

# Disability, Unemployment, Immigration: Does Solidarity Matter at the Times of Crisis in Italy?

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## Introduction

Solidarity allows “thinking individuals in a collective dimension”, and “defines a *perimeter of mutual assistance* which includes some people and excludes others” (Supiot 2015: 7 and 15). This perimeter may vary according to the scale we are referring to (local, national, European, for example), but may also vary according to the resources, both material and immaterial, available for mutual assistance. The economic crisis has evidently exerted a strong impact on these resources. From a material perspective, it has increased inequality within the countries; it has brought poverty back onto the political agenda and into the spotlight of media debate; it has generated an increase in xenophobia and the tightening of immigration laws; it has polarised the political debate. But the economic crisis has also exerted a strong impact on people's perceptions and attitudes, on people's disposition towards solidaristic or egoistic behaviours (Maggini 2018). Furthermore, the crisis has impacted on people's expectations in terms of legal and policy responses. In view of all this, this chapter aims to shed light on the new perimeters of solidarity in the domains of disability, unemployment, and migration and asylum in Italy. In order to understand the impact of the crisis and the recent legal and policy responses, the chapter will briefly illustrate the state of the art in terms of legal and policy framework in the three fields, discuss the crisis-driven reforms against the backdrop of the fundamental values of the legal system and in the light of qualitative data gathered through a series of in-depth interviews with stakeholders and civil society organisations active in the three domains (disability, unemployment, and migration and asylum) carried out in

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1 The chapter is the product of the authors' common discussion and reflections. Nonetheless, Introduction, Unemployment and Immigration have been written by Nicola Maggini, and Disability and Solidarity in action by Veronica Federico.

September-October 2016. While not pretending to voice the multiple claims, attitudes, opinions and perceptions of civil society organisations and stakeholders, these data offer interesting insights and critical perspectives to enrich our discussion.

The global economic crisis has had a debilitating effect on the already fragile Italian economy. Prior to the 2008 financial crisis, Italy had already grown below the EU average (an average of 1.2% between 2001 and 2007). In 2009, the economy suffered a heavy 5.5% contraction—the strongest GDP drop in decades. Despite a (momentary) positive sign in 2010 and 2011, Italy showed no clear trend towards recovery until 2015, when the GDP witnessed a small growth (+0.7%). The domestic demand also showed a negative sign from 2011 to 2014, being at its lowest in 2012 (-4.2%).

Italy, with the second largest manufacturing sector in Europe after Germany, lost about 24% of its industrial production from 2008 to 2013, and the difficult status of the country's public finances contributed to make the overall picture even darker. In 2013, Italy was the second biggest debtor in the Eurozone and the fifth largest worldwide. The goal of restoring the financial market's confidence and of safeguarding the Italian public budget from bankruptcy was achieved at high social costs and led to severe cuts in public spending for social inclusion and social protection. From a social point of view, the main effects registered are increased poverty rates and social exclusion of increasingly large groups of the population, an upturn in severe material deprivation and a growth in child poverty significantly above the EU average between 2010 and 2013 (Reyneri 2010; Salazar 2013; Franzini 2011).

Poverty, social exclusion and inequality have increased at the same pace. In 2014, 6.8% of the population was living below the poverty line, and 28.7% was at risk of poverty or social exclusion in 2015, with an increase of 3.7% compared to 2009.<sup>2</sup> The crisis has also led to a sharp overall spike in inequality: the Gini coefficient — a well-known measure of income inequality — from 2010 to 2015 has grown (from 31.7% to 32.4%), whereas the EU average increase was significantly less pronounced (mov-

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2 Moreover, between 2010 and 2015, people experiencing severe material deprivation increased from 7.4% to 14.5% and then declined to 11.5% in 2015. At the same time, between 2010 and 2012, the proportion of children at risk of poverty or social exclusion increased from 29.5% to 34.1%, then it declined to around 32% in 2013-2014, and finally it increased again to 33.5% in 2015.

ing from 30.5% to 30.9%). Thus, Italy is one of the European countries with the most unequal income distribution, further exacerbated by a domestic North-South territorial divide.

The impact on the most vulnerable sectors of society, such as the target groups of this study: the unemployed, immigrants and people with disabilities, has been devastating. Unemployment remains one of the most crucial challenges for the Italian economy: the unemployment rate rose from 2010 to 2014. In 2014, it reached its highest level on record: 12.7%. The youth unemployment rate has also risen constantly from 2010 to 2014, moving from 27.9% to a dire 42.7%. The high level of unemployment has caused discouragement and inactivity among young people, and more than two million people aged 15-29 (23.9% of the total) are not engaged in education and training programmes, or are unemployed. These high unemployment rates are a sign of the weaknesses in the Italian labour market. Only in July 2015 did the unemployment and youth unemployment rates begin to decrease.

The economic crisis also had a significant impact on migrants' employment, especially for males. Between 2008 and 2012, the unemployment rate of male migrants grew by 6.7 percentage points, compared to the 4.1 percentage points of nationals. Female employment contraction was mitigated by the growth of personal services and the care sector: half of migrant women were and continue to be employed as domestic workers or caregivers.

Within the gap of a few years, the refugee crisis overlapped with the economic crisis. From January until December 2014, the total number of sea arrivals reached 170,000, almost one third of whom were rescued by the operations 'Mare Nostrum'<sup>3</sup> and/or 'Frontex'. Almost half claimed to be escaping from Syria and Eritrea. A new record was registered in 2016, when the total number of sea arrivals reached 181,000: an 18% increase compared with 2015 (154,000). Individuals arriving by sea between January and November 2016 mainly originated from Nigeria (21%), Eritrea (12%), Guinea, Côte d'Ivoire and Gambia (both at 7%). Several thousands of people perished at sea. Solely in 2016, the number of people who lost their lives was 5,022. Finally, 2016 data also highlight Italy's record for the number of landings in the Mediterranean: half of more than 361 thou-

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3 The initiative was unilaterally launched and financed by the Italian government in October 2013 and ended in December 2014 to rescue migrants in the Mediterranean.

sand migrants arriving by sea into Europe landed on the Italian coast, 48% of the landings occurred in Greece (174 thousand arrivals), while 8,826 migrants landed in Spain.

Until 2013 the requests for asylum were limited compared to other European countries, but these numbers increased in the following years. Between January and October 2016, over 98,400 persons lodged an asylum application in Italy compared to 83,970 applications in the whole of 2015. According to the data of ISMU foundation<sup>4</sup> on 1 January 2014 (the most recent data available), the foreign population (documented and non-documented) in Italy was estimated at over five and a half million with an increase of over half a million with reference to 2013.

The economic crisis particularly affected the disabled, too. The policies of public expenditure rationalisation and reduction in all spheres of government had a strong impact on people with disabilities. In 2011 the 'National Fund for the Non-Self-Sufficient' (a fund financed through general taxation and capable of giving a concrete response to social and care needs of people with severe disabilities) was reduced by 75% due to budget cuts, and only in 2015 was the fund brought back to its original figure of 400 million euros. General cuts in service delivery and allowances impacted severely on the more vulnerable, and moreover the disabled were immoderately hit by unemployment, with a typical negative intersectionality effect (Hankivsky and Cormier 2011). The cuts in public education have exacerbated the ratio between pupils with disabilities and supporting teachers; the cuts in local government budgets have translated to a reduction in local action to support people with disabilities (transport, social assistance additional supporting personnel at school and in the workplace, etc...); work inclusion of disabled workers has been made more difficult by the growing unemployment rate. According to the latest data, out of three million people with disabilities (i.e., approximately 5% of the entire population), only 32% of disabled adults (15-44 years of age) have a job compared with 70% of male adults without disability problems who do. Noticeably, however, none of these cuts, reductions and retrenchment measures happened silently. There have been vibrant debates on the media, and street demonstrations and protests, both at the local and national lev-

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4 ISMU (Foundation for Initiatives and Studies on Multi-Ethnicity) is an autonomous and independent organisation focusing in particular on the phenomenon of international migration.

els, protests against the general cuts,<sup>5</sup> as well as protests against single measures.<sup>6</sup>

The rationalisation and retrenchment measures in the three fields of vulnerability were partially compensated for and mitigated by regional activism. While mitigating the effect of the crisis and of the crisis driven measures in some regions, this activism aggravated the regional inequalities with a perverse multiplier effect. Since the 1990s, there has been a significant devolution of functions to regions in the field of labour market policies and services, as well as social assistance and healthcare services for migrants and disabled people, which has radically changed the relationship between the central government, the regional governments, and local governments according to the principle of subsidiarity. The economic crisis had the effect of modifying and reinforcing the role of regional governments in new strategic policy-making and service delivery to temper both the direct effect of the crisis and the impact of national retrenchment measures (Fargion and Gualmini 2013). Regional responsibilities in the field of social policies have become so important that scholars argue that Italy has moved from 'welfare state' to 'welfare regions' (Ferrera 2008). This process has exacerbated existing differences, especially between Northern and Southern regions, that remain more strongly marked by high rates of poverty, unemployment, social exclusion and whose regional governments have proved to be less pro-active in counter-balancing the worst effects of the crisis, especially in the field of unemployment. The gap is not only measurable in terms of per capita income, but also in terms of well-being and opportunities gaps (Cersosimo and Nisticò 2013). The paradox is that regions most severely hit by the crisis were the most vulnerable ones, and the most severely hit populations were the most marginalised.

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5 See: <http://sociale.corriere.it/disabili-in-piazza-e-il-governo-porta-a-400-milioni-il-fondo-per-la-non-autosufficienza/>; <http://www.anffasonluspatti.it/anffaspatti/news/news-manifestazione-nazionale-anche-anffas-onlus-in-piazza-per-dire-basta-tagli-ora-diritti.html>.

6 To gain some insight: <http://www.ilfattoquotidiano.it/2015/01/26/scuola-parma-caos-per-i-tagli-assistenza-disabili-presidi-lesione-diritti-studenti/1371394/>; <http://www.abcsardegna.org/>.

Table 1: General economic statistics, Italy 2010-2016 (Source: Eurostat, ISTAT and OECD data)

	2010	2011	2012	2013	2014	2015	2016
Population (million)	59.2	59.4	59.4	59.7	60.8	60.8	60.7
GDP per capita (EUR)	26,800	27,300	26,700	26,500	26,700	27,000	-
GDP (EUR bn)	1,604	1,637	1,613	1,604	1,620	1,642	-
Economic Growth (GDP, annual variation in %)	1.7	0.6	-2.8	-1.7	0.1	0.7	0.8
Domestic Demand (annual variation in %)	0.9	-0.8	-4.2	-2.8	-0.4	1.0	1.3
Consumption (annual variation in %)	1.5	-0.3	-4.0	-2.5	0.4	1.5	1.2
Investment (annual variation in %)	0.6	-2.2	-7.4	-6.6	-3.0	1.3	2.0
Exports (G&S, annual variation in %)	11.8	5.2	2.3	0.7	2.9	4.3	1.7
Imports (G&S, annual variation in %)	12.4	0.5	-8.1	-2.4	3.3	6.0	2.4
Industrial Production (annual variation in %)	6.8	1.2	-6.3	-3.2	-0.5	1.1	-
Unemployment Rate	8.4	8.4	10.7	12.1	12.7	11.9	11.5
Youth Unemployment Rate	27.9	29.2	35.3	40.0	42.7	40.3	-
People at risk of poverty or social exclusion (%)	25.0	28.1	29.9	28.5	28.3	28.7	-
Children at risk of poverty or social exclusion (%)	29.5	31.5	34.1	32.0	32.1	33.5	-
Severe Material Deprivation (%)	7.4	11.1	14.5	12.3	11.6	11.5	-
Gini Coefficient	31.7	32.5	32.4	32.8	32.4	32.4	-
Fiscal Balance (% of GDP)	-4.2	-3.5	-2.9	-2.9	-3.0	-2.6	-2.4
Public Debt (% of GDP)	115	116	123	129	132	132	133
Total Tax Revenue (% of GDP)	41.8	41.9	43.9	43.9	43.6	43.4	-
Inflation Rate (HICP, annual variation in %)	1.6	2.9	3.3	1.2	0.2	0.1	-
Producer Price Indices (manufacturing, annual variation in %)	3.6	4.9	1.9	0.0	-0.7	-1.8	-
Long-term Interest Rates (%)	4.04	5.42	5.49	4.32	2.89	1.71	1.49
Current Account (% of GDP)	-3.5	-3.1	-0.4	0.9	1.8	2.2	-
Current Account Balance (EUR bn)	-55.7	-50.4	-6.9	15.0	31.2	35.1	-
Trade Balance (EUR billion)	-30.0	-25.5	9.9	29.2	42.9	45.2	-

## Disability

Out of the 3 million people with disabilities, i.e., approximately 5% of the entire population, only 32% of adults (15-44 years of age) have a job, just 9.4% have been to the cinema, theatre or have attended other shows in the previous year (18.7% of non-disabled have), 15.2% have participated in a sporting activity (57.5% of non-disabled have), and 30% have access to

the Internet (60% of non-disabled)<sup>7</sup>. Official statistics on pupils with disabilities for 2013-2014 register the presence of more than 150,000 disabled students in Italy in primary and intermediate schools, which is 3% of the pupils in primary school and 3.8% in lower secondary school<sup>8</sup>. In upper secondary school the presence of disabled students has dropped and just 2% of the students have disabilities<sup>9</sup>.

The 1948 Constitution recognises and guarantees fundamental rights to every citizen (and requires the performance of certain duties), without regard for their personal conditions (Art. 3). People with disabilities are fully included in the national community, and rights and duties apply to all citizens equally. In the Constitution there is not a single article devoted to granting the rights of people with a disability as such<sup>10</sup>, but Art. 38 establishes that “citizens unable to work and lacking the resources necessary for their existence are entitled to private and social assistance; workers are entitled to adequate insurance for their needs in case of accident, illness, disability, old age, and involuntary unemployment; and disabled and handicapped persons are entitled to education and vocational training”. Moreover, Article 32 entrenches the right to health, and Art. 34 recognises the right to an education for all children, disabled included. These provisions, in the general framework of the duty to social solidarity (Art. 2) and equality (Art. 3), constitute the basis for the constitutional protection of people with disabilities. Moreover, in 2007, Italy signed the Convention on the Rights of Persons with Disabilities (CRPD) approved by the United Nations General Assembly in 2006<sup>11</sup>, and the convention has been ratified and became effective in Italy through law n. 18 of 2009.

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7 <http://dati.disabilitaincifre.it>. On the right to Internet access, it is noticeably the Resolution of the Council of Europe n. 1987 of 2014, whose Art. 2 affirms that “The Internet has revolutionised the way people interact and exercise their freedom of expression and information as well as related fundamental rights. Internet access hence facilitates the realisation of cultural, civil and political rights”. And this is even more evident for disabled people.

8 <http://www.istat.it/it/archivio/50280>.

9 The data refer to 2013, and they are accessible the website of Ministry for Welfare: <http://dati.disabilitaincifre.it>.

10 In more recent constitutions, on the contrary, disability is explicitly included in sections dealing with discrimination or where the constitution recognises specific rights for the disabled and legitimises affirmative actions.

11 <http://www.un.org/disabilities/default.asp?id=150>.

Specific legislation for the protection of people with disabilities developed however in a fragmented way until 1992, when the Italian Parliament adopted its first framework legislation. Before 1992, Italy had gradually acknowledged partial rights for disabled people, taking into account specific categories of disabled people (blind, physically disabled, etc.) or their specific needs and rights (economic support, health, education, employment, mobility, etc.).

The first laws addressing the disabled date back to 1920s<sup>12</sup>, but disability became a sensitive topic for political debate and public policies only several decades later, at the end of the 1960s and in the early 1970s. For the first time in 1968, law n. 482 provided for the “general rules on compulsory employment of disabled persons in the public administration and private enterprises”. The law entrenched the right of people with disabilities to work, creating the premises and the conditions for the integration of the disabled in the labour market and assuring the protection of their jobs. The law established a system of compulsory employment of workers with disabilities in both public sector and private enterprises. A few years later, law n. 118 of 1971 granted all children with disabilities the right to be educated in common classes and, subsequently, law n. 517 of 1977 abolished special schools, guaranteeing the right to study in the mainstream education system with a supporting teacher.

Those norms represented the beginning of the effective inclusion of disabled people in society. Since that time, legislation and public policies targeting disabled people's social inclusion through service delivery, affirmative actions, anti-discrimination measures have multiplied.

### *Framework Law n. 104 of 1992*

Framework law n. 104 of 1992 on the assistance, the social integration and the rights of “handicapped” persons marks a radical change of approach compared to previous legislation, which was almost exclusively based on assistance. The novelty of the law lies in the fact that it recognises the person with disabilities as a person, in a comprehensive way, despite the extent of her disability, and takes into consideration the development of a

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12 The first legislation targeting blind people is the Regio Decreto of 31 December 1923, establishing the compulsory nature of primary education for “educable blind children” (Alliegro 1991).



disabled person from birth to participation in the family, at school, at work and during leisure time. The law acknowledges that disability should not exclusively fall in the area of health care measures, but should be considered a multidimensional phenomenon to be addressed through social integration strategies. Integration at school, accessibility to public and private buildings and the provision of assistance in the use of public transport, special rights for parents of children with disabilities are all aspects disciplined by law n. 104. Finally, it is noteworthy that foreigners and stateless disabled people are considered on equal legal ground with Italians; the only requirement is that the individual must be a long-time resident<sup>13</sup>. As highlighted by the Constitutional Court, law n. 104 of 1992 does not simply introduce a set of guarantees for people with disabilities. It has radically changed the community's perspective and its approach towards disability. Since law n. 104's enforcement, disability has become a collective responsibility, ceasing to be an individual or family problem<sup>14</sup>. Whether explicitly mentioned or not, society's collective responsibility for the empowerment of disabled people is directly connected with the principle of solidarity in its multiple nuances and implications, as highlighted in chapter 5 of Part I of this volume.

Indeed, law 104 does not refer verbatim to solidarity, but acknowledges human dignity, social integration and the full enforcement of fundamental rights as substantial justification for and, at the same time, explicit objects of legislation. These notions, as already mentioned, partially overlap with solidarity and they mutually reinforce each-other. More interestingly, however, law 104's fundamental principle, which is the idea of burden-sharing, stems from the very notion of solidarity in ancient Roman times: a common responsibility in *solidum* (i.e. in concrete terms)

### *The Right to Work*

Labour plays a crucial role in defining the model of the "Italian citizen" and is a contemporary means for self-sustainability, an occasion for social integration, and a duty contributing to the economic, social and cultural

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13 For instance, according to CC decision n. 432 of 2005, free transport for people with disabilities cannot be limited to Italian citizens, but should be extended to all documented residents.

14 CC decision n. 167 of 1999.

wealth of the republic. The Constitution asks every citizen, “without regard to their sex, race, language, religion, political opinions, and personal or social conditions” (Art. 3), to “undertake an activity or a function that will contribute to the material and moral progress of society”, according to capability and choice (Art. 4). Citizens with disabilities are not exempt. The duty to work, consequently, calls on disabled people to contribute, within the limits of their abilities, to the common progress and development of the community of which they are an integral part. Working does not only provide economic means, but is one of the most crucial forms of participation and socialisation through which disabled citizens prove to be active and legitimate members of the national community (Donatello and Michielin 2003).

The employment of persons with a disability is currently governed by law n. 68 of 1999 “Regulations on employment rights of disabled people”<sup>15</sup>. It represents a profound cultural innovation as regards the integration of the disabled in the workplace. The law promotes and supports a “tailored” placement of people with disabilities, and requires public employers and private agencies and enterprises with more than 15 employees to hire disabled workers in proportion to the total number of people employed through a compulsory quota system. Besides promoting access to work, the law prescribes applying to disabled workers the same standards of legislative and collectively bargained treatment of “ordinary” workers, which enforces the principle of substantial equality. What is interesting about this law is that it is not framed in an exclusively charitable approach, but it aims at providing disabled workers with a job that fits their actual abilities and potential and, at the same time, is useful for the business or the public office. Once again, the law does not explicitly mention the notion of solidarity neither does it with the notions of equality. Here the key concept is “integration”: it is through “integration” into the workforce that the perimeter of solidarity can encompass people with disabilities.

One of the most important mechanisms to facilitate the inclusion of workers with a disability in the workforce has proved to be the system of social cooperatives<sup>16</sup>. Despite the crisis, social cooperatives represent a growing movement within the Italian economy (Costa et al. 2012), and according to the most recent data (ISTAT 2012), in 2011 there were about

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15 For an in depth analysis of the legislation: Cinelli and Sandulli 2000.

16 For an in depth discussion, *inter alia*, see: Galera and Borzaga 2009.

11,200 social cooperatives, employing more than 513,000 people, of whom about 16,000 have disabilities<sup>17</sup>. Against the crisis, the very recent “*Decreto Lavoro*” (Law Decree n. 76 of 2013, converted by law n. 99 of 2013) increased the fund created to encourage the employment of people with disabilities (established by law n. 68 of 1999) with 10 million Euro for the year 2013 and 20 million Euro for the year 2014.

### *Public Assistance and Anti-Discrimination Measures*

People with disabilities who are unable to work are entitled to several forms of public assistance as invalidity allowances (*assegno ordinario d'invalidità*), and disability pensions (or incapacity pension, *pensione di inabilità*). Additional carers allowances (*indennità di accompagnamento*) are granted to persons with disabilities whose autonomy is reduced to 100% for both physical and mental disabilities.

In order to facilitate the freedom of movement for persons with disabilities, there are facilities to purchase a car and reserved parking spots, as well as an exemption from parking fees. Public transportation falls under the responsibility of regional authorities, and each regional government has established its own criteria. Moreover, local governments, through special agreements with civil society organizations, often manage to provide disabled people with special transport services that allow them to reach schools, their workplace or leisure and cultural activities.

A specific instrument granted to people with disabilities to fight discrimination is provided by law n. 6 of 2006, offering additional protection to any disabled who suffered discrimination (directly or indirectly) on the basis of disability. Since the law's enforcement, the judicial protection against discrimination has been applied in very different contexts: from cases of the reduction of supporting teachers in Milan, to discrimination in the form of lack of access to leisure in Sardinia<sup>18</sup>. There are no statistics on legal actions undertaken under this law, but providing remedies against discriminations *senso latu* is in any case a relevant acknowledgement of the inherent dignity of every person.

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17 <http://www.istat.it/it/censimento-industria-e-servizi>.

18 For an overview, see: <http://www.ilfattoquotidiano.it/2011/03/09/una-riflessione-sulla-legge-67/96305/>.

## *Laws' Enforcement and the Crisis*

In the Italian context, the main concerns as regards the disability field do not lie with the lack of legislation, but in their implementation and in the effective financing of measures, funds, services which were drastically reduced during the crisis. Indeed, as it has been highlighted in the large majority of the interviews<sup>19</sup> carried out in September and October 2016 with disability grassroots movements and associations<sup>20</sup>: “*We do not need new laws, but to enforce and implement the existing ones.*”<sup>21</sup>

*“The legal framework in Italy is appropriate, in line with the most progressive European countries. In some fields Italy has been (and sometimes still is) ground-breaking, as for example disable pupils' integration at school. What remains highly problematic is the actual implementation of existing legislation.”*<sup>22</sup>

In a field where human dignity and rights are strongly connected with services and health and social care, the impact of the crisis has been dramatic. The crisis hit hard on vulnerable people and vulnerable families. People with disabilities and households with disabled people have been seriously affected by the crisis both directly, through the cut and/or restriction of measures specifically targeting people with disabilities, and indirectly, because of the reduction of services, the policies of ‘rationalisation’ of welfare, unemployment, etc...

*“Independence and autonomy are linked to the economic situation...The disabled person has daily needs. The life of a disabled person's family is affected also economically. Disability may create difficulties also from a professional standpoint...In addition, the disabled often has to buy a new house for his/her needs...The disability or illness in itself have a differentiated impact depending on the economic situation of the disabled person's family. The crisis broadens these inequalities.”*<sup>23</sup>

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19 According to the TransSol research project's tasks, we carried out 30 in-depth interviews with representatives/participants of Transnational Solidarity Organisations (TSOs) in Italy, from selected community settings, 10 from each of TransSol target groups (disabled, unemployed, and migrants/refugees).

20 In particular, seven interviewed TSOs are local branches of national NGOs/non-profit/voluntary organisations, one is the local branch of the Italian Caritas, one a regional non-profit organisation, and one a national non-profit organisation.

21 Interview realised on 5<sup>th</sup> September 2016.

22 Interview realised on 5<sup>th</sup> September 2016.

23 Interview realised on the 5<sup>th</sup> October 2016.

The first, most evident and tangible outcome of the crisis was the cut in the ‘National Fund for the Non-Self-Sufficient’. Reduced by 75% due to budget cuts in 2011, the Fund was not financed at all in 2012. The 100 million euros of 2011 have been totally allocated to the support of people affected by amyotrophic lateral sclerosis. The reduction and cut of the Fund were highly contested measures<sup>24</sup> and public opinion mobilized against them.

The impact of the cuts was amplified by the concomitant cut in the Fund for Social Policies (policies of social inclusion of people with disabilities, marginalised people, drug addicted, elderly people and migrants are financed through this fund). Created in 2008 with an initial budget of 929 million euro, it was reduced to 583 million in 2009, and the constant reductions led to the lowest financing of 2012: only 70 million.

The reduction/non-financing of the Funds, as already mentioned, were partially compensated and mitigated by regional activism, but this aggravated the regional inequalities with a perverse multiplier effect. The regions most severely hit by the crisis were also the most vulnerable ones, and the most severely hit populations were the most marginalised: “*The Region of Tuscany recognizes twice as many rare diseases than the rest of Italy. We are lucky. But those who live in other regions, especially the poorest ones, are disadvantaged.*”<sup>25</sup>

Alongside decision-makers, in the past decades Italian courts have been very relevant and pro-active actors in the process of rights definition and enforcement (Califano 2004; Donati 2014). In the field of disability, in a consolidated case-law<sup>26</sup>, the Constitutional Court has often highlighted that the constitutional principles and the specific legislation should provide for a coherent and integrated framework of guarantees for persons with disabilities, all aiming at social integration.

The courts, especially the Constitutional Court, have become an important battleground and one of the *loci* for the application of the principle of solidarity. The Constitutional Court has always recognized the discretion of the legislative authorities in determining the appropriate measures and instruments to grant rights and services to citizens with disabilities (CC

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24 For an insight on the political debate: <http://www.avvenire.it/Politica/Pagine/Disabili-fondi-ridotti-di-un-quarto-.aspx>.

25 Interview realised on the 3rd October 2016.

26 CC decision n. 215 of 1987; n. 07 of 1992; n. 325 of 1996; n. 167 of 1999; n. 251 of 2008.

decisions n. 431 and 251 of 2008). Nonetheless, in decision n. 80 of 2010 the Court established that the availability of teaching support cannot be determined according to budget constraints and must always be granted. “The legislative discretionary power is not absolute, and it is limited by an untouchable core of guarantees for the beneficiaries”. The Court found that special support teachers for severe disabled pupils are part of these untouchable guarantees, as they are part of the fundamental right to education, which cannot be jeopardized by any economic constraint.

### *Unemployment*

“Italy is a democratic republic based on labour” (Italian Constitution, art.1). Labour is a means to achieve individual and social development, and a duty to contribute to the economic wealth and the socio-cultural well-being of the community. Nevertheless, the right to work's effective enforcement heavily depends on the historical, political and economic context.

From 2010 to 2014 the unemployment rate has increased constantly<sup>27</sup>. In 2014, it reached its peak (12.7%), and youth unemployment rate was at 42.7% (OECD statistics). This high unemployment rates highlight on the one hand the weaknesses of the Italian labour market, and, on the other, the weakness of the whole economic system.

In the last two decades, Italy moved from a rather rigid labour market, with strict regulations for the protection of workers' rights and collective bargaining, towards a more flexible model, entering a long process of deregulation of employment (Baglioni and Oliveira Mota 2013). Policy reforms of the labour market started in the early 1990s promoting on the one hand more active unemployment policies (law n. 223 of 1991), and, on the other, flexibilisation and deregulation of the labour market (law n. 196 of 1997 and the so-called Biagi law of 2003). Because of the strong opposition of the unions and of the left wing parties and movements (Zartaloudis 2011), the full implementation of labour market reforms, such as a full-fledged ‘flexsecurity’, took more than a decade and the roadmap towards a

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27 From 2000 to 2008 unemployment constantly decreased, reaching its lowest rate in the decade in 2007 (6,1%) and since 2002 it remained lower than the EU average. In 2008 the trend reversed and the unemployment rate started to increase (IS-TAT 2011).

‘flexisecurity’ model has been resumed only recently under the pressure of the crisis.

In order to address youth unemployment, the different Cabinets that followed one another in between 2010 and 2015 adopted a number of measures. Following the EU Council Recommendation of 22 April 2013, the decree law n.104 of 2013 (which became law n.128 of 2013) intensified the Youth Guarantee supports to enhance employment services to young people in the school-to-work transition, through a special incentive for employers hiring low educated young people aged 18–29 on a permanent basis. The incentive has been in force until 30 June 2015 with a fund of 800 million euro. Moreover, specific measures were implemented between June and September 2013 to support vocational guidance and curricular traineeships in the final years of higher secondary and tertiary education. Financial resources have been allocated to support youth self-employment and business start-ups in Southern regions and to foster the development of social infrastructures for vulnerable groups.

The most important Italian unemployment income support system, based on the Wage Guarantee Fund for temporary lay-offs [Cassa Integrazione Guadagni (CIG)], was radically reformed in 2012 with the ‘Fornero reform’ (law n. 92 of 2012), which came into force on 18 July 2012. The reform aimed at reducing the existing disparities in employment protection and access to income support during unemployment, while guaranteeing an adequate degree of employment flexibility. This new, more universal Social Insurance for Employment scheme (ASPI- *Assicurazione Sociale per l’Impiego*) should have been fully phased in by 2017, replacing all previous ordinary unemployment and mobility benefits and extending eligibility and coverage to all workers with at least two years of social security contributions and 52 working weeks over the preceding two years. Workers with less than two years’ contributions but having worked at least 13 weeks in the preceding year were eligible to a reduced benefit (mini ASPI).

For 2013 and 2014 special social shock absorbers supported 250,000 workers at risk of unemployment and a further 2.8 million workers have been covered by CIG, solidarity funds (funds financed by two thirds by companies and by one third by workers which will guarantee workers integrative remuneration in case of termination of employment or additional allowances as income support to facilitate the exit of workers that have almost reached the retirement age) and solidarity contracts (allowing a com-

pany to reduce the working time of its workers in order to avoid dismissals, with the consent of local trade unions<sup>28</sup>).

Solidarity funds and solidarity contracts are the sole two measures explicitly referring to solidarity. Based primarily on the notion of horizontal solidarity (among workers and between workers and companies), they combine also elements of vertical solidarity, with the national government topping up salaries in solidarity contract and granting solidarity funds. The use of words is meaningful, especially if considered against the backdrop of the wording of existing legislation in the domain of unemployment, where law-makers use more frequently other notions, such as equality, social justice, integration, human dignity. Certainly, it has an emphatic purpose: in addressing very thorny issues, the importance of evoking the positive notion of solidarity should not be underestimated. It has a substantial purpose, too. If solidarity as entrenched in the Constitution while defining the perimeters of mutual assistance (in both a vertical and horizontal direction) defines the demarcation between those that are included in the political community and those that are excluded, evoking solidarity in the context of unemployment means that this vulnerability should not impact on the perimeter of the community.

### *The Jobs Act*

The most important reform of the labour market was undertaken in the biennium 2014-15 under the name of Jobs Act. Two framework pieces of legislation (law decree n. 34 of 2014 and law n. 183 of 2014) and a number of additional law decrees radically re-defined the legal framework with the purpose of simplifying, revising the regulation of employment contracts, and improving the work-life balance. Passive and active labour market policies have been reformed, the regulation of temporary and apprenticeship contracts has been simplified, the period for fixed-term contracts has been extended from 12 to 36 month (with a limit of 5 renewals), a new form of permanent contract with increasing protection levels has been launched and a new unemployment benefit scheme put in place (legislative decrees n. 23 and 22 of 2015). Article 18 of the Workers Statute, imposing very restrictive conditions for workers dismissal, has been radi-

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28 For an insight, see chapter 5 in Part I.



cally reviewed, eliminating the system of compulsory reintegration in case of unjustified dismissal for workers employed under the new contract system. Increased levels of job protection will depend on seniority and will be based upon monetary compensation (instead of compulsory reintegration).

The Jobs Act aims at improving the functioning of the Italian labour market by reducing its segmentation and fostering the creation of more productive and secure jobs, especially for disadvantaged youth and other vulnerable groups. The reform introduces incentives for firms to hire or convert more workers on permanent contracts, and to promote the participation of women. It also extends income support to (almost) all the unemployed and should create more effective outplacement services for job seekers.

Concerning the unemployment benefits system, the Jobs Act intends to universalize the scope of the ASPI. The new ASPI (NASPI) unifies the previous ASPI and Mini-ASPI, homogenizing the rules governing ordinary treatments and short-term treatments. Access to NASPI is possible even for those who have small social contributions. The benefit's amount is correlated to the average wage of the last four years. NASPI cannot however exceed the monthly amount of €1,300 and from 2017 unemployment benefits will be provided for a maximum of 78 weeks. NASPI is made contingent upon the worker's participation to redeployment measures proposed by Employment Services. The unemployed entitled to receive the NASPI support can claim for an anticipation of the entire amount of the benefit as a form of incentive to self-employment initiative. The so-called 'project contract', a form of quasi-subordinate contract often used as a 'grey area' between actual freelance contracts and subordinate employment, has been abolished on 1 January 2016, and specific unemployment benefits have been made available for workers with a 'project contract'.

These new unemployment measures clearly strive towards the universalization of income support for the unemployed following the idea of 'flexsecurity', providing a safety net necessary to protect the worker during periods of transition from employment to unemployment, which more easily occur in a labour market characterized by flexibility in hiring and firing. Nonetheless, real universal unemployment benefits will occur only when self-employed workers and those who have never had access to the labour market will be fully included in the new scheme.

A new assistance benefit, named ASDI ('*assegno di disoccupazione*') will be granted for a maximum of 6 months for people that, having bene-

fited the NASPI, remain in a condition of unemployment. ASDI beneficiaries will be obliged to follow a personalized programme provided by the Employment Services in order to actively look for employment. To a certain extent, this new subsidy follows the model of income support, but with the severe limitation of not addressing all the citizens below the poverty line. In fact, it remains a measure of income support dedicated exclusively to those who had a job and lost it involuntarily. People who have never been able to find a job are excluded from the benefit. In other words, there is not a proper guaranteed minimum income.

Unemployment insurance for temporary layoffs (i.e. Wage Guarantee Fund – CIG) has been reorganized to avoid providing generous subsidies exclusively to keep ‘sick’ companies alive. A *bonus/malus* insurance style policy has been introduced: the company that uses unemployment insurance will pay more for it. Furthermore, the CIG has been extended to small companies, and the apprentices have been included among the beneficiaries. The CIG, in its ordinary and extraordinary form, can not exceed the maximum term of 24 months within a five-year period. Companies that resort to the solidarity contract formula can enjoy the CIGS up to 36 months.

The Jobs Act provides for additional novelties. First of all, school apprenticeships are made simpler so as to create a school-work link on the German dual model: students can enter a company starting from their second year of upper high school with a contract that can last for a maximum of four years as to allow for the diploma achievement. The company hiring student-apprentices will have important fiscal benefits.

The Jobs Act also revised the employment service system in order to improve active labour market policies. The main aim is to: rationalize the incentive system both for employees as well as self-employment and business start-ups; establish a central national agency for the coordination of passive and active labour policies; and strengthen collaboration and partnerships between public and private employment services. Double incentives have been included in the 2015 national budget to encourage employers to hire workers under the new contract: a cut of €4.5 billion in total revenue, and additional fiscal incentives. Moreover, the employment bonus foreseen by the Youth Guarantee has been extended to contracts for professional apprenticeship.

Finally, the Jobs Act entails measures to support the work-life balance for all workers and to support female employment. The maternity allowance is extended to self-employed mothers. Additional measures to

support female participation to the labour market include: enhanced child-care and elderly-care services, and improved work-life balance measures in the national collective bargaining agreements.

### *The Regional Level*

More than in the other fields, the process of decentralization contributes to the fragmentation of the decision-making entities: the ministry, the provincial directorates of labour (responsible for conciliation and inspectorates, mainly), regions, provinces, national agencies, regional agencies, and INPS (National Institute of Social Security) which provides subsidies. Since the 1990s, there has been a significant devolution of functions to Regions in the field of labour market policies and services, which has changed radically the relationship between the central, regional, and local governments according to the principle of subsidiarity. Moreover, the two national laws n. 469 of 1997 and n. 30 of 2003 abolished the public monopoly for employment services and opened the labour market to private – profit and non-profit – providers (labour market intermediaries), which were to coexist with the traditional Public Employment Services, adding to the vertical dimension of subsidiarity the horizontal one.

The economic crisis had the effect of modifying and reinforcing the role of regional governments in the management of passive and active labour market policies. Indeed, according to the State-Regions agreement of February 2009, regions could integrate, with additional measures, the central government's intervention in the field of income support and active labour market policies. These measures could be financed through the use of the EU funds, like the European Social Fund, to jointly support the income of workers employed by companies hit by the economic recession and to enrol them in training and re-qualification programmes. In particular, the agreement made it possible to use special social shock absorbers, like the *Cassa Integrazione Guadagni in deroga* (Exceptional Wage Guarantee Fund), notwithstanding existing rules either in favour of firms (small and medium-sized enterprises) or type of workers (atypical) not usually covered by CIG and CIGS. As already mentioned, this process has exacerbated existing differences, especially between Northern and Southern regions, with the erosion of the value of solidarity at the national level.

## *Laws' Enforcement and the Crisis*

Political debate on the reform of the labour market has been particularly harsh, and stakeholders views highly polarized. For those advocating for a more flexible labour market, the crisis has proved the inadequacy of existing Italian labour law framework and has been the momentum for a positive reform. For those perceiving job insecurity and flexibility as a major threat to human dignity and fundamental rights, the reform has been a dramatic step back in workers' rights and empowerment. It is too early to measure the systemic effect of the reform in economic, legal and social terms. Scholars have divergent views on the reform (Cinelli 2015; Caruso 2016) and the debate on the solidaristic approach of the Jobs Act is a crucial point in this discussion.

Against these debates, from the interviews with stakeholders and grassroots movements and association it emerges that, despite the attempt to provide for a coherent, integrated reform of the labour market, the interviewees highlight three major weaknesses that persist: first of all the absence of real industrial policy to create new and better jobs<sup>29</sup> and to “strategically take advantage of the crisis to radically innovate the labour market”<sup>30</sup>; second, the lack of a systematic approach, entailing the provision for a basic income, to counter-balance the fragmentation of the labour market, that has been exacerbated by the flexibility and by the crisis<sup>31</sup>; and third, an enduring discrepancy between the “law in the books” and “the law in action”, i.e. the real enforcement of the legislation that, especially in the field of unemployment finds insurmountable obstacles in both the economic contingency and in the stratification of the labour market, where “vulnerable people have become even more vulnerable and marginalised”<sup>32</sup>. On the Jobs Act itself the opinions we gathered are controversial and mirror the political and the academic debate: some (especially the cooperatives) accept flexibility if accompanied by social protection and active labour market policies<sup>33</sup>, while for others (specifically the union and the most left-wing entities), the flexibility is absolutely nega-

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29 Interviews realised on 12th October 2016 and 18th October 2016.

30 Interview realised on 19th October 2016.

31 Interviews realised on 1st September 2016, 23rd September 2016, 18th October 2016, 21st October 2016.

32 Interview realised on 19th October 2016.

33 Interview realised on the 12th October 2016.

tive, as it leads to dismantling workers' rights: "*Job insecurity set forth by the law (the Jobs Act) has further deprived the most vulnerable workers without offering the «parachute» of a guaranteed universal basic income*"<sup>34</sup>.

### *Immigration/Asylum*

Italy, traditionally a country of emigrants, has progressively become a country of immigration. As of the 1<sup>st</sup> January 2016, there were 3,931,133 foreigners legally living in Italy, whereas the whole foreign population (undocumented included) was estimated in over five and a half million<sup>35</sup>. In 2015, 83,245 asylum applications were lodged (about 7% of the overall number of applications lodged in the EU). This number increased between January and October 2016, when over 98,400 persons lodged an asylum application in Italy. In addition, the landings of refugees coming from Africa and the Middle East has significantly risen in recent years.

Interestingly, in the early nineties documented migrants and undocumented ones were equal in number. Over the following decade, the number of documented migrants substantially increased, whereas that of undocumented ones followed a trendless flow due to large regularisations. In 2014 undocumented immigrants were particularly low (6% of the total, approximately 300,000 units), due to both large regularisations and the minor attractiveness of the Italian labour market in comparison with other European countries<sup>36</sup>.

In the Italian Constitution of 1948 there is neither a definition of citizenship nor a set of citizenship-related regulations, and there are few rules devoted to the status of foreigners in the country. Article 10 states that 'The legal status of foreigners is regulated by law in conformity with international provisions and treaties' and 'A foreigner who is denied the effective exercise of the democratic liberties guaranteed by the Italian Constitution in his or her own country has the right of asylum in the territory

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34 Interview realised on 1st Sept 2016.

35 For further details, see <http://www.istat.it/it/immigrati>.

36 "*In the last years people come and go. During the crisis Italy has become less attractive. Migrants tend to reach more prosperous countries. Italy is a sort of second-best option. If things get worse, it is easier to stay undocumented in Italy than in France, Germany or in the UK*" Interview realised on 5th July 2016.

of the Italian Republic, in accordance with the conditions established by law'. It follows that Italy is bound to respect international obligations (customary rules and treaties), therefore including the conventions on human rights regarding the legal status of foreigners that extend to immigrants the possession of the fundamental rights belonging to citizens. Moreover, all fundamental principles of the Constitution are guaranteed to individuals as persons and not as citizens, so that foreigners are fully entitled to rights and liberties (Scoca 2013).

Furthermore, there is a consolidated jurisprudence of the Constitutional Court concerning the extension of rights to foreigners. Already in 1967, in decision n. 120 the Court maintained that the equality clause (Art. 3), despite its formal referral to citizens only, should be extended to encompass foreigners.<sup>37</sup> Otherwise, the Court stated, the entitlement to fundamental rights provided for in Article 2 should lose its intrinsic value; no fundamental rights can be guaranteed and promoted without equality. Nonetheless, this does not mean that no differentiation exists between citizens and foreigners. The Court clarified the concept in decision n. 104 of 1969: there are objective differences between the two legal statuses, due to the different relation between the individual and the State. Citizens have an 'original' relation with the State, whereas foreigners have a non-original, and are often temporarily bound to the State. This allows the national legislation to determine: conditions of entry into the country, limitations of residence, and the eventual expulsion from national territory. Furthermore, except for the guarantee of very fundamental rights recognised in Art. 2, equality may have a softer, but more reasonable application in the case of foreigners.

A stronger legal and political debate arose around socio-economic rights. Should non-citizens be entitled to social services, healthcare services, housing facilities, education programmes and school enrolment, family benefits, etc.<sup>38</sup>? Despite the reluctance on the part of both public opinion and political parties, the Constitutional Court case-law is clear and consistent: social rights are the condition for the realisation of substantial equality and of the democratic principle, and are fundamental elements of human dignity. Following the reasoning, the right to health, and the relative healthcare services are extended to foreigners, explicitly in the name

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37 For a further discussion on the principle of equality and non-discrimination, see *inter alia*, Favilli 2008.

38 For an in-depth analysis, Corsi 2009; Chiaromonte 2008.

of social solidarity (decision n. 103 of 1997), as well as the rights of social security which may not be differentiated according to citizenship (decisions n. 454 of 1998, n. 432 of 2005, n. 306 of 2008 and n. 11 of 2009).

In 2010, the Constitutional Court (decision n. 187 of 2010) established that the possession of a residence permit in order to be entitled to ‘social security benefits’ including also the right to disability allowance was an unfair discrimination and it was in breach of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court recognised the guarantee of family unity and the rights of children to live with both parents also in the case of foreigners, and the exclusion from welfare provisions as social allowances of non-EU citizens residing legally in Italy but without a residence permit was judged unconstitutional (decisions n. 308 of 2008, n. 11 of 2009, n. 187 of 2010). Nonetheless, the full guarantee of socio-economic rights finds a limit in the lack of resources, and this was obviously exacerbated by the crisis. The residence permit grants steadier access to rights and remains a precondition for specific entitlements and benefits. In order to acquire a residence permit of a duration of not less than one year, foreigners (over the age of 16) have to stipulate an ‘integration agreement’ with the State (Art. 4-bis, para. 2, legislative decree n. 286 of 1998 and Decree of the President of the Republic n. 179 of 2011), according to which the foreigner agrees to: acquire an adequate knowledge of spoken Italian; acquire a proper knowledge of civic life in Italy, in particular in the fields of education, social services, health, labour and tax obligations; guarantee the fulfilment of compulsory education for any children; acquire sufficient knowledge of the fundamental principles of the Constitution and the functioning and organisation of the Italian public institutions; adhere to the Charter of the values of citizenship and integration (adopted by decree of the Minister of Interior on 23 April 2007, published in the *Official Gazette* n. 137 of 2007). The integration agreement expires after two years, renewable for another year and it should bind the State to support the social integration of the foreigner.

### *Immigration*

The first attempt at regulating immigration dates back to 1986 (law n. 943 of 1986) with the incorporation of the principle of equal treatments between Italian workers and immigrants, according to the International Labour Organisation Convention n. 143 of 1975 (Scoca 2013). The subse-



quent law n. 39 of 1990 (the so-called Martelli Law) introduced the principle of programming the migratory flows. The law n. 40 of 1998 on immigration (known as the Turco-Napolitano Law) marks an important turning point: the law is the first coherent regulation of the presence of foreigners in Italy and still constitutes the framework of the current legislation on immigration, despite subsequent revisions. Law n. 40 is based on two pillars: annual quota of foreigners to be granted residence permits, and administrative detention for undocumented immigrants awaiting expulsion. This entailed the creation of detention centres, the CPTs ('Centres of Temporary Stay'). The quotas are determined on the basis of Italian workforce needs (of course, this does not apply to political asylum and refugees).

Law n. 189 of 2002, known as the Bossi-Fini Law, also introduced temporary detention for asylum seekers; made undocumented migration a crime; forbade ex-post legalisation procedures for undocumented migrants; and prolonged the CPT stay to sixty days. Later on, law n. 125 of 2008 renamed the CPTs with the label 'Centres of Identification and Expulsion' (CIE), and the detention term was further extended to 180 days in 2009 (law n. 94), and up to 18 months in 2011. It was as recently as 2011 that the Council of State, the supreme administrative court in Italy, established that failure to obey an order of expulsion could not inhibit legalisation (Plenary Meeting of the Council of State, decision n. 7 of 2011).

The directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning third-country nationals staying illegally (so-called "European Return Directive"), together with the directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States were implemented in Italy with the decree law n. 89 of 2011, then converted into law n. 129 of 2011. The directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegal third-country nationals was transposed in Italy through the legislative decree n. 109 of 2012, introducing the prohibition, among other things, of issuing a permit to work for those facilitating illegal immigration in Italy or illegal emigration to other countries.

The Italian legislation on immigration has mainly focused on the 'criminal' aspects linked to undocumented immigration, sometimes at the expense of the protection of fundamental rights. The Constitutional Court found that the decree law n. 92 of 2008 introducing into Penal Code the aggravating factor for crimes committed by an offender 'while he/she is in



the national territory illegally', resulting in sentence increases of up to a third for any offence was in breach of the Constitution. The Court maintained that this was in sharp contrast with the principles of formal equality and non-discrimination in relation to personal and social conditions. Indeed, crimes should be related to conduct not to personal qualities or status (decision n. 249 of 2010). The EU Court of Justice intervened several times in cases concerning Italian legislation on immigration, especially concerning the rules on repatriation/expulsion, with a consistent case law downsizing the Italian sanctionative system (decision of 28 April 2011, Case C-61/11PPU, *Hassen El Dridi*, decisions 6 December 2011, Case C-329/11, *Alexandre Achughbabian*; 6 December 2012, Case C-430/11, *Md Sagor and* 19 September 2013, Case C-297/2013, *Gjoko Filev and Andan Osmani*).

### *Asylum*

Despite the constitutional recognition of the right to asylum (Art. 10, para. 3) and the imperatives imposed by international and European mechanisms of refugees and asylum seekers' protection, the Italian legal system still lacks specific legislation. This entails that no distinction between asylum right and refugee status exists. Moreover, the administrative proceedings to apply for both are the same, which means more red tape and longer waiting time for asylum seekers than there should be. Furthermore, if immigrants are undocumented or if their asylum application needs to be verified, they are taken to a CIE (Centre for Identification and Expulsion), where their stay often lasts much longer than what it should.

Art. 10 para 3 of the Constitution states that "Foreigners who are, in their own country, denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law". Thus, the right to asylum is directly connected with the full exercise of fundamental rights, which, in turn, should guarantee respect for life first, and human dignity second. The Constitution would have explicitly required a law setting out the conditions for entitlement to the right of asylum, but in the absence of a specific law enforcing Art. 10 of Constitution, the right to asylum is ruled by law n. 251 of 2007 (implementing Directive 2004/83/EC), and by law n. 25 of 2008 (implementing Directive 2005/85/EC), and subsequently amended by legislative decree n. 159 of 2008 and by law n. 94 of 2009. Essentially,

the right to asylum is granted both for the refugees themselves, as was already established by the Geneva Convention, and for people identified as beneficiaries of subsidiary protection, though with different content and different intensity. Recently, the legislative decree n. 142 of 2015 (which entered into force on 30 September) has implemented in Italy the directives 2013/33/EU laying down standards for the reception of applicants for international protection and 2013/32/EU on common procedures for granting and withdrawing international protection.

### *Laws' Enforcement and the Crisis*

The field of asylum is one of the most sensitive areas for the enforcement of the principle of solidarity (Langford 2013; Mitsilegas 2014; Hein 2010; Nascimbene 2010). Basically, there are two relevant claims built on solidarity: on the one hand, the humanitarian commitment of the Italian government (at national, regional and local level) to rescue asylum seekers and to address their needs is grounded in the discourse of solidarity, justice, and human dignity; on the other hand, the claims *vis-à-vis* the EU and Member States to share the burden of massive arrivals on the Italian coasts are built on the solidarity duty that should bind all EU Member States.

During the crisis, the entry rate of new workers, both documented and undocumented, from non-EU countries, diminished. From 2010 to 2014, however, there was a noteworthy increase in the number of asylum applicants, refugees and asylum seekers, coming especially from Africa and Syria. In order to manage the refugee humanitarian crisis in the Mediterranean Sea, Italian authorities organised migrants' rescues through the naval assets of 'Mare Nostrum' and/or 'Frontex' operations, even in the absence of an agreement at EU level.

As of early 2017, no effective burden-sharing mechanism has been enforced and asylum seekers/refugees relocation processes have been extremely difficult, slow and rather inconsistent as regards real numbers of people relocated<sup>39</sup>. Solidarity does not seem to work at this level, neither regarding refugees and asylum seekers that often remain long in over-

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39 For an insight: [http://www.repubblica.it/politica/2017/05/29/news/migranti\\_l\\_accusa\\_di\\_strasburgo\\_ricollocato\\_un\\_solo\\_minore\\_dei\\_cinquemila\\_approdati\\_in\\_italia\\_-166686725/](http://www.repubblica.it/politica/2017/05/29/news/migranti_l_accusa_di_strasburgo_ricollocato_un_solo_minore_dei_cinquemila_approdati_in_italia_-166686725/); <https://www.theguardian.com/world/2016/mar/04/eu-refugee-relocation-scheme-inadequate-will-continue-to-fail>;

crowded CIE, nor regarding burden sharing among EU Member States. The perception of interviewed Italian grassroots movements and associations working in the field are univocal and unambiguous:

*“We are doing what every European State should do: saving lives, hosting people escaping wars and terrorism, and restoring their dignity. Refusing to participate in this tremendous battle against human brutality is shameful and inappropriate for States that claim to be “European”. This is not the EU we are dreaming about”<sup>40</sup>.*

Equally univocal and unambiguous is the opinion of the Italian legislation on immigration and asylum. All interviewees agree in criticising the tightening of economic migration and the absence of a proper and specific legislation on asylum<sup>41</sup>. Yet, some highlight the gap between rules and their enforcement. Nonetheless, contrary to what has been observed in the fields of disability and unemployment, in the case of migration/asylum the gap may have a positive connotation.

*“The systematic violation of the due dates for obtaining permits and/or receiving feedback on applications is frustrating and it may extend the period of permanence in very unpleasant institutions such as the CIEs, but if things turn negative, in Italy you can survive in the grey zone of the undocumented population more easily than in other European countries. [...] Despite the lack of job opportunities and a lower level of social services than, for instance, Northern countries, Italy remains an appealing host country because life here is easier for the undocumented”<sup>42</sup>.*

### *Solidarity in Action?*

The value of inclusion, the duty of supporting people unable to work and lacking the resources necessary for their existence, the imperative of protecting people in danger because of war, natural disaster, political harassment and persecution, and also endemic poverty, and the importance of offering opportunities to people looking for better life conditions for themselves and their children are all dimensions of the principle of solidarity recognised as the load-bearing pillar of the Italian social and legal system.

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40 Interview realised on 16th September 2016.

41 Interviews realised on 5th July 2016, 15th September 2016, 16th September 2016, 21st September 2016, 29th September 2016, 3rd October 2016, 4th October 2016, 6th October 2016, 18th October 2016.

42 Interview realised on 5th July 2016.

Laws, as highlighted in previous discussions, rarely mention solidarity verbatim. Law-makers more frequently rely on the notions of social inclusion, equality, non-discrimination, human dignity as source and, at the same time, the final purpose of legislation on disability, unemployment and immigration/asylum domains. The reluctance to explicitly name solidarity in legislation is in itself a relevant datum. It could be interesting to investigate whether solidarity has been a key concept in Parliamentary debates in the processes of law-making and law-amending, but this would lead our discussion astray and would largely exceed the limits of our research. Moreover, the transposition of values, duties and imperatives connected with solidarity into specific legislation and policies is not linear, not simply because the process of operationalisation of values through laws is a difficult and not unambiguous one, but also because none of these values and imperatives is uncontested. Rather, each of them remains a highly contested terrain, where opposing political ideas and visions shape different, and often very distant, legal and policy frameworks. How to integrate disabled children and adults into schools and the workplace respectively; which reforms of the labour market, what to do with economic migrants and how to deal with refugees and asylum seekers. These have been at the centre of the political agenda for the last decade. The economic crisis has exacerbated existing tensions.

*“The risk is to instigate a war among the poor for scarce resources: unemployed against migrants, for example”<sup>43</sup>.*

And indeed the crisis-driven reforms have heavily questioned the solidarity basis of existing legal and institutional systems, first by reducing the resources available for the pursuit of solidarity in concrete terms. Rights cost (not only socio-economic rights, but also civil liberties and fundamental freedoms), and reducing resources means tightening rights (Holmes and Sunstein 2000). In the field of disability this phenomenon is unequivocal: the cuts in disability funds and the dramatic reduction of support teachers at school, for example, cannot claim to have any solidarity justification. Secondly, it has done so at the level of values. Introducing into the legal system the crime of “illegal immigration (law n.94 of 2009) means a profound transformation not only in the Italian migration policy, but also in its culture of rights.

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43 Interview realised on 16th September 2016.

However, it has been in the name of the constitutional duty of social solidarity that the Constitutional court, when it has been consulted, has mitigated the crisis driven measures, especially in the domain of disability. Here the Court has developed a rather consistent jurisprudence asserting that in the process of interest balancing, the duty of social solidarity should take precedence over the economic imperatives of cutting the costs. In the field of unemployment and migration the picture is not so clear. In both cases, the crisis has exacerbated existing criticalities, and decision-makers have seized the momentum for undertaking, especially in the field of unemployment, a radical reform of the labour market. The courts have started to work on claims filed against the reform, but there is not enough case law for a consistent critical analysis. On migration, the political discourse is extremely polarised, and the debate is harsh. Paradigmatic of the polarisation of the discourse is the divergent jurisprudence of the Constitutional court on two subsequent cases on migration in 2010. In neither of the two cases was solidarity directly at stake, and the Court did not made use of it in its reasoning. Nonetheless, they are important as they reveal the sensitivity of the theme. In the first, CC decision 249 of 2010, on the aggravating circumstances of the criminal sanction for a crime, in case it was committed while the author was illegally on the State's soil, the Court found the provision unconstitutional as the aggravating circumstance was in fact founded on a “personal and social condition”, which is considered a qualified parameter for measuring the principle of equality by Art. 3 of the Constitution. In the second case, CC judgment 250 of 2010, the Court rejected several constitutional questions on the s.c. “clandestinity crime” maintaining that “the requirements of human solidarity are not *per se* at odds with the rules on immigration put in place in order to ensure an orderly migratory flow and an adequate welcome and integration of foreign nationals”. Undocumented migration cannot be considered an aggravating circumstance but the crime of undocumented migration is not in breach of the Constitution.

From a different perspective, in CC decision n. 119 of 2015 on the exclusion of young foreign residents from the “Civil draft”, the Court stated that “excluding aliens from access would amount to unreasonable discrimination”. But the Court goes beyond this, stating that allowing persons living in Italy to fulfil their duty of solidarity is a crucial opportunity for them to be fully integrated into the national community. Solidarity fosters social inclusion and social cohesion. Here the legal reasoning highlights the most important duty solidarity has to accomplish in the hard times of crisis: not

simply preventing cuts in services and privileges and rights tightening, but contributing to strengthen social ties that hold communities together. This argumentation is confirmed in CC decision n. 173 of 2016, when the Court found that “solidarity contribution” applied to wealthier pensions was admissible. The idea is that ensuring the pension system's sustainability may impose extra-burden on some groups of members, in the name of the community's general interest.

Finally, an additional interesting and extremely important aspect of the discourse on solidarity like *conditio sine qua non* for social cohesion is the gender dimension of the impact of the crisis. As observed by Verashchagina and Capparucci, “most of the policy initiatives implemented during the crisis are expected to reinforce the existing gender imbalances” (2013, 266) The budget cuts in childcare, care of the elderly, public transportation, disabled people, and immigrants have moved the entire burden of the missing public services back on women's shoulders. The intra-family, gendered division of work between paid and unpaid work, already in a state of imbalance before the crisis, has been reinforced by the perverse multiplication effect of the crisis and of austerity. A positive effect might “come from the introduction of the new system of unemployment benefit which aims to provide a wider coverage” (Verashchagina, Capparucci 2013, 266). The inclusion of precarious workers in social security benefits positively impacts on women, who are most frequently found among this category of workers. Nonetheless, it is perhaps overly optimistic that this positive improvement may counterbalance the widening of the gender gap due to the crisis and austerity policies.

The crisis has weakened the economic system; its persistence has unravelled the texture of the social tapestry and it has strongly impacted on the legal system as well, reducing the extent and the quality of rights, especially in the domains of immigration and asylum, unemployment and disability. The value of solidarity, both as guiding law-making principles entrenched in the Constitution and as constitutional adjudicating paradigm, has probably mitigated this effect, but the country has not managed to navigate these troubled waters with relative peace.

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