Italy

Veronica Federico and Nicola Maggini[1]

Introduction

In the last two decades, Italy has undergone deep structural changes that have radically transformed its social, political, economic and legal system. The crisis has exacerbated certain weaknesses in both the socio-economic and legal systems and has created the momentum for the enactment of a number of reforms. In the wake of mounting fiscal pressure and new needs created by the crisis, by an ageing population and, in the field of immigration, by sizeable flows of economic migrants and asylum seekers, important legal and policy changes have been implemented. These changes had a direct impact on the transformation of the welfare system. But what about solidarity in these troubled waters?

Since its re-foundation after the second world war, the Italian legal and policy-making system has been permeated by tension between a dominant solidaristic approach, upheld by both the Christian democrats and the socialist and communist culture, and the more liberal approach, that, plunging its roots in the liberal thinkers of the XIX century, focuses on the value of personal rights and liberties. This tension mirrors a second, socio-cultural tension between altruistic attitudes that uphold, for example, the country's pronounced involvement in volunteerism, and more individualistic ones, which can be identified, for example, in patronage behaviours. Both tensions emerge in the very structure of the jurisdiction, that we will begin by briefly describing in order to understand what "solidarity means in legal terms, and, secondly, to inquire about the role this principle has played in shaping the way the country has faced the crisis

1 The chapter is the product of the authors'common discussion and reflections. Nonetheless, the paragraph "The socio-cultural dimensions of solidarity has been written by Nicola Maggini, and all other ones have been written by Veronica Federico.

and in providing the answers to specific societal needs in the field of unemployment, migration and disability.

The Italian legal system is grounded and embedded in a few pivotal principles: democracy, as laid down in Art. 1 of the Constitution ("Italy is a democratic Republic founded on labour"); the so called "personalist principle" of Art. 2 which guarantees the full and effective protection of human rights; the pluralist principle together with the principle of national unity and territorial integrity (Art. 5); the value of social and linguistic diversity and pluralism (Art. 6 and Art. 2); the importance of labour as a core value of Italian society (Art. 1 and Art. 4.1); the principle of non-discrimination and equality before the law (Art. 3); the principle of the rule of law which permeates the whole constitutional system; and the principle of social solidarity (Art. 2).

"The Republic recognises and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity.Understanding the meaning and the value of Art. 2 of the Italian Constitution requires taking into consideration the Italian socio-cultural background on the one hand, and the legal and constitutional system on the other. In the following paragraphs the analysis will first illustrate some elements of the socio-cultural dimensions of solidarity, and, then, move on to the investigation of the defining characters of its legal dimensions.

The Socio-Cultural Dimensions of Solidarity

Quite interestingly, Italian society is cross-cut by a number of cleavages characterised by socio-economic, cultural and political factors. Thus, the country moves between traditionalism and modernity; between rural and urban environments; between post-industrial economic districts and proto-industrial ones; between conservative and progressive political culture; etc. Against this complex background, the two most relevant, and rather contradictory -if analysed individually-, elements of the socio-cultural dimensions of solidarity (i.e. familism and civic volunteerism) complement each other under the umbrella of what has been defined as the "residual welfare state" in the broader category of the Esping-Andersen conservative-corporatist model (1990), or in Ferrera's "Southern model" (1996).

In Italian history, the persistence of the 'traditional' family, of kin systems and rural values, has led to the establishment of the family/kinship solidarity model (Naldini 2003). Indeed, family arrangements and kin relations grasp the specificity of the Mediterranean welfare state model, with its 'clientelistic-particularistic' character. The Italian welfare state model has been centred on the role of the family as an agent of social protection (Ferrera 1996). The permanence of such a model can be explained by the interplay among the legacy of fascism, the strong influence exercised by the Catholic Church and conflicts over family issues in the political arena (Naldini 2003). In the absence of a strong and universal welfare state, the family and Catholic-run charity services remain the strongest safety nets (Saraceno 1994). This is particularly true during economic crisis. Since 2009, the family has offered social protection both via intergenerational cash transfers and via service provision (the most 'classic' example is housing opportunities). Thus, families and kin are both the source and the *locus* for the first, most primordial solidarity ties.

The importance of the family for social cohesion has led, according to some scholars, to the culture of the so-called "amoral familism" (Banfield 1958; Sciolla 1997; Alesina, Ichino 2009), and to a lack of strong civic traditions, especially in the South (Putnam *et al.* 1993). According to the aforementioned literature, the term 'amoral familism' means a social action persistently oriented to the economic interests of the nuclear family regardless of or at the expense of the general interest of society. This reduces citizens' propensity to act collectively to solve social problems or for any goal transcending the immediate, material interest of the nuclear family, leading to a self-interested, family centred society that sacrifices the public good.

Nonetheless, volunteerism is widespread and creates a network of associations, allowing its members to achieve socially relevant goals on a collective basis. According to the European Social Survey, in 2011 (exactly during the financial 'storm') 26% of Italians participated in voluntary activities, i.e. a percentage above the EU average (24%) (May 2011 data drawn from the Special Eurobarometer survey 75.2, question Q15). In 2013, ISTAT (the Italian National Institute of Statistics) with the collaboration of CSVnet (National Coordination of Volunteer Support Centres) and the *Volontariato e Partecipazione* Foundation carried out the first national survey on voluntary work. One out of eight Italians does unpaid activities to benefit others or the community. The number of volunteers is estimated at 6.63 million people.

Voluntary associations produce social capital (i.e. a network of durable relations over time), based on trust and on reciprocity (Torche, Valenzuela 2011). In this regard, altruism is encouraged by social and community involvement (Putnam 2000). While fulfilling the needs of people living in social and economic discomfort, the altruistic nature of volunteerism creates a favourable context for solidarity-based attitudes and practices. The crucial importance of volunteerism is acknowledged by policy-makers. Already in 1991, the framework law n. 266 on organised voluntary work recognised volunteerism's social value and functions in terms of participation, solidarity and pluralism. Third Sector's entities may take the form of volunteering organisations (law n.266 of 1991), social cooperatives (law n. 381 of 1991), social promotion associations (law n. 383 of 2000), non-profit organizations–ONLUS (law n. 460 of 1997), and social enterprises (Legislative Decree n. 155 of 2006). Since the early '90s, the third sector's growth enhanced a model of solidarity based on the synergy between the private and public sector in the implementation and management of welfare policies. This model was recently reformed and rationalised in 2016 (law n.106) to provide a coherent structure for an extremely differentiated third sector. In fact, along with classical forms of volunteerism based on charity and supportive activities of religious inspiration, mainly working in the social and healthcare fields, the so-called 'civic' volunteering has also emerged (Arcidiacono 2004). The latter is based on alternative forms of social vindication and participation widening the scope of voluntary organisations, which are active also in fields where they aim to meet the collective needs linked to quality of life, the protection of public goods and the emergence of new rights (Garelli 2000). Volunteerism is clearly the second (family the first being the first) most important source of solidarity network in Italy (Valastro 2012), and voluntary organisations have been a strategic instrument to pursue objectives of social inclusion in a phase of withdrawal by the public sector and of retrenchment of the welfare system due to the economic crisis and austerity measures.

The importance of socio-cultural habitus in shaping the concrete forms of solidarity practices should not be underestimated: family networks and widespread volunteerism in Italy provide a cultural environment that encourages attitudes and practices of solidarity. The constitutional and legal framework build on those habitus recognising the specificity of the Italian solidaristic attitudes and its attempts to channel those same habitus into a structured net of rights and duties.

The Constitutional Entrenchment of Solidarity

While recognising inviolable human rights, Art. 2 of the Constitution also prescribes the "unalterable duty to […] social solidarityis thus explicitly mentioned in the text of the Constitution. Its significance, however, can be fully appreciated only in the broader picture of the constitutional structure and of the final purpose of the constitutional design. Solidarity permeates all relations included in the Constitution: from ethical and social aspects (family, health, education) to economic ones (labour, union rights, private property and enterprise), from political aspects (franchise and political parties) to the constitutional duties (loyalty to the Constitution, taxation, defence of the fatherland, parental duties). Rights and liberties are conceived in a "solidary" frame, and the respect and guarantee of rights and liberties has to be intrinsically combined with the meta-principle of social solidarity (Cippitani 2010, 34-37).

From the *incipit* of the Constitution, solidarity takes the form of the most fundamental mandatory and binding constitutional duty. In this context, solidarity loses its compassionate and benevolent significance, to become the cement that transforms diverse people into a community.

In a jurisdiction based on solidarity, citizenship means that the legal bond between the individual and the State creates a relationship of mutual responsibility that works in both a bidirectional vertical dimension (between the State and the citizens), and in a bidirectional horizontal dimension (between fellow citizens). Every citizen should be a part of the creation and maintenance of the Republic's well-being, and should be responsible for the promotion and assurance of fellow citizens' rights and needs (Apostoli 2012, 143).

Much has been written about solidarity as the founding principle of the Italian legal system (Balboni 1987; Barbera 1975; Crisafulli 1952; Lombardi 1967; Nicoletti 1970; Onida 2005; Pezzini and Sacchetto 2005). It suffices here to mention that the writers of the Constitution did not make solidarity simply another constitutional principle, but a supreme principle of the Constitution, so that solidarity is "co-essential" to the Constitution itself (Galeotti 1996, 9). The inclusion of solidarity among the founding principles of the Constitution (that assume the value of meta-principles of the legal system, a sort of quintessence of the "spirit of the Constitution", Constitutional Court (CC) decisions n. 18 of 1982, n. 170 of 1984, and n. 1146 of 1988) means that all subsequent rights have to be enforced and enjoyed in a solidary way. Hence, fundamental rights become "functional"

to the fulfilment of the duty of solidarity (as a prerequisite for peaceful co-existence and integration).

This functional approach to rights becomes clear, for example, in the way patrimonial rights are conceived and enforced. Property and freedom of enterprise are recognised and guaranteed (Art. 41 and 42), but they have to be "directed and coordinated towards social ends", which means that common interest will take precedence over property rights in the name of solidarity helps shedding light on this: solidarity "imposes a duty on the State to legitimately impose a sacrifice on its citizens" (decision n. 506 of 2002). This implies that limitations on property rights are legitimate not just in the name of Art. 42, but also in the name of Art. 2: i.e., rights find their justification in the constitutional principle of social solidarity and they have to be enforced accordingly (decision n.77 of 1969). However, the Constitutional Court goes beyond the mere interpretation of solidarity as a rights' limitation (as it is in the case of expropriation and the limits to succession) and it finds in solidarity a way to provide a coherent reading and interpretation of individual rights and liberties in the name of mutual responsibility for other people's rights.

Therefore, the Court states that "the Constitution has conceived the principle of solidarity among the founding values of the legal system, as solidarity reveals the original connotation of the individual *uti socius* (as a member of society). Thus, the principle of solidarity is solemnly recognised and guaranteed, together with fundamental rights, in Art. 2 of the Constitution, as the basis of the social coexistence prefigured by the constitution-makers" (decision n. 75 of 1992). In the same decision, the Court maintains that the realisation of the principle of solidarity leads every person to create social relations and bonds beyond the constraints of public duties or public authorities' orders. This is a result of the human need to socialise. In other words, in interpreting Art. 2, the Constitutional Court acknowledges that the whole project of society underpinning the 1948 Constitution is rooted in the value of solidarity that makes citizens responsible for one another as well as for the whole national community.

Fully appreciating the principle of solidarity's importance in the constitutional framework, as well as its impact on a radical renewal of the political and social structure of the national community, imposes a reflection on solidarity *vis-à-vis* the other fundamental principles of the Italian Constitution: the central role of the human being, equality, labour, and subsidiarity. This reflection opens the way for a further step of analysis, that of studying how solidarity and its specific meanings become a source of very di-

verse legislation, from family law to the third sector, from fiscal legislation to anti-poverty measures. Thus, solidarity is not merely an abstract, moral and ethical value, but rather "social solidarity is a general pragmatic guideline, […] binding for the legislators", which means that it should permeate the whole legal system in a very concrete way (CC decision n. 3 of 1975).

Solidarity and the Centrality of the Person

The entire Italian legal system is centred on the value of the human being – what Italian scholars name the *principio personalista* – described by the Constitutional Court as the "principle that makes the development of every human being the final goal of the State's social organisation" (decision n. 167 of 1999).

What allows the constitutional system to pursue the development and blossoming of the person is "the duty of solidaritywhich recalls the nature of human beings as interconnected *ab origine* (since the beginning of the time) to others, and the nature of society not merely as a social contract but as a community where every personality is permitted to thrive" (Violini 2007, 519). Solidarity is solidly anchored in the concept of human dignity. The dimensions of human dignity and fundamental rights are crucial to differentiate solidarity from charity, benevolence, and compassion. Charity, benevolence, and compassion intrinsically imply that the beneficiary's status is inferior, while a notion of solidarity in the light of human dignity imposes peer-to-peer relations (Rodotà 2014, 25). Human dignity is the constitutional prerequisite for all rights related to the well-being of both the person and social relations. It is at the same time the justification for and the overarching scope of fundamental rights: while representing the most important value of the constitutional system, human dignity determines the final goals the political and social system has to pursue (Apostoli 2012, 38).

This may appear to be an abstract scholarly dissertation, however it has direct and pragmatic implications. The whole constitutional system is not centred on an abstract image of "the citizen" but on living people and real social actors (the so-called *homme situé).* The concrete enforcement of the principle of solidarity allows the system to overcome the dichotomy between the two spheres of social life: the private one based on the principle of natural inequality and the public one based on the principle of formal

equality. Solidarity seeks to implement a coherent system of norms aimed at rebalancing natural inequalities, not only avoiding unfair discrimination. It also strives for entrenching proactive measures to bridge existing socio-economic and cultural gaps. This is why "the principle of solidarity, as corollary to the centrality of the person, aims to override the old notion of formal equality, in order to grant all citizens the conditions for a free and decent life, while moving towards substantial equality" (Giuffré 2002, 85).

A first direct application of solidarity along with the centrality of the person can be found in the notion of family solidarity. The 1975 reform of family law marked a crucial revolution in the legal structure of the family. The law abolished the anachronistic concept of "head of the family" and gave both spouses the same rights and duties. Parents have mutual obligations and must both contribute to the needs of the family according to their capacity. Unpaid family care work is legally valued. Interestingly, the legal system relies heavily on the idea of family solidarity for the support of next of kin, even if "solidarity" is not explicitly mentioned in either the relevant articles of the Civil Code or in the law n. 151 of 1975. Indeed, as throughout Europe, parents are bound to support their children, but Art. 433 and 439 of the Civil Code extend the duties to brothers and sisters. Moreover, ascendants are obliged to provide parents with the necessary means for the children, in case of need (Art. 148 cc). The State will only intervene if no support can be found among next of kin. In a more extensive way, the Civil Code imposes that kinfolk provide financial support to each other in proportion to their income, and in cases of real need. This goes well beyond the normal boundaries of responsibility of the nuclear family and the residential boundaries of the household.

"The assumption contained in kin legal obligation are two-fold. First, the legal acknowledgement of the importance of family solidarity […] Second, the survival of kin obligations points to the role still played by the principle of subsidiarity, that is, the role of the State is regarded as subsidiary to that of the family" (Naldini 2003, 123).

Solidarity and Equality

Article 2 of the Constitution should not be extrapolated from its context. It is located between Art. 1, which recognises labour as the founding principle of the Republic, and Art. 3, where the value of human dignity is grant-

ed through the State's duty to remove all "economic and social obstacles", which directly echo the "unalterable duty to political, economic, and social solidarity of Art. 2. This is clear confirmation of the tight interconnectivity between the values of human dignity, solidarity and equality. This interconnection underlines the transformative character that the Constitution attributes to the triad of human dignity, solidarity and equality that should guide both private and public entities' proactive attitudes (Rodotà 2014, 46).

The values of social solidarity, as just mentioned, underpin the transition from formal equality (everyone is equal before the law and has equal social status) to substantial equality ("the Republic [shall] remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organisation of the country" Art. 3(2)) (Rodotà 2014; Giuffré 2002).

This means that solidarity is not conceived simply as an "antidote" that operates in a residual way to rebalance the inequalities of the social and economic system. On the contrary, once combined with solidarity, substantial equality becomes the pillar of social cohesion. This is why, for example, the Constitutional Court found that limiting the privilege of free transport for Italian disabled citizens, while excluding foreign disabled persons in the name of budget restrictions, as established by Lombardia's regional law n.1 of 2002, was in breach of equality as entrenched in Art. 3 of the Constitution. It manifestly violated the principle of social solidarity, too, because the law "finds its *raison d'être* in a solidarity logic" and narrowing its scope by restricting the benefit to Italians only jeopardises the very essence of the law (CC decision n. 432 of 2005).

The duty of social solidarity of Art. 2 largely exceeds the constitutional justification for the typical duties of the defence of the nation, the contribution to the expenses through taxation, and the loyalty to the Republic (Art. 52 -54). In connection with equality, it provides the constitutional grounding for the entrenchment of socio-economic rights that alleviate inequalities, outlaw discrimination and pursue the integration of the more fragile and vulnerable sectors of societies. The duty of solidarity confers the State with the justification for a more incisive redistribution of national resources. The combined provisions of solidarity and equality are direct source of the welfare system in its multiple dimensions of social assistance, social care, pension policy, health care, employment policy, school policy, higher education policy, family policy, etc. Nevertheless, despite

the strong constitutional entrenchment of the principles underpinning the welfare state, it remains heavily characterised by numerous imbalances, including an uneven distribution of protection and costs, as mentioned earlier (Ascoli and Pavolini 2016).

Quite interestingly, among the anti-poverty measures, "solidarity is explicitly mentioned in a very specific measure targeting a crucial aspect of Italian people's perceptions of wealth: the mortgage solidarity fund. Home ownership in Italy is high, with 72.1 percent of households owning their house in 2010, which is high compared to the 60% of the euro area average (Banca d'Italia 2012). Law n. 244 of 2007 liberalised the mortgage market, effectively increasing the mobility of mortgage customers. In order to meet the increasing demands of payment suspensions of mortgage loans for first-time home buyers in case of temporary difficulties, a government-run "Solidarity Fund" was created to cover interest payments during payment suspensions. In this case, the law explicitly refers verbatim to solidarity. The Fund's capital endowment of 20 million euros for 2011 was quickly exhausted, and contributed to the interest payments of 5,000 households. Despite the retrenchment policies, the fund has been constantly renewed, and for 2016-17, the Fund has been allocated a budget of 650 million euros. Moreover, a guarantee fund for purchase of a primary residence by young couples has been set up, where the government covers 50 percent of the residual amount due in case of insolvency.

Solidarity and Labour

Among the fundamental duties to political, economic and social solidarity, Art. 4 of the 1948 Constitution recognises "the right of all citizens to work and promotes conditions to fulfil this right", and correspondingly, "according to capability and choice, every citizen has the duty to undertake an activity or a function that will contribute to the material and moral progress of society".

Much has been written on the value of labour in the constitutional structure of the Italian legal system since 1948 (Mortati 1954; Mazziotti Di Celso 1973; Esposito 1954). It suffices here to mention that labour replaced property and/or social status (which were the typical entitlements of the *ancien régime* and liberal state) as the prerequisite to participating in the "political, economic and social organisation of the country" (Art. 3). Labour permits the citizen's full membership in society, thus, it is not a

mere economic activity, but the means to assure the full development of every person's personality.

Labour is a right (and the Republic "promotes the conditions to fulfil this right" (Art. 4(1)) and a duty. As part of the duty of solidarity, Art. 4(2) establishes the duty "to undertake an activity or a function that will contribute to the material and moral progress of society", in line with the citizens' capability and choice. This tight interconnection among rights and duties is exactly what creates, according to the constitutional thinking, the social bonds that hold a society together. Citizens are not simply the beneficiaries of the advantages derived from activities of the State. They are the protagonists of the process of social integration aimed at creating a coherent continuity between the political and institutional structure of the State and its social organisation (Lombardi 1967, 52).

"The strong accent on labour conveys the close correlation between liberty and solidarity, which finds its common denominator in the principle of mutual responsibility towards themselves and the others" (Giuffrè 2002, 205).

How concretely solidarity underpins labour law, employment policies, and unemployment measures will be discussed in detail in the third part of the volume. What is worth mentioning here, however, is the legislation concerning "solidarity contracts", where solidarity explicitly defines the purpose and the underlying value of the measure. Despite the fact that it appears tailored to the crisis needs, the measure dates back to the mid-80s, last century.

The Decree law n. 726 of 1984, which was approved by Parliament and was enacted as law n. 863 of 1984, introduced in the labour legislation a new typology of contracts, named "solidarity contracts" (mentioning verbatim the notion of solidarity), directly inspired by the principle of solidarity among workers, as they intend to assist them in maintaining employment during periods of crisis. In the case of business difficulties, instead of dismissing a number of workers, the employer and the workers, through a process of negotiation led by Trade Unions, may agree to reduce the number of hours worked per worker in order to allow potential redundant workers to keep their jobs. Income support is provided by the State so that workers are granted 60% of their lost income. The duration of solidarity contracts cannot exceed four years, extended to five in Southern regions, where the problem of unemployment is more critical. Designed solely for companies that were entitled to *Cassa Integrazione Guadagni* (a sort of Redundancy Fund to protect the workers' earnings in the event of enter-

prise difficulties), law n. 236 of 1993 extended the typology of companies that were entitled to use solidarity contracts. For these companies, the wage integration is 25% of the lost wage, and contracts can last up to two years.

The interesting feature of this kind of contract is that it pursues both vertical and horizontal solidarity the vertical dimension of solidarity, with the whole national community (i.e. the State) integrating the wage loss in the name of the duty to promote conditions to fulfil the citizens' right to work (Art. 4 of the Constitution), and the horizontal dimension of workers that agree to work and earn less (despite the wage integration) in the name of the "duty of social solidarity" (Art. 2 of the Constitution).

Solidarity and Subsidiarity

The realisation of solidarity, through citizens' activities and social integration, is an individual and a collective task, and this task has to be "jointly pursued by the central government, by regions and by autonomous provinces, in the respect of their specific competences" (CC decision n. 202 of 1992). In a decentralised state where subsidiarity is strongly entrenched, the goal of solidarity involves all tiers of government, together with civil society in all its forms, from families to associations, and economic stakeholders.

Article 2's recognition of the "unalterable duty to political, economic, and social solidaritybinds the Republic and citizenry, so that every single citizen should be involved in the ongoing process of society building and consolidating. This means that solidarity has both a vertical and a horizontal dimension, as just mentioned. The participation of the citizens in the full enforcement of those fundamental rights that, according to Art. 2, allow for the expression of individual and/or social groups' personalities responses to the horizontal dimension of solidarity. But civil society's involvement in public activities responds, as well, to the principle of subsidiarity, which is another fundamental pillar of the Italian (and European) legal system.

Indeed, the entire constitutional design is anchored in the principle of subsidiarity, which postulates a close interconnectivity between the action of the State and the free engagement of the people in the fulfilment of rights and in service delivery. The cross-breeding between the principles of solidarity and subsidiarity leads to a system where the State configures

rights and defines the modalities for the enforcement of those rights by setting standards. Civil society participates in realising the rights and may even go further by directing its energy towards expanding and enriching the quality and quantity of those rights (Onida 2003, 116).

In other words, if rights cannot be fully and directly enforced by the State either because of economic restrictions (as may be the case during a crisis) or because of political opportunity reasons, the State shall "activate" the citizens' duty of solidarity through legislation, promoting private intervention. The Constitutional Court itself, since 1993, has recognised that Art. 2 aims to encourage collaboration for the assurance and promotion of public goods, such as scientific research, artistic and cultural promotion, and health and social services, not just by public entities, but also by civil society's multiple entities (decision n. 500 of 1993).

A way to "activate" citizenry is through the application of solidarity in tax legislation: individuals and entities that are subject to company income tax, can deduct from their total declared income all donations in money or in kind made to non-profit organisations, associations registered in an *ad hoc* national register; foundations and associations whose statute includes the protection, promotion and development of property of artistic, historic and scenic value as well as the development and promotion of scientific research activities; to religious institutions; and to universities, university foundations, public university institutions, public research centres. Clearly, this is a fiscal instrument designed by the legislator to foster actions of charity and benevolence. Even though we have already highlighted the differences between the application of the constitutional principle of solidarity and charity, it is undeniable that the State favouring voluntary donations through a fiscal incentive is grounded in the principle of solidarity, even though it is not explicitly mentioned in the relevant legislation. Interestingly, however, except for donations to recognised non-governmental organisations working in the field of international cooperation, voluntary donations can be deducted only if the recipient is an Italian entity. Donations to a non-profit organisation based in France, Germany or Greece can not generate any tax breaks. The terrain for application of solidarity in this field is bounded by national borders.

Solidarity interpreted along with subsidiarity is the source of the laws disciplining the third sector. For the first time in 1991, with the law n. 266 the legislator "recognise[d] the social value and function of volunteering as an expression of participation, solidarity and pluralism" and created the legal framework to promote its development "protecting its autonomy and

encouraging contribution for the achievement of social, civil and cultural aims" (Art. 1). Solidarity here is explicitly mentioned verbatim in the text of the law. The law regulates the relationship between voluntary organisations and public administration (especially for the purposes of horizontal subsidiarity) and it defines a volunteering activity as spontaneous, gratuitous, without intended remunerative aims and undertaken exclusively for solidarity (verbatim) purposes, clearly differentiating volunteering from working activities. Noticeably, the legislator has defined volunteerism as a direct application of the principle of solidarity, and it has recognised the crucial value of volunteering activities for the quality of the national social fabric.

In addition to volunteerism, a salient component of the third sector is social entrepreneurship. Social enterprises may take two legally recognised forms in Italy: social cooperatives and social enterprises *ex lege*. In none of the relevant legislation is solidarity explicitly mentioned, but both stem from the solidarity approach of Art. 2 of the Constitution.

Social Cooperatives are cooperatives pursuing social or general interest aims (whereas traditional cooperatives are primarily oriented towards serving the interest of their members), either providing social, health and educational services or integrating disadvantaged persons into the labour market (law n. 381 of 1991), whereas the law n. 155 of 2006 provides the legal definition of social enterprise and specifies the criteria that an organisation must comply with in order to be legally recognised as a social enterprise. It does not create a new legal form in terms of organisational structure or ownership, but a legal status or 'label' which all eligible private business organisations can obtain regardless of their ownership or organisational structure. In order to be a recognised "social enterprise", private business entities shall: aim at the "general interest"; produce goods of "social utility" (which in practice corresponds to a relatively wide range of sectors like culture, education, social tourism, etc., joining the list of classic social welfare and educational services and economic activities for the integration of disadvantaged people into employment); shall provide for "forms of involvement" in their governance system; not distribute business profits, not even indirectly; and shall produce not only a financial report but also a social report.

The idea of social entrepreneurship preceded legislation, and since the early 1980s the term "social enterprise" has been used to refer to innovative private initiatives established by volunteer groups with the aim of de-

livering social services or facilitating the integration of disadvantaged people into the labour market.

Noticeably, the law does not grant any specific fiscal benefits to social enterprises *ex lege* (but social cooperatives benefit from favourable tax conditions depending on their characteristics). Beyond fiscal benefits, what is interesting in the legal recognition of social entrepreneurship lies in the value of acknowledging the importance of the inclusion of disadvantaged workers in the workplace, contributing to the removal of "all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organisation of the country" (Art. 3 of the Constitution).

Finally, the legislator explicitly refers to solidarity in the law providing for the "national civil draft" in 2001. The first legislation about the so-called *servizio civile* dates back to the 1970s, when law n. 772 of 1972 made it possible to substitute civil draft for military conscription for people who refused to serve the country in a military capacity. The civil draft became very popular among young people, and several services (from supporting disabled pupils at school to public administration work, from voluntary organisations to civil protection) heavily relied on the young "civil conscripted". After the elimination of the mandatory military draft, law n. 64 of 2001 established the National Civil Draft, addressed to men and women between 18 and 28 years and based on the principle of voluntary participation. "Civil conscripted" receive a token salary. Organisations and institutions which recruit civil conscripted must meet some requirements (non-profit status, organisational capacities, etc.), and be included in a national register as well as in regional ones. The service lasts twelve months. Art. 1 of law n. 64 clearly states that the national civil draft shall "favour the realisation of the constitutional principle of social solidarity; shall promote national and international solidarity and cooperation, in particular shall guarantee social rights, social services and processes of peace education". The legislators have explicitly rooted the idea of supporting and promoting young people's social involvement in the well-being of the community on the constitutional principle of social solidarity.

Conclusions

Looking at the Italian legal system and at its socio-cultural aspects, we have to ascertain a curious discrepancy between on the one hand a very strong constitutional entrenchment of solidarity, a quite consistent and diverse legislation stemming from this principle, and rather copious case-laws grounded on solidarity and, on the other hand, a welfare system that remains characterised by several imbalances, combining a universalistic approach in education and health with a traditional "corporatist" approach in pensions and unemployment measures, and a familistic approach in social care. Recent transformations in social needs, in the economy and in policy-making show that "the Italian way" to solidarity provides solutions based on premises that do not respond any more to reality (one for all the structure of the family). Therefore, solidarity should assume different meanings and connotations. The recent efforts of reforming the welfare system bridging the gaps due to segmentation and particularism/clientelism on the one hand, and to the lack of structural measures to combat poverty on the other, may trace new paths in the quest for those new meanings and connotations, always in the respect of the very essence of solidarity: citizens being responsible for one-another as well as for the whole national community. However, reforms have only recently begun, it is still too early to measure their capacity in providing new significance to the value of solidarity.

The crisis has submitted the Italian solidarity framework to one of the heaviest crash tests ever experienced. It has dramatically unhinged an already unbalanced welfare state and it has eroded some elements of its solidarity and altruistic socio-cultural and legal pillars. Against this background, as will be highlighted in the third part of the volume for the field of disability migration and unemployment, the decision-makers have been tempted to adopt crisis-driven measures not always consistent with the principle of solidarity. As a consequence, the courts, and especially the Constitutional court, have emerged as a second, very relevant actor for the protection and respect of solidarity as source of legislation. Indeed, the crisis-driven legislation and policies have generated high levels of contentiousness, and a large number of austerity measures (from welfare re-

trenchment policies to the pension system reform[2]) have been challenged in the courts invoking the respect of solidarity, fundamental rights, and equality. In a jurisdiction where solidarity is explicitly mentioned in the Constitution, the Constitutional court refers to the principle as a proper 'constitutional paradigm', and indeed in the past ten years it has constantly referred to solidarity, often in connection with human dignity, equality, labour and subsidiarity, to define the uninfringeable perimetre of a society where rights and duties should stem from the very same source: the value of sharing privileges and responsibilities.

Solidarity both as source of legislation and as constitutional paradigm has, thus, been a sound contributor during the crisis, protecting the rights and duties that define the very essence of being an Italian citizen.

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2 For example, to mitigate the effects of job insecurity on the pension allowances, the Constitutional court allowed the worker to ask for the extrapolation of eventual periods covered by unemploymentbenefits from the overall calculation of his/her pension that would lower the amount due. The Court does not explicitly mention solidarity in its reasoning, but evoking the principles of proportionality and adequacy of pensions, it implicitly recognizes that in times of crisis the duty of both the state and the community is to alleviate the extra burden that may be placed on the shoulders of the most vulnerable people (CC decision n. 82 of 2017). And this is something not too far from a solidarity approach.

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