Essays

Lights and Shadows of the Italian Law on Citizens' Income

Elena Vivaldi*

Abstract

The article aims at analysing the recent Italian decreto legge 28 January 2019 no 4 (converted by legge 28 March 2019 no 26) on Citizens' Income. After examining the new regulatory measure, the article deals with the role of the local authorities in the implementation of the measure, analysing also the role of the Municipalities in the activation of projects useful for the Community, in which to employ the beneficiaries of the Citizens' Income. In conclusion, the article considers the scope of the constitutional provision of basic level of benefits relating to social entitlements, in light of the provisions of the decreto legge on Citizens' Income, both in the social and labour spheres.

I. Introduction

> 'Does poverty have the same characteristics everywhere? Can we identify objective criterias, or conditions, to distinguish the poor from the non-poor regardless where they live and how they assess their own situation?'.[1]

The answer is probably a negative one to both questions.

Poverty is a concept that needs to be built on shared coordinates, having first made clear what are the goals that legislature and institutions intend to pursue, and what are the limits that must characterise their activities.

In other words, poverty is a relative concept.[2] But *not arbitrary*.

Nevertheless, there is another important aspect of the above questions not to be overlooked related to the perception of poverty and of the poor by the individuals and society. One may feel poor even after comparative evaluation with respect to others and with respect to the level of well-being characterising the society in which one lives; evaluations that become all the simpler and more

* Assistant Professor of Constitutional Law, Sant'Anna School of Advanced Studies.

[1] C. Saraceno, *Il lavoro non basta. La povertà in Europa negli anni della crisi* (Milano: Feltrinelli, 2015), 27.

[2] M. Baldini, 'Questioni valutative in relazione alla definizione di «povertà»', in F. Mastromartino ed, *Teoria e pratica dell'eguaglianza* (Roma: Asino d'Oro, 2018), 169; E. Granaglia, 'Premesse concettuali e nodi critici', in Fondazioni Astrid and Circolo Fratelli Rosselli eds, *Nuove (e vecchie) povertà: quale risposta? Reddito d'inclusione, reddito di cittadinanza, e oltre* (Bologna: il Mulino, 2018), 41.

accessible thanks to the role played by the media. Is this a relevant issue for public policies? Moreover, the way in which poverty is faced determines the way in which the experience of poverty and the status of the poor is made.[3]

This second theme appears to be relevant to the extent that the perception of poverty influences, in the words of Sen, the possibility of translating one's *capability* – understood as substantial freedoms of a person to do the things to which, for one reason or another, they assign a value – in functioning corresponding to what a person desires because of the value assigned to it.[4]

To question what poverty is today and how to build public policies means, therefore, from a constitutional law scholar perspective, to query the meaning that the Constitution assigns to the value of the dignity of the person and to the principle of equality, in an attempt to recover 'a global broad-spectrum vision [of the] condition of human frailty'.[5]

As authoritatively affirmed from the provisions on rights and duties, a constitutional design emerges that imposes a continuous action aimed at the transformation of society, in which the foundation of the duty of public powers in the eradicate against poverty and social exclusion

> 'can be deemed as empowered by the specific constitutional commitment to the removal of inequalities, clearly an expression of the need to place man in the conditions to be able to exercise his rights and therefore to carry out his personality'.[6]

The guarantee of a vital minimum can effectively represent the material pre-condition to exercise rights and participate in the economic, political and social life of the Republic. In this regard, and with specific reference to Art 38, para 1, of the Constitution[7], among scholars there are those who argued that the provision 'refers to the solidarity of the entire community that should not tolerate people without the vital minimum'.[8] The right to social assistance is, indeed, a constitutionally guaranteed right of which the essential nucleus cannot be affected

[3] C. Saraceno, n 1 above, 28. In this sense the classification of poverty proposed by Paugam (S. Paugam, 'Les formes contemporaines de la pauvreté et de l'exclusion en Europe' *Études rurales*, 73-96, 159-160 (2001), is interesting and it distinguishes between forms of integrated poverty, typical of southern Europe, where poverty is so widespread that those who are poor do not feel different from others, from forms of marginal *poverty*, typical of contexts in which poverty is not much widespread and therefore the poor are and are perceived as excluded.

[4] A. Sen, 'Human Rights and Capabilities' 6 *Journal of Human Development*, 151 (2005).

[5] Q. Camerlengo, 'Il senso della Costituzione per la povertà' *Osservatorio Costituzionale*, 1-2, 2 (2019).

[6] M. Ruotolo, *Sicurezza, dignità e lotta alla povertà* (Napoli: Editoriale Scientifica, 2012), 226.

[7] 'Every citizen unable to work and without the necessary means of subsistence has a right to maintenance and social assistance'.

[8] L. Violini, 'Art. 38', in R. Bifulco, A. Celotto and M. Olivetti eds, *Commentario alla Costituzione* (Torino: UTET, 2006), 789.

by the legislature in the exercise of his powers.[9]

Building public policies able to eradicate poverty, also through measures aimed at guaranteeing the vital minimum means, first of all, looking at the social complexity and taking note that the forms of exclusion are not determined exclusively by economic deprivation; consequently, having a job – although representing a crucial condition to get out of poverty – does not ensure achieving the scope.[10] On the contrary, to take on this datum would mean to consider different situations as equal, and therefore to assume a distorted conception of equality. In fact, the observation of the reality demonstrates, on the one hand, the increase in *working poor*, on the other, it leads to reflect on profound social exclusion situations in which family members do not have a chance of working due to personal conditions or for welfare burdens towards other members of the family unit.[11] In these cases the intervention of the Republic aimed at

> 'removing obstacles of an economic and social nature that, by limiting the freedom and equality of citizens, prevent the full development of the human being and the *effective participation of all workers in the political, economic and social organisation of the country*' (Art 3 of the Italian Constitution)

must take the form of further and previous interventions that can allow these people to commit and free themselves from need.

On these premises, the article analyses the Italian decreto legge 28 January 2019 no 4 (converted by legge 28 March 2019 no 26) on Citizens' Income (hereafter CI). Firstly, the article examines the provisions of the new regulatory framework and how the CI ranks with respect to the factual data on poverty, considering also the other similar regulatory interventions adopted in the last twenty years. Secondly, the article is focused on the investigation of the specific conditions and access requirements of the CI. Then, an analysis of the role of the local authorities in the implementation of the measure is carried out, in order to assess the compatibility with the constitutional framework even through the analysis of the role of the Municipalities[12] to activate projects useful

[9] In this sense, a clear confirmation came from the Corte costituzionale 15 January 2010 no 10, *Giurisprudenza costituzionale*, 135 (2010).

[10] M. Chan and R. Moffit, 'Welfare Reform and the Labor Market' 10(1) *Annual Review of Economics, Annual Reviews*, 347 (2018); M. Ferraresi ed, *Reddito di inclusione e reddito di cittadinanza. Il contrasto alla povertà tra diritto e politica* (Torino: Giappichelli, 2018), 3; C. Goulden, *Cycles of Poverty, Unemployment and Low Pay* (York: Rowntree Foundation, 2010); E. Granaglia and M. Bolzoni, *Il reddito di base* (Roma: Ediesse, 2016); P. Tullini, 'Opinioni a confronto sul reddito di cittadinanza. Un dialogo aperto' *Rivista del Diritto della Sicurezza Sociale*, 4, 687 (2018).

[11] E. Ranci Ortigosa, 'Dal reddito di inclusione al reddito di cittadinanza: continuità o discontinuità?' *Prospettive sociali e sanitarie*, 1 (2019).

[12] The Italian social assistance system is organized on a multilevel basis. Local authorities exercise administrative functions, regions have legislative power and the state should define basic level of benefits relating to social entitlements.

for the community and in which to employ the beneficiaries of the CI. The article concludes with a reflection on the current scope of the provision of 'basic level of benefits relating to social entitlements' (Art 117, para 2, letter m) of the Italian Constitution) in light of the new legislative measure of the CI, both in the social and labour spheres.

II. Decreto Legge 28 January 2019 no 4 and Policies to Fight Poverty

Citizens' Income[13] is defined in the Art 1 of the decreto legge 28 January 2019 no 4 as

> 'fundamental measure of active labour policy to guarantee the right to work, to eradicate poverty, inequality and social exclusion, (...) aimed at promoting the right to information, education, training and culture through policies aimed at economic support and the social inclusion of those at risk of marginalisation in society and in the world of labour'.

To understand the real extent of this reform, it must be remembered that this is not the first attempt to introduce a tool to combat poverty in the Italian context. In fact, many experiments have been carried out in the last twenty years, both at national and regional levels, much more studied by the social sciences but never subjected to a serious monitoring and evaluation process by public institutions.

The long process of experimentation seemed destined to end positively with the approval of legge 15 March 2017 no 33 (and the following implementation with decreto legislativo 15 September 2017 no 147 containing 'Provisions for the introduction of a national poverty reduction measure'), which aimed to introduce a new instrument, the Inclusion Income[14] (II), extended to the entire national territory, as part of a comprehensive reform of Italian welfare.

Legge 15 March 2017 no 33 had indeed a very broad ambition: to reorganise monetary benefits, to strengthen the coordination of interventions on social services, to reintroduce a series of national programming tools. Just after less than two years, the decreto legge 28 January 2019 no 4, hereafter examined, has introduced a new tool to combat poverty, stopping the ongoing reform process based on the previous legge 15 March 2017 no 33 that at that moment was

[13] The choice not to use the term *universal basic income* wants to emphasise the distance between forms of unconditional income, as recently theorised, among others, by Ph. Van Parijs and Y. Vanderborght, *Basic Income: A Radical Proposal for a Free Society and a Sane Economy* (Cambridge: Harvard University Press, 2017), and the measure here analysed.

[14] The measure was reserved to certain categories of fragile subjects, it was subject to the means test and adherence to a personalised project of activation and social and work inclusion (Art 1, para 2, legge 15 March 2017 no 33). I will return to some aspects of the II in the following paragraph, to highlight some features of citizens' income.

taking its first steps.

The fact that the Citizens' Income reform has been approved with the instrument of decreto legge appears even more controversial. As known, in the Italian legal system, a decreto legge can only be issued 'in extraordinary cases of necessity and urgency', under the responsibility of the Government, and it is a 'provisional provision' that the Parliament must convert into the legge within sixty days, under penalty of forfeiture with retroactive effects. The emergency decree has been widely abused of for a very long time; an abuse that legge 23 August 1988 no 400 already attempted to stem by providing that

> 'Decrees must contain measures of immediate application and their content must be specific, homogeneous and corresponding to the title' (Art 15.3).

In the specific case analysed in the current article, as stated in the preamble of the decreto legge 28 January 2019 no 4, the extraordinary need and urgency is in the need

> 'to provide for a measure to eradicate poverty, inequality and social exclusion aimed at guaranteeing the right to work and favour the right to information, education, training, culture through policies aimed at economic support and the inclusion of those at risk of marginalisation in society and in the world of work and thus guarantee a useful measure to ensure a minimum level of subsistence, encouraging the personal and social growth of the individual'.

From this point of view, the use of the decreto legge is certainly not new: in fact, it was preceded by three decreti legge that had been approved after one another in the short period of time from 2008 to 2012.[15] Later, more or less incisive reforms followed, adopted with the Legge di Bilancio for 2014 first and then the Legge di stabilità of 2016 (legge 28 December 2015 no 218), to then the legge 15 March 2017 no 33, and decreto legislativo 15 September 2017 no 147 that included the implementation of the Rei regime.

[15] Decreto legge 25 June 2008 no 112, converted into legge 6 August 2008 no 133, a special fund was set up to answer mainly food-related needs for disadvantaged people and the so-called social card. In 2010, a new experiment was regulated with decreto legge 29 December 2010 no 225, the so called 'mille proroghe' decree, converted with legge 26 February 2011 no 10, to be activated in cities with at least two hundred and fifty thousand inhabitants, in which the cards are assigned to charitable organisations, having determined which will provide and give them to the people in need. Lastly, the experimental Purchasing Card was regulated with decreto legge 9 February 2012 no 5 (the so called Semplifica Italia), converted into legge 4 April 2012 no 35, not cumulative with the previous ordinary Purchasing Card, for which it is expected that the Municipalities will act as intermediaries in the distribution of the purchase card while the third sector entities will be involved in the management of projects aimed at job placement and social inclusion, developed in collaboration with local administrations.

It seems that this consisted of a series of clumsy and ineffective attempts to find a way to respond also to the recommendations coming from the European side, to face a constant growth of relative and absolute poverty from 2007 to today.[16]

Whilst the use of the regulatory instrument devised to deal with situations of exceptional gravity can be based on the anti-crisis *ratio* of the economic measures adopted, the inadequacy of Parliament to cope with issues with organic policies, such as what is being discussed, that have taken on such a nature of chronicity that seems, in a certain sense, ordinary, and therefore surely not sudden or unforeseen.

Moreover, decreto legge 28 January 2019 no 4 has also another critical profile, related to the presence of contents that are not immediately applicable.[17] From this point of view, the lack of the nature of the immediate applicability of some provisions required by the aforementioned Art 15 of legge 23 August 1988 no 400 that derives coherently from the connotation of a source intended to answer immediate and undelayable needs, has been recently sanctioned by the Constitutional Court. In fact, the latter pointed out that, as conceived by Art 77 of the Constitution 'for specific and timely interventions, made necessary and undelayable by the occurrence of *extraordinary necessary and urgent* cases' the use of the decree would violate the constitutional norm 'if it contained provisions that would have practical effects deferred over time' due to of the

> 'obvious inadequacy of the Decreto legge instrument to implement an organic and systemic reform that [...] requires implementation processes necessarily protracted over time, such that suspensions of effectiveness, postponements and progressive systematisation become indispensable, and that are difficult to reconcile with the immediacy of effects inherent in the Decreto legge'.[18]

Considering the brief description above, it seems that a strategic part of the reform has not been implemented yet. Therefore, the use of the decreto legge is controversial, even starting from the consideration that, as mentioned above, an organic reform for the income support instruments had been set up during the last legislature and that provided for a gradual extension of the recipients.

The use of the decreto legge and the desire to leave that reform unfinished and give life to another that can then be credited to a very precise political majority, can probably be explained in terms of electoral consensus: as effectively observed, in fact,

[16] Istat, 'Le statistiche sulla povertà in Italia. 2018', Roma, 19 June 2019; Inps (Osservatorio statistico), 'Reddito/Pensione di cittadinanza e Reddito di inclusione' available at www.inps.it.

[17] R. Bin, 'Un nuovo problema per il Presidente Mattarella: si può introdurre il reddito di cittadinanza con un decreto-legge?' *la Costituzione.info*, 16 January 2019.

[18] Corte costituzionale 19 July 2013 no 223, *Giurisprudenza costituzionale*, 3296 (2013).

> ‘There is no party or coalition or government program that does not evoke the eradicate against poverty among its qualifying points (…). And the reason is clear: by promising a battle on the side of poverty, the political actor turns to a relatively large audience consisting in potential supporters by levering the value that seems to be dominant in the current social context, namely money’.[19]

So, in this case, urgency is not only dictated by the scope of pursuing the fight against poverty, but by the immediate reinforcement of the political force that is ready to answer a specific social need.

III. Citizens’ Income: What’s It?

Unlike the Inclusion Income (hereafter II)[20], the CI is addressed to all citizens (not only to certain categories), but still remains conditioned to a series of requirements[21] linked to the availability of a certain amount of revenue and assets,[22] to the availability of durable goods and to citizenship and prolonged residence in the national territory.[23] It is therefore a measure of a universalistic[24] nature, but selective at the same time.[25]

[19] Q. Camerlengo, n 5 above, 1.

[20] In this regard it is useful to remember that the Legge di stabilità for 2018 provided for the repeal of Art 3, para 2, of decreto legislativo 15 September 2017 no 147 starting from 1 July 2018, thus erasing the categorical limitations to access pertaining to the members of the family unit (presence of a member under 18 years in the family or of a person with a disability or a pregnant woman, presence of a worker aged 55 or above who is unemployed and does not qualify for any unemployment benefit).

[21] G.B. Sgritta, ‘Il reddito di cittadinanza’ *Politiche sociali*, 142 (2019).

[22] To access the CI, the required ISEE value (the equivalent economic status indicator) has increased by fifty-six per cent (from six thousand to nine thousand three hundred sixty Euro) and the value of the real estate assets (that goes from twenty thousand to thirty thousand Euro), other that the house of residence; the value of movable assets remains the same (equal to six thousand Euro), even if maximum amounts not previously envisaged are introduced in relation to disabled family members (for which the envisaged threshold can be increased up to five thousand Euro) or seriously disabled and not self-sufficient (for which the envisaged threshold can be increased up to seven thousand five hundred Euro).

[23] It is interesting to note that we move from a prolonged residence on the national territory of two years, typical of the II, to a ten-year one – of which the last 2, consecutive, of the Citizenship Income. On this point: A. Bonomi, ‘Osservazioni sparse sul Reddito di cittadinanza: sarebbe costituzionalmente legittimo estenderlo ai soli cittadini italiani’ *Dirittifondamentali.it*, 1-20 (2018); more generally, F. Biondi Dal Monte, *Dai diritti sociali alla cittadinanza. La condizione giuridica dello straniero tra ordinamento italiano e prospettive sovranazionali* (Torino: Giappichelli, 2013), 144; P. Palermo, ‘Welfare immigrazione. Disuguaglianza, discriminazione e libera circolazione. “Declinazioni” locali alla luce del diritto europeo e della giurisprudenza delle Corti’ *Dirittiregionali.it*, 1-31 (2018); C. Panzera, ‘Immigrazione e diritti nello Stato regionale. Spunti di riflessione’ *Diritto pubblico*, 141-180 (2018).

[24] O. Jacques and A. Noël, ‘The Case for Welfare State Universalism, or the Lasting Relevance of the Paradox of Redistribution’ 28 *Journal of European Social Policy*, 70 (2018).

[25] M. Baldini and C. Gori, ‘Il reddito di cittadinanza’ *il Mulino*, 269 (2019); G. Bronzini, ‘Il

It consists of a series of benefits: a) income integration (that takes the name of a citizenship pension for the over-seventy-seven years of age); b) contribution for rent or contribution for the payment of the loan instalments; c) employment pact (excluding the citizenship pension beneficiaries), d) pact for social inclusion.

Therefore, compared with the II[26] and the measures that preceded it, CI is characterised of a more strictly 'job' connotation that, at least in the intentions of reform supporters, it has the purpose of constituting a stimulus towards the search for an occupation for those who are inactive. In fact, Art 4, para 1, decreto legge 28 January 2019 no 4, affirms that

> 'the payment of the benefit is conditioned by the declaration of an immediate availability to work by the members of the family who are over eighteen, (...), as well as adhering to a personalised path to accompany the insertion work and social inclusion that includes activities at the service of the community, professional retraining, completion of studies, as well as other commitments identified by the competent services aimed at entering the labour market and social inclusion'.

Some subjects are excluded from the declaration of immediate availability to work, provided by Art 4, paras 2 and 3, including the adults that are employed or attend a regular course of studies, the members of the family unit with care burdens.

This 'employment' vocation reverberates on the path of access, which sees the alternation of the two fundamental poles on which the reform is based: the Employment Centre[27], on the one hand, and the Municipality on the other, depending on the prevailing needs and the employment and care situation of the beneficiary.

For those who find it easier to access to the employment as they do not seem to have social problems,[28] they are 'identified and made known' to the Employment Centres through a digital platform so that they can be summoned within thirty days from the recognition of the benefit and they are called to sign a Labour Pact.

In the other cases (Art 4, para 11), the families 'are identified and made known' to the Municipalities through the platform that coordinate at territorial level, so

reddito di cittadinanza, tra aspetti definitori ed esperienze applicative' *Rivista del Diritto della Sicurezza Sociale*, 1 (2014); F. Ravelli, *Il reddito minimo. Tra universalismo e selettività delle tutele* (Torino: Giappichelli, 2018), 35.

[26] E. Ranci Ortigosa, *Contro la povertà. Analisi economica e politiche a confronto* (Milano: Francesco Brioschi, 2018); S. Toso, 'Una ricostruzione storico-analitica', in Fondazione Astrid and Circolo Fratelli Rosselli eds, n 2 above, 223.

[27] E. Reynery, 'I centri pubblici per l'impiego', in Fondazione Astrid and Circolo Fratelli Rosselli eds, n 2 above, 239.

[28] According to Art 4, para 5, these are those without a job for over two years; that have a social benefit for involuntary unemployment or have ended their use for no more than a year; have not signed a customised project pursuant to Art 6, decreto legislativo 15 September 2017 no 147.

that they are summoned, in the same period of time, by the services in charge of fighting poverty. To the interventions connected to the CI, including the support for employment, the applicant and family unit access after a multidimensional assessment aimed at identifying the needs of the family unit, pursuant to Art 5, decreto legislativo 15 September 2017 no 147. Whenever it emerges from this assessment that the needs of the family unit and its components are mainly related to the work situation, the competent services are, in any case, identified at the employment centres, where the employment pact is stipulated, within which the activities to be carried out weekly must be identified.

This is a kind of agreement signed between the beneficiary and the local authority that contains a series of obligations, and the failure to comply gives way to – in defined terms and conditions – the forfeiture of the economic benefit. The heart of this Pact is represented by the need to accept at least one of three suitable job offers;[29] obligations are also provided like: registering on the specific digital platform and consulting it daily as a support of an active search for work; carrying out active job search activities, verifying the presence of new job offers, according to the procedures defined in the Employment Pact; accepting to be referred to activities identified in the employment pact; supporting psycho-attitudinal interviews and any selection tests aimed at recruitment, upon advice of the competent services and in relation to certified competences.

If the need is complex and multidimensional, the beneficiaries undersign a Pact for social inclusion. Para 12 of Art 14 underlines the importance that the Pact is aimed at giving unitary responses to the family nucleus, with the involvement, in addition to the Employment Centres and social services, of the other territorial services for which competence is declared in the preliminary assessment. Moreover, in this case, the Inclusion Pact corresponds to the personalised project provided by Art 6, decreto legislativo 15 September 2017 no 147 and includes interventions and social services to fight poverty referred to in Art 7 of the above decreto legislativo. Within this binary access system, corrections are made during the conversion so as to make the system more functional and less rigid. Art 4, para 5-*quater*, provides that, in the event that the operator of the Employment Centre discovers issues in relation to which it would be difficult to activate a job placement procedure, the applicant may be referred to the social services for assessment multidimensional. While in Art 4, para 13, a provision has been added according to which

> ‘the interventions and social services to eradicate poverty are activated,

[29] The congruity parameter changes in relation to the time of enjoyment of the benefit and the number of refused job offers (Art 4, para 9). Corrective measures are provided if there is a member of the family with a disability or minor children. It is also provided that, if an offer for a job that is over two hundred and fifty kilometres away is accepted, the economic benefit is acknowledged from three to twelve months by way of compensation for the transfer costs incurred.

where appropriate and requested, also in favour of the beneficiaries signing the employment Pact'.

Therefore, the two changes should answer, at least on paper, the criticisms of excessive rigidity of the binary system proposed by the decreto legge.

Beyond the emphasis that was given to the provisions in drafting of the new provisions – and in the political communication – the so called 'anti-couch' (Art 4 regulates the Employment Pact in detail, while the Pact for inclusion is relegated to what continues to be in force in accordance with the decreto legislativo 15 September 2017 no 147), upon a more attentive reading it emerges that active policy measures for work are not addressed to all beneficiaries of the CI. In fact, upon closer inspection, the Legge implies a triple categorisation among the beneficiaries of the measure: those who are excluded from obligations of any kind, because they have care burdens; those who are primarily addressed to social services for the stipulation of the Pact of inclusion; lastly, those who are considered as more easy to employ, to whom active labour policy measures are primarily addressed.

With reference to the Employment Pact and the Social Inclusion Pact, as well as the multidimensional evaluation that precedes them, Art 4, para 14, specifies that they are basic levels of benefits, within the limits of the resources available under current legislation.

Therefore, a complex system, articulated between Municipalities, Employment Centres and beneficiaries, that, through the digital support represented by the Platforms, embodies – in a revisited form – the model, already experimented on several occasions in Italy, of the so-called *conditionality*.[30]

IV. Citizens' Income Between State, Regions and Local Authorities: What Governance for Policies to Eradicate Poverty?

The CI is composed of a series of measures and interventions that cross state, regional and local level competences. This complexity should also be reflected in terms of governance, requiring, at least in the abstract, the preparation of a series of interactions among the various parties involved in the implementation of the measure. However, this supposed complexity is not reflected in the system outlined by the legislation that has, upon first instance, a significant downsizing of the directorial role that the Municipalities had within the institutional scheme of the II.[31] As observed,[32] this aspect is a consequence

[30] M.A. Gliatta, 'Le misure di sostegno al reddito nel sistema costituzionale di garanzia sociale', in F. Marone ed, *La doverosità dei diritti: analisi di un ossimoro costituzionale?* (Napoli: Editoriale Scientifica, 2019), 221.

[31] V. Casamassima and E. Vivaldi, 'Ius existentiae e politiche di contrasto della povertà' *Quaderni costituzionali*, 115 (2018).

[32] A. Somma, 'Contrasto della povertà e politiche attive del lavoro: reddito di cittadinanza,

of the more 'work-relates' vocation of the CI that intends being characterised to be a stimulus towards the search for a job for those who are inactive.[33] If this were true, the consequent governance system should call into question the main institutional actors of labour market, state and regional policies, creating structured inter-institutional forms of collaboration. Instead, the attention of the legislature focused on the functioning of offices and technical-operational[34] and information tools. The Information System of the CI is established within the Ministry of Labour and Social Policies, within which two specific digital platforms operate: one at the ANPAL, for the coordination of the Employment Centres; the other at the Ministry of Labour and Social Policies, for the coordination of the Municipalities, individually or associated. The platforms

> 'are tools to make information available to the central administrations and to the territorial services involved, in compliance with the principles of minimisation, integrity and confidentiality of personal data' (Art 6, para 1, decreto legge 28 January 2019 no 4).

In other words, they are the place of coordination between the operators of the Employment Centres, the social services of the Municipalities and the other territorial services supporting multidimensional teams.

Furthermore, the general framework of existing State-regional-local authorities relations has changed, on which the legislation establishing the II had already intervened in an important way, empowering the functions of coordination and state directions for the issue. In fact, legge 15 March 2017 no 33 laid down in Art 1, para 1, letter c) the objective of

> 'empowering the coordination of interventions in the field of social

reddito minimo garantito e regime delle condizionalità' *Diritto pubblico comparato ed europeo*, 433-458 (2019).

[33] M. Forlivesi, 'Reddito minimo garantito e principio lavoristico: un'interazione possibile?' *Rivista del Diritto della Sicurezza Sociale*, 721-730 (2018).

[34] It is sufficient to observe on which aspects – in detail, with respect to the overall economy of the reform under comment – the 'Conference system' intervenes. In particular, the State-Regions Permanent Conference intervenes: in the definition of national guidelines and models for the drafting of the Labour Pact (Art 4, para 7); in the definition of guidelines on the basis of which the accredited training institutions can stipulate a training Pact at the Employment Centres and at accredited entities to ensure training or retraining (Art 8); in defining the Extraordinary Plan for empowering employment centres and active labour policies (Art 12). While the Unified Conference intervenes: in the definition of principles and general criteria to evaluate the categories exempt from the obligations to which the beneficiaries are bound (Art 4, para 3); in defining the methods of implementation of public utility projects that the Municipalities are called upon to activate (Art 4, para 15); in defining the summoning procedures for the beneficiaries by the Municipalities and Employment Centres (Art 4, para 15-*quinquies*); in defining procedures to verify the residence and residency requirements of the Municipalities (Art 5, para 4), in the approval of the technical plan for the activation and interoperability of the digital platforms, through which the exchange of information and governance between the institutions at national and territorial level is provided (Art 6, para 1).

services, in order to guarantee the basic level of benefits throughout the national territory, within the framework of the principles of Legge 328/2000'.

Chapter IV of decreto legislativo 15 September 2017 no 147 has been dedicated to this, currently in force with some modifications, within which the Network of protection and social inclusion is regulated. This is a coordinating body for the system of interventions and social services created to promote greater territorial homogeneity in the provision of services and to define guidelines for the interventions. The Network, established at the Ministry of Labour and Social Policies, is responsible, as well as for the elaboration of the Plan for interventions and social services to eradicate poverty (letter b), even for the elaboration of the National Social Plan, as a programmatic tool for the use of the resources of the National Fund for social policies (letter a) and of the Plan for non-self-sufficiency (letter c), plans, the latter, that are not expressly provided for by legge 15 March 2017 no 33. Therefore, the overall design envisaged in the above refereed legge was that of a *cascading programming system* that involved the Regions jointly within the network, and, individually, in the implementation process, through the adoption, with a three-year period cadence, a regional plan to eradicate poverty and to plan the services necessary for the implementation of the II, to be communicated to the Ministry of Labour and social policies within thirty days of its adoption.

Decreto legge 28 January 2019 no 4 intervened to significantly amend the decreto legislativo 15 September 2017 no 147, repealing, for what is more relevant here, Arts 13 and 14, concerning the functions of the Municipalities, the territorial areas, the Regions and the autonomous provinces for the implementation of the II, but also Art 8 called 'National Plan to Combat Poverty and Social Exclusion'. Thus, there is no system outlined by the previous legislative intervention, in which local and regional autonomies were acknowledged with functions of promotion, connection and involvement of third sector bodies, sub-state employees planning and evaluation.

With the repeal of the provision relating to the National Plan to Combat Poverty,[35] a three-year Extraordinary Plan is introduced, aimed at empowering the Employment Centres and active labour policies (Art 12, decreto legge 28 January 2019 no 4); it is a one-time tool introduced to prepare the system outlined by the decreto legge: defining the navigator's[36] needs on a regional basis, dictating the technical assistance plan for Regions and Employment Centres for the system to become fully operational for interventions addressed to the

[35] However, para 6 of Art 21 formally enforced assigns to the Network the responsibility for the elaboration of 'a Plan for interventions and social services to eradicate poverty, as a programmatic tool for the use of the Poverty Fund resource quota referred to in Article 7, paragraph 2'.

[36] Role of a private actor aimed at facilitating the encounter between labour demand and supply.

beneficiaries of the CI. National agency for active labour policies (ANPAL) and the Ministry are the main actors of the actions, the Regions, directly and through the Employment Centres, are the recipients of the financial interventions and technical assistance considered in the Plan.

Lastly, with regard to inter-institutional bodies, the decreto legge abolished the Committee to eradicate poverty and the Observatory, previously regulated by Art 16, decreto legislativo 15 September 2017 no 147, both composed of representatives of the Network of protection and social inclusion, to introduce, with para 10-*bis* of Art 21, decreto legislativo 15 September 2017 no 147, a Control room dedicated to the implementation of the CI within the Network of protection and social inclusion. The Control Room also adds those in charge of regional labour policies, a representative of ANPAL and one of the National Social Security Institute (INPS) to the members of the Network. It is expected that it operates through technical articulations and consults social parties and institutions of the third sector periodically.

Therefore, in view of the lack of participation of the Regions and local authorities in defining the main axes of the CI, and, more generally, in the strategic choices of adopting policies to eradicate poverty, institutional forums are maintained for the coordination like Social Protection Network and the new technical body as the Control Room. On the one hand, these organisms allow for structural enhancement of the connections with labour policies; on the other hand they have a more technical-operational function than an overall policy governance, a dimension that is completely under the new structure that is outlined.

V. The Beneficiary's Participation in Socially Useful Projects Activated by Municipalities of Residence: Problems and Prospects

The beneficiaries of the CI are required to offer their availability to participate in socially useful projects, owned by Municipalities of residence, by making available a number of hours compatible with the other activities (not less than eight per week that can be increased up to sixteen with the consent of both parties). This is an important hourly commitment summed to the series of obligations provided for the beneficiary, both regarding the Pact for social inclusion and the Pact for work.

The willingness to participate in these projects is requested when defining the Pact for employment and the Pact for social inclusion, 'consistent with the professional competences of the beneficiary and with those acquired in a formal, non-formal and informal context, as well as based on the interests and propensities that emerged during the interview held at the employment centre or at the service offices at the municipalities'. Thus, the forecast has a dual scope: for those who have signed the Labour Pact, employment in these projects stops the loss of skills and abilities related to being away from the world

of work; for those who, on the other hand, it was not possible – for situations of serious social hardship – to sign it, it has the equally important function of constituting a first employment experience.

The provision poses a series of problems, only partially solved by the legge that has converted the decreto legge. In fact, the latter has freed the Municipalities from having to arrange the administrative procedures useful to launch the projects. Now this fulfilment is by the Minister of Labour and social policies that a ministerial decree will indicate forms, characteristics and methods of implementation of the projects, subject to agreement in the Unified Conference. Subsequently, the Municipalities proceed with the drafting of these projects to include in a section of the ministerial platform dedicated to the CI.

Therefore, the single Municipalities decide upon the start of the projects. Since no type of incentive is envisaged, it is reasonable to believe that there will be a strong differentiation at the local level: in terms of the number and quality of the initiatives, areas of intervention, professional and economic resources used in the planning and implementation of the interventions. Moreover

> 'the lack of reference to the legislation on the Third Sector and the possibility of activating co-programming and co-planning forms between third sector entities and public bodies is consistent with the *institutional-digital* model introduced that does not contemplate any form of horizontal subsidiarity and involvement of intermediate bodies'.[37]

However, the most complicated knot to untangle remains: how can this type of activity be qualified?

The element that distinguishes it from all the others mentioned in the Pact for inclusion (the frequency of training internships, for example) or in the Labour Pact (active job search, undergoing an aptitude interview) is that while the latter are aimed at increasing the beneficiary's skills and making the entrance into the world of work faster and easier (therefore they are designed in the interest of the beneficiary), the former are activities that, although important for increasing and consolidating the CI beneficiary's skills, are carried out primarily in the immediate interest of the community; therefore, they have the scope of linking the benefit performance to a kind of payment. Art 4, para 15, refers expressly to

> 'participation in projects owned by the Municipalities, useful to the community, in the cultural, social, artistic, environmental, educational and in the protection of common goods'.

Moreover, although not explicitly referring to a mandatory activity, Art 7,

[37] E. Innocenti and E. Vivaldi, 'Dal reddito di inclusione al reddito di cittadinanza', in Fondazione Emanuela Zancan ed, *La lotta alla povertà è innovazione sociale* (Bologna: il Mulino, 2019).

para 5, letter d), decreto legge provides for the forfeiture of the benefit in the event of non-compliance with the projects if the Municipality of residence has established them. The fulfilment of these obligations is certified by the Municipalities by updating the dedicated platform. At the same time, it is specified that the participation in projects is optional only for persons not bound by the obligations connected to the CI.

It is thus not a matter of individual voluntary activity, now explicitly recognised by the Third Sector Code,[38] characterised by the performance of

> 'activities in favour of the community and common good (...) in a personal, spontaneous free, and no-profit, not even indirectly, and exclusively for the scope of solidarity' (Art 17, para 2, decreto legislativo 3 July 2017 no 117).

But it cannot be fully included within the category of socially useful jobs, recently reformed by decreto legislativo 14 September 2015 no 150 (in fact, never mentioned by the decreto legge 28 January 2019 no 4), now defined as 'activities for the scope of public utility for the benefit of the territorial community to which it belongs' (Art 26, para 1). Actually the new discipline that repealed the decreto legislativo 1 December 1997 no 468 provides that, under the direction and coordination of public administrations and according to defined criteria and methods,

> 'workers benefiting from income support instruments with employment may be required to carry out activities for public scope utility for the benefit of the territorial community to which it belongs'.

Therefore, in the latter case, these are beneficiaries that, unlike the users of the CI, are holders of an employment relationship. The aforementioned legislation provides that unemployed workers over the age of sixty who have not yet acquired the right to retirement or early retirement can also be employed. For the latter, that therefore – like the users of the CI – do not have a work relationship, para 5 of Art 26, decreto legislativo 14 September 2015 no 150, prescribes the right to receive a subsidy called 'check for socially useful activity', that is proportionate to the number of hours worked. In the case of CI beneficiary, carrying out socially useful activities is a kind of payment for the provision of the service to eradicate poverty.

The non-applicability of the current provision for public utility works highlights the need for this type of activity to be regulated with a series of fundamental aspects that Art 26, decreto legislativo 14 September 2015 no 150 does not omit to regulate, such as, first of all, the necessary insurance coverage

[38] L. Gori, 'La disciplina del volontariato individuale, ovvero dell'applicazione diretta dell'art. 118, ultimo comma, Cost.' *Rivista AIC*, 1-21 (2018).

against accidents and occupational illnesses related to the work performance, but also civil liability towards third parties, the regulation of periods of rest and that relating to sick leave. Fundamental aspects of the employment right that cannot be overlooked precisely within a reform that has the ambition to represent a 'fundamental measure of an active labour policy, to guarantee the right to work, to eradicate poverty, inequality and social exclusion'.

But concerns about these predictions are also of a more general nature. The obligatory nature of participation in socially useful projects, the tendential correspondence between the economic advantage and the number of hours that the person must employ in these projects, the possibility of non-compliance, are typical elements of the *conditionality* measures practiced for decades in the Systems of Western welfare, more work-oriented. Lastly, as is known, these elements have long been the object of strong criticism regarding their effectiveness and adequacy.

VI. The Prevision of Basic Level of Benefits Relating to Social Entitlements in the Light of the Reform on the Citizens' Income

According to the Constitutional Court jurisprudence, Art 117, para 2, letter m), of the Constitution has introduced

> 'a fundamental instrument to guarantee the maintenance of an adequate uniformity of treatment in terms of the rights of all subjects even in a system characterised by a decidedly increased level of regional and local autonomy'.[39]

Precisely in reference to the constitutional legitimacy of state provisions that aimed to protect situations of extreme weakness (in this case, the social card established by decreto legge 25 June 2008 no 112) the Court stated that this provision, although affecting the issue of social services and of assistance of residual regional competence, must also be reconstructed in the light of the fundamental principles of Arts 2 and 3, para 2, of the Constitution, of Art 38 of the Constitution and of Art 117, para 2, letter m), of the Constitution. The entirety of these constitutional regulations returns among 'social rights' and the national legislator is responsible for, the right to obtain basic level of benefits to alleviate situations of extreme need and to affirm the duty of the State to establish their qualitative and quantitative characteristics, in the event that a lack of such prevision could jeopardise them. Furthermore, it consents to retain that the objective of guaranteeing the immovable nucleus of this fundamental right legitimate intervention on the part of the State which includes providing for an appropriate and ready distribution of a given benefit in favour of individuals.

Consequently, the principle of this title of competence and the need to

[39] Starting with the Corte costituzionale 27 March 2003 no 88, *Foro italiano*, I, 2915 (2003).

safeguard the fundamental rights implied by it, allow to believe that it could represent the juridical basis of the provision and of the direct distribution of a specific social benefit, in order to insure more fully, the satisfaction of the interest which was considered worthy of safeguarding, when it was made unavoidable by unique circumstances.

What does the decreto legge on Citizens' Income call for at basic level? As above mentioned, in its entirety the CI is defined as the basic level of benefits (Art 1, para 1); furthermore the same qualification is attributed to the Work Pact and the Pact for social inclusion, to 'support provided by it, as well as the multidimensional evaluation which may precede the (art 4, paragraph 14)'.[40]

If there are no particular differences identifying basic level of benefits on the 'social' side between the II, the novelty that could take on greater meaning is the one regarding reinforcement – with general limits that will be discussed below – of the working side of the measure in connection to the qualification of the active policy measures like the basic level of benefits.

In other words, the affirmation according to which the Work Pact, with the measures provided in it (measures which obligate the beneficiary as well as the administration) could lead to a reinforcement and enhancement of the 'rights' side of the 'right/duty to work' sanctioned by Art 4 of the Constitution. Although it is not possible to attribute a merely programmatic or political value to Art 4 of the Constitution, it is in fact known that the regulation cannot be invoked in front of a judge by a person looking for a job who has not been able to find one through other channels.

Art 4, para 7 specifies that the Labour Pact is equivalent to the personalised service pact mentioned in Art 20, decreto legislativo 14 September 2015 no 150. This last regulation provides, beside a series of obligation for beneficiaries, a series of obligations for the administration, which become relevant in view of an improvement in the position of the beneficiary and his aspiration to find an employment. In this perspective, the provisions of para 2 letters a), b), and d) of Art 20 are particularly important. These regulations provide: the obligation for Work Centres to select a person in charge of activities that the beneficiary can contact; the definition of the frequency of contacts between the beneficiary and the person in charge of activities (an element that represents a commitment not only for the unemployed worker, but also for the administration in charge); additionally, perhaps the most important feature, the requirement for a definition of the personal employable profile according to the technical procedures prepared by ANPAL. The compliance with the latter requires,

[40] Legge 15 March 2017 no 33 and decreto legislativo 15 September 2017 no 147 had already defined the II as an essential level the benefits (Art 1, para 1, letter a), legge 15 March 2017 no 33 and Art 2, comma 13, decreto legislativo 15 September 2017 no 147). Besides, the latter had considered in the same way the multidimensional evaluation (Art 5, para 10, Decreto legislativo 15 September 2017 no 147) and the personalised project (Art 6, para 13). The last two regulations are still in force.

essentially, the definition of an overall evaluation of the personal and employment condition of the user. The aim of the regulations is evidently to lead to the most comprehensive and detailed evaluation of the distance from the job market, and the draft of a more effective and focused personalised service Pact in which the measures and services of active policies suitable for the construction of real opportunities for social inclusion and inclusion in the work force are indicated.

However, the true problematic aspect concerns the cross-compliance to which these basic levels are subjected to. Conditionality that, as effectively observed translates, basically, into a conditioned cross-compliance: first of all by available resources[41] (both Art 1, para 1 and Art 4, para 14 clarify it); this means, as observed effectively, the

> 'articulation of public duty to remove obstacles of economic and social order to the realisation and equality is entrusted to contingent choices regarding the use of public funds'.[42]

But it is also conditioned by the predisposition of a series of organisational, professional, human resources (think about the actual implementation of digital platforms required by a strategic part of the reform, or the impact the Navigators will succeed in producing). Finally, it has been considered more simply the diversity of productive and local contexts and, more in general, the ability of the job market to offer concrete job opportunities.

VII. Final Remarks

As recently affirmed,

[41] For a reconstruction of the interventions of the Constitutional Court in the relationship between effectivity of social rights and the balanced budget rule (in particular Corte costituzionale 16 December 2016 no 275, *Foro italiano*, I, 2591 (2017) and Corte costituzionale 11 April 2019 no 83, *Giurisprudenza costituzionale*, 1004 (2019)) see, among others, R. Cabazzi, 'Diritti incomprimibili degli studenti con disabilità ed equilibrio di bilancio nella finanza locale secondo la sent. della Corte costituzionale n. 275/2016' *Le Regioni*, 593 (2017); L. Carlassare, 'Bilancio e diritti fondamentali: i limiti "invalicabili" alla discrezionalità del legislatore' *Giurisprudenza costituzionale*, 2336 (2017); I. Ciolli, 'I diritti sociali «condizionati» di fronte alla Corte costituzionale' *Rivista giuridica del lavoro e della previdenza sociale*, 353 (2017); E. Furno, 'Pareggio di bilancio e diritti sociali: la ridefinizione dei confini nella recente giurisprudenza costituzionale in tema di diritto all'istruzione dei disabili' *Consultaonline.it*, 1-21 (2017); M. Luciani, 'Diritti sociali e livelli essenziali delle prestazioni pubbliche nei sessant'anni della Corte costituzionale' *Rivista AIC*, 1-18 (2016); L. Madau, '"È la garanzia dei diritti incomprimibili ad incidere sul bilancio, e non l'equilibrio di questo a condizionarne la doverosa erogazione". Nota a Corte cost. n. 275/2016' *Rivista AIC*, 1-13 (2017); M. Massa, 'Discrezionalità, sostenibilità, responsabilità nella giurisprudenza costituzionale sui diritti sociali' *Quaderni costituzionali*, 73-96 (2017); F. Saitto, '«Costituzione finanziaria» ed effettività dei diritti sociali nel passaggio dallo «Stato fiscale» allo «Stato debitore»' *Rivista AIC*, 1-42 (2017); C. Salazar, 'Crisi economica e diritti fondamentali'4 *Rivista AIC*, 1-39 (2013).

[42] A. Somma, n 32 above, 432.

> 'an income supplement that establishes conditions of *reciprocity* seems (...) to better reflect the constitutional idea of citizenship, both in terms of rights and responsibilities'.[43]

In this perspective, it seems that the correspondence between claiming rights and observing obligations to solidarity must be the a foundation of a welfare reform in which the 'social equivalent' along with some social rights, is the

> 'condition necessary so that each person can claim the right to freedom from welfare-related dependence, from help that does not know dignity and capabilities'.[44]

As evidenced, the hypothesis is based on the assumption that in the perspective of solidarity inscribed in our Constitution lies undoubtedly the conviction that obligations that benefit the common good can be imposed upon members of the community and that the hypothesis of accompanying the distribution of a benefit by public institutions (expression of vertical solidarity) with the expectation of a service on the part of subjects who benefit with the aim of establishing actions which benefit others, constitutes a mutual 'give and take', in which the various dimensions of solidarity combine and produce a positive 'added value' for everyone.[45]

Thus, the types of activation disciplined in the succession of twenty-year experimentations carried out in Italy and studied by the doctrine, constitute a sort of evocation of the labour principle. In fact, it is relevant to remark that, alongside the personal and solidarity principles, in the economy of the Italian Constitution the labour principle carries significant weight. The right/duty to employment sanctioned in Art 4 of the Constitution is, in fact, the foundation of our republican order, to which Art 1 of the Constitution assigns a function of guideline. A democracy founded on work constitutes the basis of the entire constitutional architecture, in which work is considered, indeed, not only a means through which one can express his/her personality, but also a source of social validation for holding and exercising any other position. Its aptitude, as a means by which a person can achieve his goals both materially and spiritually and participate fully in social life, make work a dimension that deserves to be particularly esteemed and protected by the legislature, without permitting that the protection it is granted becomes a way for public powers to legitimate inaction regarding needs and necessities that are not related to the conditions of

[43] C. Tripodina, *Il diritto a un'esistenza libera e dignitosa. Sui fondamenti costituzionali del reddito di cittadinanza* (Torino: Giappichelli, 2013).

[44] Fondazione E. Zancan ed, *Vincere la povertà con un welfare generativo. La lotta alla povertà. Rapporto 2012* (Bologna: il Mulino 2012), 10.

[45] E. Rossi, 'Prestazioni sociali con "corrispettivo"? Considerazioni giuridico-costituzionalistiche sulla proposta di collegare l'erogazione di prestazioni sociali allo svolgimento di attività di utilità sociale' *Consultaonline.it*, 1-20 (2012).

workers (or former workers). These elements have led part of the doctrine to consider incompatible with the constitutional provisions proposals that aim to introduce unconditional forms of guaranteed income, which do not take into consideration the condition of need and the laboriousness of the person.[46] Therefore, in a constitutional perspective, the objective of the participation of the recipient of the benefit in job training/placement programmes, enhancing his/her skills, seems fundamental and qualifying, inasmuch as it aims at consolidating the concept of an interdependence between citizens and community, aimed at the construction of the common good.[47]

How have these elements been translated into legislative measures whose fundamental features as above outlined?

Most of the emphasis with which the Citizens' Income reform has been presented – which significantly affected the perception of the poor as idlers – seems to deflate opposite a plurality of normative conditions (the implementation of measures and procedures which require the approval of bills which have not yet been adopted) and contextual ones (the labour market's actual flexibility and capacity to absorb) that, a few months after the emanation of the decreto legge 28 January 2019 no 4, seem clearer. Ultimately these conditions, if not met, risk causing the collapse of the articulate system of obligations (some, *first level*, such as those linked to the stipulation of the Work Pact and the Pact for social inclusion; others, *second level*, such as those related to activities linked to public utility projects, potentially activated by Municipalities) on which the actual integration of essential levels of benefits defined by the analysed legislation stands.

In fact, these previsions presuppose the existence of a system of social services and employment start-up services that are currently not available homogeneously in the national territory. The role of social services is particularly important in the fight against poverty and how these are distributed and financed at national level. Italy is still characterised by strong territorial differences, not only in terms of spending capacity and the provision of social services, but also in terms of enhancing relations between public operators and third sector.

Only after having tackled these two crucial questions, it would be possible to understand whether socially useful projects, Labour Pacts and Pacts for Social Inclusion would be effective tools to enable people to escape poverty.

[46] F. Pizzolato, *Il minimo vitale. Profili costituzionali e processi attuativi* (Milano: Giuffrè, 2004), 82; C. Tripodina, n 43 above, 239.

[47] E. Rossi, 'La doverosità dei diritti: analisi di un ossimoro costituzionale?', in F. Marone ed, n 30 above, 9.