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Neglect or Protect Migrant Workers in Court?

Courts and the Legal Protection of Migrant Workers in Farm-to-Fork Industries in Italy, Poland, Germany, and the Netherlands

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Executive Summary

This comparative paper examines how courts in Italy, Poland, Germany, and the Netherlands shape the living and working conditions of migrant workers in farm-to-fork sectors, focusing on how judicial interpretation either restricts or expands the protection of migrant workers' rights. Within the broader DignityFIRM project—which studies the regulatory infrastructures governing migrants' access to rights—the paper highlights the essential yet uneven role courts play within interconnected legal domains such as labour law, migration law, housing regulations, and workplace safety. Across the four countries studied, court decisions fall broadly into two categories: cases in which courts neglect or inadvertently weaken migrant workers' rights through narrow or restrictive interpretation of the law, and cases in which courts take a more expansive and protective approach. Restrictive decisions often stem not from judicial hostility but from systemic features of legal systems, including disciplinary boundaries, procedural limitations, and the absence of migrant workers or their representatives in litigation. Conversely, protective decisions emerge when courts recognise workers' vulnerability, draw on broader legal principles, or respond to gaps left by policymakers and enforcement bodies. In Poland, courts frequently classify employment relationships as civil contracts rather than labour contracts. This entrenched jurisprudence, grounded in contractual autonomy, denies many migrant workers access to labour rights and social protections. Despite attempts to strengthen the Labour Inspectorate's authority, courts remain the ultimate arbiters, and their narrow interpretation risks perpetuating precarity. Similarly, restrictive tendencies appear in Dutch and German cases, including the Netherlands' limited enforcement of rights under the Employer Sanctions Directive and German constitutional litigation where worker-protection arguments were not raised, leaving untested important questions regarding the justification of restrictions on temporary agency work. Protective jurisprudence is most visible in Italian and Dutch courts. In Italy, judges have consistently used the concept of “special protection”—based on private and family life—to

regularise the status of long-term irregular workers, effectively transforming the provision into a channel for recognising migrants' social and economic integration. In the food delivery sector, Italian courts and prosecutors have played a decisive role in challenging exploitative platform practices, recognising riders as employees and pushing companies toward compliance with labour and safety standards. In the Netherlands, recent case law on chain liability held hiring companies responsible for unpaid wages when temp agencies fail to comply with labour laws, explicitly acknowledging migrant workers' linguistic and informational vulnerabilities. Across all country contexts, the analysis reveals that migrant workers' actual access to justice is limited by structural barriers, including fear of deportation, lack of legal awareness, insufficient legal aid, and the fragmentation of relevant legal norms across multiple domains. As courts rely on the arguments brought before them, absent or weak representation leads to decisions that may fail to capture the realities of migrant labour exploitation. Where strategic litigation is pursued—often through collaborations among NGOs, unions, and specialist lawyers—courts can push policy and practice toward more protective outcomes, although such gains remain piecemeal and contingent. The paper concludes that while courts can play a crucial role in safeguarding migrant workers' dignity, structural reforms in legal aid, representation, and awareness of intersecting EU and national legal frameworks are indispensable to ensuring that migrant workers' rights are not only formally recognised but effectively realised.

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1. Introduction

The DignityFIRM project investigates migrant workers living- and working conditions by mapping the wider regulatory infrastructures shaping their legal position and their access to rights and services. DignityFIRM conceives law, policy, and practice in multiple policy domains as interconnected into one regulatory infrastructure governing conditions and vulnerabilities of irregular migrants. Within the project we have scrutinized laws, policies and practices at the EU and national levels. We asked about the crafting of law and policy in the regulatory cycle, lobbied, adjudicated, and if the law subsequently changed. This paper contributes to the project's aim to compare across national contexts, aiming to uncover gaps, interconnections, or contradictions in the regulatory infrastructure of migrant workers living- and working conditions. A legal question raised before labour courts in recent years in Italy, Spain, and the Netherlands regarding the status of riders as either employees or self-employed workers working through platforms is discussed by DignityFIRM researchers elsewhere.¹

The focus of this comparative paper is on the role of national courts in defining and improving migrant workers living- and working conditions in the national context of some of the participating member states: the Netherlands, Italy, Poland and Germany.² Drawing on the DignityFIRM country reports, we present anecdotal evidence of the role of courts as actor directly or indirectly impacting migrant workers living- and working conditions, taking into

¹ F. Pasetti et al. (2026) Navigating Precarity Between Law and Profit: Migrant Riders in Italy, Poland, and Spain, *Social Inclusion* 14, <https://doi.org/10.17645/si.10959>.

² For a discussion of European (case) law more general see e.g. H. Verschueren (2016) Employment and Social Security Rights of Third-Country Labour Migrants under EU Law: An Incomplete Patchwork of Legal Protection, 18 *European Journal of Migration and Law* 373, 376–377; S. Mantu (2023) When Equal Treatment is Not Enough: Human Dignity for Migrant EU Citizens, *European Papers*, Vol. 10, 2025, No 1, pp. 137-162, doi: [10.15166/2499-8249/828](https://doi.org/10.15166/2499-8249/828) on case C-709/20 *CG v The Department for Communities in Northern Ireland* EU:C:2021:602; M. Manfredi (2025) Access to Social Benefits for Third-country Nationals in the European Union Between Fragmentation and Equal Treatment, *European Papers*, Vol. 10, 2025, No 1, pp. 191-218.

consideration EU (migration) law. Because of our focus on living- and working conditions our project did not bring forward case law on regularizations or individual cases on migration status. Yet, fitting the regulatory infrastructure approach, the case law concerns other policy domains that nevertheless define migrant worker rights.

We know irregularly staying migrant workers seldomly mobilise human dignity safeguarding norms through formal legal or complaint proceedings. This is, among others due to distrust and fear for being forced to leave (deportation), or of loss of their jobs and livelihood (...). Sometimes representatives of migrant worker interests may be empowered to mobilise norms through strategic litigation in court or other adjudicating bodies. However, crossing disciplinary boundaries e.g. from migration, to labour to housing rights, may be a formal obstacle.³

This working paper is based on the research conducted for country reports for WP4 and WP5 and additional notes on Court's rulings. The country reports are based on extensive fieldwork, interviews and desk research. Most of the analysis of the Polish and Italian cases is based on media coverage of relevant cases while in the Dutch case we consulted actual court decisions. Limitations of this comparative study are twofold. First, the type of analysis performed for the DignityFIRM country reports was not a doctrinal analysis. We analysed policy configurations concerning specific policies relevant to migrant workers, and local actors' frames and strategies concerned with migrant workers' rights. Not all respondents reported on litigation as a potential strategy and thus did not report on any relevant case law. Moreover, and this is not specific to our project, not all case law is published or a case reported on in the media is eventually not decided on by the courts due to out of court settlements, which are usually not published.

The central question in this paper is: *What did the court decisions achieved or failed to achieve in respect of protecting the rights of migrant workers, especially those without legal residence, informally employed or highly dependent on their employers for public health related rights such as labour rights, housing, or occupational safety and health.*

Based on the analysis two types of case-law emerged:

- a) Neglect (restricting or obscuring) migrant workers' rights, even if unintentionally, linked to perverse consequences of the court system or complexity of legislation; neglect is associated with restrictive interpretation.
- b) Protect (migrant) workers' rights through clarifying or expanding their rights, considering their specific situation; protection is associated with expansive interpretation.

³ V. Passalacqua (2021) Legal mobilization via preliminary reference: Insights from the case of migrant rights, *CMLR* 58(3): 751-776.

The case studies analysed in the paper can be grouped as illustrated in the following Figure.

Figure 1 – Case law by Courts’ interpretation



The rest of the paper evolves as follows. First, we discuss examples from each type of case-law identified, followed by a discussion and recommendations.

2. Cases from Poland, Germany, Italy, and the Netherlands

2.1 Neglecting migrant worker rights: a restrictive interpretation of the law

2.1.1 Polish labour law cases

This first example is about multiple Polish labour law cases, **defining what is an employment relation**. By not defining the relationship common between migrant workers and their employers (a civil law relationship) as a labour relation, the Polish courts have denied the workers access to the protection offered by Polish labour law. As Grzebyk notes:

‘common courts [in Poland], when ruling on cases concerning the determination of the existence of an employment relationship, do not, in principle, refer to labour law doctrine, nor do they seek inspiration in the history of labour law, let alone foreign legislation or the opinions of the ILO or other specialised institutions and entities (...) Thus, courts/judges

currently have the greatest influence on how the existence of an employment relationship is determined.⁴

Since the late 1990s, the rationale that the autonomy of the parties takes precedence in the examination of the employment relationship has become established in Polish jurisprudence. As stated in the justification for the Supreme Court's ruling of 2004:

'In a socio-economic system based on market economy principles, the autonomy of the parties', which creates freedom of contract, is of fundamental importance in legal transactions' (Supreme Court ruling of 7 October 2004, II PK 29/04, OSNP 2005, No. 7, item 97 in Grzebyk, 2015).⁵

Although these rulings concern Polish citizens, established case law also affects migrant workers, almost 40% of whom work exclusively on the basis of civil law contracts.⁶ There was no authority for the State Labour Inspectorate's (SLI) to challenge this practice where employers evaded labour laws by using civil law contracts. It could, however, give non-binding recommendations or ask the labour court to establish employment relationships. These lawsuits are rare and, importantly, largely unsuccessful. In 2023, 52 such cases were filed with courts confirming a formal employment relationship in only 18. In 2024, just 24 claims were filed, with only four successful outcomes.⁷ Courts often reject reclassification if workers consented to civil contracts, discouraging inspectors from pursuing cases. The consent of a migrant worker to the legal classification of the work relationship may, however, be questioned. Contractual freedom is a general principle of labour law. Yet, given the dependent relationship and lack of legal awareness of a migrant worker, it is unlikely that the workers were fully aware of the consequences of such consent. Thus, these courts have failed

⁴ Grzebyk, Piotr. (2015). Analiza orzecznictwa sądowego w sprawach o ustalenie istnienia stosunku pracy. Zatrudnienie pracownicze a zatrudnienie cywilnoprawne. Instytut Wymiaru Sprawiedliwości, p. 32/

⁵ Grzebyk (2015) cites a number of Supreme Court judgments confirming this line of jurisprudence: Supreme Court 17 February 1998, I PKN 532/97, OSNP 1999, No. 3, item 81; Supreme Court 23 September 1998, II UKN 229/98, OSNAPIUS 1999, No. 19, item 627; 9 December 1999, I PKN 432/99, OSNP 2001, No. 9, item 310; Supreme Court 7 July 2000, I PKN 727/99, LEX No. 1223707; Supreme Court 7 October 2004, II PK 29/04, OSNP 2005, No. 7, item 97; Supreme Court 7 March 2006, I PK 146/05, M.P.Pr. 2006, No. 9, item 474.

⁶ Own calculation based on data from the Central Statistical Office: GUS. (2026, lutego 10). Cudzoziemcy wykonujący pracę w Polsce w sierpniu 2025 r. stat.gov.pl. <https://stat.gov.pl/statystyki-eksperymentalne/kapital-ludzki/cudzoziemcy-wykonujacy-prace-w-polsce-w-sierpniu-2025-r-,15,34.html>

⁷ These figures refer to all disputed contracts, regardless of the nationality of the employee. There is no information on whether they were natives or migrants.

to protect workers' in a precarious position. Moreover, reliance on lengthy and uncertain litigation by the SLI has made enforcement ineffective.

In September 2025 legislative amendments have been proposed to strengthen the SLI authority to combat misuse of these civil law contracts. The reform would allow SLI to administratively reclassify civil law contracts as employment contracts, granting workers retroactive rights and obligations such as proper pay, holidays, and social security contributions. However, in January 2026, by decision of the Prime Minister, work on the reform in the form proposed by the Ministry of Labour was abandoned. As the Prime Minister explained in mid-January, the excessive power granted to officials by the reform would be destructive for businesses and would result in many people losing their jobs. In February 2026, a new procedure for changing the powers of the SLI in its amended form began. The new proposal maintains the SLI's authority to convert civil law contracts into employment contracts, but clarifies the appeal process against the inspector's decision may be lodged with the district labour inspector and then with the labour court. Until a final decision is made, the inspector's decision will be suspended. The draft therefore does not introduce the immediate enforceability of the inspector's decision, as assumed in the first proposal. The reform maintains that courts are the ultimate arbiter of civil contract workers, often migrant workers, and their labour rights. Thus, the ruling of courts remain pivotal.

The negligence by courts can also be the result of congested labour courts, which was the case with the Polish labour court, which handled over 67,000 new cases in 2023. There is fear that the ambiguity over what constitutes an employment relationship could lead courts to overturn future SLI's administrative decisions, undermining the reform's effectiveness. Thus, the Polish labour Courts' interpretation of what constitutes an employment relationship – and capacity to handle appeals – will determine whether this measure truly curbs contract abuse and improves migrant workers' rights.

Whether migrant workers in Poland work under a civil law contract or a proper employment contract is even more relevant in the context of the application of EU law. In the Polish context, the argument has been made – but not taken to court – that the **Seasonal Workers Directive 2014/36/EU⁸ does not apply to seasonal workers who work under a specific civil law contract for harvest helps**. The Directive determines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and defines the rights of seasonal workers. The scope of the directive is limited to people who arrive under one or more fixed-term work contracts concluded directly between that

⁸ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.2014, pp. 375–390.

third-country national and the employer established in that Member State.⁹ The Polish argue that the commonly used civil law contract is not a ‘work contract’ and seasonal workers do not arrive on a fixed-term work contract, thus the Directive does not apply. By not defining harvest helps as workers in employment, Poland and Polish employers would not need to grant seasonal workers the rights bestowed upon them under the Seasonal Workers directive. We understood this has been notified to the European Commission, yet it was, apparently, decided not to initiate infringement procedures on this topic against Poland. Nor have – to our knowledge – seasonal workers in Poland working under harvest help contracts made a claim for rights enshrined in the Directive.

2.1.2 Dutch cases on labour and housing rights

From the Netherlands, we flag a case concerning the **EU Employer Sanctions Directive 2009/52/EU**,¹⁰ and the rights for migrant workers enshrined therein. Besides an obligation for the member states to prohibit employment of illegally staying third-country nationals and to have effective sanctions against employers, the directive also contains provisions to protect the rights of working migrants, regardless of their residence status. According to the directive, employers who are sanctioned for the illegal employment of third-country migrant workers can also be legally forced **to pay overdue wages**. Article 6 of the Employers Sanctions Directive stipulates that member states must provide that employment of at least three months is assumed (legal assumption), unless the employer or the employee can prove otherwise. In the Netherlands the legal assumption provided for by law is longer, it is six months.¹¹ This legal presumption aims to help the migrant worker with the burden of proof in a labour law procedure against the employer. The legal assumption is, however, hardly ever used in practice. For one, because it is not incorporated in labour law but in immigration law, hence in our experience, labour lawyers and courts are not aware of its existence. Indeed, the 2024 case we discuss here was the result of a case against a lawyer who neglected to timely file a case against unjust on behalf of his migrant worker client.¹² Moreover, lawyers participating in DignityFIRM events say labour courts want proof of the actual labour

⁹ Article 3(b) Directive 2014/36.

¹⁰ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, pp. 24–32.

¹¹ Article 23 Dutch Act on Migrant Labour (*Wet arbeid vreemdelingen*).

¹² [Hoge Raad 15 maart 2024, ECLI:NL:HR:2024:399](#), opinion Advocate General [Parket bij de Hoge Raad 19 januari 2024, ECLI:NL:PHR:2024:82](#) in cassation of the case [Gerechtshof Amsterdam 8 november 2022, ECLI:NL:GHAMS:2022:3136](#).

relation, which is difficult to provide by migrant workers informally employed, without a written labour contract.¹³

In the 2024 judgement the non-EU migrant worker had been employed by a pizzeria since 11 July 2002; the employer did not hold a work permit for employing him. The employer provided him with payslips and the latest payslip, for February 2016, stated a gross monthly wage of €817.30 and a net wage after deductions of €377.72. On 18 April 2016, the employer was inspected by the Labour Inspectorate (NLA). On the same day, the worker was dismissed by the employer. The worker approached a lawyer, who failed to contest the dismissal. A second lawyer helped him to claim damages from the first.

The national Advocate General informed parties of the scope of the legal presumption:

“4.15 The presumption under Article 23 of the Foreign Workers Act (Wav) thus gives the illegally employed foreign national a stronger position of proof with regard to their claim for wages. The presumption of evidence covering (at least) six months relates to the period worked before the illegal employment came to light, in the event that it cannot be established with certainty when the foreign national commenced work.

*4.16 Article 23 of the Foreign Workers Act was subsequently amended in connection with the implementation of Directive 2009/52/EC on sanctions and measures against employers of illegally staying third-country nationals. In doing so, the concept of ‘wages’ from the Directive was introduced in paragraph 1, and the legal presumption was incorporated into paragraph 2 of Article 23”.*¹⁴

However, the case was limited to the wages due after the wrongful dismissal, and not on the wages unpaid for the true hours worked prior to the dismissal. Nevertheless, in appeal, the worker argued that, by calling six witnesses, he can prove (1) that he worked more hours than stated on the payslips; and (2) that his net monthly salary was higher than stated on the payslips. Yet, the courts assumed – that based on this evidence the worker would not have been awarded a higher wage amount than that stated on [the appellant’s] payslips. The Court of Appeal therefore based its assessment on the monthly salary as stated on the (last) payslips. The legal fiction enshrined in article 6 of the Employer Directive and article 23 of the Dutch Act (Wet arbeid Vreemdelingen) was in appeal dismissed as irrelevant for the obligation to pay wages.

¹³ T. de Lange. S. Naaktgeboren, M. van Meeteren (2025). Employer Sanctions in the Netherlands: How to Bridge Policy Silo’s to Protect Migrant Workers. DignityFIRM Policy Brief.

¹⁴ [Parket bij de Hoge Raad 19 januari 2024, ECLI:NL:PHR:2024:82](#)

“The Court of Appeal sees no grounds for the conclusion that the subdistrict court judge would presumably have awarded this [higher] monthly salary for a period of six months, as [worker] claims. [the worker] has in no way substantiated the basis on which the subdistrict court judge would have assumed a six-month period in employment law proceedings. A mere reference to Section 23(2) of the Foreign Nationals Employment Act is not sufficient for this purpose. After all, this section does not relate to (the duration of) an employer’s obligation to pay wages.”¹⁵

The Cassation Court endorsed this position. Moreover, it held that the damages [...] at an amount equivalent to his salary for a period of five months, based on the employee’s monthly salary as stated on his (most recent) payslip.¹⁶

The fact that the court only considered the salary slips as proof, and did not considering the workers’ claim and evidence that he worked more hours goes against the objective of national law as well as the Employer Sanctions Directive and the legal assumption for previously worked time.

The courts did not acknowledge that in case of migrant employment salary slips do not always reflect the true number of hours worked, suggesting ignorance of the migrant workers’ reality and not taking the opportunity to clarify migrant workers’ rights in such a way that it addresses their vulnerability. Also, to our knowledge the lawyer did not present evidence from empirical research on the practice of fabricated pay slips or migrant labour abusive practices in general to convince the courts to reconsider its reliance on pay slips. Irrespective of this information being available, the Cassation Court “neglects” engaging the law with a migrant specific approach to evidence.¹⁷ In the next section, we will present a case where the specific conditions of migrant workers are considered.

Finally, we switch our analysis to yet another legal domain, and again in the Dutch context, the domain of municipal planning laws. Here we flag jurisprudence following a citizens’ ‘Not in My Backyard (NIMBY)’ initiatives against municipal planning and building permissions for housing migrant workers, refugees or temporary protected Ukrainians alike.¹⁸ Local residents’ claim housing for migrant workers jeopardizes their quality of life. In some of these cases the claimants bring the (assumed) interests of the migrant workers to the fore

¹⁵ [Gerechtshof Amsterdam 8 november 2022, ECLI:NL:GHAMS:2022:3136](#)

¹⁶ [Hoge Raad 15 maart 2024, ECLI:NL:HR:2024:399](#)

¹⁷ L. Berntsen, T. de Lange & Rijken, C. (2022) *Migranten zonder verblijfsverunning. Rechten en sociaaleconomische positie in Nederland. [Migrants without legal residence. Rights and socioOeconomic position in the Netherlands]* Amsterdam: Amsterdam University Press

¹⁸ On migrant housing in the Netherlands also see T. de Lange & M. van Meeteren (forthcoming), *Short-Stay Sedentarism: The local battle over migrant workers’ housing in the Netherlands, Social Sciences.*

(e.g., equal right to proper housing instead of group accommodation only), but migrant workers themselves are usually not a party in the procedure. Complaints concern the obstruction of neighbours' view, fear of nuisance from drinking, traffic jams, or noise pollution because of the presence of migrant accommodation. Municipalities and courts cater to citizens' wishes not to be disturbed by the presence of migrant workers by upholding building and management requirements set in exploitation permits. For example:

"[...] the court has granted an interim injunction and suspended the contested decisions and the primary decisions pending the ruling on the appeal, provided that the following conditions are not met:

- The playing of amplified music after 10.00 pm outside the buildings at the project site is not permitted.*
- Accommodation of migrant workers may only take place if the licence holder informs all claimants and the other residents of De Zand in writing of who the contact person is and the telephone number on which this contact person can be reached 24 hours a day.*
- One of the migrant workers accommodated at the project site must be appointed as a supervisor. This supervisor must ensure compliance with the house rules and must be able to speak to third parties (in Dutch, German or English) and, if necessary, contact the point of contact.*
- Until the site has been properly integrated into the landscape, thereby largely obscuring the view of the project site, the use of the outdoor terrace with outdoor kitchen on the north-western side is not permitted after 8.00 pm."¹⁹*

Examples include 24-7 supervision on the premises, camera control, or putting up a 'natural wall' around a housing facility so the migrant workers remain out of sight. In doing so, while skilfully trying to mediate the interests of municipalities, citizens, housing agents, employers and migrant workers, the courts give permission for constructing camp-like accommodations for migrant workers.

2.2 Protecting migrant worker rights: an expansive interpretation of the law

2.2.1 German case law on the banning of intra-EU posting

A first example of protecting migrant worker rights comes from Germany. This is the case about banning intra-EU Posting in the meat industry, which was a legislative change to

¹⁹ [Rechtbank Oost-Brabant 12 april 2024, ECLI:NL:RBOBR:2024:1492](#)

protect migrant workers.²⁰ COVID outbreaks offered a window of opportunity seized by policymakers who had long sought to re-regulate labour intermediaries in the meat industry. Cases were initiated by the meat industry, which asked for a temporary injunction measure before the German Constitutional Court.

The Court however, found no reason to grant the employers' request for one because it would have far-reaching consequences and to exercise its power to suspend the execution of a law would represent a considerable encroachment on the legislator's competence. Also, the Court found the applicants had not sufficiently demonstrated that they would suffer serious disadvantages from the ban on posting: the industry had not explained in a comprehensible, individualised and concrete manner what the negative consequences will be if the challenged provisions enter into force as adopted.

The challenged regulation, which prohibits the meat industry from using external personnel in its core area, does not result in a 'practical ban' on her professional activity, but merely changes the contractual conditions under which she can carry it out. It has neither been specifically demonstrated nor is it otherwise apparent why the industry would not be able to successfully offer her labour under the conditions changed by the challenged law in the future. Particularly if the affected companies no longer have access to external personnel, it seems obvious that they will endeavour to hire people who have already been trained. The comments received by the court indicate that many companies had already started to recruit new staff.

Such a sectoral restriction on the use of temporary agency work would have to be compatible with the fundamental freedoms of the TFEU, in particular the freedom to provide services and the freedom of movement for workers, as well as the Temporary Agency Work Directive 2008/104/EC. Member States may restrict free movement or the use of temporary agency work if prohibitions or restrictions are justified. It is possible to justify restrictions on grounds of public policy, public security and public health. Such grounds of general interest can include the protection of temporary workers, the requirements of health and safety at work, or the need to ensure the proper functioning of the labour market and to prevent possible abuses.

2.2.2 Dutch labour law cases recognizing migrant workers precariousness

Unlike the case discussed in the previous section, we also signal Dutch case law which gives evidence of an awareness of migrant workers' precariousness and the need to protect them.

²⁰ A. Valdivia et al (2023). Occupational health in slaughterhouses in Germany: translating political claims into Legal Language during the COVID-19 pandemic. *Zeitschrift für Sozialreform*, vol. 69, no. 4, 2023, pp. 279-303. <https://doi.org/10.1515/zsr-2023-0005>

This was especially clear in a case involving Ukrainian workers deployed by a temp agency. When the workers weren't paid properly, NGO FairWork, which supports victims of labor exploitation, assisted the workers in multiple legal procedures to get through to the company where they worked.²¹ In March 2025, the Rotterdam District Court ruled that companies that hire workers through temp agencies can be held responsible if those agencies fail to pay wages.²²

This principle of chain liability means that responsibility doesn't stop at the temp agency— it can extend to the hiring company. This ruling set a precedent for all sectors, where temporary agency work is common, such as the Farm to Fork sectors. It reinforces the principle that companies cannot escape responsibility by outsourcing labor through intermediaries. With its decision, the District Court strengthened rights protection for migrant workers and, importantly signals that accountability runs up the hiring chain. To this end, it defined actions that can be required of a hiring company. For instance, the hiring company should not rely on a verbal agreement with the agency. The hirer should have entered into a written agreement: this agreement could have included provisions regarding compliance with employment conditions. The hiring company could have checked whether the temp agency charged VAT properly; had they checked, they might have seen the workers had 'service contracts' and did not have proper employment contracts, did not receive salary slips, received their money through a Polish bank account; that some had been forced to register at the Chamber of Commerce as self-employed, but did not pay taxes as such or invoice them directly. In short, the court explains that had the hiring company taken such preventive measures, they could have seen the scam.

In this case, the court is especially sensitive to the fact that the workers are migrants. The workers had voiced their complaints, and thus the hiring company should have conducted a further investigation. This is particularly so, the court argued, because the temporary workers did not speak Dutch or English, which made it more difficult for them to tell their story. Thus, in explaining the legal obligations of hiring companies, the court explicitly acknowledges the migrant workers' vulnerability and need for better protection.²³

²¹ T. de Lange (2025), <https://www.dignityfirm.eu/chain-liability-for-migrant-workers-unpaid-wages-in-the-netherlands/>, DignityFIRM blogpost 20 August 2025.

²² The case was based on EU law (Temporary Agency Work Directive 2008/104 EC) and Dutch law (WAADI), which require equal treatment for agency workers, including fair pay.

²³ Based on this judgement, NGO FairWork drafted guidelines for hiring companies in selecting proper temp agencies <https://www.fairwork.nu/2024/11/11/checklist-uitzendbureaus-weet-met-wat-voor-uitzendbureau-u-in-zee-gaat/>.

2.1.2 Italian case law on migrant worker rights

In Italy, Courts have played a significant role, in recent years, in adjudicating migrants rights, particularly in the field of asylum and complementary protection and of social rights. For the purpose of this paper, we focus specifically on the role of courts in granting protection to: i) irregular migrants, notably because of their status as workers, and ii) workers in food delivery, with regard to their employment status. In fact, while Italian courts, and particularly the Constitutional Court intervened several times to protect migrants' social rights, they rather focused on the rights to health, housing and social benefits, instead of labour rights and did so independently from the fact that the person is a worker.²⁴ Therefore, the focus on the analysis will be placed on recent innovations in the sector of food delivery, where both labour courts, and public prosecutors (particularly the Public Prosecutor in Milan) played a crucial role in limiting the exploitative conditions put in place by several delivery platforms.

In the first field, that of protection of irregular migrant (workers) from *refoulement* (forced deportation), the innovative role of courts has emerged since 2020. In fact, in 2020 the Italian Government introduced the possibility to obtain a permit to stay from Police Headquarters based on the need **to protect 'family and private life', under the name of 'special protection'**: this pathway was consistently used by irregular migrant who had arrived in Italy irregularly and had been working in Italy for many years in the country. This practice was supported by the approach of several courts, which standardised the process around employment criteria rather than the broader considerations of private and family life originally envisioned:

'Regarding the jurisprudential application of special protection, I notice a flattening of that very broad and multifaceted legal tool into a form of worker regularisation. First instance authorities can be restrictive, but courts, if there are a minimally lasting work contract and a minimally sufficient income, recognise it, without even an investigation into all the other profiles related to the protection of private life, family life' [ITA_WP4_SECT3.1_civil society]

This judicial approach reflected, on the one hand, a pragmatic approach to the immigration system based on economic/utilitarian considerations; on the other hand, a courts' reluctance to engage in complex case-by-case assessments of private and family life considerations. The standardisation around employment criteria made, between 2021 and 2023, special protection more predictable and accessible for working migrants. Even when in

²⁴ P. Pannia (2022). Questioning the Frontiers of Rights: The Case Law of the Italian Constitutional Court on Non-European Union Citizens' Social Rights. *European Journal of Legal Studies*.

2023 a new reform banned the possibility of applying directly for a ‘special protection permit’, all Italian courts continued to recognise this protection to asylum applicants essentially because (previously irregular) migrants were working – either regularly or irregularly – in the country.

The courts, including the Court of Cassation²⁵, adopted an advance and protective interpretation of the law as it has resulted from the amendments occurred in 2023, using the reference to the ‘rights guaranteed in the international conventions’ as a way to apply the right to family and private life established in Article 8 ECHR. Therefore, through a ‘judicial resilience’ or ‘resistance’ to the legislative reforms, the judiciary maintained a broader scope of protection for migrants, including migrant workers. In this sense, the implementation of the special protection provision proved to be more progressive than initially anticipated, marking what one legal expert described as a ‘point of no return’ in Italian immigration law. Because of the extensive judicial interpretation, anchored in the respect for fundamental rights, it proved to be resilient even to legislative changes, aiming at restricting it:

‘That thing about special protection that was revolutionary, is that before that norm [of 2020], reasoning in courts about protection of private life was something some lawyers did but no one listened to. After the legislator recognised that tool, it was embedded in the judicial reasoning, and then with the 2023 reform, even if in fact the legislator’s will was evidently to return to a formulation like that of the Salvini decrees, jurisprudence had moved forward and had recognized that protection as part of the legal framework [...] The legal backlash of the 2023 reform failed to eliminate that protection entirely, because the interpretative system had moved beyond’ [ITA_WP4_SECT3.1_civil society]

Albeit apparently disconnected from the labour and social rights of migrant workers, the possibility of extensively recognising the ‘special protection’, mainly based on the pragmatic recognition of the migrants’ role of **essential workers for the Italian economy**, allowed many irregular migrants to **regularise their migration status** and to access proper labour contracts, representing a way out from a situation of invisibility and potentially of exploitation.

In the second field under consideration, that of food delivery, labour law courts and the Court of Cassation influenced the process of establishment of workers’ rights and the idea that couriers could be considered as employees. The self-employment model set up by the

²⁵ See for instance Court of Cassation n. 20641/2023, n. 28161/2023, n. 13309/2025. M. Ferri (2026). Il riconoscimento della protezione complementare al richiedente protezione internazionale. Una polifonia di fonti che rimane immutata (anche) dopo il d.l. 20/2023. *Giustizia Insieme*.

AssoDelivery-UGL Rider agreement signed in 2020 (and applied to riders working for Glovo and Deliveroo) has been repeatedly challenged by workers in courts. Already since 2018 many riders, often backed by trade unions (notably CGIL), have asked judges to assess whether their employment with Glovo or Deliveroo could be considered bogus self-employment. The approach of the Courts, which initially showed a reluctance in recognizing the nature of subordinate relationship, has been very severe against the platforms since 2020, when the Italian Court of Cassation ruled that Foodora riders should be considered as full employees: this moment can then be regarded as a turning point in the policy implementation.

Following this decision, many local courts (in Turin, Milan, Bologna, Firenze, Catania, Palermo) qualified the riders as either employees or as heteronomous workers, in which case the platforms had to **guarantee the same protections as employees**, setting a very high standard for the rights of platform workers. This is still the case as of 2025, even though the recognition of rights connected with the employment status must be **assessed in an individual appeal by each worker**.

The decisions made by Courts might as well have played a role in shaping the employers' strategies. For instance, when explaining the process that led to the agreement between Just Eat and the confederal unions, an interviewee from the latter made the hypothesis that it could be the result of a sort of deal: the recognition of riders as employees in exchange of the end of complaints to the Courts. Indeed, the platforms appeared more worried about the reactions and sanctions of the Courts, rather than about the action of the government.

'At a certain point, when certain judgements came, [the platforms] stopped to be oppositive. I remember that they said to us, they proposed to us in a meeting saying, we accept what you want but stop with the lawsuits because we can't bear with it any more. And there, and then after a few months, the agreement [with Just Eat] came. We understood that it was the good direction' [ITA_WP4_SECT1_2_trade union]

Alongside the individual cases challenged before the labour courts, the Public Prosecutor of Milan followed a new and **innovative strategy to force the platforms to ensure migrants' social rights**. In 2021, it ordered Uber Eats, Glovo, Deliveroo and Just Eat, to pay contributions to their riders (who had worked between 2016 and the beginning of 2020) and fined them a total of around €700 million for failing to ensure that health and safety regulations were followed. In October 2023, the Criminal Court of Milan confirmed that Uber Eats and Deliveroo must pay outstanding contributions for their riders to the Italian National Social Security Institute, for a total amount of €10 million, following a partial commitment of

the platforms in ensuring basic rights, particularly with regard to access to healthcare.²⁶ However, the intervention carried out between 2021 and 2023 seemed to have only partially reached the Public Prosecutor's objectives, as in early 2026 the same Office has activated preventive measures – through judicial administration – against Glovo and Deliveroo, because of the emergence of patterns of serious exploitation of migrant workers, occurred in recent years.²⁷

Overall, both courts and some prosecutors have followed a protective stance towards food delivery (migrant) workers, filling the void left by the government in the implementation stage. On the one hand, labour courts influenced the implementation of the policies on riders' rights since 2020, especially with regard to the configuration of riders as employees:

'It really seemed to us as if the courts had made up for the political deficiency. In fact, it seemed as if the courts were doing the political work, i.e., they had understood what society's sensitivities were and then, through somewhat forced interpretations even at times, led to the application of the law according to the sensitivities that were now widespread' [ITA_WP4_SECT1_1_rider and activist]

However, because court rulings are not *erga omnes* and apply only to individual cases, this **judicial activism has produced a fragmented and limited result in terms of policy changes**, generating uncertainty rather than coherent policy reforms. On the other hand, the Milan Prosecutor's Office has intervened in a broader and more structural way, launching investigations against Glovo and Deliveroo in 2021 and again in 2025, on charges related to illegal labour intermediation and exploitation. While in the initial prosecutions the focus was placed on occupational health and safety and contributions payment, in the most recent cases the Public Prosecutor Office targeted the algorithmic management systems – identified as instruments of de facto subordination – and extended its reach to major restaurant chains and retailers as well, claiming their involvement in the workers' exploitation.

²⁶ N. Costalunga, L. Di Cataldo (2026). Salute e sicurezza sul posto di lavoro: la situazione degli immigrati nell'economia delle piattaforme. *Giornale di diritto del lavoro e di relazioni industriali*, 47: 714-737. See also L. Di Cataldo & F. Cabras (2025). Life is (Not) a Game: Racial Platform Capitalism, Exploitation Practices and Forms of Rider Mobilization in Milan. *Cambio. Rivista Sulle Trasformazioni Sociali*, 15(30).

²⁷ Euractive, 2026.

3. Discussion

Our analysis shows several cross-national patterns, despite differences in the organisation of the legal system, standing for migrant representatives as well as the fact that these cases concern various migration patterns, national legal peculiarities, and a plethora of legal domains. Across national contexts, court rulings on the legal domains in the regulatory infrastructure of migrant work have an impact on migrant workers' living- and working conditions. We've given examples where courts **give restrictive interpretations of the law** and passively neglect the fact that their decisions, albeit unintentionally, can hurt migrant workers interests and rights, because the migrant worker interests are not brought before the courts as relevant arguments. This is not a 'fault' of courts or individual judges, but a systemic neglect. Adding to this is the fact that, at least in housing cases, migrants are most times not a party to the case. This exacerbates their legal insecurity, interlocking dependencies on housing agents, intermediaries and employers, and mediate limited access to information, representation, enforcement, and support. These intersecting precarities cannot always be considered in a court decision due to systemic legal disciplinary barriers. Hence such decisions risk disadvantaging migrant workers, albeit unintentionally.

On the other hand, Courts can **provide an expansive interpretation of the law** and recognise protection to irregular workers, sanction individual cases and exert pressure on employers, housing agencies, or municipalities. At the same time, they cannot alter the structural legal frameworks that sustain precarity.

Theoretically migrant workers, irrespective of their migration status, have access to justice in all country contexts studied with respect to their individual rights, e.g., claiming wages, equal treatment, protection against housing discrimination, et cetera. However, as our research across the DignityFIRM project shows, in practice, **migrant workers often cannot realize their rights**. Even in countries with a relatively strong legal aid infrastructure, legal protection is frequently inaccessible to migrant workers in practice.²⁸ Also, their 'consent' with their living and working conditions can stand in the way of more protective legal actions. DignityFIRM research has found that migrant workers and their representatives have – albeit only sporadically – gone to court.

²⁸ In the Netherlands first line legal aid is provided through the government funded Juridisch Loket, T. de Lange, M. van Meeteren & S. Naaktgeboren S. (2026) Temporary Workers, Permanent Dependence? The Local Battle over Migrant Labour in the Dutch Agri-Food Sector, *DignityFIRM Working Paper*. DOI:10.5281/zenodo.18834576. On the limits to effective judicial remedies for migrants in Italy, see F. Spitaleri (2024). La tutela giurisdizionale effettiva dei singoli nei settori dell'immigrazione e dell'asilo. *Rivista AISDUE* n.1/24.

Courts rely on the arguments and evidence put before them in a case. Affordable legal aid is not always available and the increasing use of AI by litigants is not always helpful and burdens the courts limited time per case. But also well informed legal representation for migrant workers can be hard to come by as lawyers do not have expertise across interacting legal domains.

In the Polish case, we've seen case law on labour rights is highly **'demigrantized'**: it is about workers in general and migration status, and the impact of a practice does not come into the Courts assessment of the rights. Not because the court is not aware of the migrant status, but **being a migrant is not a relevant legal fact**. Yet, even where immigration status or EU law could come forward as a relevant legal argument, it does not. This was the case with the salary claims under the Employer Sanctions Directive. Possibly, this is the result of legal aid workers unawareness of the specific legal challenges at the intersection of labour law and migration law, or municipal planning laws and migration status and the intersection of local, national and EU law, making knowing migrant workers' rights an extraordinarily complex endeavour for often underfunded legal aid workers.

However, we did come across some mobilising cases where lawyers collaborate with other actors such as **NGO's and labour unions**. Combined, representatives mobilise norms through strategic litigation, as the FairWork case from the Netherlands illustrated. In Italy, there is a well-established history of legal mobilisation by lawyers and unions on the right to equal treatment to social benefits under the Single Permit Directive. DignityFIRM research also showed that the protective reach of the 'special protection' permit, that allowed for irregular migrant workers to regularise their position as essential workers, was actively advocated by NGOs, lawyers and academics, and finally incorporated by courts since 2020 onwards. In the field of food delivery, moreover, lawyers and trade unions promoted the case law that recognised food delivery workers as employees, even though the law was even more effectively mobilised by Public Prosecutors to force platforms to change their practices.

In contrast, the German example is one of **businesses** making a case *against* laws that intend to improve worker rights. Here, the state represents the workers' interests. The Dutch case shows that housing agents can also act in the interest of workers, where their interests align. A case for a business planning permit in order to build accommodation does serve workers' interest. Yet, although the outcome of such legal procedures concerns their well-being, **migrant workers are not involved as (third) parties** to such proceedings. We've also noted that procedures can be **time** consuming; migrant workers might not even be in the country anymore by the time their case comes up. Decisions on planning permits in the Netherlands have a long preparation, which includes the obligation to hear all interested parties. Yet the migrant workers that will occupy the houses to be build are not yet there, and if they are, they might be gone by the time a court hearing takes place. In cases concerning

housing, migrant workers are often referred to in general terms, as anonymous ‘others’ that some parties, including courts, can easily dehumanize by focusing on nuisance control instead of the workers’ right to a proper roof over their head.

Also, courts adjudicate a case to solve that case, **not necessarily to have impact on policy at home or abroad**. A German constitutional case, or better even, a CJEU ruling on the sectoral ban of intra-EU posting or temporary agency labour could have been helpful outside Germany because the Netherlands is also considering a ban on temporary agency work in industries that fail to address precarious living and working conditions of migrant workers.²⁹ The Dutch policy cycle has been paralyzed for fear that a favoured policy choice may violate Union law and thus potentially incur infringement proceedings. This has been a reason for the Dutch not to ban posting or temporary agency work in non-temporary sectors where migrant workers are often in a vulnerable position, such as in the meat industry.³⁰ It would have been helpful for the Dutch policy makers had the German constitutional court or the CJEU deemed such a restriction legitimate, even if only under strict conditions.

In the policy cycle, once courts find migrants have certain rights, this may call for a policy change. Yet policy can also remain negligent to incorporate these rulings, demanding of workers to each claim their rights individually, or the judiciary to explore creative routes to ensure a general compliance to workers rights, as it has happened in the criminal investigations carried out by the Public Prosecutor of Milan against major food delivery platforms. Moreover, it can happen that new legislation can try to undo the courts ruling by designing **reversing policies**, which would be backsliding on the protection of migrant rights.

Finally, the effects of litigating as a strategy to improve migrant workers’ right is **not monitored**. As noted in the DignityFIRM final report, labour and social policy monitoring focuses on inspection activities and compliance actions - numbers of inspections, infringements detected, fines issued, rather than on whether remedies are effective - wage recovery achieved, retaliation prevented, complaints resolved. We do not know to what extent litigation - in an individual case, collective or strategic, improves over time accident

²⁹ Dutch Government Declaration of the Cabinet of Prime-Minister Jetten (2026) Aan de Slag, p. 39.

³⁰ N. Gottlieb et al (2025) Immigrant workers in the meat industry during COVID-19. Comparing governmental protection in Germany, the Netherlands, and the USA. *Globalization and Health*, 21 (1):10. doi: 10.1186/s12992-025-01104-9; S. Mantu et al (2025). EU migrant workers and the right to health in the Netherlands during and beyond the COVID-19 pandemic. *Transfer: European Review of Labour and Research*, 31 (1), 105-119. doi: 10.1177/10242589251318693; L. Berntsen et al (2023) State of care for EU mobile workers' rights in the Dutch meat sector in times of, and beyond, COVID-19. *International Journal of Sociology and Social Policy*, 43 (3/4), 356-369. doi: 10.1108/IJSSP-06-2022-0163

rates, repeat offenders, safety culture, and dignity for all (migrant) workers in Farm2Fork industries.

4. Conclusions & recommendations

The findings of this comparative working paper can be used to raise awareness among judges, migrant workers and their legal representatives, employers, policymakers and enforcement agencies of the potential of litigation to improve migrant workers' access to rights and services. However, as we demonstrate, the court's assessment of a dispute is limited by the scope of the relevant laws and regulations. While the rule of law requires that courts do not randomly consider issues outside the scope of a specific law, it is sometimes necessary to push the boundaries in order to overturn legislation or legal practice that unintentionally prevents migrant workers from accessing their rights, and dignified living and working conditions.

This paper mapped some court decisions and draws attention to the courts impact towards improving the rights of migrant workers. Courts do not appear to easily offer inequality compensation for migrant workers' vulnerabilities due to a lack of legal residence, informal employment or high dependency on their employers for public health related rights such as labour rights, housing, in short occupational safety and health. Contractual freedom seems to prevail in the Polish context. In the Dutch examples courts did offer guidelines to better protect vulnerable migrant workers.

We conclude that legal practitioners and judges do not always seem to be aware of relevant EU law and the rights of migrant workers potentially enshrined therein. For example, in both Poland and the Netherlands provisions transposing Directive 2009/52/EU are scattered. For involving these rights in court, it would be better were those provisions integrated into the existing legal order (of labour rights). That way, legal practitioners representing employers or workers as well as judges may be more inclined to interpret these rights considering the specifics of migrant workers living and working conditions. If aware of the EU law this can help with better interpretation or, in case of doubt, preliminary questions must be raised for a better interpretation of such a Directive.

We conclude with four recommendations for immigration authorities, administrations responsible for the financial resources for legal aid, legal aid, unions and NGO's, and courts:

1. **Make access to remedies real** by providing sufficient resources of legal aid as well as judicial bodies to take timely decisions; the fact that there are no cases at all on some topics at least suggests that access to justice could be at stake;

2. Legislators in the EU and national context should facilitate **for NGO's and labour representatives** to access the work place to provide information as well as have **standing to** represent migrant workers in court;
3. NGO's and labour unions should **initiative collective interest litigation** on behalf of migrant workers. One collective interest case potentially improves living and working conditions of more migrant workers than multiple individual cases. However, a lack of standing might stop NGO's and labour unions from taking such actions;
4. **To all involved: raise awareness on EU law and on the intersecting legal domains** of the regulatory infrastructure³¹ of migrants. Such awareness is needed among legal aid workers as well as judges. It allows all involved in adjudicating to realise that human dignity is a right migrant workers have irrespective of their migration status. Yet rights that need protecting, often face neglecting.

³¹ In DignityFIRM, the regulatory infrastructure consisted of migration law, social law, the law of specific domains like delivery or agricultural, and corporate social responsibility.

Deliverable information

Schedule Information	
Title	Neglect or Protect Migrant Workers in Court? Courts and legal protection of Migrant Workers in Farm-to-Fork Industries in Italy, Poland, Germany, and the Netherlands.
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Neglect or Protect Migrant Workers in Court?

Courts and the Legal Protection of Migrant Workers in Farm-to-Fork Industries in Italy, Poland, Germany, and the Netherlands

ABOUT DignityFIRM

Towards becoming sustainable and resilient societies we must address the structural contradictions between our societies' exclusion of migrant workers and their substantive role in producing our food.

www.dignityfirm.eu



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