. DE MARTINO, *op. cit.*, p. 57.

39 S. BORELLI, *Who cares? La (mancanza di) cit.*, pp. 667 ss.

40 Court of Justice, 24 Feb. 2022, C-389/20, *C.J. c. Tesorería General de la Seguridad Social*, in *Riv. it. dir. lav.*, 2022, 2, p. 371.

41 E. CHEREGATO, *La Corte di giustizia contesta la specialità del rapporto di lavoro domestico alla luce del diritto antidiscriminatorio europeo*, in *Riv. it. dir. lav.*, 2022, 2, pp. 370 ff.

on domestic work still provided by Law No. 339 of 1958, this speciality of domestic work is also shown by the choices made by the lawmakers during the pandemic, when domestic workers were excluded by the scope of application not only of the ban on dismissal⁴² but also of the income aid provided by the Law Decree No. 18 of 2020 (so-called «Decreto Cura Italia»)⁴³.

Given this legal framework, it is not surprising that the sector is characterised by both "legal" and "illegal" forms of exploitation, often tolerated because they are performed by families who may have no alternatives to satisfy their need for care⁴⁴.

In this common tolerance, the home environment, isolated and difficult to penetrate, lends itself to forms of abuse and these labour relations end up being almost impenetrable to the law itself, due to the specificity of both the workplace (i.e. the home environment) and the employer (i.e. a family), thus contributing to a loss of protection for those who carry them out and certain invisibility⁴⁵, making it a fertile ground for an escalation of subjugation and violence⁴⁶ in the asymmetrical power relationship between the employer and a particularly vulnerable worker.

4. The “uberisation” of care and the difficult protection of domestic workers

The spread of the gig economy in the domestic sector fits in the scenario just described. The proliferation of platforms in the care sector is, indeed, a response to the shortage of public and quality care services, in a setting where the demand for female care workers is rising, due both to the general ageing of the national population and to the increasing integration of women into the labour market, with a consequent reduction in free care services within the family⁴⁷.

It is clear, however, that the proliferation of platforms in this sector provides fertile ground for the replication and further spread of exploitative dynamics on a larger scale than is already the case, further increasing existing conditions of inequality⁴⁸. Indeed, we have already seen how platforms end up reproducing the exploitative dynamics of the traditional market.

As in food delivery, platforms give access to a crowd of would-be employees ready to seize work opportunities and provide interchangeable services⁴⁹. Moreover, the specific market sector in question already seems to appeal to people in need, who are willing to accept any working conditions, and who, as we have seen, are mainly made up of foreign women. Concerning this conformation of the workforce, the systems of labour competition proposed by the platforms (e.g. reputation rating systems and the use of customer reviews)

42 C. DE MARTINO, *op. cit.*, p. 69.

43 E. CHIEREGATO, *op. cit.*, p. 371.

44 S. BORELLI, *Le diverse forme cit.*, pp. 293 ff.; OSSERVATORIO DOMINA SUL LAVORO DOMESTICO, *op. cit.*, pp. 188 ff. Picco describes the phenomenon as “white” exploitation; see G. PICCO, *op. cit.*, p. 136.

45 G. PICCO, *op. cit.*, p. 135.

46 L. PALUMBO, *op. cit.*, p. 3.

47 A. MOSTARDA, *op. cit.*, p. 2.

48 I. TAGLIABUE, *Lavoro di cura e piattaforme digitali: note a margine di una sentenza del Tribunale di Amsterdam*, in *Riv. it. dir. lav.*, 2022, 1, p. 360.

49 C. DE MARCO - A. GARILLI, *op. cit.*, p. 6.

risk creating further and more ruthless downward competition between workers. Indeed, all these mechanisms undermine the workers' dignity and risk playing an increasingly devaluing role in domestic and care work⁵⁰.

These brief considerations clarify how far labour exploitation in the domestic sector will likely go due to the spread of platforms. Indeed, the whole system on which domestic care is based has contributed to the gradual realisation of models of "legal" exploitation, which risk being pursued and even amplified by platforms.

Faced with this scenario, the contrasting solutions adopted to guarantee platform workers' protection in this sector are inadequate.

In regard to the most severe manifestations of platform exploitation, as exemplified by the Uber case, it has been demonstrated that criminal law can serve as an effective instrument for the protection of exploited workers. Nevertheless, criminal law seems to be of no help in the domestic sector, even in the most serious cases of exploitation. Indeed, even though workers are mostly in a condition of need, the degree of tolerance of exploitation and its prevalence in this sector is such that the threshold for criminal intervention is drastically raised⁵¹. Moreover, the element that makes labour exploitation criminally relevant is not to be found in the concept of exploitation, but in the concept of need. Article 603 *bis* of the Criminal Code requires not only the imposition of conditions of exploitation but also the abuse of a "state of need". However, in this sector, the number of workers in a state of distress is so high that it is hardly relevant to activating criminal intervention⁵².

On the other hand, even the traditional labour law instruments do not seem to be an effective response to the forms of exploitation prevalent in the sector.

Addressing work on the platform, labour law has focused mainly on classifying the employment relationship⁵³. Therefore, in most cases, the protection of workers exploited "legally" by the platforms has been performed mainly in Court by recognizing the existence of an employment relationship or applying the same forms of protection provided for employed workers under Article 2 of the Legislative Decree No. 81 of 2015⁵⁴.

50 S. BORELLI, *Who cares? La (mancanza di) cit.*, p. 671.

51 S. BORELLI, *Le diverse forme cit.*, pp. 295-296.

52 These difficulties in activating Criminal Law against the most serious forms of exploitation in the domestic sector are shown by Cass. Pen, IV, 9 Oct. 2019, n. 49781; see S. BORELLI, *Le diverse forme cit.*, pp. 295-296.

53 About the issue, among the others, see C. DE MARCO - A. GARILLI, *op. cit.*; M. PERSIANI, *Note sulla vicenda giudiziaria dei riders*, in *Lavoro Diritti Europa*, 2020, 1; O. RAZZOLINI, *op. cit.*, pp. 346 ff.; G. SANTORO PASSARELLI, *Ancora su eterodirezione, etero-organizzazzione, su coloro che operano mediante piattaforme digitali, i riders e il ragionevole equilibrio della Cassazione n. 1663-2020*, in *Mass. giur. lav.*, 2020, pp. 204 ff.; M. BARBIERI, *Della subordinazione dei ciclotattorini*, in *Labour & Law Issues*, 2019, 5 (2), pp. 4 ff.; A. DONINI, *Il lavoro attraverso le piattaforme digitali*, cit., pp. 117 ff.; A. BELLAVISTA, *Riders e subordinazione: a proposito di una recente sentenza*, in *Lavoro Diritti Europa*, 2022, 2.

54 E.g.: Trib. Milano, 28 Sept. 2023 and Trib. Milano 19 Oct. 2023, in *Riv. giur. lav.*, 2024, 2, II, with a comment of A. GRAVINESE, *Tutele collettive e previdenziali per i riders: superate anche le ultime riserve alla integrale equiparazione nel trattamento*; App. Torino, 4 Feb. 2019, in *Lavoro e giur.*, 2019, 4, p. 398, with a comment of G.A. RECCHIA, *Contrordine! I riders sono collaboratori eterorganizzati*; Cass., 24 Jan. 2020, n. 1663, in *Giur. it.*, 2020, 7, pp. 1806 ff., with a comment of M. BIASI, *Le (in)attese ricadute di un approccio rimediabile al lavoro tramite piattaforma digitale*; Trib. Palermo, 17 Nov. 2023, in *Riv. giur. lav.*, 2024, 2, II, p. 170, with a comment of A. INGRAO, *Critica della ragione artificiale. La discriminazione algoritmica intersezionale e gli obblighi di parità di trattamento in ipotesi di impiego di sistemi decisionali automatizzati*.

These efforts to classify platform workers as employees or apply the rules valid for employees are not enough to counter the precarization of gig work⁵⁵, particularly in domestic care. Moreover, labour law has guaranteed access to rights for gig workers (especially those employed in food delivery) in a battle that has been fought mostly in court.

The same is unlikely to happen in domestic work. Domestic workers are reluctant to demand protection due to their situation of need, which makes them more vulnerable to abuse. Even if a worker were to be found willing to assert his or her rights in court, in many cases these protective techniques would still lead to applying the “special” framework provided for domestic workers. According to case law, domestic work is characterised by a service aimed at the functioning of family life to satisfy a personal need of the employer and which does not constitute an instrument for the exercise of the employer’s professional activity⁵⁶. Nevertheless, employment relationships can be classified as domestic work even in cases of supplied work, if characterised by a service aimed at the functioning of family life⁵⁷.

Thus, the solution usually pursued by Courts to protect workers on platforms would still end up applying a “special” framework, which has so far proved incapable of preventing exploitation, contributing, on the contrary, to create a system based on it.

The same inadequacy of protective solutions also characterises other mechanisms used in labour law to protect platform workers. For instance, the rules about transparency and the right to information, introduced by Legislative Decree No. 104 of 2022, have proved to be an effective tool for developing trade union action⁵⁸ and breaking through the algorithmic opacity⁵⁹. However, the same does not seem possible in the home care sector, given the difficulties of unionisation which already characterized it⁶⁰ to sum with the additional issues of unionisation associated with the platform economy.

55 N. VAN DOORN - F. FERRARI - M. GRAHAM, *op. cit.*, pp. 1103 ff.

56 See, for example, Cass. Civ., 1 Apr. 2005, No. 6824.

57 According to case law, even if there are forms of intermediation - as in the case of a social cooperative working with families who request the services of foreign workers to care for the elderly or disabled - the employment relationships can be classified as domestic. Therefore the rules on domestic work can be applied to the relationship between cooperatives and contracted workers because the relationship is still characterised by a service aimed at functioning family life; see Cass. Civ., 29 Nov. 2022, No. 35080.

58 E.g. Trib. Torino, 12 Mar. 2024, in *Riv. giur. lav., Giurisprudenza Online*; Trib. Palermo, 31 Mar. 2023, in *AmbienteDiritto.it*, 2023, 4, with a comment of A. SGROI, *Rivendicazioni sindacali e nuovi diritti: l’art. 28 St. Lav. alla prova del platform work*; Trib. Palermo, 3 Apr. 2023, in *Labor*, 2023, 4, p. 419, with a comment of A. SCELISI, *Alla ricerca di un rinnovato spazio di azione politica in azienda: il sindacato e la leva della trasparenza algoritmica*; Trib. Palermo, 20 Jun. 2023, in *Lavoro e prev. oggi*, 2024, 1-2, with a comment of M. SALVAGNI, *Repressione della condotta antisindacale e astreinte ex art. 614 bis: l’art. 28 St. lav. quale strumento “camaleontico” e polivalente per assicurare l’effettività della tutela*.

59 A. BELLAVISTA, *La questione del potere “trasparente” nei rapporti di lavoro*, in *Dir. mer. lav.*, 2023, 3, pp. 580-581. On the topic, see G. A. RECCHIA, *Condizioni di lavoro trasparenti, prevedibili e giustiziabili: quando il diritto di informazione sui sistemi automatizzati diventa uno strumento di tutela collettiva*, in *Labour & Law Issues*, 2023, 9 (1), pp. 32 ff.

60 S. BORELLI, *Who cares? Il lavoro nell’ambito dei servizi di cura alla persona*, Jovene editore, Napoli, 2020, pp. 29-30; Z. JIANG - M. KORCZYNSKI, *When the ‘unorganizable’ organize: The collective mobilization of migrant domestic workers in London*, in *Human Relations*, 2016, 69 (3), pp. 817 ff.

5. Domestic care and platforms. An opportunity to regularise a difficult sector or a new path for exploitation?

Scholars have observed that in a sector, like domestic care, which is characterised by high rates of undeclared and irregular work⁶¹, the use of platforms may be a useful tool to ensure the emergence of workers from irregularity⁶². This perspective suggests that platform work might be an opportunity for particularly vulnerable workers⁶³.

However, this idea does not seem applicable in the current legal framework. Indeed, in this panorama, the main effect that the platform might have is to turn the exploitation from illegal to legal, without any improvement of the working conditions⁶⁴, since platforms realise «a set of business and management practices that formalise some aspects of gig work while perpetuating the precarity associated with informal labour markets» and disempowering workers, creating a process of «selective formalization»⁶⁵.

A positive impact on the working conditions would only be possible with a broader regulatory framework for platform work, which is still missing in Italy. Indeed, the growing use of platforms could lead to a potential for regularization only when a regulatory landscape is effectively defined, protecting workers on the platform.

The European Union finally seems to be pointing the way to this solution, with the upcoming “Directive on improving working conditions in platform work”⁶⁶. Should this prospective legal framework be expanded to encompass domestic workforces, the trajectory

61 On the high rate of undeclared work, S. BORELLI, *Le diverse forme* cit., p. 287; G. PICCO, *op. cit.*, p. 138.

62 A. MOSTARDA, *op. cit.*, p. 16.

63 About platform work as an opportunity, see N. VAN DOORN - F. FERRARI - M. GRAHAM, *op. cit.*, pp. 1101 ff.

64 The Italian doctrine has used the expression "contractual slavery", to describe the cases in which a state of substantial subjection to slavery is disguised by the establishment of a contract, formally regular, which in reality imposes onerous working conditions that go so far as to imply the actual loss of freedom of the people concerned; M. ROCCELLA, *La condizione del lavoro nel mondo globalizzato fra vecchie e nuove schiavitù*, in *Ragion Pratica*, 2010, 2, p. 427.

65 Indeed, «although platforms provide clients and workers with tools for documenting worked hours, evaluating service experiences, processing payments, and/or doing taxes – and despite framing the formalisation of historically informal work as a primary value proposition to both clients and policymakers – they often strategically refrain from enforcing the requirements and norms of formal employment. Instead, they dissolve the formal employment relation into a nexus of non-negotiable commercial contracts and user agreements, to which nominally self-employed workers must consent if they want to retain access to the platform. These agreements tend to be opaque and are rarely offered in the languages spoken by large parts of the local workforce. Such practices structurally benefit platform companies and the users of the services they provide, while disempowering the workers who are expected to carry the administrative, fiscal, and legal burdens of a formal labour relation»; N. VAN DOORN - F. FERRARI - M. GRAHAM, *op. cit.*, p. 1102; see also N. VAN DOORN, *Stepping Stone or Dead End?* cit., pp. 49 ff.

66 For an analysis of the latest version of the Directive after the political agreement, see: G. SMORTO - A. DONINI, *L'approvazione della Direttiva sul lavoro mediante piattaforme digitali: prima lettura*, in *Labour & Law Issues*, 2024, 10 (1), pp. 23 ss.; S. RAINONE - A. ALOISI, *The EU Platform Work Directive What's new, what's missing, what's next?*, ETUI Policy Brief 2024.06. On the previous versions of the proposal, see: M. BARBIERI, *Prime osservazioni sulla proposta di direttiva per il miglioramento delle condizioni di lavoro nel lavoro conpiattaforma*, in *Labour & Law Issues*, 2021, 7 (2) pp. 3 ff.; P. TULLINI, *La Direttiva Piattaforme e i diritti del lavoro digitale*, in *Labour & Law Issues*, 2022, 8 (1), pp. 46 ff.; V. DE STEFANO, *The EU Commission's proposal for a Directive on Platform Work: an overview*, in *Italian Labour Law e-Journal*, 2022, 1 (15), pp. 107 ff.; S. BELLOMO - D. MEZZACAPO - F. FERRARO - D. CALDERARA (eds.), *Improving working conditions in platform work in the light of the recent proposal for a Directive*, Sapienza Università Editrice, Roma, 2023.

that the European Union is charting towards regulating work on digital platforms may prove instrumental in rendering visible and regulating a sector that has thus far remained opaque, by prioritising the transparency of employment relationships conducted via such digital platforms.

There is no denying that until the rules in question are implemented, the platforms risk doing nothing more than moving in the direction of creating ever greater commodification of care work⁶⁷ and, therefore, ever greater exploitation of women workers, even if legal.

Nevertheless, it is possible that even this new legal framework may prove inadequate in guaranteeing a beneficial impact of platform work on the domestic sector.

Although the Directive does not focus exclusively on this issue, it is evident that one of its primary objectives, together with transparency, is to address the problem of misclassified employment status. To achieve this, the Directive introduces a rebuttable legal presumption under Article 5, which should reduce the burden of proof for platform workers, shifting the responsibility to prove that the contractual relationship is not an employment relationship to the platform itself⁶⁸.

It is evident that, if implemented in the home care sector context, this new presumption may potentially perpetuate the same challenges as those encountered under the existing Italian legal framework. It may not fully address the core issue of workplace and employment relationship specificity. Moreover, it may not overcome the barriers that currently prevent domestic workers from pursuing legal action, given that the new legal presumption is still regarded as a «procedural facilitation»⁶⁹.

Therefore, in many cases, the new regulatory framework would still risk being neutralised by the “special” characteristics of the domestic employment relationship and the permanent application of a legal framework that seems destined to remain “special”.

Finally, it cannot be forgotten that the sector is characterised by a considerable rate of migrant workers, who, when irregular, cannot get access to any regular job and, thus, would be excluded from any possible positive impact of platforms in this sector. However, this is a broader problem that calls for a reform of immigration policies⁷⁰.

67 Indeed, the risk of considering work as a commodity is in itself in the gig economy; A. DONINI, *Lavoro digitale su piattaforma*, in *Labour & Law Issues*, 2015, 1 (1), pp. 56 ff.

68 According to the latest version of the EU Platform Work Directive, as updated on 2 October 2024, Article 5, par. 1, provides that: «The contractual relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship where facts indicating direction and control, in accordance with national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice».

69 Article 5, par. 2, of the EU Platform Work Directive.

70 S. BORELLI, *Who cares? Il lavoro* cit., pp. 33 ff.